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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/00LC/LDC/2015/0042

Property : Flats 7-24 Estuary Reach, Pleasant Row,
Brompton, Gillingham, Kent ME7 5QX

Applicant : Estuary Reach Management Company
Limited Ltd

Representative : KDL Law solicitors

Respondents : The Lessees

Representative :

Type of Application : To dispense with the requirement to
consult lessees about major works- section
20 ZA Landlord and Tenant Act 1985

Tribunal Member(s) : Mr D Banfield FRICS

Date of Decision : 2 November 2015

DECISION

Summary of decision

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985.

Background

1. This is an application for dispensation from the consultation requirements provided by section 20 Landlord and Tenant Act 1985.
2. The Applicant advises that “the proposed works involve external decoration and maintenance/repair works to the Property specifically: rebuilding 2 no. (car park facing) gable walls; overhaul to roofs, primarily re-fixing loosened slates and ridge pieces; overhaul of rainwater goods; additional wall fixings to balcony balustrades; repair to patio door of flat 21; sundry pointing and cleaning down; redecoration to balconies and lintels”
3. Scaffolding is still in place following the completion or near completion of other works not subject to this application.
4. In order to avoid the cost of providing fresh scaffolding and in order to carry out the work before the commencement of winter the Applicant now seeks permission to dispense with the statutory consultations.
5. Estimates have been obtained from two contractors; JW&C and Manor Construction. The former estimates £34,901 if able to use the existing scaffolding and the latter estimates £35,405 using the existing scaffolding and £49,205 if it is necessary to provide new scaffolding.
6. On 17 September 2015 the Applicant served a Notice of Intention to carry out works on all affected lessees. The Applicants intend to continue with the consultation process until such time as this application is determined.
7. Directions were made on 30 September 2015 requiring the Applicant to serve a copy of the application and Directions on each lessee with a form to be returned to the Tribunal indicating whether the application was opposed and whether an oral hearing was required.
8. No forms have been returned to the Tribunal either objecting to the application or requesting an oral hearing and the matter has therefore been determined on the basis of the bundle received in accordance with rule 31 of the Tribunal Procedure Rules 2013.

Decision

9. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

The Law

10. The relevant section of the Act reads as follows:

20ZA Consultation requirements:

(1) Where an application is made to a [Leasehold Valuation Tribunal] for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long-term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

11. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson*. In summary the Supreme Court noted the following

- The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
- The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
- Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA(1).
- The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
- The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
- The more serious and/or deliberate the landlord's failure, the

more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.

- Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

12. The history of this matter is set out in paragraphs 2 to 6 above. In a witness statement dated 19 October 2015 Mr Kevin Lever of KDL Law confirms compliance with the Tribunal's Directions specifically that enclosed with a letter of 5 October 2015 the Lessees were sent copies of the application and Directions and that no objections have been received.

Decision

13. It is clear that additional works are required and that costs may be minimised by the use of scaffolding already in place. Two quotations have been received and the lower has been accepted.
14. None of the lessees has objected to the application or indicated whether they have suffered prejudice by the lack of consultation required by S.20 of the Landlord and Tenant Act 1985.
- 15. On the basis of the evidence before it the Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985.**
16. Tribunal makes no findings as to whether the sum is in due course payable or indeed reasonable but confines itself solely to the issue of dispensation.

D Banfield FRICS
2 November 2015

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
2. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
3. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.