



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

Case reference	:	CAM/00MB/LDC/2018/0019
Property	:	Hamstead Mill, Mill Lane, Hamstead Marshall, Newbury, RG20 0JD
Applicant	:	Hamstead Mill Management (1991) Ltd.
Respondents	:	Richard White (flats 1, 5 & 6) Amy Marie Robinson & Sarah Dyer (flat 2) Atul Wahl (flat 3) Richard Samuel (flat 4)
Date of Application	:	7th November 2018
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 works to be undertaken or being undertaken to divert water from running under the property so that tanking works and/or a waterproofing rendering system be applied to prevent further water penetration and possible structural damage to the property.

Reasons

Introduction

2. This is an application for dispensation from the consultation requirements in respect of ‘qualifying works’. Regrettably, the application lacked clarity, included the long leaseholders as Applicants and the legal titles to the freehold and leasehold ownerships were unclear.

3. The Tribunal chair issued a directions order on the 8th November 2018 timetabling this case to its conclusion. The Tribunal indicated that it would deal with the application on the basis of written representations on or after 28th November 2018 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.
4. The directions order cited the long leaseholders as Respondents and not Applicants and the preamble explained that if the long leaseholders agreed to the works proceedings and to pay the reasonable cost thereof, even if the cost exceeded the £250 limit, then no dispensation was required.
5. No written representations have been received from any of the Respondents.

The Law

6. 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.
7. 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 and the landlord must give its response to those observations.
8. 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 so to do.

Discussion

9. 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?
10. The directions order required the Applicant to send a statement to the Respondents by the 14th November 2018 setting out a history of the problems, and attaching copies of experts' reports and estimates. This does not appear to have been complied with. However, there is a copy of a letter from someone called Chris Westbury of Nouveau Architecture dated 21st November 2018 addressed to a Peter O'Reilly, various e-mails and some estimates and

photographs.

11. The story set out in the letter from Chris Westbury says that the lower levels of flats 5 and 6 are below the river which, from one of the lease plans, appears to be the River Kennet. This part of the property was tanked in 2014 as part of refurbishment works. The letter adds *“At this time there was no ingress of water running across the floor. If this had been the case the installed system would not have been deemed suitable”*.
12. The description then says that there is continuous running water entering the building and running under the tanking membrane. The likely place of entry, it is said, is *“behind a cupboard which contains all the heating system and associated electrics”*.
13. The application form says that the works entail damming the river to the west of the property to allow access to the area below flats 5 and 6 so that the necessary new tanking works can be undertaken which is described as *“prepare and apply a three coat SIKA waterproofing rendering system to the walls”*. The form also says that the long leaseholders have discussed matters at meetings and are aware of the works necessary.
14. It is clearly not possible for a reliable estimate of the cost of works to be calculated or for a full specification to be prepared until the river has been dammed and a full inspection has been undertaken. Conducting a section 20 consultation after full inspection would necessitate either leaving the dam in situ, or removing and later re-instating it, both of which would incur considerable extra cost.
15. Attempts have been made by the Tribunal to clarify some issues which have been largely unsuccessful. However, the Tribunal has concluded that matters should proceed with the information to hand. It must be emphasised that the Tribunal makes this decision on the basis that it has not fully examined the title documents and assumes that paragraph 1 of the directions order was complied with.

Conclusions

16. The evidence clearly shows that there is a serious problem with water ingress to flats 5 and 6 which must be resolved. Dispensation is granted.
17. However, it should be made clear that this is not an application for the Tribunal to determine whether the works themselves or the costs incurred or to be incurred are reasonable and/or payable and it does not do so.

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Bruce Edgington
Regional Judge
9th January 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.