



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

**Case Reference** : **CAM/00KF/LDC/2023/0002**

**Property** : **46-52 Carlingford Drive  
Westcliff on Sea Essex  
SS0 0SB**

**Applicant** : **Appointmoor Property  
Management Services Ltd.**

**Representative** : **Sophie Whiston**

**Respondents** : **Mr & Mrs Cooper  
Leaseholders of No.52 and all other  
Leaseholders at No.s 46 48 50**

**Representative** : **None**

**Landlord** : **Mr & Mrs Cooper (Freeholder)**

**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** : **2 March 2023**

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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, only. Dispensation is granted on terms, as set out at the conclusion.

## **Background**

2. The freeholder through its managing agent Appointmoor Property Management Services Ltd applied on 12 January 2023 to the Tribunal under S20ZA of the Landlord and Tenant Act 1985 (“the Act”). The application was for the dispensation from all or any of the consultation requirements contained in S20 of the Act.
3. The application related to the apparent failure of main roof covering and/or chimney brickwork and/ lead flashing at or around the chimney stack above the roof line above Flat 50 (said to be First Floor). Flat 50 is directly above Flat 52.
4. Flats 46, 48, 50 and 52 together appear to form a purpose built building of four flats dating from around 1900 set on 3 levels, the first floor flats appear to enjoy some attic use of the second floor roof space.
5. At the date of application it was stated that none of the work had been started. Under the sample lease for No.46 was provided, it is for the applicant landlord through their agent to recharge costs under the service charge provisions to all flats in the Building (the block is reported to the Tribunal as being formed of all 4 flats).

## **Directions**

6. Directions dated 25 January 2023 were issued by Regional Surveyor Mary Hardman, without an oral hearing. These directed for various actions to be undertaken by the applicant and respondents if any, to reply, within a timetable. In doing so she corrected the respondents’ identity from the freeholders - Mr and Mrs Cooper to that of all leaseholders of flats in the Building, including as leaseholders Mr and Mrs Cooper. (Mr and Mrs Cooper are the applicants as freeholders). The applicant fails in the application form to identify to the Tribunal, the names and contact addresses of the other leaseholders in the building. These details are not found by the Tribunal in any other papers from the applicant.
7. By 6 February 2023 the applicant freeholders were to send to each potential respondent that is, all leaseholders of a flat in the building, a copy of the application, a brief and clear description of the scope of the

- works for which dispensation was to be sought. The estimated price of the works and of the fees of professional advisers with a set of these Directions. Finally the applicant was to certify by letter to the Tribunal that these had all been completed and the date when they had.
8. By 15 February 2023 any respondent leaseholders had to send a standard reply form (attached to the Directions) to the Tribunal and the landlord and attach a copy of their statement of any evidence and other documents to which they wished to refer.
  9. By 22 February 2023 the applicant freeholder was to prepare the bundle sending a copy to the Tribunal and to each respondent leaseholder who opposed the application. The bundle was to include; the application form, Directions, the notification sent to the leaseholders, a standard sample lease, a copy of all responses and letter of confirmation on completion of these tasks.
  10. 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, either directly or via the freeholder or agent.
  11. The Tribunal determined the case on the paper bundle received from the applicant. The Directions appear to have been largely followed by the applicant. Correspondence from the landlord was dealt with by their managing agent signed off by Sophie Whiston for the freeholder's agent. On 10 February 2023 the agent confirmed in writing to the Tribunal that the requirements of the Tribunal's Directions had been complied with regarding notice to all leaseholders and any responses received.

### **Applicant's Case**

12. The Property appears to consist of the small low rise purpose detached block of apparently purpose built residential flats at 46 48 50 52 Carlingford Drive, Westcliff, dating from 1900. All flats appear to be let on essentially identical leases. A sample flat lease (flat 46) was included in the bundle. It was not apparent to the Tribunal whether for the purposes of the lease, flats 46 and 48 formed part of the whole detached building or were themselves part of a self-contained building of half of the whole detached structure. The Tribunal however took the lease of flat 46 as sufficiently representative for the purposes of considering dispensation for the other half, involving flats 50 and 52, be it of the 2 or 4 flats.
13. In the application form at box 7 it confirms that these works are to be qualifying works but, that they not had been started. At Box 8 in reply to the question "*Do you know of any other cases involving either (a) related or similar issues about the management of this property; or (b) the same landlord or tenant or property as in this application ?*" They replied No.

14. At box 9 the applicant was content for paper determination and applied for it, marking at box 10, but asked it could be dealt with by 'Fast Track'. The reason for urgency was given as: *"Water ingress into flat 50 causing damp and mould. Water pouring in during rainfall."*
15. At *Checklist 13b* the applicant confirmed by ticking the box provided that they had supplied *"A statement that service charge payers have been named as the respondents or a list of names and addresses of service charge payers."* The Tribunal did not find either in the bundle and any dispensation is subject to evidence from the applicant that it did.
16. The application at box 'Grounds for seeking dispensation', was completed. At 1, *"We received a report from the tenant in flat 50 in relation to water ingress. A contractor attended and witnessed water running down internal walls during rainfall. This is causing damp and mould inside the property. The leaseholder has provided the tenant with a dehumidifier to help with the issue temporarily. We have since received three quotations for the remedial works which consist of replacing guttering rainwater pipe pointing to wall and chimney along with redecorating works inside Flat 50."*
17. At 2, the applicant confirmed the consultation that had been carried out. *"Renew gutter and rainwater pipe re-point flank wall and chimney replace flashing to chimney."*
18. At 3, the applicant explained: *"Water is penetrating into Flat 50 badly during rainfall. Contractor had witnessed water dripping down the internal walls. We have photos to show the extent of the damage. No photos were supplied by the applicant."*
19. The applicant did not name any leaseholders in the application and rather named themselves as respondent. The applicant referred three quotes obtained for the remedial works. No copies of quotes were provided save for one from MATP Ltd. registered in Barnet, Herts, not VAT registered, with which it appeared the applicants were proposing to proceed and which described the works in general terms. The works appeared to be solely to the roof chimney and walls directly over Flats 50 and 52 and did not affect flats 46 and 48. The price of these external works including scaffolding and any surveyors fees was £4000 exactly. Any works and their cost in the interior, were not included.

### **Respondent's Case**

20. The Tribunal did not receive any representations from the leaseholders (other than the applicant freeholders and leaseholders) either in support of or raising any objection.

## The Law

21. 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.

22. 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.”**

23. 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**

- 24. 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.
- 25. 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.
- 26. Though the correspondence shows that the applicant complied generally with Directions it failed (though directed) to include the cost or an estimate of the cost of professional fees for the works, or confirmation that such cost was already included in the price of the works in its representations to the Tribunal or to leaseholders. For this reason any additional sum for all and any professional fees is not covered by this

dispensation. Similarly the costs of the prior survey and associated work stated by the applicant to have been carried out prior to this application, (but, not subject to it), is also not covered by this dispensation.

27. The terms of this dispensation are:
28. That the total sum to be recovered from all leaseholders at the Property (believed to be flats No.s 46 48 50 and 52) where these subject qualifying works to the exterior only and any variations on them, will not be in excess of £4,000, including fees and all other costs and VAT arising. This dispensation does not determine what service charges are reasonable and payable by any leaseholder under the lease, as a service charge for these capital works.
29. No copies of quotes, schedule of rates and quantities, or other basis for prices or extent of the works were included other than the schedule and price from MATP Ltd. dated 5 January 2023. This dispensation does not extend to any other works at the Property. This is because they do not form part of this application.
30. **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 all, some or any of the leaseholders, when or how. 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**

**2 March 2023**