



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

Case Reference	:	LON/00BG/LDC/2020/0117 P
Property	:	Blackmans Yard, 44 Cheshire Street, London E2 6EQ
Applicant	:	Cheshire House Development Limited
Representative	:	C/O Hallmark Property Management
Respondent	:	The leaseholders of Flats 1-4 Blackmans Yard. The details of the leaseholders are appended to the application
Representative	:	None
Type of Application	:	An application under section 20ZA of the Landlord and Tenant Act 1985 for dispensation from consultation after carrying out works
Tribunal Members	:	Mr I B Holdsworth FRICS MCI Arb
Date and venue of Hearing	:	2nd December 2020 by written submission
Date of Decision	:	2nd December 2020

DECISION

Decisions of the Tribunal

This has been a remote hearing on the papers which has not been objected to by the parties. A face-to-face hearing was not held because all issues could be determined on paper. The documents referred to in this decision are in a submitted bundle of 54 pages, the contents of which are noted.

The Tribunal determines that dispensation should be given from all the consultation requirements in respect of the works to install a non-return valve to the sewage system at this property at Blackmans Yard, 44 Cheshire Street, London E2 6EQ required under s.20ZA of the Landlord and Tenant Act 1985 (the “Act”) for the reasons set out below. The agreed cost of the sewage system repair works is £2,730.00 inclusive of VAT.

The application

1. The Applicant seeks a determination pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) to dispense with the statutory consultation requirements associated with installation of a non-return valve to the foul water and sewage system at Blackmans Yard, 44 Cheshire Street, London E2 6EQ.
2. An application was received by the First-tier Tribunal dated 15th April 2020 seeking dispensation from the consultation requirements. Directions were issued on the 16th September 2020 to the Applicant. These Directions required the Applicant to advise all Respondents of the application and provide them with details of the proposed works.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. This matter was determined by written submissions. The Applicant submitted a bundle of relevant materials to the Tribunal.
5. No responses were received by the Tribunal from the Respondents since they were advised of the intention to seek dispensation from the statutory consultation procedure by the managing agents.

The background

6. The property which is the subject of this application is a three-storey period building converted into four self-contained flats with a ground floor commercial unit.

7. The Tribunal are told the sewage and foul water discharge system serving the property has proved inadequate and the property has suffered from flooding and the backing up of sewage waste.
8. A CCTV inspection of the drain was carried by Drain Away and Son Ltd on 1st October 2019. This revealed a defective manhole chamber and outlet. The drain engineer advised that the CCTV review identified no defects likely to cause flooding and waste return. It was their opinion that this was caused by the faulty design of the foul drain. They recommended that a non-return valve be installed to remedy the defect.
9. It was the intension of the managing agent to seek works quotations and appoint a contractor to carry out these works in early 2020 after appropriate statutory consultation.
10. The Applicant commenced a stage 1 consultation with the 4 leaseholders on the 14th January after receipt of the works scope and quotation from Direct Drain Services for £2,730 inclusive of VAT. Whilst the stage 1 consultation was underway a second verbal quotation was secured from an alternative contractor and the Tribunal are told it amounted to £4,200 inclusive of VAT.
11. The problems continued with the foul drains and the managing agent decided to curtail the consultation and commission the works ahead of the pending national lockdown to stem the rise of Covid -19.
12. The Applicant does not intend to carry out statutory consultation after undertaking the shortened consultation in January 2020. It acknowledges this consultation does not satisfy the requirements of The Service Charges (Consultation Requirements) (England) Regulations 2003. It now seeks dispensation from these procedures for the completed works through this application.
13. The Applicant contends the non-return valve and limited ancillary works were needed urgently to ensure the integrity of the property and nearby properties subject to flooding from the leak, the health and safety of residents, particularly those residents at ground floor.
14. The Applicants also argue that the leaseholders suffered no prejudice from the lack of consultation prior to the works.
15. Prior to my determination the Tribunal had available a Bundle of papers which included the application, the Directions and a copy of written representations prepared by the Applicant that provided information on the background to the foul drain works.
16. A copy of a specimen lease for each flat is supplied. The cost of carrying out works to the property is recoverable under provisions of

Part II of the fifth schedule clause 6, the schedule details expenditure to be recovered by means of the maintenance charge, it states “*all sums by the Company in and about the repair, maintenance, decoration ...and running of the common parts and the Development whether or not the Company was liable to incur the same under the covenants herein contained*”.

17. The only issue for the Tribunal to consider is whether or not it is reasonable to dispense with the statutory consultation requirements in respect of the installation of the non-return valve to the foul drain. **This application does not concern the issue of whether any service charge costs are reasonable or payable.**

The determination

18. The Tribunal has considered the papers lodged. There is no objection raised by the Respondents, either together or singularly.
19. There was a demonstrated need to carry out the works urgently to minimise the risk of significant further damage to the property and reduce the likelihood of harm to the residents, particularly those with ground floor residence. The Tribunal cannot identify any prejudice caused to the Respondents by the grant of dispensation from the statutory consultation procedure.
20. It is for these reasons the Tribunal are satisfied it is appropriate to dispense with the statutory consultation requirements for the foul drain non-return valve works and the associated expenditure.
21. **This decision does not affect the right of the Respondents to challenge the costs or the standard of work should they so wish.**
22. **In accordance with paragraphs 8 and 9 of the Directions, it is the Applicant’s responsibility to serve a copy of the Tribunal’s decision on all Respondent leaseholders listed on the application.**

Valuer Chairman Ian B Holdsworth

2nd December 2020

Appendix of relevant legislation

Section 20 of the Act

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation Tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long-term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber)