



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

Case Reference : **CAM/22UH/LDC/2021/0015**

Property : **1-11 Blackborough House,
No.23 Beatrice Court,
Buckhurst Hill, IG9 6EA**

Applicant : **RMB 102 Limited**

Representative : **Warwick Estates (Managing Agent)**

Respondents : **Leaseholders of Flats 1-11**

Representative : **None**

Landlord : **RMB 102 Limited**

Type of Application : **S20ZA of the Landlord and Tenant
Act 1985 - dispensation of
consultation requirements**

Tribunal : **N. Martindale BSc MSc FRICS**

Hearing Centre : **Cambridge County Court, 197 East
Road, Cambridge CB1 1BA**

Date of Decision : **6 August 2021**

DECISION

Decision

1. The Tribunal grants dispensation from the requirements on the applicant to consult all leaseholders under S.20ZA of the Landlord and Tenant Act 1985, in respect of the qualifying works in this application. Dispensation is granted on terms, as set out at the conclusion.

Background

2. The landlord through its managing agent applied to the Tribunal under S20ZA of the Landlord and Tenant Act 1985 (“the Act”) for the dispensation from all or any of the consultation requirements contained in S20 of the Act.
3. The application related to defects identified from an inspection and investigation of the shared sewerage and related electrical systems at the Property. The work has been carried out by contractors to the landlord, who deemed it to be their responsibility, under the leases of all flats at the Property, to effect. It is for the applicant landlord to recharge costs under the service charge provisions to all flats in the Property.

Directions

4. Directions dated 22 June 2021 were issued by Judge Wyatt, without an oral hearing. They followed and supplemented the original directions dated 2 June 2021 by Regional Judge Wayte. This second set was needed to allow additional time, because the applicant’s agent had failed to comply with the first set. The applicant had not sent any of the substantive documents which formed the application for dispensation, to any of the leaseholders, merely their cover letter.
5. Following the second set, the applicant’s agent certified to the Tribunal, that they had done so. Regrettably this Tribunal has seen similar failures by this particular agent on behalf of its client, to comply with Directions in other cases, and despite its being an RICS registered firm presumably as a mark of quality.
6. The applicant was, by 9 July 2021 to send to each of the leaseholders a copy of the application form and the Directions. They were to display a copy prominently within the common parts. They were to certify compliance to the Tribunal, by 9 July 2021 and did so by email on 5 July 2021.
7. Leaseholders who objected to the application were to send a reply form and statement to the Tribunal by 21 July 2021. The applicant was to prepare a bundle of documents including the application form, Directions, sample lease and all other documents on which they wanted to rely; with 2

- copies to the Tribunal and 1 to each respondent leaseholder and to do so by 30 July 2021. The applicant complied before the due date.
8. In the event, the Tribunal did not receive any requests for a hearing, nor did it receive any forms from potential respondents either supporting, or objecting to the application.
 9. The Tribunal determined the case on the electronic bundle received from the applicant.

Applicant's Case

10. The Property appears to consist of the small low rise purpose built pair of blocks built in the early 2000s, located in Beatrice Close, a residential cul-de-sac off Albert Road, in Buckhurst Hill. The Property contains 11 flats, No. 1 - 6 in one, No. 7 – 11 in the other. All flats appear to be let on essentially identical leases. A sample flat lease was in the bundle.
11. In the application form at box 7 it confirms that these are to be qualifying works and that they had been started. At box 9 the applicant was content for paper determination and applied for it, marking at box 10, that it could be dealt with by Standard Track. No reason for urgency was given, nor was it sought.
12. The application at box 'Grounds for seeking dispensation', 1. stated: *"Blocked drains at the site which affected the Pumps and caused them to be overwhelmed and non-operational. The old pump needed to be removed and a new pump needed to be fitted. Invoice dated: 15th March 2021. Works order raised: 1st March 2021."*
13. The application at box 2. below this, described the consultation that had been carried out or is proposed to be carried out; *"Multiple emails from the leaseholders of Blackborough House concerned about the stench coming from the block drains. Works need actioning as soon as possible and residents were very keen for action."*
14. The application at box 3. explained why they sought dispensation of all or any of the consultation requirements. *"The invoice exceeds the Section 20 amount for works for anyone leaseholder. PM felt the works were urgent to prevent any damage. The Pumps were tripping out the RCD as a result which also stopped the intercom working at site."*
15. The applicant did not include any statement in support other than the contents of the application form. The applicant attached various documents in the bundle, including, in this order: 1. A quote dated 30 December 2021 from Unbloc Engineers Ltd ref, M&E 9197. It is for an old pump to be removed and a new one to be fitted. The price is £3368.47

- including VAT. 2. A quote (undated) from Abbey Drains Ltd. It is stated to be for 'New Pump Stations'. The price is £28,653 including VAT. 3. An order dated 25 February 2021 from Warwick Estates to LCR Property Services Ltd.. regarding electrical works. 4. An invoice dated 31 May 2021 from Unbloc Ltd. for replacement of pump No.2 for £3368.47 including VAT, work ordered on 17 May 2021. 5. A quote dated 17 March 2021 from Unbloc Ltd. for replacement of pump No.2 for £3368.47 including VAT.
16. It appears from these documents, though it is not clearly stated or explained by the applicant, that the first pump was causing trouble in late 2020 and a price quoted by Unbloc Ltd on 30 December 2020. Some two months later, an order was placed on 1 March 2021 by the applicant for this work. The work replacing the first pump was undertaken on 15 March 2021. When on site the contractor drew the attention of the applicant to the likely need for more extensive works to be undertaken. Unbloc Ltd. invoiced the applicant on 15 March 2021. However, the application form clearly states the works which are the subject of this dispensation are only those set out in the invoice of 15 March 2021.
17. Sometime in early 2021 Abbey Drains quoted for a much larger set of works but, it is unclear if they were the only contractor, whether the works proceeded and whether the leaseholders were or are to be consulted. Either way this work is not referred to nor included in the application.
18. On 17 March 2021 Unbloc Ltd. also quoted for replacement of the 2nd pump which was duly replaced and the applicant billed on 31 May 2021. Again this work is not referred to nor included in the application.

Respondent's Case

19. The Tribunal did not receive any representations from the leaseholders.

The Law

20. S.18 (1) of the Act provides that a service charge is an amount payable by a tenant of a dwelling as part of or in addition to the rent, which is payable for services, repairs, maintenance, improvements or insurance or landlord's costs of management, and the whole or part of which varies or may vary according to the costs incurred by the landlord. S.20 provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.

21. Dispensation is dealt with by S.20 ZA of the Act which provides:-
“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.”

22. The consultation requirements for qualifying works under qualifying long term agreements are set out in Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-

1(1) The landlord shall give notice in writing of his intention to carry out qualifying works –

- (a) to each tenant; and**
- (b) where a recognised tenants’ association represents some or all of the tenants, to the association.**

(2) The notice shall –

- (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;**
- (b) state the landlord’s reasons for considering it necessary to carry out the proposed works;**
- (c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;**
- (d) invite the making, in writing, of observations in relation to the proposed works or the landlord’s estimated expenditure**
- (e) specify-**
 - (i) the address to which such observations may be sent;**
 - (ii) that they must be delivered within the relevant period; and**
 - (iii) the period on which the relevant period ends.**

2(1) where a notice under paragraph 1 specifies a place and hours for inspection-

- (a) the place and hours so specified must be reasonable; and**
- (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.**

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made state his response to the observations.

Tribunal's Decision

23. The scheme of the provisions is designed to protect the interests of leaseholders and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose.
24. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that leaseholders who may ultimately pay the bill are fully aware of what works are being proposed, the cost thereof and have the opportunity to nominate contractors.
25. Though the correspondence shows that the applicant did respond to concerns from leaseholders from the smells and back flow from communal drains, there was no attempt to formally consult. The Tribunal notes that a period of 8 weeks passed between the quote for replacement of a pump and the order of this work which suggests that the work was not regarded as especially urgent by the applicant.
26. The terms of this dispensation are:
27. That all costs of and associated with the making this application and compliance with Directions, will not be borne by the leaseholders. This is because of the significant failures by the applicant to comply despite being aware of the need to do so. The applicant employed professional advisors but, their failure to comply with the first set of Directions required the issue of a further set by the Tribunal. Both sets of Directions clearly set out the potential consequences of this.
28. That the total sum to be recovered from all 11 leaseholders for all of the subject qualifying works (those ordered on 1 March 2021 and invoiced for on 15 March 2021) and any variations on them, will not be in excess of £3,368.44, including fees and all other costs and VAT arising.

29. This does not determine what service charges are reasonable and payable by any leaseholder as a service charge.
30. Although papers, quotations and in some cases invoices relating to other works to electrical installations and the drains are included in the bundle this dispensation does not extend to any other works at the Property. This is because they did not form part of the application.
- 31. In making its determination of this application, it does not concern the issue of whether any service charge costs are reasonable or indeed payable by the leaseholders. The Tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act; in this case, on terms.**

N Martindale FRICS

6 August 2021