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

**Case reference** : **CAM/26UG/LDC/2013/0021**

**Properties** : **15, 16, 25 and 26 South Close,  
St. Albans,  
Herts. AL2 3HE**

**Applicant** : **St. Albans City & District Council**

**Respondents** : **Mr. J M Theile (15)  
Mr. G A Shaw (16)  
Mr. Jovan Ciric (25) and  
Mr. & Mrs. Thompson (26)**

**Date of Application** : **5<sup>th</sup> November 2013**

**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**

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## **DECISION**

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1. The Applicant is granted dispensation from further consultation requirements in respect of works to replace vertical tiling and associated battens at the properties.

### **Reasons**

#### **Introduction**

2. This application has been made for dispensation from the consultation requirements in respect of ‘qualifying works’ at the properties, namely the replacement of vertical tiling and the battens upon which they are fixed.
3. The evidence from Colin Fernandes, Leasehold Management Officer employed by the Applicant has been noted by the Tribunal. In 2011/12 the Applicant council replaced the pitched roofs for 18-24 South Close. The vertical tiling was also replaced because, Mr. Fernandes says, “...the surveyor responsible for the 2011/12 pitched roof works exceeded the scope of the works and included the vertical tiling to these properties”.

4. In late 2012, the Applicant commenced a section 20 consultation to replace the pitched roofs to the subject properties as part of a programme to replace the roofs of 250 properties. The vertical tiling on the subject properties was not included. As part of the consultation process, there was a meeting of the residents on the 17<sup>th</sup> June 2013. Mr. Fernandes says that at that meeting, 2 of the leaseholders raised the question of the vertical tiling and asked for this to be done at the same time.
5. The Applicant obtained a quotation dated 10<sup>th</sup> July 2013 for this additional work from the contractor appointed to deal with the replacement of the pitched roofs on the reasonable assumption that this contractor could do this additional work whilst the scaffolding was in place for the pitched roof contract. On the 15<sup>th</sup> August 2013, the Applicant wrote to the 4 Respondent leaseholders enclosing a copy of that quotation and asking each leaseholder whether they wanted the work dealt with now or delayed until sometime on the future. An offer was made by the Applicant to waive the 6% management charge and allow payment at £50 per month if they wanted the work done now.
6. 3 out of the 4 leaseholder Respondents to this application replied in writing saying that they would prefer to work to be undertaken immediately and indicated that they were happy for the Applicant to apply for dispensation. The forms said to be signed by the said Respondents have been 'edited' to block out the individual addresses plus the names and signatures. Why the Applicant would want the Tribunal not to have this information is not known but the Tribunal accepted the evidence of Mr. Fernandes that these forms were from 3 of the Respondents.
7. The Tribunal Chair issued a directions order on the 21<sup>st</sup> November 2013 timetabling this case to its conclusion. One of the directions said that this case would be dealt with on the papers on or after 19<sup>th</sup> December 2013 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 directions order said that if any of the Respondents wanted to make representations, then they should do so, in writing, by 6<sup>th</sup> December. None have been received.

### **The Law**

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

then has 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.

### **The Lease terms**

10. Copies of the leases to the properties have been provided. The landlord has to maintain, repair and replace as necessary the structure and exterior of the buildings which would include the vertical tiles.

### **Conclusions**

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 issues to be determined by a Tribunal dealing with this issue which culminated with the recent Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14.
12. That decision made it clear that a Tribunal is only really concerned with any actual prejudice which may have been suffered by the leaseholders or, perhaps put another way, what would they have done in the circumstances? In this case, for example, it appears to have been 2 out of the 4 leaseholders who raised the issue of the vertical tiling and 3 out of the subsequently agreed to have the work done immediately. The application states that "*an inspection of the vertical tiling has shown that some tiles are falling off*".
13. In view of the evidence submitted, the Tribunal agrees, on balance, that replacement at the same time as the replacement of the pitched roofs would probably be cost effective whilst scaffolding was in place for the main contract and on the assumption, as the evidence states, that some vertical tiles were already falling off. There is no evidence that the full consultation process would have resulted in a lower cost. The Tribunal therefore finds that there has been no provable prejudice to the lessees from the lack of consultation. Dispensation is therefore granted.
14. It is a little concerning that the need this work was not picked up earlier, particularly, for whatever reason, 18-24 South Close had vertical tiles replaced in or about 2012. It is also right to point out that his decision does not determine that the cost of the work is necessarily reasonable because the Tribunal does not have any quotations from other suppliers.

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**Bruce Edgington**  
**Regional Judge**  
**20<sup>th</sup> January 2014**