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

Case reference : CAM/26UD/LDC/2014/0011

Properties : **Tewin Water,
Digswell,
Herts. AL6 0AA**

Applicant : **Tewin Water House Management
Company Ltd.**

Respondents : **Mr. S. Stefanou
Mr. J C & Mrs. H A Brook
Mr. R A & Mrs. J M Leggetter
Mr. N Dodgson & Ms. C Mandy
Mrs. C I D Foster
Mr. R & Mrs. V Hay**

Date of Application : **24th March 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 further consultation requirements in respect of works to repair the roof and guttering to the Manor House at the property.

Reasons

Introduction

2. This application has been made for dispensation from the consultation requirements in respect of ‘qualifying works’ to the roof and guttering of the Manor House at the property. A temporary repair was effected in November 2012 following reports of leaks and concerns over guttering. That temporary repair proved to be insufficient because a further leak to apartment 1 was reported in January 2014 in the middle of a period of very wet and stormy weather.

3. The evidence from James Williams, a property manager employed by the managing agents OM Property Management, who has managed this property for the last 2 years, has been noted by the Tribunal. He has explained the brief history as outlined above and reports that the damage to apartment 1 is particularly pronounced with water damage evident internally, particularly to the spare bedroom. It is his opinion, which has not been contradicted by any resident, that without urgent repairs, water could well penetrate through to the flats below. He also reports that the failed guttering is causing water to penetrate the render which, in turn, is causing cracking and ingress of water.
4. Mr. Williams explains further that he has obtained 2 individual quotations from 2 contractors for each piece of work and then a combined quotation from one of them. There is a residents' association, although the application form suggests that it has not yet been 'recognised'. Be that as it may, the chair of that association, a Neil Dodgson, has, according to Mr. Williams, given permission for the works to be undertaken.
5. Such works involved the roof being stripped back, repaired and waterproofed before re-instating the slates. The 'guttering' repair involves removing 12 meters of damaged rainwater pipe, removing damaged rendering and re-rendering before fixing new pipework and finishing.
6. A procedural chair issued a directions order on the 27th March 2014 timetabling this case to its conclusion. One of the directions said that this case would be dealt with on the papers on or after 9th April 2014 taking into account any written representations made by the parties. It was made clear that if any party wanted an oral hearing, then that would be arranged. No request for a hearing was received. The directions order said that if any of the Respondents wanted to make representations, then they should do so, in writing, by 7th April. None have been received.

The Law

7. 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 4, Part 2 to the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These require a Notice of Intention, facility for inspection of documents, a duty to have regard to tenants' observations, followed by a detailed preparation of the landlord's proposals. The landlord's proposals, which should include the observations of tenants, and the amount of the estimated expenditure, then has to be given in writing to each tenant and to any recognised tenant's association. Again there is a duty to have regard to observations in relation to the proposal, to seek estimates from any contractor nominated by or on behalf of tenants and the landlord must give its response to those observations.

8. 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 Lease terms

9. No copy lease was provided but it is assumed that the landlord has the usual responsibility to maintain the roof, external rendering guttering and rainwater goods.

Conclusions

10. 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 issue which culminated with the recent Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14.
11. 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 the directions order mentioned above, the leaseholders were asked what prejudice did they think they would suffer if dispensation were granted. None of the leaseholders has made any such suggestion of prejudice.
12. It is self-evident that remedial works are required and the Tribunal agrees, on balance, that the delay which would have been caused by undertaking the full consultation exercise may result in substantial additional costs 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 will be no significant prejudice, if any, to the lessees from the lack of consultation. Dispensation is therefore granted.

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Bruce Edgington
Regional Judge
14th April 2014