



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

**Case Reference** : **MAN/00CE/LDC/2021/0085**

**Property** : **Edgar House, Bawtry Road, Bessacarr,  
Doncaster DN4 7AW**

**Applicant** : **River Freeholds Limited**

**Applicant's Representative** : **Inspired Property Management Ltd**

**Respondents** : **The residential leaseholders of the Property  
(See Annex)**

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

**Tribunal Member** : **Judge Bennett**

**Date and Venue of Hearing** : **Determined without a hearing**

**Date of Decision** : **3 May 2022**

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**DECISION**

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## DECISION

**Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to works comprising the replacement of two sewage pumps at the Property.**

## REASONS

### Background

1. On 13 December 2021 an application was received by the First-tier Tribunal (Property Chamber) (“the Tribunal”) under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) for a determination to dispense with the consultation requirements of section 20 of the Act. Those requirements (“the consultation requirements”) are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”).
2. The application was made by River Freeholds Limited, the landlord of Edgar House, Bawtry Road, Bessacarr, Doncaster, DN4 7AW (“the Property”). The Respondents to the application are the long leaseholders of those units. A list of the Respondents is set out in the Annex hereto.
3. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
4. The works in respect of which dispensation is sought concern the replacement of two sewage pumps which are required to pump waste from the Property up to a gravity fed waste system that connects to the mains drains.
5. I have determined this matter following a consideration of the Applicant’s case but without holding a hearing. Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed). In this case, the Applicant has given its consent and the Tribunal has not heard from a Respondent in response to the application. Moreover, having reviewed the case papers, I am satisfied that this matter is indeed suitable to be determined without a hearing. Determining this matter does not require me to decide disputed questions of fact.

### Grounds for the application

6. The Tribunal did not inspect the Property, but I understand it to be a purpose-built residential block comprising of 8 units over 4 stories. It is a traditional brick building with concrete floors under a flat roof.

7. The Applicant explains that due to the misuse of the drains by the occupiers of the Property, two sewage pumps suffered a failure. According to the Applicant, the repeated flushing of non-flushable items has caused the pump chamber to fill up causing both pumps to seize and stop working. The Applicant highlights that the mains drain serving the Property is higher than the Property itself and without an operational pump, waste will stay in the pump chamber and subsequently back up in the Property and overflow into the grounds. In the interim therefore, the Applicant chose to install a temporary secondhand pump after the chamber had been emptied. This was only suitable on a short-term basis as the system cannot operate effectively without two pumps. The temporary pump was rented at the cost of £150 plus VAT per week. It is argued that, had the Applicant completed a full consultation in accordance with section 20 of the Landlord and Tenant Act 1985, the cost for the rental pump, payable by the leaseholders, would have amounted to a minimum of £2160. In addition to this, there would have been a cost for emptying the tank periodically at £800 plus VAT each time.
8. The Applicant submits that the best way to address the health and safety risk, reduce the service charge expenditure and protect the Property was to instruct a contractor to replace the pumps immediately and avoid paying unnecessary rental costs.
9. The Tribunal did not receive submissions from a Respondent Leaseholder regarding the application.

## **Law**

10. Section 18 of the Act defines what is meant by “service charge”. It also defines the expression “relevant costs” as:

*the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*
11. Section 19 of the Act limits the amount of any relevant costs which may be included in a service charge to costs which are reasonably incurred, and section 20(1) provides:

*Where this section applies to any qualifying works ... the relevant contributions of tenants are limited ... unless the consultation requirements have been either–*

  - (a) *complied with in relation to the works ... or*
  - (b) *dispensed with in relation to the works ... by the appropriate tribunal.*
12. “Qualifying works” for this purpose are works on a building or any other premises (section 20ZA(2) of the Act), and section 20 applies to qualifying works if relevant costs incurred on carrying out the works exceed an amount which results in the

relevant contribution of any tenant being more than £250.00 (section 20(3) of the Act and regulation 6 of the Regulations).

13. Section 20ZA(1) of the Act provides:

*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 ... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.*

14. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord (or management company) to:

- give written notice of its intention to carry out qualifying works, inviting leaseholders to make observations and to nominate contractors from whom an estimate for carrying out the works should be sought;
- obtain estimates for carrying out the works, and supply leaseholders with a statement setting out, as regards at least two of those estimates, the amount specified as the estimated cost of the proposed works, together with a summary of any initial observations made by leaseholders;
- make all the estimates available for inspection; invite leaseholders to make observations about them; and then to have regard to those observations;
- give written notice to the leaseholders within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder if that is not the person who submitted the lowest estimate.

## **Discussions and conclusions**

15. The Tribunal must decide whether it is reasonable for the works to go ahead without the Applicant first complying with the consultation requirements. Those requirements are intended to ensure a degree of transparency and accountability when a landlord decides to undertake qualifying works – the requirements ensure that leaseholders have the opportunity to know about, and to comment on, decisions about major works before those decisions are taken. They also ensure that leaseholders are protected from paying for inappropriate work, or from paying more than would be appropriate for necessary work.
16. In deciding whether to dispense with the consultation requirements, the Tribunal must focus on whether the leaseholders have been, or would be, prejudiced by the lack of compliance with the consultation requirements. If there is no such prejudice, dispensation should be granted.

17. In the present case, the works concerned are clearly of an urgent nature, and there is no evidence that the Respondents have been, or would be, prejudiced by the lack of compliance with the consultation requirements. Although formal consultation has not taken place, I accept that Leaseholders are aware of both the underlying issue and this application following a notice of intention that was given to the Respondents. I note the Applicant has considered the interests of the Leaseholders and sought to provide the most cost-effective solution by undertaking this work as quickly as possible. I therefore conclude that retrospective dispensation should be granted.
18. The fact that the Tribunal has granted retrospective dispensation from the consultation requirements should not be taken as an indication that I consider that the amount of the anticipated service charges resulting from the works is likely to be reasonable; or, indeed, that such charges will be payable by the Respondents. I make no findings in that regard.

Signed: L Bennett  
 Judge of the First-tier Tribunal  
 Date: 3 May 2022

**ANNEX  
 (List of Respondents)**

<b>Unit number</b>	<b>Respondent</b>	<b>Address</b>
1 Edgar House	David Philip Jarman	C/O Julian Smith and Andrew Hughes (LPA), TLT Solicitors, 1 Redcliff Street, Bristol, BS1 6TP
3 Edgar House	Zafer Hussain Munshi	16 Jessops Close, Headinton, Oxford, OX3 0NU
4 Edgar House	Raymond Ali	37 Montrose Road, Sheffield, S7 2EF
5 Edgar House	Paul Christopher Outram & Maxine E Fitzgerald	Barnfield House, The Dukes Drive, Ashford in the Water, Bakewell, Derbyshire, DE45 1QQ
6 Edgar House	Scott David Campbell	10 Conalan Avenue, Sheffield, S17 4PG
7 Edgar House	Austin Anthony Fitzgerald	10 Silverdale Crescent, Ecclesall, Sheffield, S11 9JH
8 Edgar House	Mehmooob Yaqub	161 Mill Road, Wellingborough, Northants, NN8 1PJ
2 Edgar House	Malcolm James Ball	26 Astcote Court, Kirk Sandall, Doncaster, DN3 1SE