



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

Case reference : **CHI/24UB/LDC/2016/0026**

Property : **A wide number of properties
details of which are contained in
Appendices 1 and 2 to the
Application**

Applicant : **Stonewater**

**Applicant's
Representative** : **Shakespeare Martineau**

Respondents : **The Lessees of the property named
in Appendix 2**

Tribunal member : **Mr D Banfield FRICS**

Date of Directions : **26 August 2016**

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. (the Act)
2. The Applicant wishes to enter into a long term agreement for cleaning services in respect of its scheme properties in the South East with SCS Worthorpe. Full Section 20 consultations were concluded and the winning contractor, City Cleaning was appointed. Following their withdrawal however the Applicant wishes to award the contract to SCS Worthorpe as the second best tendering party without going through the consultation process again.
3. The Tribunal made Directions dated 28 June which required the Applicant to send a copy of the application to each lessee together with the Tribunal's Directions and a form indicating whether the landlord's application was supported and whether a hearing was required. If the proposal was opposed the lessees should send reasons to the Tribunal.
4. Of the responses received 82 were in favour, 4 with conditions relating to an undertaking that their contributions would be restricted to £100 pa plus VAT in respect of a failure to serve S.20 Notices.
5. Objections were received from 7 lessees of Westdeane Court Basingstoke, 2 from The Sidings, Polegate, 1 from Burleigh Court, Worthing and 2 from Danehurst Bognor Regis one of whom said that he was representing the Residents Association with 24 members. None requested an oral hearing.
6. **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

7. 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.

8. 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

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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

9. The objection from the Burleigh Court lessee was on the grounds that when the gardening contractors had changed the service deteriorated and there was concern that the same would also happen to the cleaning service.
10. In summary the objections to dispensation from Danehurst lessees are as follows;
 - a. The contract should not have been tendered through European Journal under EU Regulations their block's requirements being too small to fall within the regulations.

- b. There were errors in the Tribunal's Directions and Appendices 1, 2 & 3 to the Application were not supplied.
 - c. The lessees are happy with their current cleaners.
11. Two objections were received from lessees of The Sidings but reasons for those objections were not provided.
12. Of the seven objectors from Westdeane Court six gave no reasons for their objection and one gave the following;
- a. City Cleaning withdrew due to the supply of wrong information as to the size and structure of Westdeane Court.
 - b. SCS have been providing temporary cleaners since 1 April 2016 and have not proved satisfactory.
 - c. The lessees are aware of a local cleaning company who is able to supply a cleaner.

Decision

13. As referred to in paragraph 6 above this application is simply to determine whether dispensation from the consultation requirements should be given. It does not concern the quality or cost of the service both of which may be challenged under S.27A of the Act should Lessees wish to do so.
14. Full consultation was previously carried out but the successful contractor withdrew thus potentially requiring the Applicant to go through a further consultation process.
15. One lessee considers that tendering through the European Journal was unnecessary however, it is for the Lessor to determine the manner in which it fulfils its obligations under the various leases and it clearly considers there are advantages in having one contractor providing its cleaning services.
16. It was unfortunate that there was an error in the Tribunal's reply form however the Directions to which they were attached could have left no doubt as to the subject of the consultation.
17. As referred to at paragraph 13 above, if the quality of the service or the costs thereof prove to be unacceptable the lessees are at liberty to challenge them under S.27A of the Act.
18. This application is in essence the approval of substituting one contractor for another without going through further consultation and as such the Tribunal is satisfied that the prejudice referred to in the Daejan case referred to in paragraph 8 above has not been shown.
19. 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.**

20. The Tribunal makes no findings as to whether the sums are in due course payable or indeed reasonable but confines itself solely to the issue of dispensation.

D Banfield FRICS
26 August 2016

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.