12032

First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/11UC/LDC/2017/0001**
Properties	:	**Flats 1 and 3, 87 High Street, Great Missenden, Bucks. HP16 0AL**
Applicant	:	**Trustees of R.M. Raymond's Charitable Trust**
Respondents	:	**Justine Egan (1) Kieran Michael Byrne & Kaley Susannah Botting (3)**
Date of Application	:	**12th January 2017**
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. Dispensation from the consultation requirements in respect of roofing works to the property as described in the application is refused.

Reasons

Introduction

2. The Applicant owns the freehold of the building in which the properties are situated. It consists of 5 flats on 3 floors. 1 of the flats is built into the original roof space. 3 of the flats are let by the Applicant on assured shorthold tenancies and the other 2 are the properties which are occupied by the Respondents as long leaseholders. In the papers submitted for this determination, it is also said that there are office premises in the building.

3. The application is dated 12th January 2017 and says that "*it is planned to strip off the existing slate covering to provide Celotex insulation then recover with a breathable membrane and recover the roof using second-hand slates. This is to eradicate leakage into the second floor*

accommodation. The builder has already been instructed as this is considered emergency work".

4. It is then said that the consultation procedures would, in the Applicant's opinion, be too long in view of the urgency of the matter. The work is said to be urgent because "*water is penetrating into a building to the detriment of the occupiers of the appropriate flat*".

5. The application was received on the 13th January and on the same day a Directions Order was made requiring the Applicant to file and serve a statement setting out a history of the matter, its reasons for saying that this was an emergency, a breakdown of the cost, what investigations have been made to find alternative costs and, as a builder has already been instructed, why the Respondents have not been told of the proposals beforehand.

6. The order said that the Tribunal would be content, as suggested by the Applicant, for the matter to be determined on a consideration of the papers and any written representations filed, and would do so on or after 7th February 2017. It also said that if any party wanted an oral hearing, one would be arranged. No request for an oral hearing has been received. Indeed, nothing has been heard from the Respondents.

7. A bundle of documents has been received from the Applicant for the purpose of this determination. It includes a submission from Mr. K.P. Thompson FRICS of Thompson Wilson Ltd., Chartered Surveyors, which is said to be in compliance with the above mentioned directions order.

The Law

8. Section 20 of the 1985 Act limits the amount which lessees under residential long leases can be charged for major works to £250 per flat 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 the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These require a Notice of Intention, an invitation to lessees to nominate potential contractors, facility for inspection of documents, a duty to have regard to tenants' observations, followed by a detailed preparation of the landlord's proposals. There then has to be a tender process with estimates being obtained including at least one from a contractor unconnected with the landlord. These requirements last well over 2 months.

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. There has been much litigation over the years about the matter to be considered by a Tribunal dealing with this issue which culminated with the Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14.

10. That decision made it clear that a Tribunal is only really concerned with any actual prejudice which may have been suffered by a lessee or,

perhaps put another way, what would they have done in the circumstances?

Discussion

11. It is of concern that some of the questions raised by the Tribunal have not been answered. It is said that the flat in the former roof void was let by the Applicant on an assured shorthold tenancy. During that occupancy complaints were made about damp penetration around the old chimney breast and around dormer windows. The tenants vacated on the 22nd November 2016. The report says that the surveyors "*took the opportunity of having the roof inspected*".

12. There are some photographs which show a small number of slates having slipped out of place. There are then some copy e-mails but these all start in January 2017. The first is an e-mail from Mr. Thompson to a letting agent which refers to a communication from a roofing contractor but without any detail. He says that some slates have slipped but it "*is not a large number relative to the size of the roof*". There is a comment that Mr. Thompson will take advice from his 'own roofing contractor'. He then e-mails a Mr. Bennett asking for estimates for either (a) overhauling the roof or (b) completely re-roofing.

13. Mr. Bennett replies on the 9th January suggesting re-roofing at a cost of £6,600.00 plus VAT because of the cost of scaffolding and the fact that special permission will be required for the scaffolding from the local authority. On the same day, Mr. Thompson replies asking Mr. Bennett's availability and he then says that he is "*seeking legal advice as to whether we can avoid serving notice on the leaseholders and delaying the matter*". On the 10th January, Mr. Bennett says that it will take at least 4 weeks to get the licence as the property is on a very narrow pavement.

14. On the 11th January, Mr. Thompson then gives instructions to Mr. Bennett to get his scaffolder to obtain the necessary licence and then instructs him to commence the work, asking "*if you can give me a few days' notice of when you intend to start work*".

15. Mr. Thompson's conclusions in his report to the Tribunal are that re-roofing is necessary and it is important to do this as quickly as possible to prevent deterioration of the building as well as loss of income to the Applicant. He adds that his clients were not prepared to look for alternative quotes because there was no time to seek them. He adds that Mr. Bennett has been used before and his clients are satisfied with the quality of his work "*and his pricing which is normally competitive*".

Conclusions

16. The only matter to be considered is the possible prejudice to leaseholders in permission being granted. The purpose of the consultation arrangements is to ensure that long leaseholders have a say in any large contract when they are to contribute to its cost. It is not just a matter for the landlord to dictate terms. With a real emergency situation such as a roof which is leaking badly into a flat

with current occupiers or a broken lift in a block of flats where there are elderly and/or infirm occupants, landlords have to move quickly.

17. In this case, however, there is no information about when the leak(s) became apparent and no report from the roofer or Mr. Thompson explaining the extent of the damage caused or the rate at which damage is continuing. It seems clear that the flat which is really affected by the leak(s) is empty and there is no suggestion that when the tenant vacated in November 2016, the position was so serious as to warrant emergency works or complete re-roofing.

18. It seems to have taken weeks for the letting agent to obtain information from another roofer and it is clear that the permission from the local authority for the scaffolding is to take weeks. Once Mr. Thompson became aware of this, he has given no indication that he has tried to convince the local authority that this is an emergency.

19. On the evidence placed before it, the Tribunal is not convinced that this is an emergency. There has been time to get other quotations from different roofers and the Tribunal is troubled by the assertion that the Applicant is not prepared to look for alternative quotations. Thus, the primary reasons why the consultation provisions exist i.e. so that the leaseholders can (a) contribute to the discussion as to whether a roof is to be repaired or renewed, (b) nominate contractors and (c) have competitive quotations, have been thwarted by the actions of the landlord. It is likely, on balance, that this will cause prejudice and dispensation is therefore refused.

Bruce Edgington

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Bruce Edgington
Regional Judge
10th February 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.