



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : **CAM/38UF/LDC/2019/0018**

Properties : **Residential Apartments at Marriotts Walk,
Witney OX28 6GW**

Applicant : **RREEF Witney Ltd**

Represented by : **Fieldfisher LLP**

Respondents : **Aviva Investors Ground Rent GP Ltd
Aviva Investors Ground Rent Holdco Ltd**

Represented by : **Mainstay residential**

Date of Application : **14 June 2019**

Type of Application : **for permission to dispense with
consultation requirements in respect of
qualifying works - Section 20ZA Landlord and
Tenant Act 1985 (“the Act”)**

Tribunal : **Mrs M Hardman FRICS IRRV (Hons)
Judge Wayte**

Date of Decision : **26 June 2019**

DECISION

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Decision

1. The Applicant is granted dispensation from the part of the statutory consultation requirements that were omitted (see para) in respect of the qualifying works .

Reasons

Introduction

2. The landlord has applied for dispensation from part of the statutory consultation requirements in respect of work to the Marriotts Walk Car Park . The Tribunal was informed that works were due to commence in mid-July 2019 and are expected to be completed before Christmas 2019. The costs of the work are estimated to be in the range of £1.3m-£1.8m

3. The Tribunal has been informed that s20C consultation has been completed by the landlord in respect of the 69 residential sub tenants.
4. The Applicant informs the tribunal that they sent an initial notice to the Respondent, Head tenant of the development, at the same time as the notice to the Respondent's sub tenants. However, whilst the second notice was sent to all residential sub tenants on 24 May 2019 the notice to the Respondents was not sent until 4 June 2019
5. This notice did not meet the requirements of Para 4 Schedule 4 to The Service Charges(Consultation Requirements) (England) Regulations 2003 as it did not give the required 30 days to provide observations.
6. A subsequent further notice was also served on 4th June 2019 allowing the full 30 days. However, the tribunal is informed that the urgency is that the Applicant wishes to start works before the end of the 30-day consultation period to avoid the impact of inclement weather and/or overrunning into the Christmas period.
7. The Tribunal noted however that the Application referred to a work commencement date in the Grounds for Seeking Dispensation of mid-July 2019.
8. The Respondent provided written consent to the Applicant having dispensation regarding this non-compliance in the form of a postscript signature to a letter sent to them by the Applicant .
9. A procedural chair issued directions timetabling this case to its conclusion over a shortened time period. One of the directions said that this case would be dealt with on the papers taking into account any written representations made by the parties and a decision would be made on or after 5 July 2019. It was made clear that if any party requested an oral hearing one would be arranged. No such request has been received.
10. Subsequently the Tribunal was contacted by the Applicant informing them that the work was due to commence on or around 25th June and that they were seeking a decision prior to that.
11. With that request they also supplied correspondence from the agent for the respondent with a series of observations that the Respondent was requiring responses to in writing prior to works commencing and/or any request for payment being made.
12. The Tribunal has therefore written to the Respondents seeking confirmation that they remain in agreement for the dispensation to be granted.
13. The Tribunal received affirmation of this on 24 June 2019.

The Law

14. Section 20 of the 1985 Act limits the amount which lessees can be charged for major works unless the consultation requirements have been either complied with, or dispensed with by a leasehold valuation tribunal (now called a First-tier

Tribunal, Property Chamber). The detailed consultation requirements are set out in Schedule 3 to the Service Charges (Consultation Requirements) (England) Regulations 2003. These require a fairly complicated and time-consuming consultation process which give the lessees an opportunity to be told exactly what is going on and the landlord must give its response to those observations and take them into account.

15. The landlord's proposals, which should include the observations of tenants, and the amount of the estimated expenditure, then have to be given in writing to each tenant and to any recognised tenant's association. Again, there is a duty to have regard to observations in relation to the proposals, to seek estimates from any contractor nominated by or on behalf of tenants and the landlord must give its response to those observations
16. Section 20ZA of the Act allows this Tribunal to make a determination to dispense with all or part of the consultation requirements if it is satisfied that it is reasonable and the Tenants have not suffered prejudice.

Discussion

17. Following the Supreme Court decision of *Daejan Investments Ltd. v Benson* [2013] UKSC 14, the only issue for the Tribunal is whether the Respondents have suffered prejudice in dispensing with the requirements.
18. Taking into account the urgency of the work, the affirmation from the Respondent that they are content for the dispensation to be granted and the potential cost implications of delay, it would clearly be unsatisfactory to the Respondent and the residential leaseholders for the work to be delayed . It is therefore sensible for the Applicant to proceed with the works as soon as possible and there is no evidence that dispensation as sought would cause any prejudice to the Repondent. It is therefore reasonable to grant dispensation.

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.