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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/26UD/LDC/2018/0001**
Property	:	**Pilgrim House,** **1-9 Evron Place,** **Hertford,** **SG14 1PF**
Applicant	:	**Ringley Ltd.**
Respondents	:	**the long leaseholders of the flats set out in the application**
Date of Application	:	**21st December 2017**
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 works to rectify health and safety issues marked C1 arising from a report obtained by Black and White Fire Safety on 27th January 2017.

Reasons

Introduction

2. This is an application for dispensation from the consultation requirements in respect of 'qualifying works' to the property. A sample lease from the property has been seen by the Tribunal members and it is clear that maintenance of the electrical equipment in the common parts is the management company's responsibility.

3. A procedural chair issued a directions order timetabling this case to its conclusion. It was said that the application would be dealt with on a consideration of the papers on or after 14th February 2018 but if anyone asked for an oral hearing, one would be arranged. No such request was received.

The Law

4. 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 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 or management company's proposals.

5. Such 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 management company must give its response to those observations.

6. 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.

The Inspection

7. The Tribunal did not consider that it was necessary to inspect the property as a full copy of the health and safety report referred to in the decision above was seen by the Tribunal and the rectification works had evidently been completed.

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 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?

9. It is clear that the health and safety report identified above set out a number of items that needed very urgent work as they were categorised as being 'dangerous'. A quote for such works was obtained from Black & White Fire Safety in the sum of £5,275.00 plus VAT and this is dated 20th February 2017. There is no evidence that any other quotation was obtained.

10. It should be said that 2 of the long leaseholders did respond to this application and asked for dispensation to be refused on the basis that another application had been made by the leaseholders to the Tribunal (case no. CAM/26UD/LSC/2017/0110) challenging the reasonableness and payability of many service charge demands made on behalf of the Respondent in that application, namely Pilgrim House Hertford Management Ltd.

11. With different parties, it is impossible to provide one decision to cover both

applications. This application is simply to decide whether it was reasonable for the Applicant to proceed with the electrical works required to eliminate a danger without a full consultation process.

12. There are 3 points to be made about the Applicant's conduct in this case They are (1) the fact that only one quotation appears to have been obtained, (2) amongst the documents provided by the leaseholders in support of their case against Pilgrim House Hertford Management Ltd. is an invoice from Black & White Fire Safety for the completion of the said electrical work dated 25th May 2017 i.e. over 2 months after the quote and (3) there is no explanation as to why this application was not made in February 2017 when the anticipated cost of the works was known.

Conclusion

13. The Tribunal is very disturbed about how this matter has been handled because of the 3 factors set out above. However, at the end of the day, there is a clear report stating that various items of work needed to be done to eliminate a direct danger to residents in the property and the only question for this Tribunal is to say whether the full consultation requirements were necessary before the work was done. The current case law indicates that a failure to either consult or obtain the Tribunal's dispensation at the time, is only relevant if the leaseholders have been prejudiced. Eliminating an imminent danger could not be described as prejudicial and dispensation is therefore granted.

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Bruce Edgington
Regional Judge
14th February 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.