FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/ 23UC/LDC/2020/0093
Property	**:**	Steepleton Court, Cirencester Road, Tetbury, GL8 8FQ
Applicant	**:**	Pegasuslife Development Limited
Representative	**:**	Rendall & Rittner Limited
Respondent	**:**	Vera van Dijk
Representative	**:**	
Type of Application	**:**	To dispense with the requirement to consult lessees about a long term contract: section 20ZA of the Landlord and Tenant Act 1985
Tribunal Member	**:**	Judge D. Agnew
Date of Decision	**:**	15 February 2021

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the contract between the landlord and Cleverchefs Limited for the running of the restaurant at Steepleton Court.

In granting dispensation, the Tribunal makes no determination as to whether any service charge costs incurred under that contract are reasonable or payable.

Background

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 ("the Act") from the consultation requirements imposed on the landlord by Section 20 of the Act.

2. The Applicant states that Steepleton Court is a development of 68 apartments with a restaurant, gym, and wellness centre including a pool, sauna and steam room.

3. The company which ran the restaurant was found to be unsatisfactory and so the managing agents sought other providers. Two proposals were received and considered and that provided by Cleverchefs Limited was the preferred choice as it was cheaper and appeared to offer the better service. A meeting of lessees, managing agent and Cleverchefs was arranged for 8 July 2020 when, on a show of hands, the lessees voted to proceed with the contract with Cleverchefs Limited.

4. The contract started in or about September 2020. It was for two years as it was recognised that with high start-up costs it was likely that it would take that length of time for the contract to become profitable for the provider. No formal consultation under section 20 of the Act with the lessees was undertaken and the Applicant accepts that this was a mistake. This application, for retrospective dispensation from the requirement to consult under section 20 of the Act was issued in November 2020.

5. The Tribunal made Directions providing for the application to be determined on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected.

6. The Tribunal required the Applicant to send to the Respondents its Directions together with a copy of the Application and a form to indicate whether they agreed with or objected to the application and if they objected to send their reasons to the Applicant.

7. It was indicated that if the application was agreed or no response was received the lessees would be removed as Respondents.

8. Only one lessee, Ms van Dijk, responded indicating that she opposed the application and in accordance with the Directions all the lessees but her have been removed as Respondents.

9. No requests for an oral hearing have been received and on receipt of the hearing bundle the issues were examined to determine whether the application could be satisfactorily determined on the papers. The Tribunal is so satisfied and the application is therefore determined in accordance with Rule 31.

10. The only issue for the Tribunal is whether it is reasonable to dispense with any 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:

S.20 ZA Consultation requirements:

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

i. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.

ii. 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.

iii. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.

iv. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.

v. The Tribunal has power to impose conditions on the grant of dispensation.

vi. 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.

vii. 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.

viii. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

13. A bundle was provided as directed which contained the Applicant's statement of reasons and supporting documentation and the Respondent's objection.

Determination

14. Dispensation from the consultation requirements of S.20 of the Act may be given where the Tribunal is satisfied that it is reasonable to dispense with those requirements.

15. The provision of restaurant facilities is a service provided to the lessees and the landlord says that it is also a planning requirement to do so.

16. I have considered carefully the Respondent's objection to dispensation being granted. She says that the landlord is in the business of providing accommodation with such services attached and it is inconceivable that it was unaware that it should have formally consulted the lessees. There was plenty of time for it to have done so and it was slow in applying to the Tribunal. Not all lessees attended the meeting and no advance notice was given that a vote would be taken to approve the contract. She would like to have been formally consulted and asks that this be done. However, she does not say what difference it would have made had she been consulted. She does not say that she would have asked for any particular company to be asked to tender for the contract.

17. There may be some misunderstanding on Ms van Dijk's part as to the consequence of the application failing. It does not mean that the process has to start again with proper consultation. The contract has been entered into and will last for two years. The consequence of not having formally consulted, should the Tribunal not grant retrospective dispensation, is to limit the ability of the landlord to recover the cost of provision of the service to £100 per annum from each lessee.

18. As stated in paragraph 12 above the main consideration for the Tribunal in deciding this application is whether the lessees have been prejudiced in any way due to the failure of the landlord to go through the formal section 20 procedure. In that respect, I cannot see that the lessees have suffered prejudice. Ms van Dijk has not said what she would have done had she been formally consulted. She has not said that she would have asked for any particular alternative company to tender for the contract. I find that she has not demonstrated prejudice to her in the failure to consult formally.

19. I take into account that there was a form of informal consultation and approval given at the meeting in July 2020 (if only by those attending

the meeting) and that the lower of the two pitches for the contract was accepted. I also take into account that out of 68 lessees only one objection to this application has been received.

20. Consequently, I consider it reasonable for dispensation to be granted. I emphasise, however, that this dispensation is concerned solely with the process for having entered into the contract. It does not affect the ability for any lessee who considers the charge that will be made for the service in a subsequent service charge to be unreasonable, or considers that the service is not being made to a reasonable standard, to challenge that charge by way of an application to the Tribunal under section 27A of the Act. Also, should the landlord wish to enter into a fresh contract for over 12 months with either Cleverchefs Limited or any other company once the current contract has expired it must be mindful that it will be necessary to go through a formal consultation procedure before entering into such a contract.

Dated the 15th February 2021

Judge D. Agnew.

RIGHTS OF APPEAL

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 be sent by email to rpsouthern@justice.gov.uk

2. 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.

3. 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.

4. 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