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

Case reference : CHI/00HH/LDC/2016/0040

Property : Oaklawn Court, Barton Road, Torquay,
Devon TQ1 4EN

Applicant : Oaklawn Court (Torquay) Ltd

**Applicant's
Representative** : Blenheim Estate & Asset Management
(SW) Ltd

Respondents : The Leaseholders

Tribunal member : Mr D Banfield FRICS

Date of Directions : 13 October 2016

Summary of decision

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of Option 2.

The Tribunal makes no findings as to whether the sum is in due course payable or reasonable

Background

1. This is an application dated 16 September 2016 for dispensation from the consultation requirements provided by section 20 Landlord and Tenant Act 1985. (the Act)
2. During the execution of repairs to the balconies that had been the subject of previous consultation it was discovered that some of the concrete support beams pillars were in disrepair and additional works were required.
3. Until these additional works have been completed the original balcony drainage project cannot re-commence.
4. A report dated 30 August 2016 was obtained from NBP Consulting Structural & Civil Engineers recommending that the main contractor obtain quotations from specialist contractors once further investigations had been completed. A quotation was obtained which provided alternative options (1 and 2)
5. Following a meeting on 12 September 2016 at which 9 of the 18 leaseholders were present it was unanimously agreed to commence works in respect of Option 2 as soon as possible and to apply to the Tribunal for dispensation.
6. In a letter to the leaseholders dated 16 September 2016 from Blenheims the problem was explained referring to the attached report from the Structural Engineers. Details of a quotation from South West Concrete Repairs for the works was given and the reasons the application to the Tribunal given, being for the need to start work without delay. The quotation received gave two alternatives; Option 1 (Full Works) and Option 2 (Most Urgent Works)
7. Blenheims also issued a revised Statement of Estimates dated 16 September incorporating the alternative options referred to above. Written observations were invited by 16 October 2016.
8. The Tribunal made Directions on 20 September 2016 requiring the Applicant to send copies to each Respondent and to place copies on the notice boards. The Applicant has confirmed that this has been done. The Directions provided a form for Lessees to state whether they objected to the proposals and if so whether they wished for the matter to be determined at an oral hearing.
9. No objections have been received and as there have been no requests for an oral hearing I have made my determination on the application and bundle of documents received.
10. **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

11. 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.

12. 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

13. The bundle contains in addition to the documents referred to above;
 - a. A detailed quotation with supporting photographs from South West Concrete Repairs Ltd dated 7 September 2016
 - b. An email from Colin Ritchie Architects dated 9 September setting out the likely total costs for each option inclusive of fees.

Decision

14. The engineer's report clearly indicates the need for the work to be carried out and that until completed the ongoing works to balcony drainage cannot proceed.
15. There have been no objections to the application and the Respondents have not identified that the type of prejudice referred to in the Daejan case referred to in paragraph 12 above has been shown.
16. On the basis of the evidence before me the **Tribunal therefore grants Dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of Option 2.**
17. **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.**

D Banfield FRICS
13 October 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.