



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

**Case Reference** : **LON/00AW/LDC/2015/0081**

**Property** : **Flats 2 & 3, 1 Palace Gate, London W8  
5LS**

**Applicant** : **Winchester Park Limited**

**Representative** : **Pemberton Greenish LLP**

**Respondent** : **Wayland Investments Inc.  
Mr H Sehayek & D Noonoo Flat 2  
Mr R Sehayek & Mrs D Sehayek Flat 3**

**Representative** : **Collyer Bristow LLP**

**Type of Application** : **Dispensation from statutory  
consultation requirements**

**Tribunal Members** : **Judge Dickie  
I Thompson FRICS  
A Ring**

**Date of Decision** : **15 February 2016**

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**DECISION**

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## Summary of Determination

1. The application for dispensation from statutory consultation is granted, on condition that the Applicant pay to the Respondents the sum of £3656.00 (plus any VAT payable) in respect of its costs within 28 days of the date of issue of this decision. The qualifying works that are the subject of the application are set out in the tribunal's preliminary decision.

### Introduction

2. On 16 November 2015 the tribunal issued a preliminary decision and, having considered the decision of the Supreme Court in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14, directed submissions from the parties as to the appropriate terms for the grant of dispensation in relation to:
  - (a) The Respondents' reasonable costs in the s.20ZA proceedings, for summary assessment by the tribunal;
  - (b) Evidence as to the Respondents' additional legal, professional and other costs incurred in investigating and challenging prejudice;
  - (c) The appropriate reduction to the cost of major works to compensate fully for any relevant prejudice (such as any increase in the cost of the works which might reasonably be attributable to the failure to consult);
  - (d) What sum the Applicants would offer (if any) as being sufficient to meet or exceed the financial prejudice to the Respondents of failure to comply with the statutory consultation procedure.
3. Collyer Bristow in correspondence to the tribunal dated 4 December 2015 has confirmed that the Respondents did not incur any additional legal, professional or other costs in investigating or challenging prejudice. The Applicants have not offered a sum greater than £100 in respect of such costs. The Respondents do not seek any reduction in the costs of the major works (but reserve their position to challenge those costs in proceedings under s.27A of the Landlord and Tenant Act 1985).

### Amount of costs in the s.20ZA proceedings

4. A statement of costs in respect of this application has been produced by Collyer Bristow on behalf of the Respondents totalling £7400.70 (£3492.25 for solicitors' costs, £2675 for disbursements (counsel's fees), plus VAT of £1233.45).
5. The hearing took place on the same day as the hearing of the Respondents' application for costs (and for an extension of time to make that application), and 45% of counsel's fee in respect of both applications has been apportioned to the s.20ZA application. Mr Lederman for the Applicants disputes this apportionment, but it is reasonable in the tribunal's view, given the time spent on that application and the costs application under Rule 13 (including the application to extend time to make it), including hearing time on 2 October 2015.
6. Mr Lederman submits that the Respondents' costs in the s.20ZA proceedings have not been shown to be the costs of investigating and challenging prejudice occasioned by the failure to consult. However, as Lord Neuberger found at paragraphs 61 – 65 of the decision in *Daejan*, the tribunal may require the Applicant to pay to the Respondents an amount equal to the costs properly

incurred in resisting the s.20ZA proceedings as a condition for its indulgence in the grant of dispensation.

7. As to the Respondents' schedule of costs, having considered the submissions on behalf of the Applicant, the tribunal makes the following adjustments:

- (a) The solicitors' costs on documents are allowed in full in the sum of £1354.50
- (b) The solicitors' costs on letters and telephone calls are allowed in full in the sum of £391.50.
- (c) The costs of attendance at the hearing of a trainee solicitor are disallowed as a Grade A fee earner (Mr Grace) was in attendance.
- (d) It was reasonable for Mr Grace, who had attended for the costs application, to remain for the purposes of the s.20ZA application. The Grade A fee earner's costs of attendance at the hearing are however reduced to 1 hour for the following reasons:
  - i. The Respondents did not produce at the hearing their costs in the s.20ZA application. Time was taken on the day in dealing with this and further submission have been required as a result of their filing pursuant to the tribunal's subsequent directions.
  - ii. The majority of the hearing was taken up with submissions from the Respondents inviting the tribunal to impose a condition on the grant of dispensation that the Applicant pay the Respondents' costs in the s.27A application. That argument was unsuccessful and went beyond the terms of the judgment of the Supreme Court in *Daejan v Benson*.
  - iii. The tribunal also rejected the Respondents' request that it impose a condition that works be completed to the building which had not been charged for within the service charges determined payable by the tribunal.
  - iv. But for these unsuccessful arguments, the hearing on dispensation would have been largely perfunctory, in that it would have consisted of submissions on the Respondents' costs in the s.20ZA proceedings, for the purposes of identifying an appropriate condition as to payment of an equivalent sum.
- (e) Counsel's fee for advice etc. pre hearing is allowed in full in the sum of £875.00.
- (f) Counsel's brief fee for the s.20ZA hearing is reduced to £600, in light of the fact that the tribunal does not allow for the costs of preparation of and presentation of arguments relating to the two conditions sought, as set out above.

8. Accordingly, the tribunal considers that the amount for costs properly occasioned in the s.20ZA proceedings, and being the costs of investigating and challenging prejudice caused by the failure to consult, is £3656.00 (plus any VAT payable). The tribunal thus grants dispensation subject to payment by the Applicant of this sum to the Respondents within 28 days of the date of issue of this decision.

Name: F. Dickie

Date: 15 February 2015