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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/00KB/LDC/2018/0009**
Property	:	**1-10 Oaklands Court,** **25 Rothsay Road,** **Bedford,** **MK40 3PT**
Applicant	:	**25 Rothsay Road Management Co. Ltd.**
Respondents	:	**the long leaseholders listed in the application**
Date of Application	:	**22nd May 2018**
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 re-cover the flat roof over flat 5.

Reasons

Introduction

2. This application was made for dispensation from the consultation requirements in respect of 'qualifying works' to the flat roof of the building over flat 5. The way in which this has progressed is unfortunate, to say the least.

3. The first point to make is that the application was originally made by Mary Patricia Long who describes herself as the estate manager of Encore Estates who are presumably the managing agents for the building. The landlord is said to be 25 Rothsay Road Management Co. Ltd. As neither Ms. Long nor Encore Estates has any contractual relationship with the long leaseholders, there was little point in granting them any dispensation. It is the landlord who has to consult and the landlord is the one to receive dispensation – hence the change of name of the Applicant.

4. As requested, the Applicant has included in the bundle a statement setting out the facts. It seems that the flat roof over flat 5 started leaking in December 2017. As at the date of this application, it was still leaking profusely with water being collected in buckets at every rainfall.

5. At first, a contractor was instructed. It was someone who had undertaken repairs to 5 holes in the roof over the previous year. The statement then says that "*after several weeks delay this contractor declined to quote for these works*". A building surveyor was then instructed to look at the condition of the roof and co-ordinate tenders from 3 contractors "*to process the Section 20ZA procedure for these works. These tenders have now been received and checked through by the surveyor as appropriate for the works concerned*".

6. It was only after the tenders were received that the decision was made to make this application. The first notification to the leaseholders under the consultation process was not sent until 22nd May 2018 i.e. the same date as this application.

7. The Tribunal chair issued a directions order on the 23rd May 2018 timetabling this case to its conclusion. One of the directions said that this case would be dealt with on the papers on or after 22nd June 2018 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 and no written representations have been received from leaseholders.

8. The directions order required the Applicant to include in the bundle any relevant documents. It was not known when that direction was given that a surveyor had been instructed or that there had been a tender exercise. None of the communications with the surveyor, or the tender documentation were included in the bundle. Presumably there is also a full specification.

The Law

9. 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 landlord'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 landlord must give its response to those observations.

10. 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

11. 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.

12. That decision made it clear that a Tribunal is only really concerned with any actual prejudice which may be suffered by the lessees or, perhaps put another way, what would they have done in the circumstances? In this case, for example, the roof is leaking badly and needs urgent repair.

13. The problem in this case is that a full consultation could clearly have taken place because the problem was known about some 5 months before the application and 3 tenders have already been obtained. As the consultation process allows leaseholders to nominate contractors, there may well have been actual prejudice.

14. The Tribunal is also concerned to note a comment from the Applicant in its statement that no order for the work will be placed until the leaseholders have paid in full. The lease certainly allows for payments in advance to be obtained but the reality is that the occupiers of flat 5 appear to have had months of damage being caused to their flat without the consultation process even being commenced.

15. It is self-evident that repair works were and are required as a matter of urgency. Dispensation is therefore granted. However, the Tribunal obviously cannot and does not approve the details of the work or its cost because it simply has no information upon which to make any judgment in this regard. Thus, if any leaseholder wants to challenge those matters, a further application can be made.

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Bruce Edgington
Regional Judge
27th June 2018

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.