First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**CHI/OOHN/LDC/2021/0029**
Property	**:**	**Snowdon Mount.** **4 Snowdon Road,** **Bournemouth,** **Dorset BH4 9HL**
Applicant representative	**:**	**RMB 102 Ltd.** **J B Leitch Ltd.**
Respondents	**:**	**the long leaseholders of the 14 apartments at the property**
representative		**Rebecca Goodson (lay)**
Date of Application	**:**	**12th March 2021**
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	**:**	**Judge B Edgington**
Date of determination	**:**	**29th June 2021**

DECISION

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1. The 2 applications by the Respondent Rebecca Goodson for a direction that the main application under section 20ZA of the 1985 Act should be deferred until she can 'adduce further evidence' as she 'once again has concerns over the specification proposed and how the costs have been obtained' are refused.

2. The Applicant is granted dispensation from the consultation requirements for continued major works to the roof and structure of the property estimated in the application to cost £226,000.00 demanded as part of the service charges for the period 1st January – 31st December 2021.

Reasons

Introduction

3. The property is a purpose-built block of flats built in 2008. The Applicant acquired the freehold interest in 2014 from a company with a

similar name. The property has suffered from serious building defects in recent year which started with what appeared to be water ingress and then turned into major structural defects.

4. I have seen copies of decisions made by Judge Morrison on 20th July 2020 and 3rd November 2020 which, between them, set out a brief history of this dispute between the Applicant and some or all of the long leaseholders. As those decisions are public and should have been read by the parties, I will not repeat matters set out in those decisions.

5. Suffice it to say that the July case determined that there could not be an equitable set-off based on the alleged breach of the Applicant's repairing obligations at that stage. The November case determined that the interim service charges demanded at that time for repairs were reasonably demanded and payable. The current disputed demand covers the subsequent period.

6. It is important, in my view, just to point out that Judge Morrison was not 'siding with' the Applicant in those cases. She was merely saying that the repair work was necessary; that there was no evidence of misappropriation by the Applicant and that there was no actual evidence of the service charges being unreasonable. Unless and until such evidence was available, the Applicant should be given the means to get on with the work.

7. Another application was made by the Applicant on the same date as this one i.e. 12th March 2021, for a determination that the amounts demanded on account of service charges for the year in question were reasonable i.e. a total of £239,825.00 divided between the 14 flats. That case was given a different case number. In a sense, this is unfortunate because the only service charges actually being contested are the 'major works' charges of £226,000.00. I will comment on this later.

8. Directions orders have been made by Judge Whitney and the Regional Surveyor, Mr. D. Banfield FRICS, timetabling this paper determination until today. It has been ordered that the determination is to be based on the representations and evidence filed unless any party objected. None has.

9. On the 11th June 2021, Ms. Goodson filed an application asking, in effect, for this main application to be put off so that she can adduce further evidence. No indication is given as to what that evidence may be and the Applicant objects to the delay. On the 24th June, Ms. Goodson filed a further application in similar terms which did not add anything to the earlier one.

The Law

10. 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.

11. 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.

12. 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.

Discussion

13. It is clear from the evidence that whilst the work was being undertaken to deal with the water ingress, the problem with the structure of the building was encountered which required further substantial work to rectify it. It was clearly considered to be more cost effective and less disruptive to the leaseholders to deal with the work speedily.

14. An enlightening passage from a letter said to be written by the managing agents Rebbeck Brothers to Miss. R. Goodson (and, presumably, to the other Respondents) dated 16th October 2020 at page 214 in the bundle provided is as follows:

> "*For those of you who may have driven past the site over the last few weeks, you may be aware that there have been times when the contractor was not on site. This has largely been due to having to call the structural engineers back to site on three separate occasions to undertake further inspection and prepare revised drawings for the required works. Whilst some of this work was originally anticipated within the specification and tender, the opening up that has been undertaken has uncovered additional structural works, not associated with the water ingress problem. This particularly relates to around 17 Glulam beams (structural beams) where the structural integrity has been compromised and which now need replacing*."

15. The letter goes on to give further details and a very clear indication is being given that the cost of remedial works was going to increase substantially. On the 21st October a further letter was written by Rebbeck Brothers giving more detailed information following a meeting on site by the relevant experts and contractor.

16. On the 1st January 2021 the demand for service charges on account was sent out asking for £17,130.46 from each leaseholder. Why it took over 2 months for this application to be made is not explained.

17. I can well understand why a long leaseholder of such a recently erected building should be upset by these large demands for service charges. Obviously I have no evidence as to the reasons for this and it may be that the Respondents are taking expert legal advice. I certainly hope that this has been considered.

18. The Respondents have seen the full specification of works and proposed costings which means that they can seek their own expert's opinion as to the reasonableness of the figures given. If they are to challenge the final figures before a Tribunal, then that is the sort of evidence which will be required.

19. The conclusions reached by the Respondents in their final submissions are that the Tribunal should refuse the application; that there was sufficient time for a full consultation; that the work was not paused at all and the Respondents have been prejudiced.

20. The Applicant says that the Respondents had to be asked to vacate the building for the work to be undertaken. If that was the case, then urgency is a clear priority. However, even if it was not the case, evidence has been produced to show that quotations have been difficult to obtain in respect of some of the work in specifications.

21. Certainly it is this Tribunal's expert view that getting quotations on such substantial works at short notice are difficult because contractors have to make plans to take on this size of contract – particularly during a pandemic. This situation arose during the continuation of works already being undertaken.

Conclusions

22. All the Tribunal has to determine is whether dispensation should be granted from the 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.

23. 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 i.e. if they were the landlord? I fully appreciate that they would say that they would have obtained quotations. I have to determine whether that would have been realistic, reasonable and result in a saving of cost. I have no evidence to suggest any of those things.

24. 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. Save for the issues raised by Ms. Goodson, none have been put forward, and as none can be inferred from the evidence seen by the Tribunal, it concludes that, on balance, it should grant dispensation. It was clearly sensible to deal with this work whilst contractors were on site and it appears to have been very urgent work.

25. I am sorry that I cannot delay matters by granting Ms. Goodson's requests for a delay so that she can obtain further evidence when she gives no indication as to what that evidence might be. The only indication is that she wants evidence to challenge the amount being demanded. The only evidence she refers to in order to substantiate such a request is a slight, in relative terms, reduction agreed in some decoration work to flat 11. She must understand that the demand is based on estimated costs and, as always, estimates can go up and down.

26. She will have the chance, as will the other Respondents, to challenge the final figures provided there is expert evidence available to support such a challenge.

27. I would just add, as indicated above, that on the evidence presented, I would have some difficulty in finding that the estimated cost of the works, namely £226,000.00 for the major structural repairs, was unreasonable at the time of the demand on the 1st January 2021. I take into account the fact that none of the other estimated service charges have been challenged.

.....
Judge B Edgington
29th June 2021

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.