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

Case reference : **CHI/43UL/LDC/2016/0004**

Applicant : **Bridewell Park (Wormley)
Management Company Limited**

Representative : **Itsyourplace Limited**

Respondents : **The Lessees**

Property : **1-70 Franklin Court, Brook Road,
Wormley, Surrey GU85US**

Tribunal : **Mr D Banfield FRICS**

Date of Decision : **1 March 2016**

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 some of the consultation requirements provided by section 20 Landlord and Tenant Act 1985. (the Act)
2. The development comprises some 70 flats 49 of which are privately owned the remainder being owned by Southern Housing Group.
3. The Applicant explains that due to increasing problems with the private sewerage system serving this development an agreement has been reached to connect to the public sewer operated by Southern Water. The route of the proposed connection crosses land owned by a third party and under S 98 of the Water Industry Act Water Authorities are the only bodies empowered to work on 3rd party land. They are unable therefore to provide more than one quotation as provided for under the consultation requirements of S 20 of the Act.
4. Directions were made on 22 January 2016 requiring the Applicant to display a copy of the application form and the Directions in a prominent position in the common parts of the property and 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 supported or opposed and whether an oral hearing was required.
5. Twenty five forms were returned to the Tribunal all of which supported the application and none of which called for an oral hearing. No submissions have been received other than the information provided with the application on the basis of which the matter has been determined in accordance with rule 31 of the Tribunal Procedure Rules 2013.
- 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 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 history of this matter is set out in paragraph 3 above.
10. Due to the requirements of the Water Industry Act the Applicant is unable to comply with the requirement to obtain more than one quotation.

Decision

11. The Applicant has clearly set out the need for the proposed work and the impossibility of meeting the consultation requirements of the Act.
12. No objections have been received from the Lessees twenty five of whom wrote in support.
13. 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.**
14. The 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.
15. **A copy of this decision is to be placed in a prominent location in the common parts of the property.**

D Banfield FRICS
1 March 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.