

13005



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

Case reference : CAM/22UN/LDC/2018/0014

Property : Brannam Court,
High Street,
Dedham,
CO7 6DE

Applicant : Mary Nicolette Hart

Respondents : Katie Fenton
John Johnson

Date of Application : 20th August 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 repair the roof at the property to prevent further ingress of water into the building.

Reasons

Introduction

2. This application was made for dispensation from the consultation requirements in respect of ‘qualifying works’ to the roof of the building in which the property is situated. The building is said to be grade II* listed with 3 floors consisting of 2 parts with commercial retail use and 2 residential parts. Damage to the roof was said to have been caused by a storm on the last weekend in July 2018. There was a serious leak causing damage to and loss of stock in one of the commercial parts of the building.
3. The bundle of documents supplied for the Tribunal includes a statement from Thomas Godfrey MSc who describes himself as a Graduate Surveyor from Whybrow, a firm of managing agents. They describe themselves as managing agents of commercial property. There is an e-mail in the bundle at

page 83 wherein he seeks to produce an estimate for the works but it is not attached and there is no page 84. It is presumed that this reference is to page 56, which is an estimate from JSL Group dated 6th August 2018.

4. The Tribunal chair issued a directions order on the 20th August 2018 timetabling this case to its conclusion. One of the directions said that this case would be dealt with on the papers on or after 28th September 2018 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.
5. The Tribunal chair directed that the Applicant file and serve a statement attaching any experts' reports and competing estimates. The statement should set out "*(i) why remedial work has not been undertaken before now when a problem was identified in 2007 (ii) if no long leaseholder is affected by the present damage, why can't the full consultation process commence (iii) why this is not covered by insurance and (iv) how much each leaseholder will have to pay assuming an insurance claim does not succeed*".
6. The bundle of documents for the Tribunal did arrive but there were a number of documents not previously seen by Ms. Fenton and she e-mailed the Tribunal on the 21st September 2018 asking that some 65 pages of the bundle be 'removed'. For reasons which will become clear, the Tribunal has decided to look at all of the evidence supplied.

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 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.
8. Those 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, to seek estimates from any contractor nominated by or on behalf of tenants and the management company must give its response to those observations.
9. 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

10. Most of the bundle provided is irrelevant to the decision to be made by this Tribunal and a great deal of time was wasted in going back over the recent history of the poor relationship between the parties. The Tribunal cannot resolve these difficulties. The general evidence as to what should be done is

from Mr. Godfrey at Whybrows. However, his area of expertise is not stated. The Tribunal noted that in 2016, Stephen Platten BSc (Hons) MRICS from Whybrows was involved as Head of Building Surveying. Perhaps he should be involved again to give advice about what should be done now. If he advises that the work anticipated by the 2 middle estimates should, be done, then it will be up to the Applicant to either proceed and claim reimbursement through the courts, or for the Respondents to seek their own professional advice from a surveyor who knows about the particular problems involved with listed buildings.

11. It is noted that Ms. Fenton says that an application is to be made for the appointment of a manager. That may be a way forward if the manager has the expertise referred to. However, it seems to this Tribunal that the problems here are (a) what should be done and (b) how the tenants are going to fund it? With no ground rent income from the long leaseholders, some may feel that it is just unrealistic to expect the freehold owner to fund everything and then hope to get money back from tenants some of whom appear, on the face of it, to have refused to fund major works in the past.
12. 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 issue which culminated with the recent Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14.
13. 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? In this case, for example, the roof was leaking badly which could have compromised the electrical system and needed urgent repair.
14. In this case, the Tribunal asked questions which it thought would shed light on the issue of prejudice. As to the first question raised i.e. why work was not done beforehand when a problem was discovered in 2007, the evidence produced by all parties reveals a history of antagonism and difficulty between the parties. There has been at least one consultation under section 20 of the 1985 Act and allegations of failure to co-operate (on all sides), failure to pay monies to cover major works and so on.
15. As to whether the damage is affecting the long leaseholders, the evidence now produced makes it clear that the required roof repairs are extensive and affect the integrity of the whole building. The Applicant says that the lack of co-operation of the long leaseholders in undertaking major works has meant that insurers are denying liability because of lack of maintenance. If that is right, the Applicant will have to produce evidence of that to the Respondents.
16. Now that 3 estimates for complete repair work have been produced, the long leaseholders will have an idea of the likely cost. The first estimate was for £17,747 plus VAT and the evidence is that Barwins have estimated at £52,009.65 plus VAT (page 43 in the bundle) and Maguire Roofing Ltd. have quoted £14,696 plus VAT (page 95). There is also a quotation at page 57

from Millane Contract Services Ltd. in the sum of £1,414.48 plus VAT (page 119).

17. It is self-evident that repair works were and are 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. Having said that, this approval cannot dictate what work is actually undertaken. The present evidence would suggest that the more extensive remedial works are needed. However, this is not an application for the Tribunal to determine the reasonableness of the works themselves or the cost thereof.
18. If there is any subsequent application by the Respondents for the Tribunal to assess the reasonableness of the extent of the work and/or the cost, the members of that Tribunal will want to have clear evidence of any comparable cost and availability of experienced contractors at the time of the repairs. They will also want clear expert evidence that the work undertaken was not justified.
19. The Respondents may wish to reflect on this. It is noted that advice has been obtained from LEASE but that is not the sort of advice being referred to. It is suggested that before things reach a point when there is complete impasse, they seek such expert advice.

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Bruce Edgington
Regional Judge
28th September 2018

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.