



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

Case reference	:	CAM/00MB/LDC/2019/0008
Property	:	Flat 10-15 Faircross Court, 77-79 Bath Rd, Thatcham, Berkshire, RG18 3GL
Applicant	:	Faircross Court Management Co. (Thatcham) Ltd
Representative	:	Pinnacle Property Management Ltd
Respondents	:	the long leaseholders of the flats listed in the application
Date of Application	:	20 March 2019
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	:	Mary Hardman FRICS IRRV (Hons) Judge Wayte

AMENDED DECISION

Crown Copyright ©

1. The Applicant is granted dispensation from further consultation requirements for work to remedy the leak from the flat roof above Flat 11.
2. This decision has been amended only to correct the name of the Applicant above.

Reasons

Introduction

3. The Applicant’s managing agents of the property have informed the Tribunal that there has been a leak for a significant period into Flat 11 with the result that the leaseholder is unable to let the flat.
4. A previous leak which appeared to come from Flat 14 (above Flat 11) was repaired but it became apparent that water ingress had not solely been from the flat above. Investigations by specialists employed suggest that the leakage is coming through the bathroom ceiling of Flat 11 from the walkway above, due to a fault with the waterproof membrane. The recommendation was that the membrane be fully inspected and the necessary repairs carried out, with the suggestion that it may be prudent to replace the walkway waterproofing.
5. The Landlord has obtained two quotes, the first in December 2018 and the second in March 2019.

6. He has also investigated whether the leakage is covered by warranty from the developer, constructor, roofer and membrane company but without success.
7. In a directions order dated 26 March 2019, it was said that this case would be dealt with on the papers on or after 24 April 2019 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 and there have been no representations from the Respondents.

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 First-tier Tribunal. 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.
9. 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 proposals, to seek estimates from any contractor nominated by or on behalf of tenants and the landlord must give its response to those observations.
10. 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

11. All the Tribunal must 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 matter to be considered by a Tribunal dealing with this issue which culminated with the 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 lessees or, perhaps put another way, what would they have done in the circumstances?
13. This is not an application for the Tribunal to approve the reasonableness of the works or the reasonableness, apportionment or payability of the service charge demand.
14. A subsequent application can be made to this Tribunal to assess the reasonableness of the charges for these works under Section 27(A) Landlord and Tenant Act 1985. The Tribunal would want clear evidence that, given the circumstances, there would have been contractors available at the time who would have been able to undertake the works reasonably quickly at a lesser cost.

15. As far as this application is concerned, the **Daejan** case referred to above now places the responsibility on the shoulders of the long leaseholders to establish a particular prejudice arising from a lack of consultation. None have been put forward and the Tribunal concludes that, on balance, it can grant dispensation because the works are required to be completed urgently.

Mary Hardman
Deputy Regional Valuer
7 May 2019

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.