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

Case reference : **CAM/38UD/LDC/2016/0010**

Property : **Thames Bank, Thames Road,
Goring, Berkshire RG8 9AH**

Applicant : **Cognatum Estates Limited.**

Representative : **Mr J Laven managing director of
Cognatum; Ms N Sercombe
Operation Manager and Mr D Pitt
of Riverworks**

Respondent : **The leaseholders as set out on the
schedule attached to the
Application**

Representative : **none**

Type of application : **To dispense with the requirement
to consult lessees (s20ZA Landlord
and Tenant Act 1985)**

Tribunal members : **Tribunal Judge Dutton
Mr D Barnden MRICS**

**Venue and date of
hearing** : **Thames Bank, Goring on 13th May
2016**

Date of decision : **16th May 2016**

DECISION

DECISION

The Tribunal determines that dispensation should be given from all or part of the consultation requirements required under s20 of the Landlord and Tenant Act 1985 (the Act) for the reasons set out below.

Background

1. The applicant seeks dispensation under section 20ZA of the Act from all/some of the consultation requirements imposed on the landlord by section 20 of the 1985 Act¹.
2. The application states that the qualifying works for which dispensation from the consultation requirements is sought relates to the reinstatement and reinforcement of the river bank of the Thames. The application states that the erosion of the river bank poses health and safety issues, damage to lawns and trees and deprivation of amenity land. It is also asserted that the applicant as the riparian owner has an obligation to protect the environment of the river.
3. Accompanying the application were copies of the stage one notice, correspondence, a statement of case and exhibits thereto. We noted all that was said. There were no written responses from the leaseholder.
4. We have also been supplied with a copy of the lease for 1 Thames Bank and understand that all leases are in the same relevant terms.

Inspection

5. Prior to the hearing, which was held on site, we inspected the grounds of the development and in particular viewed the garden and the bank to the River Thames. The grounds were quite substantial sloping down to uninterrupted views of the River Thames. The development is situated close to the lock at Goring. There were a number of large trees right at the waters edge. We were shown the previous attempt made to prevent erosion, which comprised the planting of willow trees, which had by and large failed. It was noticed that both adjoining properties had been the subject of preventative works to combat erosion by the river.
6. The only issue for us to consider is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs are reasonable or payable.

Hearing

7. For the convenience of the leaseholders we agreed to hold the hearing on site. The case for Cognatum was presented by Mr Laven and Ms Sercombe.

¹ See Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987) Schedule 4 (the Regulations)

We also heard from Mr Pitt a director of Riverworks, the preferred contractor.

8. We asked those leaseholders who attended, namely Mrs Storch, Mr and Mrs Dixon, Mrs Pound, Mr Williams and Mr Turner attending on behalf of his daughter Mrs Gatto, whether they had any views on the application and the works. Without exception they were of the view that the works were required and quickly. Mr Williams thought the river had eroded the bank by a metre in 16 years. In addition they were content for Riverworks to undertake the task
9. We were told that all leaseholders had been provided with a bundle of the papers before us. The applicants had provided a detailed statement of case which we had read in advance. It does not seem necessary to recount all that was set out therein. Mr Laven said that the work required, likely to be steel piling, was specialised. To undertake a consultation in accordance with the Regulations would lengthy and time consuming. Further there were few contractors who could undertake such work and who had a good working relationship both with the District Council and the Environment Agency (EA). Riverworks was one. Another company had been mentioned in correspondence, Cook Piling, but it seems that they do not undertake such large scale work and are heavily involved in the Henley Regatta.
10. Mr Pitt outlined the planned work, subject to the approval of EA. He told us that EA had recommended the willow planting some 15 years ago but that this had failed to prevent the erosion. The steel piling will resolve the problem for many years to come.
11. We were told that there was no relationship between the applicant and Riverworks and that robust investigations would be undertaken to ensure that the leaseholders received value for money. At the conclusion of the hearing Mr Dixon expressed appreciation of the communication between the applicant and the leaseholders.

The Law

12. The relevant law is set out at the conclusion of this decision

Findings

13. Having considered the papers supplied, inspected the premises, heard from those leaseholders who attended the hearing and the applicant and Mr Pitt we are satisfied that the requirement to seek at least two quotes as provided for under schedule 4 part 2 of the consultation requirements, can, in this case, be dispensed with.
14. We find that the works required are of a specialist type and that Riverworks are a contractor with considerable experience in this regard. They have the specialist equipment to transport materials by and conduct works from the river It seems to us that it is essential that any contractor has experience of dealing with various agencies to ensure that the correct work is undertaken at a reasonable price and in a reasonable time scale. It

should be remembered that our decision does not affect the right of the Respondent Leaseholders to challenge the payability, the costs or the standard of work should they so wish.

Andrew Dutton

Tribunal Judge

Andrew Dutton

16th May 2016

The relevant law

Section 20 of the Act

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and

- (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.