



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

|                              |                                                                                                                          |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| <b>Case Reference</b>        | : CHI/23UC/LDC/2022/0054/AW                                                                                              |
| <b>Property</b>              | : Spring Lakes, Cotswold Water Park, South Cerney, Cirencester GL7 5TH                                                   |
| <b>Applicant</b>             | : PUK GLF NOMINEE A LIMITED and PUK GLF NOMINEE B LIMITED                                                                |
| <b>Representative</b>        | : Osborne Clarke LLP<br><a href="mailto:richard.martin@osborneclarke.com">richard.martin@osborneclarke.com</a>           |
| <b>Respondent</b>            | : The Leaseholders                                                                                                       |
| <b>Representative</b>        | :                                                                                                                        |
| <b>Type of Application</b>   | : To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985 |
| <b>Tribunal Member(s)</b>    | : Judge D Whitney<br>Mr M J F Donaldson FRICS<br>Mrs A Clist MRICS                                                       |
| <b>Date of Determination</b> | : 14 <sup>th</sup> July 2023                                                                                             |

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**DECISION**

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## **Background**

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.
2. The Applicant explains that dispensation is sought in respect of works to prevent erosion to the banks of the lake at the Property. The work has been completed. The application is made following an application by certain residents who are challenging their liability to pay and the reasonableness of service charges including the costs of these works. That matter is being dealt with under reference CHI/23UC/LSC/2021/0073.
3. Directions were issued on 19<sup>th</sup> July 2022 providing this matter would be heard and determined at that hearing.
4. This decision should be read together with the decision in respect of CHI/23UC/LSC/2021/0073 given the two matters were heard together over a period of 6 days. A specific bundle was prepared for this application. It was labelled “Volume 11 Section 20ZA application for dispensation”. References within this decision in [ ] to pages within that bundle.
5. **The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This application is not about the proposed costs of the works, and whether they are recoverable from the leaseholders as service charges. The leaseholders have the right to make a separate application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 to determine the reasonableness of the costs, and the contribution payable through the service charges.**

## **HEARING**

6. Miss Elodie Gibbons appeared as a direct access barrister to represent the Respondents in CHI/23UC/LSC/2021/0073 being those leaseholders who wished to be heard on this application. Mr James Fieldsend instructed by Osborne Clarke LLP appeared for the Applicant landlord. The proceedings were recorded.
7. Miss Gibbons in her opening statement conceded that dispensation should be granted. The issue remaining was as to what terms.

Counsel agreed these would be a matter for submission to be determined at the conclusion of the hearing as part of their respective closing submissions.

8. A list of conditions was produced by the leaseholders (a copy is attached marked annex A). These included payment of the costs incurred by them in obtaining Counsel's advice in the sum of £1500. The Landlord accepted that a condition requiring them to pay this sum should be attached to any dispensation granted by this Tribunal.
9. Miss Gibbons conceded that there was no relevant prejudice. She contended any prejudice was in relation to the leaseholders ability to challenge who was liable which was a matter raised within the service charge claim. However she contended that the judgment of Lord Neuberger in Daejan Investments Limited v. Benson and others [2013] UKSC 14 provided that it was not a binary decision and the tribunal retained a wide discretion as to the attachment of conditions.
10. Miss Gibbons addressed the conditions sought and answered questions from the Tribunal. In particular she addressed the point that the conditions sought could be imposed and it would be for the Landlord to decide if they wished to agree and accept. If they did not then no dispensation would be granted.
11. Mr Fieldsend submitted that the leaseholders conceded there was no relevant prejudice. He asked the question what was the purpose of the conditions? The purpose is in his submission to correct any prejudice with an exception being made as to costs which (as set out above) it is accepted should be paid by the landlord in the sum sought of £1500.
12. Mr Fieldsend contended the conditions sought go beyond placing the leaseholders back in the position they would have been but for the failure to consult. He suggested that this Tribunal did not have jurisdiction to grant the conditions sought. In his submission any conditions are to overcome any prejudice and it is conceded there is none.
13. Further he suggests the conditions sought invite further dispute as certain of the terms are inherently uncertain. A number of the conditions relate to the use of the lake and yet any decision this Tribunal made would not bind the user of the lake.

## **DECISION**

14. We record that we take account of all the oral evidence we heard over the course of the 6 days, as well as the submissions made by the respective Counsel.

15. All parties agreed dispensation should be granted in respect of what we will refer to as the bank works. We are satisfied that it is correct that dispensation should be granted.
16. We agree that our discretion as to what, if any, conditions should be attached is broad. It must however relate to the works themselves and matters relating to those.
17. Turning to the list of conditions, Mr Fieldsend quite properly in our judgment conceded that a condition requiring payment of the leaseholders costs in the sum of £1,500 should be attached. We agree such conditions should be attached to dispensation and we order such.
18. In respect of the other conditions we can see the benefit for the leaseholders. Moving forward various of the steps referred to are probably matters that common sense would dictate the Landlord would be well advised to ensure they undertake to assist in avoiding other disputes. However the focus of the conditions relate to issues arising from the use of the lake and the potential liabilities for damage to the banks and associated matters. In the main proceedings relating to the section 27A application we heard much evidence about the use and viewed videos showing the lake used for motorised water sports. This use takes place pursuant to separate commercial leases included within other Volumes of the bundle (see Volume 5: Title Documents).
19. We were not satisfied that these were conditions that it would be appropriate to attach to granting dispensation in this case. The works have been undertaken which are the subject of this application. Everyone appears to concede they were required. The conditions look to the future and potentially different matters including issues which have arisen as to who should bear any costs of further damage. Those may be matters for another day and a different Tribunal or Court dependant on what transpires. It is currently not possible to say.
20. For all of the above, having considered the evidence and submissions we determine that retrospective dispensation should be granted for works undertaken in installing gabions on Spring Lakes conditional upon the Landlord paying to the Respondents in case reference CHI/23UC/LSC/2021/0073 the sum of £1500 being the costs incurred in taking advice upon the application.

## 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 by email to [rpsouthern@justice.gov.uk](mailto: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.