



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

Case reference	:	CAM/34UD/LDC/2017/0022
Property	:	Flats 50-74 Rectory Road, Rushton, NN10 0AD
Applicant	:	Rectory Road (Rushden) “B” Ltd.
Respondents	:	the landlord and the long leaseholders at the property
Date of Application	:	7th December 2018 (rec’d 31st)
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) Mary Hardman FRICS IRRV (Hons)

DECISION

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1. The Applicant is granted dispensation from further consultation requirements in respect of works to the roof of the building as set out in the quotation of Tri-Bond Roofing Ltd. dated 12th November 2018.

Reasons

Introduction

2. This application is made for dispensation from the consultation requirements in respect of ‘qualifying works’ to the roof of the building in which the property is situated. On the 5th November 2018, the managing agents received notice that water was penetrating flats 72 and 74 in the building. It was considered that urgent repair work was essential and contractors were asked to quote for the work. On the 9th November PDR Roofing said that repairs would cost £10,500 plus VAT and on the 12th November, Tri-Bond Roofing Ltd. quoted £9,959.00 plus VAT. Tri-Bond was chosen and work commenced.

3. This application has been made by the management company named in the leases as being responsible for keeping the roof in repair. A Tribunal procedural chair issued a directions order on the 2nd January 2019 timetabling this case to its conclusion. One of the directions said that this case would be dealt with on the papers on or after 18th February 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. No Respondent has made any representations.

The Law

4. 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 management company's proposals. Those proposals, which should include the observations of tenants, and the amount of the estimated expenditure, then has 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 management company must give its response to those observations. All this takes over 2 months.
5. 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

6. 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 question which culminated with the Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14.
7. Such 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? In this case, for example, the roof was leaking badly and considered to need urgent repair.
8. It seems clear, on the balance of probabilities, that urgent repair works were required. The Tribunal therefore finds that there has been little or no prejudice to the Respondent lessees from the lack of consultation. Dispensation is therefore granted.
9. If there is any subsequent application by any Respondent for the Tribunal to assess the reasonableness of the charges for these works, the members of that Tribunal will want to have clear evidence of any comparable cost and

availability of contractors and the necessary parts at the time of the repairs.

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Bruce Edgington
Regional Judge
18th February 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.