



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

Case reference : **LON/00BG/LDC/2018/0150**

Property : **10 Park Drive London E14**

Applicant : **CWG (Wood Wharf Two) Limited**

Representative : **Winckworth Sherwood LLP**

Respondent : **CW 10 Park Drive Limited and the
lessees named in the application**

Representative :

Type of application : **To dispense with the consultation
requirements under S20 Landlord
and Tenant Act 1985**

Tribunal member : **Mrs E Flint DMS FRICS
Mr D Jagger MRICS**

**Date and venue of
determination** : **9 October 2018
10 Alfred Place London WC1E 7LR**

DECISION

Decision of the tribunal

- (1) The Tribunal does not have jurisdiction to deal with the application under S.20 of the Landlord and Tenant Act 1985 in relation to the long term agreement to provide health club services as the flats have not been constructed or let.

The Background

1. The application under section 20ZA of the Landlord and Tenant Act 1985 ("the Act") was made by the agents on behalf of the applicants on 3 September 2018.
2. The application concerns the proposal to appoint a service provider to operate a health club at 15 Water Street E14 under a long term agreement. The health club is to incorporate gym facilities, a pool and fitness suite and private gym facilities for residents of 10 Park Drive Wood wharf estate and Newfoundland and to operate a temporary health club close to 10 Park Drive until the permanent club is available for use. The service provider will also be required to take a lease of the health club, although the lease will not be granted by the applicant.
3. Directions were issued on 10 September 2018 requiring the applicant to send to each of the leaseholders a copy of the application form and a copy of the tribunal's directions and display a copy of the application and directions in a prominent position at the site.
4. The respondents were asked to confirm by 24 September whether or not they would give their consent to the application. In the event that such agreement was not forthcoming the leaseholders were to state why they opposed the application; and provide copies of all documents to be relied upon
5. By 1 October the applicant was required to provide a bundle setting out the full grounds for the application, including all of the documents on which the applicant relies and copies of any replies from the respondents.
6. No responses were received from the respondents.

The Evidence

7. The property is a residential development of 345 one, two and three bedroom flats arranged over 42 storeys currently under construction and expected to be completed towards the end of 2019.

8. CWG have entered into 269 contracts for sale of the apartments at 10 Park Drive. The contracts are conditional upon practical completion of the apartments. The building is under construction, has not reached its full height and is not wind and water tight.
9. A Notice of Intention in respect of these works was served on CW1 Park Drive, the intermediate lessee and all those who had entered into an agreement for lease in April 2018. Where the letters were returned further copies were sent to the new addresses of the respondents, extending the timescale for replies. No responses were received.
10. The applicants stated that they were of the opinion that they were not required to consult as there are no leases in place and referred to the decision in *BDW Trading Ltd v South Anglia Housing Ltd* [2014] 1 WLR 920. In addition the provisions do not apply because the charge for the health club will be fixed, or varied only according to a set formula which is not referable to the relevant costs.
11. If neither of the grounds above are correct then dispensation should be granted because although the applicant has tried to comply it has been unable to complete the statutory consultation process because although quotes were sought from three providers only one was willing to quote.

The Decision

12. **The Tribunal determines**, following the decision in *BDW Trading Ltd v South Anglia Housing Ltd*, that the consultation requirements in respect of qualifying long term agreements do not apply in this case because the consultation procedures do not apply to agreements entered into in relation to buildings which have not yet been constructed at the time of the agreement.

Name: Evelyn Fiint
Date:

9 October 2018

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.