



**DECISION ON AN APPLICATION UNDER SECTION 20ZA LANDLORD
AND TENANT ACT 1985**

Ref: LON/00BK/LDC/2013/0027

Property: Manor House, Marylebone Road, London NW1 5NP

Applicant: Manor House (Marylebone) Limited

Respondents: All leaseholders of the Property

Determination date: 29th April 2013

Tribunal: Mr P Korn
Mr T Johnson FRICS

BACKGROUND

1. The Applicant is the Respondents' landlord at the Property. The Property comprises a block of 57 flats.
2. On 25th March 2013 the Tribunal received an application from the Applicant seeking dispensation from certain of the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 (as amended) ("the Act") in respect of qualifying works, namely the treating of dry rot within three of the flats and within adjacent common parts.
3. Directions were issued on 28th March 2013, and the Procedural Chairman determined that the application should be dealt with by the Tribunal on the basis of the papers alone (i.e. without an oral hearing) unless any party required the matter to be decided in a hearing. No request for a hearing has been received and therefore the application is being determined on the papers alone.

4. As part of the directions, the Procedural Chairman directed the Applicant formally to notify each of the Respondents of the application and to send them a copy of the application and a copy of the directions.

THE APPLICANT'S CASE

5. The Applicant states that on 1st March 2013 decorating contractors accessed Flat 41 to undertake redecoration work following a water leak and indicated to the Applicant that the damage to internal finishes could be the result of timber rot rather than just the result of a leak. On 6th March a specialist damp and timber rot treatment specialist inspected Flat 41 and confirmed the presence of dry rot. Subsequently, evidence of dry rot was also identified in Flats 37 and 45.
6. The Applicant's managing agents then inspected the affected flats and prepared a schedule of work to strip out, treat and reinstate the relevant areas within the said flats and adjacent common parts. A first stage consultation notice was issued to all leaseholders on 14th March, this notice also setting out the Applicant's intention to seek dispensation from complying with the remainder of the consultation requirements (or with a substantial part of those requirements – it is unclear to the Tribunal precisely what the intention was).
7. In the application, the Applicant states that it wishes to carry out the works as soon as possible in order to reduce the risk of additional damage from further spread.
8. The Applicant further states that the Property, including the interior, has Grade 2 listed status.

RESPONDENTS' RESPONSES

9. The Tribunal has received no responses from any of the Respondents, whether in favour of or against the application.

THE LAW

10. Under Section 20(1) of the Act, in relation to any qualifying works "*the relevant contributions of tenants are limited ... unless the consultation requirements have been either (a) complied with ... or (b) dispensed with ... by ... a leasehold valuation tribunal*".
11. Under Section 20ZA(1) of the Act "*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..., the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements*".

APPLICATION OF FACTS TO LAW

12. The Applicant has made its application on the implied basis that it considers the works concerned to be qualifying works within the meaning of Section 20(1) and Section 20ZA(1) of the Act and that these provisions therefore apply to the works. From the documentation that the Tribunal has seen, this does appear to be the case.
13. The Tribunal notes with surprise that it has received no representations from any of the leaseholders, despite there being 57 flats (although the Tribunal appreciates that some of the flats may not be let). Furthermore, the Applicant has not indicated whether it received any comments or representations in response to the stage 1 consultation notice apparently sent out to all leaseholders. There is therefore at least a question in the Tribunal's mind as to whether the Respondents have received the stage 1 consultation notice and/or the application for dispensation and also a question as to whether – if the stage 1 consultation notice was sent out to all leaseholders – the Applicant received any adverse comments or representations which it has chosen not to disclose to the Tribunal.
14. As regards the merits of the application itself, the Applicant has failed properly to explain the exact consequences of the delay that would be involved in going through the full consultation process. The application was received by the Tribunal on 25th March and the Applicant is aware from the directions that the Tribunal was not due to make its determination until during the week commencing 29th April, and so this could have been as late as 3rd May and then the Applicant would still have had to wait until it received the Tribunal's decision before it knew whether dispensation had been granted. In addition, the Applicant states that the interior of the Property is Grade 2 listed and therefore – in the absence of any explanation having been given as to why these works might be exempt – the Tribunal's working assumption is that the Applicant also needs to apply for listed building consent for the work and therefore would still need to wait for that consent to come through before commencing the work.
15. In addition, there seems to be no suggestion that the carrying out of the works constitutes an emergency, in that there is no suggestion that the current state of the Property is dangerous, nor that the current position is causing undue hardship to particular occupiers, as might be the case for example if there were elderly residents living high up in a block and the only lift was not working. Nor has the Applicant offered any real evidence to demonstrate that the problem is very fast-moving and will lead to very serious consequences if not dealt with immediately, although in any event for the reasons given above the Applicant has failed to show that it is in a position to deal with the matter quickly or that complying with the statutory process would necessarily be materially slower than applying for dispensation in the context of the facts of this particular case.

16. As there has recently been a Supreme Court decision on compliance with section 20 consultation requirements, the Tribunal considers that some reference to this case needs to be made. The case is *Daejan Investments Limited v Benson and others (2013) UKSC14*, and arguably the central issue in that case was whether the leaseholders had suffered any prejudice by virtue of the landlord's partial non-compliance with the consultation requirements. In that case the leaseholders were represented by Counsel and had a full opportunity to argue their case, whereas the Tribunal is not satisfied that the Respondents necessarily had that opportunity or had the benefit of legal advice. Also, in the *Daejan* case the landlord offered compensation for partial non-compliance and a central issue was whether partial prejudice could be cured in this way. In addition, the *Daejan* case was not fundamentally about the circumstances in which dispensation should be given, or at least not in a sense that can easily be applied to the facts of the present case.
17. In the Tribunal's view, for the various reasons expressed above, the Applicant has failed to convince the Tribunal that it should exercise its discretion to dispense with the remainder of the consultation requirements on the facts of this case as presented to it.

DETERMINATION

18. The Tribunal hereby determines not to dispense with any of the consultation requirements not yet complied with in relation to the works which are the subject of this application.
19. For the avoidance of doubt, this determination is confined to the issue of consultation and does not constitute a decision on the reasonableness or otherwise of the cost of the works.
20. No cost applications have been made.

Chairman:  P Korn

Dated: 29th April 2013