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

Case reference : CAM/22UB/LDC/2014/0020

Properties : 50, 54, 55 & 56 Buckerills,
Pitsea,
Basildon,
Essex SS13 3ER

Applicant : Basildon Borough Council

Respondents : Mr. D. Oliver & Ms. A. Coker (50)
Mr. A. Herron (54)
Mr. D. Ellis (55) and
Swan Housing Association Ltd. (56)

Date of Application : One undated, 3 dated 9th September
all received 18th September 2014

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 the consultation requirements in respect of works to remove a planter and then renew and extend the Asphalt and the quarry tiles on the balcony of 57 Buckerills, Pitsea, Basildon, Essex

Reasons

Introduction

2. This application has been made for dispensation from the consultation requirements in respect of 'qualifying works'. The evidence of the Repairs Technical Manager employed by the Applicant, Anthony Stokes, is that on or before 21st July 2014, a telephone call was received from the leaseholder at 55 Buckerills explaining that they had water ingress from the balcony above them at 57 Buckerills.

3. Following investigations, it was clear to Mr. Stokes that the water ingress was substantial and causing damage to the structure of that property and considerable distress to the leaseholder. The construction of the balcony in question is that it is concrete covered in Asphalt and the assessment made was that the Asphalt was beyond repair. There was also a brick built planter bed on the balcony which was also contributing to the problem. This needed to be removed and the Asphalt extended to cover that area.
4. Emergency remedial works were put in hand with the Applicant's contractor, MITIE and the cost was £5,370.91. On the 30th July 2014, letters were written to the Respondents informing them of the problem. At that time the estimate for the work was £4,580.60 plus an administration charge and the Respondents were given this information.
5. This letter is called and referred to in the evidence as being a "Dispensation Notice". It simply says that in view of the emergency nature of the works, there is no time for a full consultation. The Tribunal considers that this title is misleading and should be changed. There is no such thing as a Dispensation Notice. The contents of the letter and its 'title' give leaseholders the impression that because the works are of an emergency nature, there is no need for the Applicant to do anything other than write the letter.
6. As this application has been made, this was clearly not the intention of the Applicant. However, just telling people that they are going to be liable for a large amount of money without informing them that there are safeguards, could be distressing and could also be interpreted as being threatening.
7. A procedural chair issued a directions order on the 18th September 2014 timetabling this case to its conclusion. One of the directions said that the Tribunal was content to deal with this application on a consideration of the papers taking into account any written representations made by the parties on or after 23rd October 2014. It was made clear that if any party wanted an oral hearing, then that would be arranged. No request for a hearing was received.
8. The Tribunal has asked the Respondents if they wanted to make any representations – written or otherwise – and they have declined to make any.
9. This decision is considerably later than the target date of the 23rd October because when the Tribunal first looked at the bundle provided for the determination, there was information which it needed most of which was subsequently supplied.

The Law

10. 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 gives 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.

11. 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.

Conclusions

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 sort of case 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 work was undertaken in an emergency situation. Faced with that problem, the question then is what should have been done?
14. Part of the evidence supplied by the Applicant were costings for similar work undertaken on their housing stock at Wythefield, Chevers Pawen and Steeplehall. One contract was for a very similar cost to the contract in question and the others were for less.
15. The Tribunal finds that the work was reasonably undertaken as an emergency. The delay which would have been caused by undertaking the full consultation exercise could have resulted in further structural damage. 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.
16. However, the Tribunal notes with some concern that one of the questions the Applicant was asked by the Tribunal was “was there any investigation as to what actually caused the leak?”. This question was not answered and no evidence was submitted which suggested that any other balcony in this building was to be investigated. This is not an application to assess the payability or reasonableness of the cost of the works and this question may therefore have to be dealt with in a subsequent application.
17. The Applicant did say “*the resident at number 57 Buckerills was no longer a council tenant at the time of the incident but had completed their right to buy application around 9th June 2014, some 2 months prior to the incident. The Applicant’s main priority at the time of the incident was to resolve the water ingress into 55 Buckerills and to*

prevent any further damage being caused to any of the properties”.

18. There are 3 things arising from that comment. Firstly, the 9th June is not 2 months prior to the 21st July; secondly there are no less than 3 references to an ‘incident’ which implies that something specific happened to cause the problem and thirdly if the problem was created by the occupier of 57, the fact that he or she was exercising the right to buy is neither here nor there. Its only relevance may arise in establishing liability for the ‘incident’ which caused the damage.

19. The questions which arise from evidence produced which may give an indication of the cause of the water penetration are:-

- The occupier of 57 Buckerills had laid decking on the balcony. It could not apparently be removed easily on the first inspection by the Applicant’s contractor. Was this because it was fixed to the balcony? Did such fixings penetrate the Asphalt?
- Why did the quarry tiles need replacing?
- There was a brick planter on the balcony without any Asphalt under it. Who built this and why no Asphalt?
- There is reference in the inspection reports to a blocked downpipe observed on the 24th July. What part did that play?
- As it looks as though there are similar balconies in the building where the Asphalt and quarry tiles would be of similar age, is action being taken to consult on similar work to replace those elsewhere in the block? If not, why not?
- The Applicants frequent reference to an ‘incident’ is puzzling. If it was a specific incident which caused the water penetration, what was it and why hasn’t an insurance claim been made?

20. If there is a subsequent application as referred to above, the Applicant would be well advised to be ready to answer those questions.

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Bruce Edgington
Regional Judge
12th November 2014