



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

Case reference	:	CAM/00KF/LDC/2014/0017
Property	:	13 Preston Road, Westcliff-on-Sea, Essex SS0 7NB
Applicant	:	Southend Ground Rent Investments Ltd. for and on behalf of itself and BTTMM Ltd.
Respondents	:	Michael Paul Graham (13a) Paul Chrome (13b) John & Christine Ward (13c) Michael Bronstein (13d) Joanne Adey (13e) Adam Farley (13f)
Date of Application	:	30th July 2014
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 the consultation requirements of section 20 of the **Landlord and Tenant Act 1985** in respect of works to:-
 - (a) Replace (i) temporary roof covering over a 10.5m x 5m surface and (ii) a defective piece of roof covering on a 7m x 5.5m with a new 3 layer high performance roofing felt system.
 - (b) Relay or replace any defective or missing coping stones
 - (c) Replace rotten and defective fascia boards
 - (d) Supply new guttering system to existing down pipe
 - (e) Replace approximately 4 missing vertical wall tiles on the back addition dormer and

- (f) Provide 2 new fixing brackets and refit top section of the soil vent pipe

Reasons

Introduction

2. This application has been made for dispensation from the consultation requirements in respect of 'qualifying works'. The Applicant describes itself as a management company and the Tribunal infers that it makes the application on behalf of itself and the landlord, BTMM Ltd.
3. There has been temporary roof covering installed to part of the roof and another part is defective. The Applicant says "*it appears that water may be penetrating during heavy rainfall*". About 6 contractors have been contacted to undertake this work and some further related work as described in the decision above. 3 of those contractors have given quotations. It is also said that the freeholder has been asked to nominate any contractors.
4. A procedural chair issued a directions order on the 7th August 2014 timetabling this case to its conclusion. One of the directions said that depending on evidence filed by the Applicant and any representations from the Respondents, this case would be dealt with on the papers 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. The order said that the Tribunal would make a determination based on written representations on or after 3rd September 2014.
5. The Tribunal ordered that any Respondent who wanted to make any written representations in respect of the application, he or she should do so by 5.00 pm on the 20th August 2014. In particular, such Respondents were asked to say whether they considered that they would be prejudiced by dispensation being granted. No such representations were received.

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 3 to the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These require a fairly complicated and time consuming consultation process which give the lessees an opportunity to be told exactly what is going on and the landlord must give its response to those observations and take them into account.
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 sort of case 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 be suffered by the lessees or, perhaps put another way, what would they have done in the circumstances? In this case, for example, there is a temporary repair and also a defective area of the roof, both of which appear to be prone to leaking. Faced with that problem, the question then is what should be done?
10. The Tribunal finds that if rainwater is penetrating the roof, the delay which would be caused by undertaking the full consultation exercise may well result in substantial additional cost to the lessees, particularly those under the defective roof. There is no evidence that the full consultation process will result in different works or a lower cost. The Tribunal therefore finds that there has been no prejudice to the lessees from the lack of consultation on the basis of the somewhat limited information supplied to it. Dispensation is therefore granted.
11. However, the Tribunal should make it clear that this is not an application to determine the reasonableness of the works or their cost. The Tribunal has not seen the property, does not know the full extent of the work and does not have copies of the quotations. If, when the work is done and the full cost is known, any Respondent objects to the cost or the reasonableness of the work or the way it was undertaken, an application can be made to this Tribunal for a determination of all or any of those questions.

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Bruce Edgington
Regional Judge
3rd September 2014