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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/22UD/LDC/2018/0011**
Property	:	**Hanover House, 78 High Street, Brentwood, Essex CM14 4 AP**
Applicant	:	**Blueprint Investments (London) Ltd.**
Respondents	:	**The long leaseholders listed in the application**
Date of Application	:	**1st June 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. P & M Inventories Ltd. is removed from this application as a Respondent as it is a commercial tenant in the building and not subject to a long residential lease.

2. The Applicant is granted dispensation from further consultation requirements in respect of works undertaken between the 11th and 23rd February 2018 to investigate blocked pipes etc. and clear waste from the sewerage system contained in the basement area of the property. No other work undertaken is covered by this dispensation.

Reasons

Introduction

3. This is another application for dispensation from the consultation requirements in respect of alleged 'qualifying works' to the sewerage system of the property. The last application related to similar works between the 15th December 2014 and the 14th July 2015, when contractors were called out on no less than 12 occasions because the sewerage system became blocked.

4. It is clear that each call out on this occasion was also an emergency which means, for the purpose of the application, that they could not be deemed to be part of the same contract to be added together for the purpose of consultation.

5. A procedural chair issued a directions order on the 27th June 2018 i.e. the day after the application was received timetabling this case to its conclusion. The first direction said that the Applicant had to set down in a statement, why all this work became necessary when a very similar 'emergency' happened in 2015; what expert analysis has been made as to why this happened and what has been done to prevent it happening again; why the application had been delayed for many months; in the invoice of the 23rd February, what are the 'quoted works' and why the first Respondent had been included when it appeared that it was a commercial tenant. These were not the same questions but were similar to those asked in 2015.

6. The Tribunal indicated that it would deal with the application on the basis of written representations on or after 20th July 2018 and the appropriate notice was given to all parties with a proviso that if anyone wanted an oral hearing, then arrangements would be made for this. Similarly, the Tribunal did not consider than an inspection would be necessary but offered the facility of an inspection. No request was made for either an inspection or an oral hearing. The delay in the decision has been caused because the bundle for the Tribunal has only just arrived.

The Law

7. Section 20 of the 1985 Act limits the amount which lessees can be charged for major works involving a cost of more than £250 to each tenant 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.

8. The landlord's proposals, which should include the observations of tenants, and the amount of the estimated expenditure, then have 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.

9. 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 so to do.

The Lease terms

10. Copies of the leases of the residential properties were produced in 2015. They provide that the landlord is responsible for keeping the structure, including the roof, in repair together with the common parts, to include the lift, subject to the tenants paying a reasonable proportion of the cost. The Tribunal has not been asked to consider whether this includes the sewerage system but it is

assumed, for the purpose of this decision, that it does. A similar comment to this was made in the 2015 decision.

Discussion

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 matters to be determined by a Tribunal dealing with this issue which culminated with the Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14. 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?

12. When the Applicant filed a statement from Alan Parry, a director of the Applicant dated 15th August 2018, it was noted that the majority of the information requested was missing. The Tribunal determined that the Applicant, which is represented by an organisation called Cavendish Legal Group, had made the positive decision not to provide the information and it was decided not to delay matters any further. It is noted that this same comment was made in the 2015 decision.

13. Mr. Parry's statement says that the cause of the blockage was the residential tenants putting things down the toilet system. There is no explanation as to why it has happened so soon after the last occasion. The only expert analysis, so it is said, is that "*the new equipment has both alarms and a maintenance plan in place to avoid any further issue from occurring. Also the commercial toilets and kitchen waste have been sorted around this pit*". There is no explanation as to what 'this pit' means or refers to. There was a new alarm system and other substantial works undertaken in 2015 but this is not referred to by Mr. Parry.

14. It is said that the application was made as soon as possible. It is said that the reason for the 3 months' delay was that further details were being 'gathered' and they had to find a solicitor. It is interesting to note that the same solicitors were used as in 2015 and the 'details' presented to the Tribunal have been few and far between. They were available to the Applicant in February 2018.

15. The quoted works referred to are described as "*the replacement and repair of the system*". No further details are given. The Tribunal wanted to have this information so that a comparison could be made of the work undertaken in 2015. The invoice of the 23rd February simply says "*quoted works*". No copy of the quotation has been provided. Thus, the dispensation does not apply to that work. Finally, it was confirmed that the first named Respondent is a commercial tenant.

16. The Tribunal received representations from Jonathan Smith BSc CEng MICE, a tenant of Flat 12. He says that he bought his flat new in September 2014 and he objects to any dispensation being given because he considers that the vast majority of the waste in the sewerage system is from a very large busy restaurant in the ground and mezzanine floors. The figures he provides clearly illustrate that, on the face of it at least, the proposal that the blockages were caused by only the residential tenants is highly unlikely.

Conclusions

17. The contracts where dispensation has been given involved clearing blockages in the sewerage system as emergencies. For the remaining contract for 'quoted works', no information has been given which would suggest what the repairs were and why the problem had occurred so soon after the last series of blockages. If, as Mr. Smith says, the residential part of the building at least was new in 2014, then why are no efforts being made to bring the contractor into the case because it would seem that the basic sewerage removal system is defective? Either that or the designers at the time did not correctly anticipate the sewerage throughput of the commercial premises.

18. Giving dispensation for the repair work, when the Tribunal has no idea what that was or why no efforts appear to have been made to get the original contractors or the 2015 contractors to do the work, suggests that the tenants would probably suffer prejudice if dispensation was given. A new alarm system was fitted in 2015 which should have provided a warning of possible future blockages which would, in turn, have given time for a consultation process to happen.

19. It should be made clear that this is not an application for the Tribunal to determine whether the work done or the costs incurred are reasonable and it does not do so. There are certainly question marks over (a) why these substantial and expensive failings have occurred just 4 years after the flats were built, (b) why the problem was not resolved in 2015 particularly after a new alarm system was installed at that time, (c) why the residential tenants only are being blamed when a large and busy restaurant is clearly putting a great deal of waste into the system, but the Tribunal has no information upon which to base any further comment. There will be time for tenants to challenge the service charges claimed in due course if they wish to do so.

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Bruce Edgington
Regional Judge
7th September 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.