



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

**Case Reference** : **LON/00AH/LDC/2022/0137**

**Property** : **153 Sanderstead Road  
Croydon CR2 0PH**

**Applicant** : **Belgarum Property Management  
Ltd.**

**Representative** : **None**

**Respondents** : **Leaseholders of 5 flats at  
153 Sanderstead Road**

**Representative** : **None**

**Landlord** : **Seager and Hughes Ltd.**

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

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

**Hearing Centre** : **10 Alfred Place London WC1e 7LR**

**Date of Decision** : **18 October 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, only. Dispensation is granted on terms, as set out at the conclusion.

## **Background**

2. The landlord through its managing agent applied on 30 May 2022 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 failure of a sewerage pumping facility used at the Property. Apparently the pump enabled removal of waste from the sewerage tank at the Property. It’s continuing failure required onsite attendance from a contractor on a near weekly basis with a corresponding charge. At the date of application it was stated that none of the work had been started. It was understood that the landlord’s agent was able to recharge costs under the service charge provisions to all flats in the Property to all leaseholders.

## **Directions**

4. Directions dated 28 July 2022 were issued by Judge Korn, without an oral hearing. These directed for various actions to be undertaken by the applicant and respondents if any, to reply, within a timetable.
5. By 4 August 2022 the applicant landlord was to send to each potential respondent 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 by 8 August 2022 to certify by letter to the Tribunal that these had all been completed and the date when.
6. By 18 August 2022 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.
7. By 1 September 2022 the applicant landlord 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.

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 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 the applicant, the landlord's agent.

### **Applicant's Case**

10. The Property appears to consist of a former detached Edwardian House since converted in the 1970's into 5 self contained flats. The accommodation is on 3 levels. All flats appear to be let on essentially identical leases. A sample flat lease was included the bundle.
11. 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 did not reply.
12. 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: "*The sewage treatment plant requires replacement parts (floats, chains, pump & panel) in order to operate without failure. The fault is causing high levels in the pump which require engineer attendance every 10-days at a cost of £404 (inclusive of VAT) per attendance. Routine Service 19.04.22, high level alarm 29.04.22 and a further high level alarm 09.05.22.*"
13. The application at box 'Grounds for seeking dispensation', was completed. At 1, as a restatement of their entry at box 10. At 2, the applicant confirmed "*Following the routine service on 19.04.22 it was noted that replacement parts were required. Whilst awaiting the quotation the high level alarm rang on 29.04.22. An engineer attended on the same day to lower the levels, costing £404 (inclusive of VAT). A further high level alarm was raised on 09.05.22. An engineer attended the same day to lower the levels again. Both high level alarms occurred 10- days after last attendance, indicative that until the replacement parts are fitted there will be engineer's cost of £404 every 10-days to lower the levels. Cost of works are quoted at £2,647.81 + VAT = £3,177.37; BPM Major Works fee £350.00 + VAT = £420.00.*"

14. At 2. Describe the consultation that has been carried out or is proposed to. *“Email notification sent to all contributing Leaseholders 11.05.22. Advising the fault, failures, parts required, quoted costs, reserves available to cover the cost, requesting comment and contractor nomination. Flat B replied confirming receipt and stating no contractor nomination. Flat A replied replied felt full Sewage Treatment Plant would be less cost but quoted the costings seen on online for a 4-5 bed house. Flat 1 replied with no objection on 24.05.22. In response to Flat A query, Envirowise advised 25.05.22 “The quotation is already for a new like for like pump is to suit the existing set up of the pump station. Unfortunately it is not as straight forward as identifying any other type of pump as it will not fit without replacing all associated components such as claws, pedestals etc to suit, which will then cost thousands more.”*
15. At 3, the applicant explained: *“We believe it is in the Leaseholders best interest to undertake the works as soon as possible to prevent engineers attendance every 10-days at £404 per attendance and to prevent further failures such as sewage spilling out of the pump. The work has been quoted by the company who undertakes the servicing and repairs and we have invited two other established companies to provide a quotation. Envirowise £2,647.37 + VAT = £3,177.37 (company who undertakes servicing) Aquatronic Group Management Plc £2,774.06 + VAT = £3,328.87. The Leaseholders have been advised the situation, the required parts, invited to nominate a contractor and consequential costings of lowering the levels until the work is complete”.*

### **Respondent’s Case**

16. Other the comments from some leaseholders set out at para 16 above, the Tribunal did not receive any representations from the leaseholders either in support of or raising any objection, at any time during the application process.

### **The Law**

17. 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.

18. 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.”**

19. 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**

20. 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.
21. 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.
22. The correspondence showed that the applicant complied generally with Directions although appeared to post the application at the property common parts some days after the date specified on 22 August 2022 with copies of the papers required emailed to leaseholders on 23 August 2022 also late. No representations to the application were received by the applicant nor by the Tribunal either within or beyond the relevant submission date for such.
23. If there were costs associated with a prior survey and any associated work carried out prior to this application, (but, not subject to it), is not covered by this dispensation as it was not sought.
24. The terms of this dispensation are:
25. That the total sum to be recovered from all leaseholders at the Property where these subject qualifying works and any variations on them, will not be in excess of the figures stated at £3,328.87 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, just the cap.

26. No copy of the contractors specification, price or other correspondence was supplied to the Tribunal. No copies of quotes, schedule of rates and quantities, or other basis for prices were included. This dispensation does not extend to any other works at the Property. This is because they do not form part of this application.
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**

**18 October 2022**