



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

**Case Reference** : **CAM/26UL/LDC/2022/0022**

**Property** : **1-6 Marlborough House,  
Firsgrove Crescent,  
Brentwood CM14 5TF**

**Applicant** : **Marlborough Street Construction  
Ltd.**

**Representative** : **Warwick Estates Ltd  
(managing agent)**

**Respondents** : **Leaseholders of Flats 1-6**

**Representative** : **None**

**Landlord** : **Marlborough Street Construction  
Ltd.**

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

**Tribunal** : **N. Martindale FRICS**

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

**Date of Decision** : **28 July 2022**

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**DECISION**

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## **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 waste water pump serving this low rise block of 6 flats.
4. A complaint from a resident leaseholder identified that waste water pump serving a tank to these flats appeared to be running almost continuously and that it appeared likely to fail. Such a failure could cause major short term revenue expense to the landlord and thence to the leaseholders via the service charge, as well as potentially considerable loss of service to the flats.
5. Work is said to be urgently required to replace elements of the water pumping provision to ensure continuity of service. The work is to be carried out by specialist contractors employed by the landlord who is responsible, and costs arising recharged to all leaseholders in accord with the terms of their leases.

## **Directions**

6. Directions dated 10 June 2022 were issued by Deputy Regional Judge David Wyatt, without an oral hearing.
7. The applicant was, by 22 June 2022 to send to each of the leaseholders a copy of the application form and the Directions and where possible an estimate of the costs of the proposed works inclusive of any professional fees and VAT. They were to certify compliance to the Tribunal of actions taken and dates. This they did in their reply email dated 14 June 2022 to the Tribunal.
8. Leaseholders who objected to the application were to send a reply form and statement to the Tribunal by 6 July 2022. 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 20 July 2021. The applicant stated that they had complied before the due date.

9. 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.
10. The Tribunal determined the case on the paper bundle received from the applicant.

### **Applicant's Case**

11. Application dated 20 May 2020 was submitted to the Tribunal. However it was not until around 10 June 2022 that payment of the Tribunal fee had also been received, so that it could be processed. At box 4 of the application form the Property is said to consist of a: *“Purpose built single block of flats containing 6 units with two entrances one at the front and one at the rear of the building. The site was built at the end of the 1990’s and has a small car park area, each flat is allocated a parking bay for resident’s use. The building has a foul pump which serves all 6 units within the building.”*
12. All flats appear to be let on essentially identical leases. A sample flat lease was in the bundle.
13. In the application form at box 7 it confirms that these are to be qualifying works but, that they had not 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 Fast Track. A reason for urgency was given here as: *“An issue with the foul pump has been identified where damaged pipework is causing water to continuously circulate back into the well of the pump. This in turn is causing the pumps to work more often than usual which will shorten the life of the pumps, however more importantly if the issue is not dealt with promptly the damage to pipework will increase and there is a risk that pipework will break away. If this happens the tank will need to be emptied every day by a vacuum tanker at a high cost to leaseholders.”*
14. The application at box ‘Grounds for seeking dispensation’, 1. stated: *“Recommended works by the maintenance contractor are to be completed to prevent further pipework damage and potential / fittings. This includes: Replacement of pipework/ fittings. Replacement of non-return valves. Tanker to be on standby the day of works being completed. Hire of mini excavator for works to be completed. The areas during any excavation will be secured off with barriers. It is proposed this work take place as matter of urgency and we are therefore intending to instruct the works within the next week.”*

15. At 2. the applicant described the ‘consultation that has been carried out or is proposed to be carried out’. *“Notice of intention has been issued today to advise all leaseholders of the intention to complete this work.”*
16. At 3. Explain why you seek dispensation of all or any of the consultation requirements. *“A resident had reported the pump was running continuously and following a contractor visit it was identified the pumps were working correctly however damaged pipework is causing water to continuously circulate back into the well. This in turn is causing the pumps to work more often than usual which will shorten the life of the pumps. If this issues us not dealt with promptly the damage to pipework will increase and there is a risk that paperwork will break away. If this happens the tank will need to be emptied every day by a vacuum tanker at a high cost to leaseholders. Dispensation is being sought following discussions with the contractor who has advised this work is urgent and cannot wait, it may be the pipework will hold but no longer than three months. Thon how long before the pipework becomes more damaged therefore works should be completed as soon as possible. A notice has been issued today, we are concerned if the works are left to allow for statement of estimates after the first notice expires the damage may become worse and the leaseholders would potentially pay a higher costs for the remedial works. In addition. If the pipework were to fail before the consultation was completed there would be an additional cst for the vacuum tanker every day, this has been quoted at £240 per empty.”*
17. *”The applicant included a covering letter dated 20 July 2022 summarizing its actions and their timing. They also enclosed all other documents as directed previously. These included costs of supply and fitting of the replacement pipework and pump - on 11 May 2022 of £2,480 ex. VAT.*

### **Respondent’s Case**

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

### **The Law**

19. 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.

20. 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.”**

21. 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**

22. 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.
23. 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.
24. The correspondence shows that the applicant did respond to concerns from one or more leaseholders about the workings of the pump serving the block. They appointed Jiggins Environmental Ltd. to inspect the site and report on the pump and associated pipework. They quoted a total price on 11 May 2022 of £2,480 ex. VAT. This was made up of: Pipework fittings £710; Non-return valves £360; Labour £680; Tanker on standby 1 day £380; hire mini excavator £350. This price also included site safety around the works. There was no sum included for fees.
25. The terms of this dispensation are:
26. That all costs of and associated with making this application and compliance with Directions, the works proposed and to be completed for the supply, installation and labour as set out in the Quote from Jiggins Environmental Ltd., are covered by the dispensation. That the total sum to be recovered from all 6 leaseholders, though only in accordance with every lease for all of the flats subject to these qualifying works. The payment of professional fees arising in respect of pre and post application

works is also covered by this dispensation from consultation. This dispensation does not extend to any other works at the Property.

- 27. 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**

**28 July 2022**