



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

Case Reference : CAM/22UH/LDC/2014/0013

Property : South Lodge, Forest Heights, Epping New Road,
Buckhurst Hill, Essex IG9 5TE

Applicant : Forest Heights Management Co Ltd

Representative : Mr Raymond Nathan, Company Secretary

Respondents : The lessees of flats 1–51 Forest Heights, as listed on
the application

Type of Application : For dispensation with consultation requirements in
respect of roof repairs to South Lodge
[LTA 1985, S.20ZA]

Tribunal Members : G K Sinclair & G F Smith MRICS FAAV REV

**Date and place
of hearing** : Wednesday 7th May 2014
at Packfords Hotel, Woodford Green

Date of Decision : 8th May 2014

DECISION

6. 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.
7. 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 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 tribunal should focus 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 tribunal 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 tribunal 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 tribunal 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 and hearing

8. South Lodge is one of two concrete-framed and brick-skinned blocks of flats within the Forest Heights gated estate built in the 1980s. It has three residential floors plus what were once two but now converted to one larger penthouse flat on a fourth floor. The building has a flat roof above the main floors, accessed by a door at penthouse level. The tribunal inspected the roof, which has a mineral felt covering upon which a path of concrete slabs mounted on round plastic discs

² [2013] UKSC 14

(to assist drainage) follows the perimeter between the walls and windows of the penthouse flat and a brick parapet through which a number of gullies discharge via downpipes. In places on the main roof there are a significant number of large pot plants distributed near windows, presumably by the lessee of the penthouse.

9. The tribunal noted where new mineral felt had been applied to the surface of parts of the roof, and especially to upstands around the edge. In parts where repairs had not been required the felt on either side of the path was covered with gravel. Elsewhere one could see where this gravel had been cleared and stored in plastic bags so that repairs could be undertaken, presumably with a view to spreading it again after the work had been completed.
10. The hearing began at 11:25. Only Mr Nathan on behalf of the applicant company attended. He explained how the problem came to light after a heavy downpour at the end of January 2014 caused damage through ingress of water to a number of the second floor flats. A surveyor was called in and the problem identified as the roof. This was due to volume of water and paucity of drainage, causing a build-up of water on the terrace, causing an overflow.
11. The lessee-controlled management company held a board meeting, at which a decision was taken to have repairs done as quickly as possible to secure the flats below. Some were uninhabitable so the occupiers had actually moved out. It was decided to sidestep the procedure of getting everyone to agree by making this application.
12. Notwithstanding the urgency, the documentation disclosed showed that tenders were quickly sought and the lowest tender of three was accepted. This was confirmed by a short letter from the surveyor, Mr Howard Newman FRICS, confirming the urgency of the works and a transcript of another letter/report on the outcome of the tender exercise. The latter was not as illuminating as it might be because the tender specification was not disclosed; nor was any explanation for the £10 000 discrepancy between the lowest tender and the two others offered. On 5th March Mr Nathan wrote to all lessees on behalf of the company, explaining the perceived urgency of the works, the result of the tenders and the decision taken. While he had received a few oral comments of approval there had been no written response nor any sign of objection by an lessee, although in Mr Nathan's experience one often got one or two lessees in a large development who would object to proposals. Not on this occasion.
13. Questioned by the tribunal, Mr Nathan said that the insurers had agreed to pay nothing as yet. He hoped they would pay for internal repairs and redecoration and some of the external repairs, but he was not hopeful. There was a £1 000 excess on the policy. He confirmed that the roof covering was most probably the original one from the 1980s, so it has lasted well. In discussion about the weight being borne by the roof structure he pointed out that the building had a concrete roof (indeed each floor was concrete).

Findings

14. As confirmed by Mr Nathan, this roof is of some longevity so its failure is only to be expected. Faced with water severely damaging at least one flat and causing less serious damage to a number of others, it was not unreasonable for the board

to decide to proceed with urgent repairs to make the building water-tight. Despite the urgency it was nonetheless able to put the work out to tender and quickly obtained and was able to assess the outcome, awarding the contract to the lowest bidder at £18 670 plus VAT. Lessees were then notified and, despite a number of enquiries of the tribunal office, not a single one has lodged an objection or even made a single informal adverse comment.

15. The tribunal is satisfied that the management company acted reasonably given the problem it faced and has not just placed the work with a usual contractor but has managed a truncated tender process. Had there been any objection, and for future reference, the tribunal would have appreciated more detailed evidence from the surveyor and in particular a copy of the specification of works in respect of which tenders were submitted. An explanation why the winning bid was some £10 000 cheaper than the others could perhaps also have been provided.
16. Applying the *Daejan* principles, the tribunal has been provided with no evidence of any prejudice that the lessees may have suffered, notes that there has been not a single objection, and therefore grants the application as requested.

Dated 8th May 2014

Graham K Sinclair
Tribunal Judge