



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

<b>Case reference</b>	:	<b>CAM/26UK/LDC/2016/0005</b>
<b>Property</b>	:	<b>Victoria Court, 89a Queens Road, Watford, Herts. WD17 2GR</b>
<b>Applicant</b>	:	<b>Places for People Homes Ltd.</b>
<b>Respondents</b>	:	<b>Mr. A. Higgins (flat 1) Mr. A. Kanner (flat 2) Mr. S. Townsend (flat 3) Mr. S. Brazier (flat 4) Mr. Abell (flat 5) Ms. Lang (flat 6) Mr. R. Cohen (flat 7) Mr. P. Khazali (flat 8) Mr. G. Nelson (flat 9)</b>
<b>Date of Application</b>	:	<b>19<sup>th</sup> January 2016</b>
<b>Type of Application</b>	:	<b>for permission to dispense with consultation requirements in respect of qualifying works (Section 20ZA Landlord and Tenant Act 1985 ("the 1985 Act"))</b>
<b>Tribunal</b>	:	<b>Bruce Edgington (lawyer chair) David Brown FRICS</b>

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**DECISION**

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1. The Applicant is granted dispensation from further consultation requirements in respect of works undertaken between July and November 2015 to rectify leaks at the property to prevent water ingress to flats 4, 7 and 9.

**Reasons**

**Introduction**

2. This is an application for dispensation from the consultation requirements in respect of alleged 'qualifying works' to the property. Between July and November 2015, contractors Novus Property Solutions were called out to deal with leaks to flats 7, 4 and then 9. They are subject to a long term qualifying

agreement and had undertaken roof works earlier. It was initially thought that these new works would be undertaken under the warranty provided.

3. Attempts were made to provide solutions but it was eventually decided that the leaks were as a result of new and previously undetected problems with blocked joints in pipework concealed "*between the cavities of the external walls*".
4. A procedural chair issued a directions order on the 21<sup>st</sup> January 2016 i.e. the day after the application was received timetabling this case to its conclusion. 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.
5. Five of the lessee Respondents have signed a letter raising concerns about the work and the way it has been handled. The allegation, in broad terms, is that there has been overcharging and that if the original roof works had been done properly, the subsequent problems giving rise to this further work would not have happened.

#### **The Law**

6. 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 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.
7. 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.
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 so to do.

#### **Discussion**

9. 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?

**Conclusions**

10. The lessees who complain do not suggest that there were no leaks in flats 4, 7 and 9. The Tribunal therefore accepts that all the evidence suggests that there were. In those circumstances, it is incumbent upon a landlord to act quickly to try to rectify the problem. The speed with which the contractors identified the problem could be open to question but the Tribunal has little evidence about the precise reason for the delays and water leaks can be notoriously difficult to trace. In the circumstances, the Tribunal will therefore agree to dispense with the balance of the consultation requirements.
11. However, it should be made clear that this is not an application for the Tribunal to determine whether the earlier work, the subsequent work or the costs incurred are reasonable and it does not do so. However, the Applicant would do well to consider the points raised by the 5 lessees and reassure them about the matters raised.
12. Having said that, if any lessee wants to challenge reasonableness of the various works and/or the costs in any subsequent application to this Tribunal, he or she will need to provide some clear evidence about the matters set out in the letter sent to the Tribunal. Having said that, there was no urgency to the relocation of the other two sets of outlets, hoppers and downpipes (para.7.0 of the applicant's statement), so consultation could have been carried out on those.

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**Bruce Edgington**  
**Regional Judge**  
**18<sup>th</sup> February 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.