



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

Case reference	:	CAM/22UF/LDC/2019/0003
Property	:	Pepper Court, 26 High Street, Baldock, SG7 6BH
Applicant	:	Southern Land Securities
Respondents	:	the long leaseholders of the flats listed in the application
Date of Application	:	31st January 2019
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) Mary Hardman FRICS IRRV (Hons)

DECISION

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1. The Applicant is granted dispensation from further consultation requirements for repairs to the electronic entrance gates to this gated development on or about the 11th September 2018.

Reasons

Introduction

2. On 17th July 2018, an engineer attended the property and found that the electronic entrance gates were open and not working. It was found that *“the gate floor boxes are extremely corroded, the left hand side gate motor is faulty, excessive play on the gear box. Both motors will not tighten so the motors move about in the floor boxes making the link arm assembly jump off. The control board box is full of equipment that falls out when the lid is opened and the control board has a fuse holder taped on. Left gates open and disabled. System upgrade advised”*.
3. A quotation for repair work was received from Eagle Automation Systems Ltd. on 19th July in the sum of £4,523.40 plus VAT. A further

quotation was obtained from Jack Arnold UK Ltd. for £3,270.00 plus VAT. From an e-mail in the bundle provided for the Tribunal, it appears that the managing agent informed leaseholders on or about the 23rd August 2018 that repair work would be undertaken on the 11th September 2018. There is then an invoice in the bundle from Jack Arnold UK Ltd. dated 13th September 2018 for £3,924.00 including VAT.

4. In a directions order dated 1st February 2019, it was said that this case would be dealt with on the papers on or after 8th March 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 First-tier Tribunal. 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 full 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 the charges for these works, the Tribunal will want clear evidence that, given the circumstances, there would have been contractors available at the time who would have been able to undertake the works reasonably quickly at a reduced cost. It is noted that 2 quotations were obtained and the work was undertaken by the company providing the cheaper one. The first notice under the consultation rules is said to have been sent to the Respondents on the 7th December 2018.

11. 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. None have been put forward and the Tribunal concludes that, on balance, it can grant dispensation.
12. The Tribunal was slightly concerned about inaccuracies in the statement of case submitted on behalf of the Applicant. It was said that the managing agent instructed a contractor to attend the site in September 2018 and “*due to the security risk ... instructed the contractor to proceed with the repair*”. It is also said that the managing agent was unaware at the time that the section 20 threshold of £250 per flat would be exceeded.
13. Both of these assertions appear to be disingenuous, to say the least. The fault and the likely cost of repairs were known 2 months beforehand. Thus, the ‘security risk’ could not have been that great as the gates appear to have been open for all that period. It therefore appears that a full consultation could probably have been carried out. However, the Applicant should know that if no competitive quotations had been obtained, dispensation could well have been refused.

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Bruce Edgington
Regional Judge
8th March 2019

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.