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

**Case Reference** : CHI/29UE/LDC/2014/0040

**Property** : The Gateway Marine Parade Drive  
Dover, Kent, CT16 1LL

**Applicant** : The Gateway Marine Parade (Dover) Ltd

**Representative** : Fell Reynolds

**Respondents** : The Leaseholders

**Representative** : N/A

**Type of Application** : Section 20Za of the Landlord & Tenant Act 1985

**Tribunal Members** : Judge S Lal  
Mr D Banfield FRICS

**Date and venue of  
Hearing** : 5<sup>th</sup> November 2014

**Date of Decision** : 7<sup>th</sup> November 2014

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**DECISION**

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## **Application**

1. The matter was subject to Directions issued on 3<sup>rd</sup> September 2014. The matter was deemed suitable for Determination on the basis of written submissions only.
2. The Tribunal was in due course supplied with a Bundle of 148 pages prepared by Fell Reynolds. No representation in disagreement in respect of the Application has been received.

## **The Issue**

3. The application is formulated on the basis that the Tribunal grant dispensation under Section 20Za of the Landlord and Tenant Act 1985.
4. The Applicant is a limited company formed by the majority of the leaseholders which subsequently purchased the freehold of the block. The boilers at the premises consist of 4 large commercial boilers, one of which was mothballed as surplus to requirement. The position is that two of the remaining three boilers have broken down and in light of any possible repair it is submitted that this cannot be guaranteed. The Applicant now wishes to replace one or possibly two of the boilers before the onset of winter. The projected cost of one boiler is £50895.40 plus VAT.
5. The Tribunal has been supplied with 138 pro-forma responses from the individual leaseholders not objecting to the current application as well as a letter from Dover Council who is the leaseholder off flats 35, 128, 141 and 174.

## **The Law**

6. The relevant section of the Act reads as follows:  
20ZA Consultation requirements:

### **Application**

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### **The Law**

6. 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.
7. 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 consequences 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.

### **The Evidence and Decision**

8. The Tribunal applying the legal principles cited above, notes that nothing has been received from any of the possible Respondents that purport to identify any prejudice to them.
9. The Tribunal is satisfied that for all practical purposes this is an uncontested application in respect of the factual burden of identifying prejudice. However the Tribunal will still apply the relevant legal principles to the evidence before it, mindful that Parliament has intended dispensation to be an exception to consultation.
10. In the circumstances and following the agreed parlous status of the boilers before the onset of winter the Tribunal is satisfied that it would be reasonable and proper to grant dispensation from consultation in the terms requested. For the avoidance of doubt that means that Dispensation is confined to those works identified in the Application, that is one or possibly two of the boilers. The Tribunal makes no findings as to whether those sums are in due course payable or indeed reasonable but confines itself solely to the issue of dispensation.
11. The Tribunal makes no further order.
12. 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.
13. 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.
14. 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

Judge S. Lal .....

Date 7<sup>th</sup> November 2014