

12692



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

**Case reference** : **CAM/22UH/LDC/2018/0002**

**Property** : **172 Manor Road,  
Chigwell,  
IG7 5PX**

**Applicant** : **Powell & Co. Property Ltd.**

**Respondents** : **Ahmet Osmani & Tasneem Osmani (2 & 4)  
Dean Anthony Campbell (3)  
Ronald Robert Moss (5)  
Menashy David Cohen & Natalie Deborah  
Alter (6)**

**Date of Application** : **9<sup>th</sup> February 2018**

**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 tanking works to be undertaken or being undertaken at the property.

**Reasons**

**Introduction**

2. This is an application for dispensation from the consultation requirements in respect of ‘qualifying works’ to install tanking at the property which does not appear to have been installed when the property was built and which the Tribunal has been told, is necessary to avoid further flooding. The Tribunal is aware that there has been serious flooding and the damage caused is part of an insurance claim. The lack of tanking was discovered by the loss adjusters.
3. The main claim will, apparently, be met by Thames Water, but the cost of tanking, being a building defect, will not be met by either Thames Water or the insurance company. The remedial work is about to commence and the

insurers have said that it would be silly not to do the tanking before the main repairs are undertaken, particularly as the property does not comply with Building Regulations.

4. The Applicant, in the application to this Tribunal said that it would start a section 20 consultation by a letter sent to the Respondents on the 9<sup>th</sup> February 2018.
5. The Tribunal chair issued a directions order on the 14<sup>th</sup> February 2018 timetabling this case to its conclusion. The Tribunal indicated that it would deal with the application on the basis of written representations on or after 28<sup>th</sup> February 2018 with a proviso that if anyone wanted an oral hearing, then arrangements would be made for this. Similarly, the Tribunal did not consider that an inspection would be necessary but offered the facility of an inspection. No request was made for either an inspection or an oral hearing.
6. No written representations have been received from any of the Respondents.

### **The Law**

7. 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.
8. 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 and the landlord must give its response to those observations.
9. 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 so to do.

### **Discussion**

10. 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**

11. The evidence clearly shows that there is a serious problem with the lack of tanking which needs to be resolved as part of the post flooding remedial work.

The Tribunal has been told that the cost of the tanking work is likely to be £36,434.40 including VAT. Schedules of costings have been provided which do not seem to fit in with that alleged quotation.

12. However, it should be made clear that this is not an application for the Tribunal to determine whether the costs incurred are reasonable or payable and it does not do so. Nevertheless, if any tenant wants to challenge the cost of this particular work in any subsequent application, he or she will have to provide some clear evidence that the work could have been done more cheaply on reasonable enquiry within the time frame open to the Applicant.

.....  
**Bruce Edgington**  
**Regional Judge**  
**7<sup>th</sup> March 2018**

#### **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.