



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

<b>Case reference</b>	:	<b>CAM/00ME/LDC/2019/0001</b>
<b>Property</b>	:	<b>38 Castle Hill, Maidenhead, SL6 4JJ</b>
<b>Applicant</b>	:	<b>Southern Land Securities Ltd.</b>
<b>Respondents</b>	:	<b>the long leaseholders listed in the application</b>
<b>Date of Application</b>	:	<b>8<sup>th</sup> January 2019</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) Mary Hardman FRICS IRRV (Hons)</b>

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## **DECISION**

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1. The Applicant is granted dispensation from the consultation requirements for removing cill/fillet detail to rear and left hand side area of the ground floor flat externally; inject/infill cracking with injection resin; create new fillet detail using waterproofing slurry solution and coat new area in facade coat

### **Reasons**

#### **Introduction**

2. It is said by the Applicant that in February 2018 there was a water leak in the ground floor flat of this block of 3 flats and insurers had been working on site to rectify the problem. Whilst their contractors were there, another problem was encountered which required the work set out in the decision above to rectify it. It was clearly considered to be more cost effective and less disruptive to the leaseholder to deal with the work immediately.
3. A quotation was obtained from the contractor in the sum of £3,656.00 plus VAT. The respondents were notified. Only a Mr. Horton from the first floor flat replied. He questioned why this fault had not been

picked up earlier because the building has “*had major work in the past three years with numerous visits and reports from surveyors*”. He also asked why the insurers were not paying for this work. Supervising surveyors at the time of earlier works in 2013 provided some evidence that it was not reasonable or practical for this new problem to have been identified at the time.

4. In a directions order dated 10<sup>th</sup> January 2019, it was said that this case would be dealt with on the papers on or after 19<sup>th</sup> February 2019 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 and there have been no representations from the Respondents.

### **The Law**

5. 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.
6. 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 proposals, to seek estimates from any contractor nominated by or on behalf of tenants and the landlord must give its response to those observations.
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.

### **Conclusions**

8. All the Tribunal has to determine is whether dispensation should be granted from the consultation requirements under Section 20ZA of the 1985 Act. There has been much litigation over the years about the matter to be considered by a Tribunal dealing with this issue which culminated with the Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14.
9. 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?
10. This is not an application for the Tribunal to approve the reasonableness of the works or the reasonableness or payability of the

service charge demand. If there is any subsequent application for the Tribunal to assess the reasonableness of, or the charges for these works, the Tribunal will want clear evidence that, given the circumstances faced by the Applicant, there would have been contractors available at the time who would have been able to undertake the works as an emergency at a reduced cost.

11. It is also not an application for the Tribunal to decide whether the insurance company should pay for the work. If any Respondent wants the Tribunal to consider this point, then a separate application will have to be made if a demand for money is sent, when the Tribunal can consider the contractual arrangements and the insurance provisions. However, if the problem was located by the insurer's contractors, then the Tribunal would want a full explanation as to why the insurers did not just instruct their contractors to rectify this defect and pay the cost.
12. As far as this application is concerned, the **Daejan** case referred to above now places the responsibility on the shoulders of the long leaseholders to establish a particular prejudice arising from a lack of consultation. Save for the issues raised by Mr. Horton, none have been put forward, and as none can be inferred from the evidence seen by the Tribunal, it concludes that, on balance, it can grant dispensation. It was clearly sensible to deal with this work whilst contractors were on site and it appears to have been urgent work.

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**Bruce Edgington**  
**Regional Judge**  
**19<sup>th</sup> February 2019**

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- 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.
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