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**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : **CAM/22UB/LDC/2017/0013**

Property : **2a Grange Parade,
Grange Road,
Billericay,
Essex CM11 2RF**

Applicant : **Broadstreet Ltd.**

Respondents : **Andrew James Leslie Holman**

Date of Application : **3rd August 2017 (rec'd 8th)**

Type of Application : **for permission to dispense with
consultation requirements in respect of
qualifying works (Section 20ZA Landlord
and Tenant Act 1985 ("the 1985 Act"))**

Tribunal : **Bruce Edgington (lawyer chair)
David Brown FRICS**

DECISION

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1. The Applicant is granted dispensation from further consultation requirements in respect of works to replace the roof, parts of its substructure, the fascia board, guttering, downpipes and Velux window in the roof of the property.

Reasons

Introduction

2. This application was made for dispensation from the consultation requirements in respect of 'qualifying works' to the roof of the building in which the property is situated. An e-mail dated 28th June 2017 was received by the managing agent from the Respondent saying "*as requested, I attach photos of where water coming in from roof – running down ceiling light fitting in upstairs landing and front bedroom. Water in Bowl collected over 1 hour when raining last night. (I have turned fuse off for upstairs lighting as water running along the electric wires). The leaking roof needs fixing asap as more rain in weather forecast*".
3. The property is a 2 bed roomed flat above a shop. The managing agent's witness, Benjamin Frenkel, says that he had some problem getting access to

the flat in order to have it inspected and the work analysed and quoted for but eventually he was able to obtain advice that the repairs would not be long lasting and the property needed re-roofing. 3 quotes were obtained for the basic work and instructions were given to Top 2 Bottom roofing. They started work on the 21st August and found that some of the substructure to the roof needed replacing, as did the guttering and downpipe, and the fascia board was rotten. Dispensation is requested for all the work. It is not known whether the work has actually finished.

4. The Tribunal chair issued a directions order on the 8th August 2017 timetabling this case to its conclusion. One of the directions said that this case would be dealt with on the papers on or after 21st August 2017 taking into account any written representations made by the parties. It was made clear that if any party wanted an oral hearing, then that would be arranged. No request for a hearing was received.
5. In fact the bundle of documents for the Tribunal did not arrive on time. The statement prepared by Mr. Frenkel is dated 23rd August 2017. It is certified as having been served on the Respondent by 1st class post on the 24th August. Obviously it has been necessary to wait to see what, if anything the Respondent wanted to say in response. No response has been received by the Tribunal.

The Law

6. Section 20 of the 1985 Act limits the amount which lessees can be charged for major works unless the consultation requirements have been either complied with, or dispensed with by a leasehold valuation tribunal (now called a First-tier Tribunal, Property Chamber). The detailed consultation requirements are set out in Schedule 4, Part 2 to the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These require a Notice of Intention, facility for inspection of documents, a duty to have regard to tenants' observations, followed by a detailed preparation of the management company's proposals. Those proposals, which should include the observations of tenants, and the amount of the estimated expenditure, then has to be given in writing to each tenant and to any recognised tenant's association. Again there is a duty to have regard to observations in relation to the proposal, to seek estimates from any contractor nominated by or on behalf of tenants and the management company must give its response to those observations.
7. Section 20ZA of the Act allows this Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable.

Conclusions

8. All the Tribunal has to determine is whether dispensation should be granted from the full consultation requirements under Section 20ZA of the 1985 Act. There has been much litigation over the years about the issues to be determined by a Tribunal dealing with this issue which culminated with the recent Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14.

9. That decision made it clear that a Tribunal is only really concerned with any actual prejudice which may have been suffered by the lessees or, perhaps put another way, what would they have done in the circumstances? In this case, for example, the roof was leaking badly which was compromising the electrical system and needed urgent repair.
10. It is self-evident that repair works were and are required. The Tribunal therefore finds that there has been little or no prejudice to the Respondent lessees from the lack of consultation. Dispensation is therefore granted.
11. If there is any subsequent application by the Respondent for the Tribunal to assess the reasonableness of the charges for these works, the members of that Tribunal will want to have clear evidence of any comparable cost and availability of the necessary parts at the time of the repairs.



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Bruce Edgington
Regional Judge
11th September 2017

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.