



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

**Case Reference** : **BIR/OOGG/LDC/2023/0001**

**Property** : **2-24 (Evens) Barrow Close  
Walsall Wood  
WS9 9BS**

**Applicant** : **Maple (197) Ltd**

**Applicant's  
Representative** : **Sumbol Zaaman  
HLM Property Management**

**Respondents** : **The Various leaseholders of  
Flats 2-24 (Evens)  
Barrow Close  
Walsall Wood  
WS9 9BS**

**Type of Application** : **An Application for the dispensation of all  
or any of the Consultation  
Requirements provided for by Section  
20ZA of the Landlord & Tenant Act  
1985**

**Tribunal Members** : **Mr G S Freckelton FRICS (Chairman)  
Mrs K Bentley**

**Date of Hearing** : **4<sup>th</sup> April 2023**

**Type of Hearing** : **Paper Determination**

**Date of Decision** : **19<sup>th</sup> April 2023**

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**DECISION**

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## **Background**

1. By Application dated 26<sup>th</sup> January 2023, received by the Tribunal on the same dates the Applicant, through its Managing Agents, HLM Property Management, applied to the Tribunal for Dispensation from the Consultation Requirements imposed by Section 20 of the Landlord & Tenant Act 1985 (‘the Act’) and the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of the property known as 2-24 (Evens), Barrow Close, Walsall Wood, WS9 9BS.
2. The Application requested that the matter be dealt with on the Fast Track as water pumps have failed and residents were therefore without adequate fresh water supplies to their premises. The Applicant wished to carry out the repairs without the delay that would result if a full section 20 consultation was undertaken. It was considered that a paper determination would be appropriate. The Tribunal issued Directions dated 1<sup>st</sup> March 2023.

## **The Facts**

3. The property at 2-24 (Evens), Barrow Close, Walsall Wood, WS9 9BS is understood to comprise of a block of twelve modern, purpose-built self-contained flats.
4. The Applicant in this case is the Management Company and the Respondents are the various long leaseholders of the flats.
5. The Tribunal has been provided with a draft copy of the lease in respect of one of the flats and understands that there is no dispute between the parties that the works required are the responsibility of the Applicant and that the various Respondents contribute towards the cost through the service charge. The Fifth Schedule of the draft lease provides for the leaseholders to pay a service charge and the Seventh Schedule provides for the Lessor to carry out maintenance works.
6. The Tribunal has not carried out an inspection and the matter has therefore been determined on the papers provided to it by the parties. However, the Tribunal has inspected the exterior of the property on a satellite image.
7. According to the Application, work is required to replace the pumps which provides the water supply to the building. The Applicant states that both water pumps have failed on site meaning that residents are without adequate fresh water to their flats.
8. The Tribunal is informed by the Applicant that the pumps are managed by another management company (Maple (198) Ltd) for the adjacent block of flats which share the pumps. Maple 198 have obtained the requisite quotations and both blocks will contribute 50% each to the cost of the works. It has been confirmed that if a second quotation is obtained at a cheaper price, Maple (198) Ltd will refund to the Applicant the difference in price between the two quotations.
9. The application confirms that work will commence as soon as possible.
10. The Applicant has written to all the leaseholders and copies of the letters have been provided to the Tribunal. The letter explains that they are seeking dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985.

11. The letter further explains that Ground Solutions UK are employed as managing agents and that monies have been paid to cover 50% of the anticipated total cost of the work to avoid any delay. The monies have been paid from reserves so no costs will be demanded from the leaseholders for the works.
12. The letter to the leaseholders also enclosed:
  - 1) A copy of the application form to the Tribunal.
  - 2) Directions issued by the Tribunal.
  - 3) A service report from Maple (198) Ltd.
  - 4) A repair quotation provided by Maple (198) Ltd.
  - 5) An invoice for Maple (197) Ltd.'s contribution to the cost of the works.
13. The Tribunal has been provided with a copy of the quotation in the sum of £10,033.32 plus VAT (which the Tribunal calculates to be £12,039.98 including VAT). There is also the provision for further costs (if applicable) in respect of Tankering and Jetting, Civil Works and Gardening/Clearance of trees, bushes etc.
14. The Application confirms that the Applicant seeks dispensation from all of the consultation requirements to enable it to proceed with the work as quickly as possible in order to reinstate an adequate water supply to the property.
15. The Applicant submits that although it has not commenced the consultation process all the Respondent leaseholders are aware of the proposed works. This is evidenced by the letters sent to the various leaseholders by the Applicant.
16. The Directions issued by the Tribunal directed the Applicant to send to all the leaseholders a form which the Tribunal had requested each leaseholder to complete and return no later than 24<sup>th</sup> March 2023. This form asked the Respondents to confirm to the Tribunal whether or not they (a) supported the application for dispensation from full consultation for the works and (b) agreed that the Tribunal may decide the matter on the basis of written representation only (no hearing).
17. The only response to the Tribunal's Directions was from Persimmon PLC who the Tribunal assumes are the Freeholders. This reply form confirmed that they supported the application for dispensation from full consultation for the works and agreed that the Tribunal may decide the matter on the basis of written representation only.
18. The Tribunal understands, based on the Application and the Applicant's submission that the Application for Dispensation is sought:
  - a) Because the failure of the pumps means that fresh water is not being pumped to the various flats in the building.
19. The Tribunal infers from the submissions that if the full consultation process was to be undertaken, the delay could result in greater potential inconvenience and risk to the various leaseholders.
20. The Tribunal notes that the leaseholders have all been informed and had an opportunity to comment on the proposed works and costs but no observations objecting to the proposed works were received. The Tribunal therefore infers that none of the leaseholders are opposed to the proposed works and that they all support them.

## **The Law**

21. Where a landlord proposes to carry out qualifying works, which will result in a charge being levied upon a leaseholder of more than £250.00, the landlord is required to comply with the provisions of Section 20 of the Landlord & Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.
22. Failure to comply with the Regulations will result in the landlord being restricted to recovery of £250.00 from each of the leaseholders unless he obtains a dispensation from a Leasehold Valuation Tribunal under Section 20ZA of the Act, (now the (First-tier Tribunal) (Property Chamber)).
23. In deciding whether or not to grant dispensation, the Tribunal is entitled to take into account all the circumstances in deciding whether or not it would be reasonable to grant dispensation. An application to grant dispensation may be made before or after the commencement of the works.

## **The Tribunal's Decision**

24. It is evident to the Tribunal that the work is currently urgent. The pumps have failed and this has resulted in an inadequate fresh water supply to at least some of the flats in the building.
25. It is also evident to the Tribunal that if the full consultation process is followed then the works will be delayed to the extent that the lack of an adequate supply of fresh water to at least some flats in the building could cause not only inconvenience but result in detrimental health issues for the leaseholders.
26. The Tribunal is satisfied on the information provided that it is reasonable to dispense with the consultation requirements in this case. The Tribunal is satisfied that leaseholders will not suffer (or have not suffered) any prejudice by the failure to consult. Indeed, they would, in the Tribunal's view, be significantly prejudiced if the work is delayed.
27. The Tribunal is satisfied that the works appear comprehensive and that if properly completed should resolve the defective pumps by replacing them with two new pumps.
28. The Tribunal is also influenced by the fact that none of the Respondents have made any submission to the Applicant or, more importantly to the Tribunal opposing the Application.
29. Accordingly, the Tribunal grants the dispensation requested under Section 20ZA and determines accordingly.
30. This Determination does not give or imply any judgement about the reasonableness of the works to be undertaken or the cost of such works.

## **APPEAL**

31. Any appeal against this Decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this Decision, (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

G S Freckelton FRICS.  
Chairman.  
First-tier Tribunal (Property Chamber)