



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

**Case reference** : **CAM/26UB/LDC/2019/0012**

**Properties:** **62A-E High St Cheshunt Waltham Cross  
Herts EN8 0AH**

**Applicant** : **Sigma Property Co. Ltd**

**Represented by** : **Wright Hassall**

**Respondents** : **The long leaseholders of the flats listed in the  
application**

**Date of Application** : **23 May 2019**

**Type of Application** : **for permission to dispense with  
consultation requirements in respect of  
qualifying works - Section 20ZA Landlord and  
Tenant Act 1985 (“the Act”)**

**Tribunal** : **Mrs M Hardman FRICS IRRV (Hons)  
Judge Ruth Wayte**

**Date of Decision** : **24 June 2019**

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**DECISION**

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**Decision**

1. The Applicant is granted dispensation from all the consultation requirements in respect of the qualifying works to the roof.

**Reasons**

**Introduction**

2. The landlord has applied for dispensation from the statutory consultation requirements in respect of work to remedy water leakage into the ground floor shop unit beneath Flats 62A-62E.
3. Whilst the application is made in respect of 62A-62E High St together with the retail units at 64-70 and 72 High St and the roof space at 62-72 High St, the requirements for consultation under the Landlord and Tenant Act 1985 are only in respect of

dwellings. Therefore, the commercial premises are excluded for the purposes of this application

4. The reason for seeking dispensation is that there is ongoing damage to the shop unit and concerns over health and safety of shop staff and customers. The submission outlines the investigation that has been undertaken to attempt to identify the source of the standing water on the roof and water leaking into the ground floor shop premises.
5. The Applicant wrote to all leaseholders on 3 May 2019 outlining the intention to apply for dispensation from complying with Section 20 of the Landlord and Tenant Act 1985 and informed the leaseholders that 3 competitive quotes had been received and that the works had been costed at £33,564.06 which included a contingency of £5,000 for possible render repairs to the front of the flats. Each residential leaseholder is liable to pay a 10% share of the overall cost of the works.
6. A procedural chair issued directions timetabling this case to its conclusion. One of the directions said that this case would be dealt with on the papers taking into account any written representations made by the parties and a decision would be made on or after 24<sup>th</sup> June 2019. It was made clear that if any party requested an oral hearing one would be arranged. No such request has been received.
7. Attached to the Directions was a reply form to be completed by any Respondent who opposed the Application.
8. One Respondent completed the Reply Form as follows:
9. Mr Roy Woodward said that he objected to dispensation being given. He said he believed that the water ingress experienced by the ground floor shop was not because of damage to the roof terrace but was a result of a damaged pipe from the kitchen of 62B. which he had previously informed the Landlords about . He also believed that notification should have been provided to the leaseholders before the work commenced in May 2019 and that had that happened he would have had chance to make representations which avoided the need for the roof repairs.
10. The Applicant responded to the observations raised by Mr Woodward saying that investigations by contractors for the Applicants and for one of the ground floor commercial tenants and a building surveyor had identified several defects in the roof covering . They determined that the most likely cause of the leaks were the splits and other defects in the roof and based on this a decision was taken to remedy the defects with the roof covering. This had now been done and the water ingress issue had been resolved.
11. The Applicant agreed that investigations had shown that there was also a leak within the pipe in 62B and this had been rectified but that this was not the source of the water ingress problem and this was supported by professional advisors who had attended the site.

## **The Law**

12. 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 3 to the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These require a fairly complicated and time-consuming consultation process which give the lessees an opportunity to be told exactly what is going on and the landlord must give its response to those observations and take them into account.

13. 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
14. Section 20ZA of the Act allows this Tribunal to make a determination to dispense with all or part of the consultation requirements if it is satisfied that it is reasonable and the Tenants have not suffered prejudice.

### **Discussion**

15. Following the Supreme Court decision of *Daejan Investments Ltd. v Benson* [2013] UKSC 14, the only issue for the Tribunal is whether the Respondents have suffered prejudice in dispensing with the requirements.
16. In considering the representations made by Mr Woodward the Tribunal found that it does not believe that he had suffered prejudice in dispensing with the requirements. The potential for the water originating from damage to a pipe appears, from the papers submitted with the application to have been already considered some time prior to the decision to repair the roof. This is not an issue that the Tribunal can address at this stage.
17. However, when the service charge demands in respect of these works are sent out, any Respondent who objects to the cost or to the reasonableness of the work or the way it was undertaken, may make an application to this Tribunal under section 27A of the Act.
18. Taking into account the urgency of the work, it would clearly be unsatisfactory and a major inconvenience for the roof to remain unrepaired while the consultation process was being completed. It was therefore sensible for the Applicant to proceed with the works as soon as possible and there is no evidence that dispensation would cause any prejudice to the Respondents. It is therefore reasonable to grant dispensation.

**Mary Hardman**  
**Deputy Regional Valuer**  
**26 June 2019**

## **ANNEX - RIGHTS OF APPEAL**

1. 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.
2. 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.
3. 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.
4. 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.