



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

Case reference	:	CAM/26UF/LDC/2019/0004
Property	:	Pepper Court, 26 High Street, Baldock, SG7 6BH
Applicant	:	Southern Land Securities Ltd.
Respondents	:	the long leaseholders of the flats listed in the application
Date of Application	:	19th February 2019
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) Mary Hardman FRICS IRRV (Hons)

DECISION

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1. The Applicant is granted dispensation from further consultation requirements for work to install a replacement stepping relay and AP50B pump plus provision of a tanker to clean/jet vac the sump at the property following problems to the sewage system encountered by Flat 1 on the 15th and 21st January 2019.

Reasons

Introduction

2. The Applicant’s managing agents of the property have informed the Tribunal that on 15th January 2019, they were contacted by the occupier of Flat 1 who said that there was a sewage smell and their toilet was bubbling when the bath was emptied. The manhole cover in the flat was lifted and the space thereunder was full.
3. A contractor was contacted who cleared the sewage. In the 21st January, it was reported by the same flat that the alarm to the control panel was sounding and the high level warning light to the pumps was flashing. The smell had returned and the toilet was bubbling again.

4. The said managing agent arranged for works to be undertaken as quickly as possible to rectify the situation by arranging for Grundfos Pumps Ltd. to undertake the works set out in the decision above at a cost of £2,612.40.
5. In a directions order dated 20th February 2019, it was said that this case would be dealt with on the papers on or after 22nd March 2019 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.

The Law

6. 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 First-tier Tribunal. 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.
7. 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 proposals, to seek estimates from any contractor nominated by or on behalf of tenants and the landlord must give its response to those observations.
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 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.
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?
11. This is not an application for the Tribunal to approve the reasonableness of the works or the reasonableness or payability of the service charge demand. If there is any subsequent application for the Tribunal to assess the reasonableness of the charges for these works,

the Tribunal will want clear evidence that, given the circumstances, there would have been contractors available at the time who would have been able to undertake the works reasonably quickly at a reduced cost.

12. As far as this application is concerned, the **Daejan** case referred to above now places the responsibility on the shoulders of the long leaseholders to establish a particular prejudice arising from a lack of consultation. None has been put forward and the Tribunal concludes that, on balance, it can grant dispensation because there was a clear and urgent problem with the sewerage system.

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Bruce Edgington
Regional Judge
26th March 2019

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.