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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/22UB/LDC/2014/0003**
Properties	:	**19 & 21 Culverdown, Basildon, Essex SS14 2AL**
Applicant	:	**Basildon Borough Council**
Respondents	:	**Miss K Trevillion (19)** **Mr. D & Mrs. V Collins (21)**
Date of Application	:	**10th January 2014**
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)** **Roland Thomas MRICS** **Cheryl St. Clair MBE BA**

DECISION

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1. The Applicant is granted dispensation from the consultation requirements in respect of works to demolish existing chimney and rebuilding following storm damage in October 2013.

Reasons

Introduction

2. This application has been made for dispensation from the consultation requirements in respect of 'qualifying works'. The evidence of the Repairs Service Manager employed by the Applicant, Peter Long, is that during the early hours of the morning of the 28th October 2013, a violent storm had blown a steel roof off a block of garages close to the properties. He attended at the site and noticed that a brick built chimney stack on the building containing the subject flats had been severely damaged.

3. From the ground it looked as though the chimney was only being supported by the TV aerial bolted to it. The wind was still strong and Mr. Long attempted to speak to the occupiers of the properties. Whilst

no response could be obtained from number 21, a young lady at number 19 said that she had already reported it to the Applicant earlier that morning.

4. Emergency remedial works were put in hand and the cost was £1,995.24. Even if the Respondents have not been written to individually about this, they will have seen Mr. Long's statement of evidence which is undated but is attached to a letter from the Applicant dated 12th February 2014 which was ordered to be served on the Respondents.

5. A procedural chair issued a directions order on the 20th January 2014 timetabling this case to its conclusion. One of the directions said that depending on evidence filed by the Applicant and any representations from the Respondents, this case may be dealt with on the papers taking into account any written representations made by the parties. It was made clear by letter dated 24th March 2014 that if any party wanted an oral hearing, then that would be arranged. No request for a hearing was received. By subsequent letter, dated 24th April 2014, the Tribunal informed the parties that a determination would be made based on written representations on 6th June 2014.

6. The Tribunal has asked the Respondents if they wanted to make any representations – written or otherwise – and they have declined to make any.

The Law

7. 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.

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.

Conclusions

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 issues to be determined by a Tribunal dealing with this sort of case which culminated with the recent Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14.

10. 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? In this case, for example, the work was undertaken in an emergency situation. Faced with that problem, the question then is what should have been done?

11. The Tribunal finds that the work was reasonably undertaken as an emergency. The delay which would have been caused by undertaking the full consultation exercise could have resulted in further structural damage and possibly injury or death. There is no evidence that the full consultation process would have resulted in different works or a lower cost. The Tribunal therefore finds that there has been no prejudice to the lessees from the lack of consultation. Dispensation is therefore granted.

12. However, the Tribunal notes with some concern the comment made by the Applicant, in answer to a question raised by the Tribunal, that this work i.e. to repair storm damage, was not covered by the buildings insurance. This is not an application to assess the payability of the cost of the works and this question may therefore have to be dealt with in a subsequent application.

13. All that can be said is that the lease to number 21 contains a covenant on the part of the Applicant to "*keep the premises insured against loss or damage by fire tempest flood or other risks as evidenced by the Insurance Policy from time to time in force to the full cost...*". The lease to 19 contains a covenant to "*keep insured...the flat against loss or damage by fire and such other risks as the Landlord shall deem reasonable...*". The Applicant will therefore have to consider its position as to whether storm damage was or should have been covered.

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Bruce Edgington
Regional Judge
11th June 2014