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

Case reference : CAM/00MA/LDC/2013/0024

Properties : 46-54 Ringwood,
Bracknell,
Berks. RG12 8YQ

Applicant : Bracknell Forest Homes Ltd.

Respondents : The long lessees in the list attached
to the application

Date of Application : 21st November 2013

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 replace the underground water pipe system serving the properties.

Reasons

Introduction

2. This application has been made for dispensation from the consultation requirements in respect of ‘qualifying works’ to the estate’s underground system supplying water to the properties from the mains.
3. The evidence from Nicola Smith-Crallan, Senior Neighbourhood Services Officer for the Applicant and Sophie Ballard BSc (Hons) MRICS, a chartered building surveyor has been noted by the Tribunal.
4. On the 10th May 2013, the Applicant was notified of a burst water main on the left hand side of the block containing the properties. On the 3rd July there was a burst pipe at the front of the block. Both were repaired. On the 7th November a further leak was discovered following a report from the resident of 54 that a water meter was showing an

unusually high usage figure. On the 21st November there was yet another repair to the pipe supplying 46, 52 and 54.

5. A decision was made that it would be uneconomic to continue with these repairs and replacement would be more cost effective in the long run. 2 quotes have been obtained, namely £5,988 from Hamlins Water Mains and £5,112 from Acorn Excavations who, on the 2nd December 2013, were instructed to undertake the replacement works. The Respondent lessees have been kept in touch with developments.
6. A procedural chair issued a directions order on the 25th November 2013 timetabling this case to its conclusion. One of the directions said that this case would be dealt with on the papers on or after 16th December 2013 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. The directions order said that if any of the Respondents wanted to make representations, then they should do so, in writing, by 13th December. None 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 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 landlord's proposals. The landlord's 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 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.

The Lease terms

9. A copy of the lease to flat 46 was provided. It is presumed that the relevant terms are identical in all the leases i.e. under clause 4.2 the landlord has to maintain, repair and replace as necessary all external pipes.

Conclusions

10. 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.

11. 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, there have been 4 repairs to the external pipes since May 2013 at a cost of nearly £4,500. Faced with that problem, the question then is what should have been done?
12. It is self-evident that remedial works were required and the Tribunal agrees, on balance, that replacement will be cheaper in the long run than continued repairs. The delay which would have been caused by undertaking the full consultation exercise may result in substantial additional costs to the lessees. There is no evidence that the full consultation process would have resulted in different works or a lower cost. The Tribunal therefore finds that there has been no prejudice to the lessees from the lack of consultation. Dispensation is therefore granted.
13. However, the Tribunal is very concerned to see that these pipes have failed after (apparently) less than 10 years' usage. There is no description of the block making clear its age but the leases appear to be dated for 2004 and the photographs supplied seem to support the inference that this was a new build block at that time. Underground pipes which were installed to serve a new build block of flats should last many years. The Tribunal therefore hopes that the Applicant will fully investigate what has gone wrong before charging the lessees for repairs and replacement.
14. If there is any subsequent application for the Tribunal to assess the reasonableness of the charges for these works, it is likely that the members of that Tribunal will want to know what has been done to find out what has gone wrong.

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Bruce Edgington
Regional Judge
18th December 2013