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

Case reference : CAM/00KC/LDC/2016/0011

Property : 53-57 High Street North,
Dunstable,
Beds. LU6 1JF

Applicant : Southern Land Securities Ltd.

Respondents : Renata Hope (53a & 55b)
James Cattle (53b & 55a)
House of Names Ltd. (57a)
Mr. M. Shahid (57b)

Date of Application : 18th March 2016 (rec'd 22nd)

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 consultation requirements in respect of works undertaken on by Central Bedfordshire Council on or about the 12th February 2016 to deal with a loose and fallen brick parapet wall with copings on the property.

Reasons

Introduction

2. This is an application for dispensation from the consultation requirements in respect of 'qualifying works' to the property. The evidence from Central Bedfordshire Council provided by the Applicant is that in the early hours of the morning on the 12th February 2016, the Council received a telephone call from Bedfordshire police to say that parapet copings on the building were loose and some had fallen. Remedial works were put in hand immediately by the Council and the cost is high enough to require consultation. As there was no time for such consultation, permission to dispense with consultation is required.

3. By way of further explanation, the Applicant says in the application form that a section of brick parapet wall with copings fell from the roof of the building to the public footpath below. Another section fell onto the adjacent Post Office building. The cost of the emergency remedial works was £2,259.70 and the invoice from Central Bedfordshire Council in this sum has been produced.
4. A procedural chair issued a directions order on the 29th March 2016 timetabling this case to its conclusion. The Tribunal indicated that it would deal with the application on the basis of written representations and the appropriate notice was given to all parties with a proviso that if anyone wanted an oral hearing, then arrangements would be made for this. Similarly, the Tribunal did not consider that an inspection would be necessary but offered the facility of an inspection. No request was made for either an inspection or an oral hearing.

The Law

5. Section 20 of the 1985 Act limits the amount which lessees can be charged for major works involving a cost of more than £250 to each tenant 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, facility for inspection of documents, a duty to have regard to tenants' observations, followed by a detailed preparation of the landlord's proposals.
6. The landlord's proposals, which should include the observations of tenants, and the amount of the estimated expenditure, then have 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.
7. 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 so to do.

Discussion

8. 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 matters to be determined by a Tribunal dealing with this issue which culminated with the Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14. 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?
9. One of the lessees, House of Names Ltd., has made representations. They accept that the works had to be undertaken but argue that either the cost should be covered by insurance or the works result from a failure to maintain on the part of the Applicant. Whilst in a sense these points are not relevant

to the application before the Tribunal, the Applicant's managing agents have replied to the second point. They say "*that the roof is not accessible without assisted access such as scaffold or MEWP, the cost of which are not financially viable each time we visit the property*". If there is no evidence of a leak from a roof and no obvious signs of damage, this comment would appear to the Tribunal to be relevant.

Conclusions

10. These works were clearly an emergency. It is for the Applicant to maintain the structure of the building and recover the cost from the lessees. The cost of these remedial works would therefore come within the service charges. The only question for this Tribunal would therefore appear to be whether the problems with the parapet should have been identified earlier and remedied on a planned basis. None of the lessees except House of Names Ltd. has raised this point. There is no evidence to suggest that even if the cost should have been recovered as a cost of general maintenance – which the lessees would have had to pay anyway – such cost would have been significantly less than that which has been incurred. The Tribunal concludes that dispensation should be granted from all the consultation provisions.
11. However, it should be made clear that this is not an application for the Tribunal to determine whether the costs incurred are reasonable or whether they are payable by insurance, and it does not do so. Having said that, if the cost is not covered by insurance and any lessee wants to challenge reasonableness of the works and/or the costs in any subsequent application to this Tribunal, he or she will need to provide some clear evidence that in the circumstances faced by the Applicant, the cost and/or reasonableness of the works would have been significantly different from the evidence produced to this Tribunal.
12. As to the insurance point raised by House of Names Ltd., no answer to this is in the papers. The managing agents have said that the damage was caused by high winds on the 12th February 2016 and they are "*unable to legislate for high winds or other adverse weather conditions which may cause damage*". As the leases do require the landlord to insure the building "*against loss or damage by fire storm tempest...*", the Applicants will need to satisfy the lessees about this aspect of the matter. In other words, as the description of the conditions on that night given by the managing agents seems to be a description of a storm, they will need to explain why this cost is not covered by the insurance unless, of course, the excess exceeded the cost.

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Bruce Edgington
Regional Judge
14th April 2016

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.