



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

Case reference : CAM/22UB/LDC/2014/0008

Properties : 18 & 26 Dover Way,
Pitsea,
Basildon,
Essex SS13 3RJ

Applicant : Basildon Borough Council

Respondent : Mr. S. Dickman (18)
Mr. M. Draycott (26)

Date of Application : 3rd February 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)
Roland Thomas MRICS
Cheryl St. Clair MBE BA

**Date and venue of
Hearing** : 6th June 2014 at The Court House,
Great Oaks, Basildon, Essex SS14 1EH

DECISION

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1. The Applicant is granted dispensation from the consultation requirements in respect of works to replace the cladding at the property **upon condition** that the Respondent lessees are not charged for any of the legal and other costs of the Applicant of and occasioned by this application.

Reasons

Introduction

2. This application has been made for dispensation from the consultation requirements in respect of ‘qualifying works’. The Applicant served a section 20 (of the 1985 Act) notice on the 14th May 2013 indicating a desire to undertake replacement of ‘communal windows, soffits, fascias, guttering, cladding, external painting including scaffolding’ at

an estimated cost of £1,684 plus 'replacement of individual residential windows' at an estimated costs of £2,900 making £4,584 in all.

3. The intention was not to replace all of the cladding but only that covering the communal stairwells. However, during the course of the works it was decided by the Applicant that it was necessary to replace all of the cladding because, amongst other things, the existing cladding and cedar panels under did not have sufficient fixings. It was decided to use the same contractor and deal with the work whilst the scaffolding was still there. There was insufficient time for a full consultation for those works.
4. The Respondents have been written to by the Applicant and have been told that the cost of the communal works will be £2,534.69 which will be invoiced in July 2014.
5. A procedural chair issued a directions order on the 11th February 2014 timetabling this case to its conclusion. One of the directions said that depending on evidence filed by the Applicant and any representations from the Respondents, this case may be dealt with on the papers taking into account any written representations made by the parties. It was made clear by letter dated 24th March 2014 that if any party wanted an oral hearing, then that would be arranged. A hearing was requested and arrangements were made.

The Law

6. 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 relevant 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, to make observations, and the landlord must give its response to those observations and take them into account.
7. 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 Inspection

8. The members of the Tribunal inspected the outside of the building in which the properties are situated on a bright sunny morning. The Applicant's witness, Mr. Borley, was in attendance and he pointed out the cladding to the communal parts which was set back. This was the cladding referred to in the section 20 letter.
9. The other cladding on the exterior walls to the flats themselves was at first floor level and above. It was explained that the original estimate was obtained from ground floor level and it was not realised that the cedar panels under the cladding had become loose. It was only when

the scaffolding was erected and workmen discovered the problem that the decision was taken to fix the panels properly and then renew that cladding as well.

The Hearing

10. The hearing was attended by Craig Vickers of counsel, Tina Byrne, Leasehold Officer, Home Ownership team, Leanna Nicoloy and Clint Borley, Project Manager, from the Applicant council. The Respondent Mr. Draycott had expressed a wish to attend the hearing but he wrote to the Tribunal office on the 29th April saying that he was in fact unable to take time off work. He did not apply for an adjournment and said "*I await the outcome of the Tribunal in due course*".
11. Mr. Draycott had made written representations on the 1st March 2014 and it is right that they should be set out here to complete a description of the evidence. The only point he makes is that the Applicant said in its original letter that it was going to 'replace the cladding' and he thinks that this should mean what it says. What he did not appreciate was that it was only intended to replace part of the cladding.

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 proceeding and it was found that the fixings on the panels under the other cladding on the building which was not to be replaced were insufficient. Faced with that problem, the question then is what should have been done?
14. The Tribunal finds that the fixings were inadequate and agrees, on balance, that fixing the problem and replacing of those parts of the cladding will be cheaper in the long run than repairs. The delay which would have been caused by undertaking the full consultation exercise would probably have resulted in substantial additional cost 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.
15. However, the Tribunal notes the comments of the Applicant that this was not the 'fault' of either the contractor or the council. With respect to them, if a full assessment of the requirement for work to the cladding was being undertaken and a positive decision was being made not to replace certain parts of the cladding, one would have expected that some effort would have been made to ensure that the fixings and panels were adequate. For that reason, the Tribunal is making this

dispensation conditional as stated above.

16. As far as Mr. Draycott's comments are concerned, he will understand that the Tribunal has some sympathy with those views. As soon as the problem was realised there should have been communication with the long lessees to ensure that they knew what was happening and the reasons why. However, this is not an application to determine the reasonableness of the cost of these works. If Mr. Draycott wishes to challenge the cost, he will have to make a separate application to the Tribunal. Having said that, he should understand that he will have to provide evidence that the work was unnecessary and/or that the cost actually incurred was excessive. The Tribunal will not be able to provide that evidence for him.

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Bruce Edgington
Regional Judge
11th June 2014