



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

Case reference : CAM/22UB/LDC/2014/0001

Properties : 17 & 19 Caister Drive,
Pitsea,
Basildon,
Essex SS13 3RD

Applicant : Basildon Borough Council

Respondent : Mr. Y Moyet & Mrs. Kerry Moyet (17)
Scott Anthony George Smith (19)

Date of Application : 6th January 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)
Roland Thomas MRICS
Cheryl St. Clair MBE BA

DECISION

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1. The Applicant is granted dispensation from the consultation requirements in respect of works to replace the cladding at the property **upon condition** that the Respondent lessees are not charged for any of the legal and other costs of the Applicant of and occasioned by this application.

Reasons

Introduction

2. This application has been made for dispensation from the consultation requirements in respect of ‘qualifying works’. The Applicant served a section 20 (of the 1985 Act) notice on the 2nd May 2013 indicating a desire to undertake replacement of ‘communal windows, soffits, fascias, guttering, cladding, external painting including scaffolding’ at an estimated cost of £2,025 for number 19 plus ‘replacement of individual residential windows’ at an estimated costs of £1,970 making £3,995 in all. In respect of number 17, the figures were £2,025, £2,100 and £4,235 respectively.

3. The intention was not to replace all of the cladding but mainly elements to communal stairwells. However, during the course of the works it was decided by the Applicant that it was necessary to replace all of the cladding because, amongst other things, the existing cladding did not have sufficient fixings. It was decided to use the same contractor and deal with the work whilst the scaffolding was still there. There was insufficient time for a full consultation for those works.
4. The Applicant's witness, Mr. Clint Borley in his statement dated 12th February 2014 says that actual cost of the work to the communal areas to include the extra work is £2,777 for each property.
5. A procedural chair issued a directions order on the 17th January 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 may be dealt with on the papers taking into account any written representations made by the parties. It was made clear by letter dated 24th March 2014 that if any party wanted an oral hearing, then that would be arranged. No request for a hearing was received. By subsequent letter, dated 24th April 2014, the Tribunal informed the parties that a determination would be made based on written representations on 6th June 2014.
6. The Tribunal has asked the Respondents if they wanted to make any representations. Yanik Moyet has written with complaints about (a) the lack of communication from the Applicant, (2) some incorrect information in Mr. Borley's statement and (c) a general lack of foresight and proper planning on the part of the Applicant. He makes the point that the problem over the cladding should have been picked up at the outset.

The Law

7. 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.
8. 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

9. 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.

10. 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? In this case, for example, the work was proceeding and it was found that the fixings on the cladding which was not to be replaced were insufficient. Faced with that problem, the question then is what should have been done? Mr. Moyet makes some powerful points. However, he does not actually address that particular issue. The points he makes seem to be general complaints about the behaviour of the Applicant in failing to provide proper and accurate information when it should have been given. He does not provide evidence that the end cost is unreasonable and this particular application is not intended to address that issue in any event.
11. The Tribunal finds that the fixings were inadequate and agrees, on balance, that replacement of those parts of the cladding will be cheaper in the long run than repairs. The delay which would have been caused by undertaking the full consultation exercise would probably have resulted in substantial additional cost to the lessees. There is no evidence that the full consultation process would have resulted 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. Dispensation is therefore granted.
12. However, the Tribunal notes the comments of the Applicant that this was not the 'fault' of either the contractor or the council. With respect to them, if a full assessment of the requirement for work to the common parts was being undertaken and a positive decision was being made not to replace certain parts of the cladding, one would have expected that some effort would have been made to ensure that the remaining fixings were adequate. It is also noted that the Applicant does not seem to have written to the long lessees at the time explaining about the problem. For those reasons, the Tribunal is making this dispensation conditional as stated above.

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Bruce Edgington
Regional Judge
11th June 2014