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**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **CAM/00ME/LDC/2013/0014**

**Property** : **Bearsden Court, Charters Road,  
Sunningdale, SL5 9SJ**

**Applicant** : **Elmbirch Properties Plc.  
Represented by Remus Management**

**Respondents** : **Mr. J. Boyer (Flat 1)  
Mrs. D.K. Phillips (Flat 2)  
Mr. A.C. Howe (Flat 3)  
JAS Investments UK Ltd (Flats 4 & 5)  
Mr. & Mrs. H. Crawford (Flat 6)  
Mr. & Mrs. J.K. Braithwaite (Flat 7)  
Mr. B. Ferguson (Flat 8)  
Ms. M.P. Imrie (Flat 9)  
Mr. & Mrs. C. King-Farlow (Flat 10)**

**Date of Application** : **20<sup>th</sup> June 2013**

**Type of Application** : **Section 20ZA of the Landlord and  
Tenant Act 1985, as amended ("the  
1985 Act")**

**Tribunal** : **Judge J. Oxlade  
S. Redmond BSc. ECON MRICS**

**Date and venue of  
Hearing** : **7<sup>th</sup> August 2013  
Hilton Bracknell, Bagshot Road,  
Berkshire, RG12 0QJ**

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**DECISION**

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**For the following reasons the Tribunal <sup>1</sup> grants dispensation from the consultation requirements set out in Part 2 to Schedule 4 of the Service Charges (Consultation etc.) (England) Regulations 2003 in respect of works to the gate at the entrance of the development.**

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<sup>1</sup> The Decision recorded in this document was made by the First-tier Tribunal (Property Chamber) rather than the leasehold valuation tribunal, to whom the application had been made, because by virtue of The Transfer of Tribunals Function Order (2013 No1036) ("the Transfer Order") the functions of leasehold valuation tribunals were, on 1<sup>st</sup> July 2013, transferred to the First-tier Tribunal (Property Chamber). In this Decision the expression 'the Tribunal' means the First-tier Tribunal (Property Chamber).

## Background

1. The Applicant is the freeholder of the premises, and the Respondents are lessees of the ten flats in the development.
2. The leases of the flats impose obligations on the Applicant to maintain and repair the premises, and corresponding obligations on the Respondents to pay service charges to meet the costs of the Applicant discharging its responsibilities.
3. Paragraph 1 of Part A of the Sixth Schedule, provides that the Applicant shall maintain, repair, and where necessary reinstate any boundary wall hedge, fence, railing or gate. Further, paragraph 11 of Part B of the Sixth Schedule provides that the Applicant shall inspect, maintain, repair, reinstate, improve and renew any other equipment, and provide any other service or facility which in the opinion of the lessor was reasonable to provide.
4. The development is gated, with one wide electric gate. At the end of April/beginning of May 2013 the gate failed, and with some fortune the gate failed in the open position. Investigations showed that the track and wheels of the single gate were "v" shaped, which put strain on the motor. Further, the existing arrangement did not comply with current safety standards, being without safety strips, which would cause the gate to halt if it came into contact with a person, vehicle, or object. The Applicant consulted with the Residents' Association, who wished the Applicant (through its Managing Agents, Remus Management) to act with some haste to sort out the problem.
5. Remus sought quotes, in which the contractors gave expert advice about the reasons for the failure and the actions needed to remedy the fault and to improve the existing system. The existing service contractor (SCS) was invited to quote for the work, as one of three contractors.
6. The residents considered themselves and their cars vulnerable without a functioning gate, largely because all of the developments along the road are gated, and so they considered that the open gate invited unwanted attention.
7. It was settled upon that the quotes would be received, that the consultation procedure would be started, and then an application made to the Tribunal for dispensation. An application was regarded as necessary because one of the lessees in the building has challenged service charges, and so an application under section 20ZA would be made as a precaution.

## Application

8. Accordingly, on 5<sup>th</sup> July 2013 the Tribunal received an application made by Remus Management on behalf of the Applicant. In it the Applicant said that the main gate had failed a safety test, and that the motor had failed; it was propose to start the works when the Residents' Association was satisfied with the quotes. The First step of the consultation procedure had been followed, as a letter had

been sent to the lessees. Further, that the lessees wished to have the works done as soon as possible, because of the possible lapse in security.

9. The Tribunal made directions for the filing of evidence by the Applicant and gave leave for any lessee to file a statement in rely if they wished to do so. Time was expedited in view of the urgency of the application.

### Hearing

#### *Inspection*

10. Prior to the hearing the Tribunal inspected the gate at the entrance to the premises, which gate was fully functioning, the works having been completed the previous Friday. The work consisted of (a) a replacement track (b) a replacement motor (c) new safety edges (d) powder-coated wire mesh attached to the gate.

#### *Hearing*

11. The hearing was attended by Mr. Kevin Traynor (Property Manager) Lizzy Ellis from Remus Management, and John Boyer (lessee of flat 1, and Chairman of the Residents' Association), and Charles King- Farlow (lessee of flat 10, and Secretary of the Residents' Association).

12. A bundle had been filed by the Applicant, but there was no statement filed nor response made by any Respondent.

13. The Applicant explained that the motor had failed at the end of April/beginning of May, and this left the gate in the open position. The Applicant consulted with the Residents Association, which indicated that the residents wished to see the gate repaired immediately.

14. Three quotes were obtained from known contractors, including SCS, which company had a maintenance contract to do the works. The reasons for the problems were reported by the contractors, whose quotes were provided at tab 12 of the bundle, along with a chart comparing the various elements of the quotes, and the costs. The quotes were variously £2904.00, £4776.00, and £5572.80. The cheapest did not include the replacement of the rails and wheels, nor addition of mesh, which the others did include. The cheaper of the remaining two quotes was chosen.

15. All lessees were notified of the works by the Managing Agent, and the Residents' Association also spoke to all (or attempted to speak to all) of the lessees living in the UK.

16. As to compliance with the consultation requirements, the Managing agents sent a letter to each lessee dated 21<sup>st</sup> June 2013, which explained that the gate was not safety compliant, and that the motor had failed because of a v-shaped track which had put extra strain on the motor. The reasons for carrying out the

works were because the gate is open and this gives rise to security issues. The costs of the works would exceed the £250 threshold, and so consultation needed to take place. They invited comment and observation to the Managing Agents within 32 days of the date of the letter. They invited nominations of suitable contractors.

17. Within the 32-day consultation period, by letter dated 11<sup>th</sup> July 2013 the Managing Agents wrote again to the lessees to say that the Residents Association had selected Eagle Automation as the preferred contractor and wished to proceed with the works on 25<sup>th</sup> July 2013.

18. On behalf of the Residents' Association, Mr Boyer and Mr. King-Farlow said that they had received no objections to the work being carried out; rather the reverse. They praised the Managing Agents handling of the matter, and said that they were delighted with the contractors, who had put themselves out to get the works done, despite the weather.

19. At the end of the hearing the Tribunal gave a short oral decision and reasons for concluding that dispensation would be granted.

#### The Relevant Law

20. Section 20 of the 1985 Act requires that a consultation procedure be followed where works are to be undertaken resulting in any one flat incurring costs of £250 or more. The consultation procedure is set out in Part 2 to Schedule 4 of the Service Charges (Consultation etc.) (England) Regulations 2003<sup>2</sup>.

21. Where the lessor has not complied with the procedure, dispensation can be sought pursuant to section 20ZA of the 1985 Act, which the Tribunal shall grant "if satisfied that it is reasonable to dispense with the requirements". In the case of Daejan Investments Limited v Benson [2013] UKSC 14, guidance was issued on what factors a Tribunal should consider when considering a section 20ZA application. The Tribunal should focus on the extent to which the Lessees were prejudiced by the failure to comply with the consultation requirements (i.e. by paying for inappropriate works or paying more than would be appropriate as a result of the failure to comply or otherwise). If there is no prejudice then dispensation will be granted. If the Lessees establish a credible case for prejudice, then the Lessor will need to rebut it; in looking at this point the Lessees need to establish what they would have said/done had there been proper consultation. The Tribunal can grant dispensation on terms, and so the Lessor should give some thought to what might be offered as "terms". The contents of the witness statements/submissions should focus on these points.

#### Discussion

22. The Tribunal has had regard to the relevant law as set out in paragraph 21 and Appendix A.

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<sup>2</sup> Set out fully in Appendix A

- (c) make all of the estimates available for inspection.
- (6) At least one of the estimates must be that of a person wholly unconnected with the landlord.
- (7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—
  - (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
  - (b) where the landlord is a company, and the person is a partner in a manager of the company or is a close relative of any such director or manager;
  - (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
  - (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
  - (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.
- (9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—
  - (a) each tenant; and
  - (b) the secretary of the recognised tenants' association (if any).
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)—
  - (a) specify the place and hours at which the estimates may be inspected;
  - (b) invite the making, in writing, of observations in relation to those estimates;
  - (c) specify—
    - (i) the address to which such observations may be sent;
    - (ii) that they must be delivered within the relevant period; and
    - (iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

***Duty to have regard to observations in relation to estimates***

12. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

***Duty on entering into contract***

13.—(1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—

(a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and

(b) where he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.