



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

Case reference	:	CAM/22UD/LDC/2015/0016
Property	:	Hanover House, 78 High Street, Brentwood, Essex CM14 4 AP
Applicant	:	Blueprint Investments (London) Ltd.
Respondents	:	Stonegate Pub. Co Ltd. Roland Nalden (flats 1 & 4) Guy Scott (flat 2) Samuel & Toby Callahan (flat 3) Kuna Mehra (flat 5) David Tse & Yan Huang (flat 6) James Hardcastle (flat 7) Michael Goodridge (flat 8) Emad Yousif (flat 9) Alan Perry (flat 10) David Long & Moria Lunn (flat 11) Jonathan & Gillian Smith (flat 12)
Date of Application	:	19th October 2015
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. Stonegate Pub Co. Ltd. is removed from this application as a Respondent as it is a commercial tenant in the building and not subject to a long residential lease.
2. The Applicant is granted dispensation from further consultation requirements in respect of works undertaken on the 9th June 2015 to install a new pump panel, a new alarm system and to alter float switches in the sewerage system contained in the basement area of the property resulting in

invoice no. 30799 from London Drainage Facilities Ltd. in the sum of £5,631.00.

3. The Applicant is refused any further dispensation because the information supplied to the Tribunal by the Applicant is that the cost to each residential tenant of the works to the sewerage system are less than £250.00 for each contract and dispensation is not required.

Reasons

Introduction

4. This is an application for dispensation from the consultation requirements in respect of alleged 'qualifying works' to the sewerage system of the property. Between the 15th December 2014 and the 14th July 2015, contractors were called out on no less than 12 occasions because the sewerage system became blocked.
5. It is clear that each call out was an emergency which means, for the purpose of the application, that they could not be deemed to be part of the same contract to be added together for the purpose of consultation.
6. A procedural chair issued a directions order on the 27th October 2015 i.e. the day after the application was received timetabling this case to its conclusion. The first direction said that the Applicant had to set down in a statement, why the first Respondent had been included when it appeared that it was a commercial tenant; as only one of the contracts involved required each residential tenant to pay more than £250, why was dispensation being asked for in respect of the other contracts; a breakdown of the cost and what investigations were undertaken to find out alternative costs and whether any investigation had been carried out before 9th June 2015 as to the reason for the constant blockages and, if so, what were the results. If not, why not. It should attach copies of any reports and copies of any correspondence with the leaseholders and contractors. A letter was then produced but it did not deal substantively with any of these questions.
7. The delay since then was largely due to certain procedural failings on the part of the Applicant, whereby the original application was dismissed but was reinstated on further application. The Tribunal indicated that it would deal with the application on the basis of written representations and the appropriate notice was given to all parties with a proviso that if anyone wanted an oral hearing, then arrangements would be made for this. Similarly, the Tribunal did not consider that an inspection would be necessary but offered the facility of an inspection. No request was made for either an inspection or an oral hearing.
8. Solicitors for the first Respondent wrote saying that as their client is a commercial tenant, it should not have been included in the application. No other Respondent made any representations.

The Law

9. Section 20 of the 1985 Act limits the amount which lessees can be charged for major works involving a cost of more than £250 to each tenant 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.

10. The landlord's proposals, which should include the observations of tenants, and the amount of the estimated expenditure, then have 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.
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 so to do.

The Lease terms

12. Copies of the leases of the residential properties were produced. They provide that the landlord is responsible for keeping the structure, including the roof, in repair together with the common parts, to include the lift, subject to the tenants paying a reasonable proportion of the cost. The Tribunal has not been asked to consider whether this includes the sewerage system but it is assumed, for the purpose of this decision, that it does.

Discussion

13. 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 matters to be determined by a Tribunal dealing with this issue which culminated with the Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14. 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?
14. When the Applicant's letter did arrive after the directions order was made, it was noted that the majority of the information requested was missing. The Tribunal determined that the Applicant, which is represented by an organisation called Cavendish Legal Group, had made the positive decision not to provide the information and it was decided not to delay matters any further.
15. One thing the Applicant did provide was a breakdown of the percentages of the service charges payable by each tenant which has been calculated on the basis of the square footage of each demise. Apart from the commercial properties, the largest percentage is 7.08% for flat 12. This, together with the information about the cost of each contract given in the original application enabled the Tribunal to calculate the amount due from each tenant for each contract.
16. Thus, if flat 12's share of any contract is more than £250 then dispensation is

required. Otherwise, it is not. The largest contract by far is that for the work undertaken on the 9th June 2015 i.e. for £5,631 plus a management fee of 11% making a total of £6,250.41. Flat 12's contribution to this would be more than the £250 limit.

17. The next largest contract was for work undertaken on the 23rd December 2014 where the contract price was £2,340 plus the management fee making a total of £2,597.40 of which 7.08% is £183.90 i.e. far less than the £250 limit.

Conclusions

18. Each of the contracts referred to in the application was clearly treated as an emergency. They involved clearing blockages in or effecting repairs to the sewerage system. The Tribunal determines that for the only contract which would involve the residential tenants paying more than the £250 limit, the circumstances justify dispensation from the consultation requirements being given.
19. For the remaining contracts, no information has been given which would suggest that the contribution of any residential tenant would be more than £250 and, as such, neither formal consultation nor dispensation is needed.
20. It should be made clear that this is not an application for the Tribunal to determine whether the costs incurred are reasonable and it does not do so. Having said that, if any tenant wants to challenge the costs in any subsequent application, he or she will have to provide some clear evidence that the work could have been done more cheaply on reasonable enquiry within the time frame open to the Applicant.
21. There is certainly a question mark over why the problem was not resolved earlier but the Tribunal has no information upon which to base any further comment.

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Bruce Edgington
Regional Judge
21st January 2016

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.