



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CAM/00JA/LDC/2014/0016

Property : Jubilee Mansions, 119 Thorpe Road, Peterborough,
Cambridgeshire PE3 6JH

Applicant : Terry Butson, Receiver & Manager, of Francis Butson
& Associates

Represented by Katharine Paxton (property manager)

Respondents : [see list of leaseholders attached to application]

Type of Application : Application for dispensation with consultation
requirements in respect of qualifying works
[LTA 1985, s.20ZA]

Tribunal Members : G K Sinclair, R Thomas MRICS & D S Reeve MVO
OBE

**Date and venue of
Hearing** : Tuesday 19th August 2014, at
The Bull Hotel, Peterborough

Date of Decision : 21st August 2014

DECISION

- Summary paras 1–3
- Applicable legal provisions paras 4–6
- Inspection, hearing & evidence paras 7–23
- Findings paras 24–26

Summary

1. By this application the applicant Mr Terry Butson of Francis Butson & Associates, appointed as Receiver & Manager of Jubilee Mansions under Part II of the Landlord and Tenant Act 1987, asked the tribunal to dispense with some of the consultation requirements required in the case of major works so that repairs to the flat roof of the building could be completed quickly, before the damage spread and the condition of the flats deteriorated further.
2. Since the last hearing in November 2013, following which Mr Butson’s term of office was continued until December 2016, the freehold reversion to the building and the landlord’s interest in possession in the penthouse flats has been sold by the former freeholder’s administrators to a newly formed company – Jubilee Mansions Freehold (Peterborough) Ltd. This is jointly owned by Lioncross Capital Ventures Ltd, of which Mr Michael Craddock is a director, and Mowatt Properties.
3. Bearing in mind the history of the building, and for the reasons which follow, the tribunal grants the application and permits the applicant to dispense with the second and third stages of the consultation process and instead proceed directly to select and contract with the roofing contractor it deems most appropriate so that work can commence as soon as possible – perhaps within weeks.

Applicable legal provisions

4. The Landlord and Tenant Act 1985, section 20ZA(1) provides :
 Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
5. The statutory consultation requirements are set out in regulations, those current being the Service Charges (Consultation Requirements) (England) Regulations 2003¹.
6. What criteria should the tribunal apply when determining whether it is satisfied that it is reasonable to dispense with the requirements? A definitive answer has been provided by the Supreme Court in its recent decision in *Daejan Investments Ltd v Benson & others*². The following, taken from the Supreme Court’s official press summary, are the principal points to bear in mind. Numbers in square brackets refer to paragraph numbers in the full judgment :
 - a. The purpose of the Requirements is to ensure that tenants are protected from paying for inappropriate works, or paying more than would be appropriate. In considering dispensation requests, the LVT should focus

¹ SI 2003/1987, as amended by SI 2004/2939 and (as respects public notices) SI 2006/5

² [2013] UKSC 14

on whether the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements [44]

- b. As regards compliance with the Requirements, it is neither convenient nor sensible to distinguish between a serious failing, and a minor oversight, save in relation to the prejudice it causes. Such a distinction could lead to uncertainty, and to inappropriate and unpredictable outcomes [47]-[49].
- c. The LVT has power to grant dispensation on appropriate terms [54], and can impose conditions on the grant of dispensation [58], including a condition as to costs that the landlord pays the tenants' reasonable costs incurred in connection with the dispensation application [59]-[61].
- d. Where a landlord has failed to comply with the Requirements, there may often be a dispute as to whether the tenants would relevantly suffer if an unconditional dispensation was granted [65].
- e. While the legal burden is on the landlord throughout, the factual burden of identifying some relevant prejudice is on the tenants [67]. They have an obligation to identify what they would have said, given that their complaint is that they have been deprived of the opportunity to say it [69].
- f. Once the tenants have shown a credible case for prejudice, the LVT should look to the landlord to rebut it and should be sympathetic to the tenants' case [68].
- g. Insofar as the tenants will suffer relevant prejudice, the LVT should, in the absence of some good reason to the contrary, effectively require the landlord to reduce the amount claimed to compensate the tenants fully for that prejudice. This is a fair outcome, as the tenants will be in the same position as if the Requirements have been satisfied [71].

Inspection, hearing and evidence

7. The tribunal inspected the interior of some of the affected penthouse flats (and another on a lower floor) and the roof, starting at 10:00 on the morning of the hearing. In a number of the flats the new freeholder's contractors had within the last few weeks pulled down the damaged and part-collapsed ceilings, thus exposing to view the bracing which supports the flat roof. The tribunal was told that until recently most had still been occupied by tenants but, for safety reasons – and so work could be undertaken more easily, they had gradually been cleared.
8. In the bathroom to one flat effects of penetrating damp following the vertical soil pipe and leaking into the surrounding panelling were obvious. The tribunal was told damp had taken this route from the roof down through the penthouse to the flat below on the second floor, and in at least one case damp had now reached as far as a flat on the ground floor. Recent heavy rains had only increased the speed at which damage was affecting the building.
9. The roof itself was dry when inspected, unlike on the previous occasion when ponding could be seen. Some of the blue covering nailed down with battens had deteriorated in the sun and wind and one section had been shredded completely. Otherwise, the roof was much as it was when seen before, with multiple patching and the application of bituminous paint around the joints where vertical pipes emerged through the roof surface.
10. Although not directly relevant to the present application (save that the applicant and freeholder would each like to get repairs done while the scaffold access to the

flat roof is there) the tribunal members were also able to inspect the condition of parts of the mansard roof to the lower rear part of the building from the rear-facing windows of some of the flats at the front. Evidence of leaks from around the fittings for some Velux windows in the mansard roof was also noted when inspecting the interior of some of the penthouse flats.

11. The tribunal reconvened for the hearing an hour after the inspection had ended. In attendance were Katharine Paxton, property manager from Francis Butson & Associates (who manages the property subject to Mr Terry Butson's supervision as Receiver & Manager), Mr Michael Craddock for the freeholder, and Mr Peter Courtney, leaseholder of flat 4.
12. The bulk of the hearing bundle comprised the High Court judgment in a claim brought by a number of leaseholders against Optima (Cambridge) Ltd (the developer and then freeholder) and Strutt & Parker LLP (as the architect retained to periodically inspect and certify the building works), and expert reports by Jon P Chick (consulting engineer) and Christopher Brophy (chartered architect). The tribunal was also aware, however, that on 31st July 2014 the Court of Appeal had allowed an appeal on liability by Strutt & Parker LLP, thus depriving all the claimants of a substantial, insurance-backed pot of money to assist with the cost of remedial work to their respective flats (and presumably their contribution to the service charge costs of major works to the structure of the building).
13. The tribunal was told that by a letter dated 7th July 2014 the applicant had initiated the statutory consultation procedure concerning "major roof works & works to rectify defective drain system". This, couched in the vaguest of terms, was sent to the leaseholders of all 26 flats. Although the time limit has since expired there have been no responses to the notice.
14. The applicant and freeholder, who commendably seem to have established a good working relationship, are keen to proceed with work to the flat roof first, as this is the source of most of the leaks. Mr Vincent Brearley, who is local to the area, has been appointed as consultant structural engineer and various firms that have been approached had come back with their own proposals, but it had been decided to go with the Sika-Trocal specification that Mr Brearley recommended.
15. Mr Craddock and Ms Paxton discussed the various proposals received, and their prices net of VAT :
 - a. Hereward Roofing £52 820 for a single ply membrane, which is similar to the Sika system. The firm is from the Peterborough area
 - b. Garhigh £70 685 for another system, and the price excludes scaffolding. From Croydon, this firm is known to Mr Craddock but the travelling time is perhaps reflected in the price
 - c. Peterborough Roofing £29 000 for the Sika system, but add £4 995 or £9 550 for cost of insulation, and scaffold is on top. However, its scaffold proposal, at £9894 plus VAT, is the most cost-efficient
 - d. [Not named] £22 875 for an old-fashioned 3 layers of felt, considered to be completely inappropriate.

Mr Brearley has gone to other local Sika-approved contractors for rival quotes to that from Peterborough Roofing, but no pricing was yet available. In each case the cost of cherry pickers is on top.

16. Mr Craddock said that the leaseholders could not afford to spend £100 000 on just scaffold and a “top hat”. Peterborough Roofing’s proposal is for a perimeter system with a scaffold tower. Missing from the cost will be the price of replacing damaged ply. This, he said, would remain an unknown until we rip it up and was why they were before the tribunal. The plan is that Mr Brearley will be inspecting nearly every other week.
17. Mr Craddock produced a budget which he provided to Francis Butson, with fixed elements and allowances, and a 5% contingency. The total was around £75 000 inclusive of VAT. It includes remedial work to the ceilings of affected flats.
18. Anticipating questions from the tribunal, Ms Paxton and Mr Craddock said that most of those contractors that had quoted could start in September, as they were working on schools during the summer holidays. Peterborough Roofing can start at a week’s notice.
19. The tribunal was also told that Sika offer a 30 year product warranty, but the contractors could offer only 20 years for workmanship.
20. Mr Courtney, the sole leaseholder present, asked whether the proposed work (if enhanced insulation were to be provided) would be considered replacement or improvement/betterment. He asked not only how this would be answered under the terms of the lease but also about the possible tax treatment of repair works. Mr Craddock said that he was investigating whether, because the roof had been badly constructed from the start, he can get some of the work zero rated for VAT. He would try, but confessed he was not confident that HMRC would agree. He also said that, as his company had bought from the administrators, he had no knowledge whether there were any existing warranties (although probably not).
21. Asked what dispensation they actually sought, Ms Paxton and Mr Craddock said that they were of a mind that at the end of this week they would like a price in from Apex Roofing, to compare, and then appoint Peterborough Roofing as soon as possible. (Apex had attended at 09:30 that morning to inspect the building but were thinking in terms of a traditional all-round scaffolding system, so would not be able to compete with Peterborough on price).
22. They said that more water was getting through to flat 12 on the ground floor, more flats were becoming empty and unlettable, and there was more damage to plaster.
23. Asked by the tribunal, Mr Courtney said that he had no comments to make on the work proposed – he just wanted it done.

Discussion

24. The tribunal agrees that speed is of the essence. The applicant has complied with the first stage consultation by providing the bare minimum of information in the first notice. Insofar as work to the flat roof is concerned (not the mansard, which

may need to be investigated while the opportunity is there and a cherry picker is available on site) it is essential to proceed as quickly as possible before autumn sets in.

25. None of the leaseholders have responded to the notice or otherwise enquired of the applicant what his intentions were, so the tribunal is content that the sending of further notices may be dispensed with, but it would encourage the Receiver & Manager to supply as much information as possible to leaseholders about the nature and timing of the works to the flat roof. If work to the mansard is to be investigated/undertaken at the same time then leaseholders should again be kept informed, but if it is considered that the work should proceed while staff and equipment are on hand then a further application for dispensation should be made, providing detailed information and with a request that the matter be dealt with urgently on paper.
26. In the circumstances the tribunal sees no need to impose any other conditions on the grant of dispensation on this occasion.

Dated 21st August 2014

Graham Sinclair
Tribunal Judge