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

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| **Case reference** | : | **CAM/26UD/LDC/2016/0009** |
| **Property** | : | **1-23 Loxley Court,<br>Crane Mead,<br>Ware,<br>Herts. SG12 9FF** |
| **Applicant** | : | **Crane Mead Management Co. Ltd.** |
| **Respondents** | : | **All those tenants who have to contribute towards the cost of the works** |
| **Date of Application** | : | **15th March 2016 (rec'd 21st)** |
| **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)<br>David Brown FRICS** |

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# DECISION

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1. The Applicant is granted dispensation from consultation requirements in respect of works undertaken to repair the roof in addition to those anticipated by the consultation undertaken by the Applicant and commencing on 31st July 2015 for roof repairs, rainwater goods renewal and external decoration work.

## Reasons

### Introduction

2. This is an application for dispensation from the consultation requirements in respect of 'qualifying works' to the property. The evidence shows that on the 31st July 2015, a consultation started for works to repair the roof and rainwater goods at the property and to complete external decoration. That consultation finished on the 3rd December 2015 and the anticipated cost was £39,031.20 plus surveyors' fees. As the building is a block of flats several storeys high, the specification of works had been prepared using drone cameras.

3. When the scaffolding was erected and the roof inspected at close quarters, it was discovered that the work was much more extensive than was anticipated. The anticipated cost has risen to £120,437.23 including surveyors' fees. By proceeding with the works there and then to use the scaffolding already erected, the Applicant anticipates that this will result in a saving of £9,735.60.

4. Nigel Rickard BSc MRCS on behalf of the firm of chartered building surveyors and property consultants known as Brittain Hadley wrote on the 10th March 2016 and said, amongst other things:-

   > *"We have found that the detailing around the roofing areas are poor. The valleys formed at the junction of the dormer windows, the roof hips and the main roof slopes are formed in a fibreglass pre formed valley trough, the detailing of which has been found to be very poor. We have opened up in a number of areas and found that the fibreglass trough has not been adequately supported as they are not laid on a timber based board as is recommended, worsened by there being no battens to the sides of the trough, which is increased by the fact that the main roof battens have been laid over the edges of the troughs, leading to a flattening out of the valleys. We have found that the felt underlay to the main roof areas adjoining the valleys are deteriorating and we are of the view that these defects can only result in a worsening of the felt which will in a matter of time result in water penetration internally"*

5. The letter goes on to describe problems with the hip and main ridge tiles which are generally loose to the touch and need to be bedded properly and fixed for secondary protection. There is then a breakdown of the extra costs involved.

6. In order to complete the evidence submitted, the Tribunal noted an e-mail from another surveyor i.e. Mark Bithrey BSc (Hons) MRICS, dated 23rd March 2016, which is after the date of the application, suggesting some amendments to the contract works. Amongst other things, he suggests adding work to provide 'mastic seals to perimeters of windows and doors and expansion joints to be replaced' whilst conceding that they are likely to last for several years in their present condition. He does not discuss (a) whether the mastic could be provided from the inside when needed in a few years time i.e. without the need for scaffolding or (b) what the comparative costs would be when looking at any saving of future scaffolding as against undertaking work which is clearly not necessary at the moment.

7. A procedural chair issued a directions order on the 21st March 2016 timetabling this case to its conclusion. The Tribunal indicated that it would deal with the application on the basis of written representations and the appropriate notice was given to all parties with a proviso that if anyone wanted an oral hearing, then arrangements would be made for this. Similarly, the Tribunal did not consider than an inspection would be

necessary but offered the facility of an inspection. No request was made for either an inspection or an oral hearing.

**The Law**

8. Section 20 of the 1985 Act limits the amount which lessees can be charged for major works involving a cost of more than £250 to each tenant 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 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.

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

10. Section 20ZA of the 1985 Act allows this Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable so to do.

**Discussion**

11. 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 matters to be determined by a Tribunal dealing with this issue which culminated with the Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14. 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?

**Conclusions**

12. The new works were clearly not anticipated during the consultation. It is for the Applicant to maintain the structure of the building and recover the cost from the lessees. The cost of these remedial works would therefore come within the service charges. The only question for this Tribunal would therefore appear to be whether the new problems should have been anticipated and remedied on a planned basis although it should be said that none of the lessees has raised this point. Bearing in mind the description given by Mr. Rickard, it does seem to this Tribunal that most, if not all, of the problems referred to in his letter would not have been distinct and obvious enough to be visible from a drone camera.

13. The leases would appear to be for a term of 125 years from the 1st March 2000 which means that any guarantee given by the original contractors who built the block of flats would appear to have come to an end. As Mr. Rickard also

points out, the modern standards for installing tiles did not exist in 2000. Thus, in all the circumstances, and taking into account that none of the Respondents has made any representations, the Tribunal grants the dispensation requested.

14. However, it should be made clear that this is not an application for the Tribunal to determine whether the costs incurred are reasonable and it does not do so. Having said that, if any lessee wants to challenge reasonableness of the works and/or the costs in any subsequent application to this Tribunal, he or she will need to provide some clear evidence that in the circumstances faced by the Applicant, the cost and/or reasonableness of the works would have been significantly different from the evidence produced to this Tribunal.

15. Having said that, if the extra work suggested by Mr. Bithrey is included in this contract, the Applicant should explain the matters mentioned in paragraph 6 of this decision to reassure lessees that money is not being spent unnecessarily at this stage.

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**Bruce Edgington**
**Regional Judge**
**14th 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.