

10623



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

Case reference : CAM/26UG/LDC/2015/0003

Property : 1-12 Tudor Court,
High Street,
London Colney,
Herts. AL2 1JZ

Applicant : Garland Court (London Colney) Ltd.

Respondents : the schedule of leaseholders for the
12 flats in the building

Date of Application : 11th February 2015

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 further consultation requirements in respect of additional works to remove and rebuild thicker than anticipated brickwork up to parapet level following an investigation to remedy damp penetration to flat 12. The extent of the work is described in a letter from Rumball Sedgwick, chartered surveyors, to Tudor Court Management Co. Ltd. dated 16th February 2015.

Reasons

Introduction

2. This application has been made for dispensation from the consultation requirements in respect of ‘qualifying works’ at the property. A severe problem with damp penetration through the external wall above the window to the rear of the living room to flat 12 arose in 2014. The full consultation is said to have been carried out. As with many damp problems, the true extent of the work could not be identified until the work was started and the affected area exposed

3. The evidence from Mr. Harry Stratford BSc (Hons) AIRPM from Rumball Sedgwick, chartered surveyors filed on behalf of the Applicant has been noted by the Tribunal. His colleague, Shaun Blake BSc (Hons) MRICS wrote to Tudor Hall Management Co. Ltd. on the 16th February 2015 explaining that following the erection of scaffolding, a small hole was cut through the external skin of brickwork enabling inspection of the cavity above the window to flat 12.
4. He explains that the brickwork above the window is thicker than was anticipated when the consultation process was undertaken making the anticipated method of dealing with the problem impractical. It was going to be necessary to insert a new cavity tray but as the brickwork was so thick and heavy, it was not practical or safe to cut a hole through the width to insert the tray. A decision was made that it was going to be necessary to remove and rebuild the brickwork up to parapet level.
5. The cost of this extra work was estimated by the contractor on site, E.S. Moss Ltd. at £1,110.00 plus VAT in an estimate produced to the Tribunal dated 4th February 2015.
6. The Tribunal Chair issued a directions order on the 12th February 2015 timetabling this case to its conclusion. The directions order said that if any of the Respondents wanted to make representations, then they should do so, in writing, by 27th February. None have been received. The order also said that the Tribunal was content to deal with this case on the basis of the written evidence and representations filed and no decision would be made before the 4th March 2015. It was made clear that if any party wanted an oral hearing, then one would be arranged. No request for a hearing was received.

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 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.
8. Section 20ZA of the 1985 Act allows this Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable to do so.

The Lease terms

9. A copy of the lease to flat 2 has been provided and it is assumed that they are all in the same basic terms. The landlord has to maintain, repair and replace as necessary the structure and exterior of the building.

Conclusions

10. 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.
11. 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?
12. In view of the evidence submitted, the Tribunal agrees, that the additional work could not reasonably have been anticipated when the main consultation process was undertaken. It also agrees that pressing ahead with the work when the scaffolding was on site using the contractor who was there was sensible. The lessees appear to have been kept in touch with developments throughout. The Tribunal therefore finds that there has been no provable prejudice to the lessees from the lack of consultation. Dispensation is therefore granted.
13. It is 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 alternative contractors. However, if any lessee should subsequently wish to challenge the cost, he or she will have to produce some persuasive evidence to show that the cost is actually excessive bearing in mind the urgency of the work and the continued damp being suffered in flat 12.

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Bruce Edgington
Regional Judge
4th March 2015