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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/38UC/LDC/2016/0012**
Properties	:	**108-126 Frenchay Road,** **Oxford,** **OX2 6TE**
Applicant	:	**The Claydon Freehold Ltd.**
Respondents	:	**Jane Dyer (108)** **Ebrahim Gill (110)** **Eva Moore & Mark Smith (112)** **Viewshot Ltd. (114)** **J. Tomkinson (116)** **Phillipa & Nick Killin (118)** **Brian Shine (120)** **Mary Anthony (122)** **Lisa Anne Choegyal (124)** **Mr. & Mrs. Moore (126)**
Date of Application	:	**received 5th April 2016**
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. The Applicant is granted dispensation from further consultation requirements in respect of roof works to the property, specifically the replacement of the flat roof to the penthouse apartment being 126 Frenchay Road.

Reasons

Introduction

2. The flat roof to the penthouse apartment in the property was scheduled for replacement later this year. Following storm damage, significant damage was caused to that apartment and the owner of the leasehold title did not feel that it could be occupied. This application was therefore made to enable the repair work to be commenced without

having to wait for the lengthy consultation process bearing in mind that the members of the applicant company are the long leaseholders. The Applicant says that they agreed that the works should go ahead.

3. In a directions order dated 5th April 2016, it was said that this case would be dealt with on the papers on or after 27th April 2016 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.

4. On the 14th April 2016, the Tribunal received an e-mail message from a Mr. Jim Moore who describes himself as the Applicant's secretary. He said "*I was contacted earlier today by the tenants of 126 Frenchay Road and part of the roof has failed. I immediately called Midland Single Ply Ltd. and they have agreed to attend the site on Monday to deal with the roof failure. They also required another scaffolding tower, each tower is costing £1600 plus VAT. I have at present agreed to pay for the works so that they can proceed on an urgent basis. In view of the above the roof will now be repaired before 27th April. Would it therefore be possible to consider giving the direction retrospectively?*"

5. On the 19th April, a further e-mail was received from Mr. Moore who said that the roof "*is now being replaced*". Hence the application for permission to proceed with the work has turned into an application for retrospective permission to dispense with the consultation requirements. For the avoidance of doubt, and based on the facts given by Mr. Moore, the Tribunal consents to this change in the nature of the application.

The Law

6. Section 20 of the 1985 Act limits the amount which lessees can be charged for major works to £250 per flat 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. These requirements last well over 2 months.

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.

Discussion

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? As 'they' are also members of the Applicant and are said to consent to the actions taken, the task of the Tribunal is, perhaps, easier than in some cases. Having said that, the Tribunal did ask for evidence of any quotations obtained. This evidence was requested before it was known that the works had to be undertaken as an emergency measure.

10. There were 4 quotations or 'budget' figures obtained, namely:-

Company	Date	Amount (£)
Charterville Felt Roofing Ltd.	13.04.16	2,730 + VAT or 3,720 + VAT for an 'extra warm' alternative plus scaffolding
WSW Property Maintenance Ltd.	03.03.16	13,500 + VAT (budget)
James Dunn Roofing Ltd.	12.04.16	6,640 + VAT (budget) plus scaffolding
Midland Single Ply Roofing Ltd.	13.04.16	6,560 + VAT plus 785 if a roof light needs replacing

11. It is assumed that the second figure includes scaffolding. The Tribunal notes the message from the actual contractor, Midland Single Ply Roofing Ltd., that they wanted another scaffolding tower at the cost of £1,600 plus VAT. Whether the original figure included a scaffolding tower is not clear.

12. Again, it should be emphasised that these quotations and budget figures were obtained before the further storm damage on the 14th April and it is not known who, apart from the chosen contractor, was available at such short notice to complete the work.

Conclusion

13. It is self-evident that repair works were required in view of the storm damage. The delay which would have been caused by undertaking the full consultation exercise would clearly have been likely to have caused substantial internal damage. There is no evidence that the full consultation process would have resulted in different works or materially lower cost and the evidence from the Applicant is that all the contractors contacted said that replacing the roof was the only real alternative. Two of them (including the contractor chosen) were asked whether temporary repairs were possible and they said that they were not viable in view of the state of disrepair.

14. The Tribunal therefore finds that there has been little or no prejudice to the Respondent lessees from the lack of consultation. Dispensation is therefore granted.

15. If there is any subsequent application by a Respondent for the Tribunal to assess the reasonableness of the charges for these works, the

members of that Tribunal will want to have clear evidence of any comparable cost and availability of other contractors at the time of the repairs.

16. The Tribunal should also add that it has not seen all the leases for the building and assumes, as is almost always the case, that the Applicant landlord is responsible for maintaining the structure including the flat roof. Further, the Applicant may also need to check the insurance arrangements to satisfy any lessee that the cost cannot be at least partly offset by insurance monies. That may be doubtful as the Applicant and the lessees clearly seem to have been aware of the need for repairs before the storm damage.

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Bruce Edgington
Regional Judge
27th April 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.