



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

Case Reference : **MAN/30UK/LDC/2020/0052**

Property : **Rear No. 5 St Johns Court Broughton
Preston PR3 5LG**

Applicant : **D'Urton Lane Management Company
Limited**

Applicant's Representative : **Keith Williams**

Respondent : **Various Leaseholders (see Annex)**

Type of Application : **Landlord & Tenant Act 1985 – Section 20ZA**

Tribunal Members : **Mr John Murray LLB
Ms. Jenny Jacobs MRICS**

Date of Order : **30 June 2021**

Date of Determination : **12 July 2021**

REASONS FOR DECISION

DETERMINATION

The application for dispensation from consultation for the works detailed in the application is dismissed, as the subject matter works cannot be carried out and charged for by the Applicant under the provisions of the lease.

INTRODUCTION

1. An application was made by Homestead CSL, managing agents on behalf of D'Urton Lane Management Company Limited for dispensation of the consultation requirements of s20 of the Landlord and Tenant Act 1985 in relation to the works to connect the subject matter properties to a drainage system.
2. Directions were made by a Procedural Judge on the 15 January 2021 for the matter to be determined by way of submission of written evidence leading to an early determination, or by a hearing if requested by the parties.
3. The Applicant was directed to prepare and file and serve on each Respondent an electronic bundle of specified documents within 28 days of the directions, and any participating Respondent was directed to send a statement of case in response within 28 days of the Applicant's bundle being received. The Tribunal was to determine the matter on or shortly after 3 May 2021.

THE APPLICATION

4. The Application dated 26th November 2020 sought dispensation from the statutory consultation process.
5. St. Johns Court, Broughton Preston was described in the application as a development of 9 detached houses, built in 2002. The development was served by a Sewage Treatment Plant with a reed bed filtration system, as there was no sewerage system in place in the area.
6. In 2015/16, Charles Church, part of Persimmon, started to build a new housing estate behind St. Johns Court, including a new main sewer. The Applicant made contact with Charles Church to enquire about connecting to the main system to remove the need for a Sewage Treatment Plant.
7. Charles Church constructed a drag out and manhole to connect St. John's Court, and wished to carry out the work on their site to enable the connection to be made; this left no time for the statutory consultation process. Residents had originally suggested the connection be made at their 2018 AGM, had been consulted throughout the process, and were in agreement to make the connection and decommission the Sewage Treatment Plant, reed bed and power supply, and have all the properties on mains drainage.

THE LEGISLATION

8. The relevant legislation is contained in s20ZA Landlord and Tenant Act 1985 which reads as follows:

s20 ZA Consultation requirements: supplementary

(1) Where an application is made to the appropriate 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.

(2) In section 20 and this section—

“qualifying works” means works on a building or any other premises, and

“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament

THE APPLICANT'S BUNDLE

9. The Applicant submitted with their application much correspondence between the managing agent and the developers Charles Church/Persimmon, which at one point became acrimonious due to apparent misunderstanding between the parties, with a threat of disconnection of the newly connected system by the developer. The dispute ultimately appeared to be resolved in so far as the connection was to remain in situ between the nine properties and the new sewage system on the adjoining new estate with a deed of easement to be entered into by each leaseholder. The costs of the works was not clear from the documentation submitted, and in the absence of any statement of case being provided.

10. The Applicant provided a bundle dated 26th April 2021 which was effectively just a paginated bundle of emails between Mr. Williams of Homestead and Persimmon, relating to the dispute between December 2019 and September 2020. There was no statement of case provided in accordance with the directions.

11. None of the Respondents made any submissions.

12. The only lease provided by the Applicant was a sample draft lease submitted with the application for a plot at St John's Court. It was not a full copy having no Schedules attached to it.

13. The only reference to the sewerage system in the lease as provided was contained in clause 3(3) which provided that "the lessee would pay a due proportion of the costs of maintaining and repairing the sewers serving the properties on the development".

OBSERVATIONS FROM THE RESPONDENTS

14. There was no response from any of the Respondents to the Application.

THE DETERMINATION

15. The Tribunal has jurisdiction under section 20ZA to dispense with consultation before works have been carried out, as well as retrospectively when works have been carried out and completed, as in this instance.

16. The works have been completed, so dispensation from consultation was not required to enable the Applicant to proceed with the works. The application was considered necessary by the Applicant to avoid the statutory restriction to £250 per property for the works.

17. However on the case and evidence before it, the Tribunal is not satisfied that carrying out or charging for the proposed works is provided for under the lease. The proposed works are to disconnect and decommission the existing sewage system and power supply, and then connect to a new system. This work cannot be considered to be either maintenance or repairs to the sewers serving the properties on the

development which is the work that can be charged for under the lease; it is quite the opposite of maintenance and repair.

18.It would undoubtedly make economic sense to replace the maintenance of a system the burden of which falls upon few payers with adoption of the public sewage system for a one off capital cost, and removal of a system that can lead to unpleasant smells in the area.

19.Given that the works could not be carried out under the lease as there is no provision for them, it follows that the works could not be charged for under the lease; therefore they are not service charges, and statutory consultation is not required.

20.The works would need to form a separate agreement between the leaseholders and the freeholder, which is effectively what they have been. The Tribunal is told that the leaseholders proposed the works, and are understandably in favour of them. The works and the costs have been explained to them, and in fact have been completed, and presumably money has already been collected.

21.Had the works been provided for under the terms of the lease then the Tribunal no doubt would have granted dispensation, the works being urgent (to avoid disconnection) and there effectively being only one possible supplier, there could be no prejudice to the Respondents.

Tribunal Judge J Murray LLB
30 June 2021

Annex A

Leaseholders

- 1 St John's Court – Mrs B. Done
- 2 St John's Court – Mr & Mrs M. Kaura
- 3 St John's Court – Mr & Mrs H. Gillibrand
- 4 St John's Court – Mr C. R. Ingham
- 5 & 9 St John's Court – Mr C. J. Ingham
- 6 St John's Court – Mr & Mrs A. Slater
- 7 St John's Court – Mr & Mrs B. Chandrasekar
- 8 St John's Court – Mr C. Patel