



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

Case reference	:	CAM/00KF/LDC/2019/0017
Properties	:	88,90,100,106,110 Delaware Rd Southend on Sea SS3 9NR
Applicant	:	Southend-on-Sea Borough Council
Respondents		The long leaseholders of the properties (5) listed in the application
Date of Application	:	12 June 2019
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	:	Mrs M Hardman FRICS IRRV (Hons)
Date of Decision	:	12 August 2019

DECISION

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Decision

1. The Applicant is granted dispensation from the statutory consultation requirements in respect of the qualifying works.

Reasons

Introduction

2. The landlord has applied for retrospective dispensation from part of the statutory consultation requirements in respect of various external and structural refurbishment works to the roof, staircases, guttering, lighting, balconies, patio doors and gable ends. The Tribunal was informed that works were carried out between January 2016 and May 2016.
3. The landlord states that whilst consultation was carried out in compliance with s20 of the Landlord and Tenant Act 1985 two errors were made. These were
 - i) that the Statement required under the Service Charges (Consultation Requirements) (England) Regulations 2003 did not include a summary of the observations that had been made

- ii) the Statement contained an error in apportioning the cost of the works which meant that 33% of the cost of the works was shown as being the cost for the block when it should have been 50%.
4. A procedural chair issued directions timetabling this case to its conclusion. 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 12 August 2019. It was made clear that if any party requested an oral hearing one would be arranged. No such request has been received and no representations have been received from or on behalf of any of the respondents

The Law

5. 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.
6. 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
7. Section 20ZA of the Act allows this Tribunal to make a determination to dispense with all or part of the consultation requirements if it is satisfied that it is reasonable and the Tenants have not suffered prejudice.

Discussion

8. Following the Supreme Court decision of *Daejan Investments Ltd. v Benson* [2013] UKSC 14, the only issue for the Tribunal is whether the Respondents have suffered prejudice in dispensing with the requirements.
9. In respect of the first error (Para 3(i)) above the Applicant landlord has stated that only one observation had been received and the response to that observation was set out in the Statement issued to respondents as required under paragraph 4 (5) (b) of Part 2 of the schedule.
10. In respect of the second error (Para 3(ii)) above the landlord states that the apportionment error was unconnected to the works themselves and did not affect the total estimated cost of the work. They further claim that the Respondents could not have acted differently so as to affect the cost, nature or quality of the works if they had known that the calculation of the block apportionment should have been higher than the figures given in the statement. Furthermore, the Respondents had been given the opportunity to inspect all the tenders at the offices of South East homes which would have given them full

information about the nature, quality and costs of the works for the whole estate.

Conclusions

11. The Tribunal is content that the error in respect of failure to include the observation is mitigated by the inclusion of the response in the Statement.
12. The error in respect of the incorrect apportionment of the costs meant that leaseholders were informed that they were liable for a lesser apportionment of the total cost than was subsequently the case. Notwithstanding the claims of the applicant the Tribunal finds that there is a possibility that, had they been informed that the costs to them were higher than was stated, the Respondent leaseholders might have been more inclined to take the opportunity to respond and therefore potentially to influence the outcome.
13. However, the Tribunal was provided by the Applicant with Certificates of Service indicating that the Respondent leaseholder were all served with a copy of the recent application for dispensation, a copy of the directions order and a copy of a reply form inviting comments on the application. No comments were received
14. The decision in **Daejan** as set out in para 8 above made it clear that a Tribunal is only really concerned with any actual prejudice which may have been suffered by the leaseholders.
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. On the basis that none have been put forward the Tribunal concludes that it can grant dispensation for the work to various external and structural refurbishment works to the roof, staircases, guttering, lighting, balconies, patio doors and gable ends
16. 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. We make no finding in that regard and the leaseholders will continue to enjoy the protection of section 27A of the Act.

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.