



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

Case reference : CAM/26UK/LDC/2018/0018

Property : Willow Grange, 1-78 Silas Court,
Lockhart Road, Watford WD17 b4BQ

Applicant : Freehold Managers (Nominees) Ltd

Respondent : The long leaseholders listed in the
application

Date of Application : 2nd November 2014 (received 14th)

Type of Application : for permission to dispense with
consultation requirements in respect
of qualifying works - Section 20ZA
Landlord and Tenant Act 1985 (“the
Act”)

Tribunal : D S Brown FRICS (Chair)
J R Morris (Judge)

Date of Decision : 3rd January 2019

DECISION

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The Applicant is granted dispensation from the consultation requirements in respect of the replacement of the three communal boilers.

STATEMENT OF REASONS

Introduction

1. This application has been made for dispensation from the consultation requirements in respect of ‘qualifying works’. A procedural chair issued a Directions Order timetabling this case to its conclusion. The Applicant was directed to serve on all the leaseholders a copy of the application and the Directions Order and a statement setting out the history of the matter and attaching copies of experts reports and estimates by 28th November 2018 and to confirm to the Tribunal when done. This confirmation was received by the Tribunal on 12th December.

2. One of the directions said that this case would be dealt with on the papers taking into account any written representations made by the parties and a decision would be made on or after 7th December. It was made clear that if any party requested an oral hearing one would be arranged. No such request has been received.
3. The Applicant states that two of the three boilers serving the Property went off line in September 2018. It was informed on 12th October that after new parts were fitted and repairs carried out the boilers could still not be put back on line and the manufacturer would need to attend.
4. On 15th October, the manufacturer confirmed that the cost of repair would be similar to the cost of replacement. On 17th October the remaining boiler went off line. UK South Services were asked to bring one boiler on line temporarily but this was not possible so a temporary mobile boiler was supplied.
5. Quotations for replacement of the boilers were obtained from UK South Services in the sum of £96,012 and PHD Mechanical in the sum of £39,694 plus VAT and Dunamis Heating and Mechanical Services Ltd in the sum of £51,900
6. In the Directions Order, any Respondent who wished to make representations was directed to say whether they considered that they would be prejudiced by dispensation being granted and, if so, to what extent. No such representations have been 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 3 to the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These require a fairly complicated and time consuming consultation process which give the lessees an opportunity to be told exactly what is going on and the landlord must give its response to those observations and take them into account.
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.

Conclusions

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 issues to be determined by a Tribunal dealing with this sort of case which culminated with the Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14.
10. That decision made it clear that a Tribunal is only really concerned with any actual prejudice which may be suffered by the lessees as a result of the lack of consultation.

11. The Tribunal notes that all of the boilers were out of commission in October, thus depriving the flats of hot water and central heating as the winter was setting in. This was clearly extremely disadvantageous to the occupants and a potential risk to their health and wellbeing. Urgent action to replace the boilers was imperative.
12. The Tribunal therefore grants dispensation on the grounds that no prejudice is likely to have been suffered by the Respondents as a result of proceeding with the relevant works without prior consultation under section 20.
13. However, the Tribunal should make it clear that this is not an application to determine the reasonableness of the works or their cost. If, when the service charge demands in respect of these works are sent out, any Respondent objects to the cost or the reasonableness of the work or the way it was undertaken, an application can be made to this Tribunal under section 27A of the Act.

D S Brown FRICS (Chair)

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.