



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

<b>Case Reference</b>	:	<b>CAM/33UF/LDC/2020/0009</b>
<b>HMCTS code (paper, video, audio)</b>	:	<b>P:PAPERREMOTE</b>
<b>Property</b>	:	<b>Bracondale Court, Overstrand Road, Cromer, Norfolk NR27 0AJ</b>
<b>Applicant</b>	:	<b>Bracondale Court Management Limited</b>
<b>Applicant's representative</b>	:	<b>Watsons Property Group Ltd</b>
<b>Respondents</b>	:	<b>The leaseholders of the Property (17 flats)</b>
<b>Type of application</b>	:	<b>For dispensation from consultation requirements - Section 20ZA of the Landlord and Tenant Act 1985</b>
<b>Tribunal members</b>	:	<b>Judge David Wyatt</b>
<b>Date of decision</b>	:	<b>10 June 2020</b>

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**DECISION**

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**Covid-19 pandemic: description of hearing**

- A. This has been a remote hearing on the papers which the parties are taken to have consented to, as explained below. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on paper.
- B. The documents that I was referred to are in an electronic bundle of 45 pages, the contents of which I have noted. The decision made is described below.

## The Tribunal's decision

**The Tribunal determines under section 20ZA of the Landlord and Tenant Act 1985 to dispense with all the consultation requirements in relation to the works described in the application form and the statement from the Applicant at pages 44 and 45 of the bundle.**

## Reasons for the Tribunal's decision

### The application

1. The Applicant landlord proposes to carry out qualifying works to trace and repair a water pipe which the Applicant says is leaking under the Property. These works would include lifting flooring and cutting through the basement tanking to locate and repair the suspected damaged pipe(s).
2. The relevant contributions of leaseholders through the service charge towards the costs of these works would be limited to a fixed sum unless the consultation requirements prescribed by section 20 of the Landlord and Tenant Act 1985 (the "**1985 Act**") and the Service Charges (Consultation etc) (England) Regulations 2003 are:
  - (i) complied with; or
  - (ii) dispensed with by the tribunal.
3. In this application, the Applicant seeks a determination from the tribunal, under section 20ZA of the 1985 Act, to dispense with these consultation requirements. The tribunal has jurisdiction to grant such dispensation if satisfied that it is reasonable to do so.
4. In this application, the only issue for the tribunal is whether it is satisfied that it is reasonable to dispense with the consultation requirements. **This application does not concern the issue of whether any service charge costs of the relevant works will be reasonable or payable.**

### The Property and the parties

5. The Property is described by the Applicant as four houses which were converted into a school and later converted into the current 17 flats. The application was made against the leaseholders of those 17 flats (the "**Respondents**").
6. The Applicant states that it is the landlord under those leases. It has produced a specimen lease in the bundle.

## **Procedural history**

7. The application was said to be urgent because Anglia Water had advised the Applicant that several litres of water were being lost every minute and that they believe this leak had been continuing undetected for some 18 months.
8. The Applicant indicated that this was likely to be caused by a broken water pipe under the Property and that it was necessary to identify and stop the leak as soon as possible to seek to protect the structure of the Property.
9. In view of the urgency described in the application form, case management directions were given on 26 March 2020. After the tribunal followed these up on 20 April 2020, the Applicant's representative explained that those directions had not been received.
10. To avoid confusion, replacement directions were issued on 21 April 2020, requiring the Applicant to serve on the Respondents:
  - (i) a copy of the application form and directions; and
  - (ii) a statement to explain the cause of the leak, the insurance position, the works expected to be required, the locations proposed to be opened-up and whether any leaseholders would be asked to allow access or vacate.
11. On 5 May 2020, the Applicant confirmed to the tribunal that these documents had been sent by first class post to each Respondent.
12. The directions contained a reply form for any leaseholder who objected to the application to return to the tribunal and the Applicant, indicating whether they wished to have an oral hearing. Any such leaseholder was required to respond by 20 May 2020.
13. The directions further provided that this matter would be determined during the seven days commencing on 8 June 2020 based on the documents, without a hearing, unless any party requested an oral hearing.
14. No leaseholder has responded and no party has requested an oral hearing. Accordingly, this application has been determined based on the documents produced by the Applicant in the bundle.
15. On reviewing the documents, the tribunal considered that an inspection of the Property was neither necessary nor proportionate to the issues to be determined.

## **The Applicant's case**

16. The Applicant's statement (as served on the Respondents) explains the circumstances and the proposed works. A copy is at pages 44 and 45 of the bundle. It says that:
- (i) the Property was originally four separate houses (Nos 1-4), which were converted into a school and then into the current 17 flats. After the leak was first discovered in December 2019, a professional leak detection company was brought in and narrowed down the leak to the area between the front bedroom and the rear kitchen of Flat 17, which is the basement of what were originally house Nos 3 and 4;
  - (ii) the services are complex but it appears that the stopcock for the main pipes to the leak is in the road, the stopcock for Flat 17 also affects most of what was originally house No 3 (Flats 1, 2, 5 and 8) and the main water feed to what were originally house Nos 3 and 4 will need to be turned off for one or up to two working days;
  - (iii) the basement is tanked to prevent water ingress (due to a historic foul water backflow issue). The tanking would need to be breached in two places in Flat 17: (a) below the stop cock in the front bedroom, to locate the leaking dead leg pipework and any others, and cap them at source, and to relocate the stop cock to enable isolation of Flat 17 without isolating the other Flats in that part of the building; and (b) in the rear kitchen heading back to the bedroom, where the leak itself is believed to be; and
  - (iv) the occupant of Flat 17 would need to vacate to allow the works to be carried out. Those in the other Flats in what was originally house No 3 will be affected for longer than others (since the stopcock for No 3 is likely to be turned off for a significant period); the Applicant says that all avenues are being explored to ensure that the works cause as little disruption as possible.
17. It is unhelpful that no estimate of the costs of the works has been provided, but I recognise that the costs will vary depending on what is discovered when the relevant areas are opened-up. The Applicant explains in the statement that they need to assume that the costs would be sought from leaseholders through the service charge because, while the building insurers have been put on notice, as matters stand they will only cover the costs of the work to trace the leak because they presume that there is damage at the source of the leak. The Applicant will need to ensure that it arranges to provide constant photographic and documented evidence of what is discovered on opening-up and the works which are carried out, as required by insurers and to seek to preserve any possible insurance claim.

18. The Applicant also included in the statement a proposed schedule of works which appear to have been sensibly planned. They include:
- (i) removal by the leaseholder of Flat 17 of their personal items and furniture from the bedroom and kitchen;
  - (ii) arrangements for sealing the corridor for protection and security;
  - (iii) breaching the tanking with repair in mind, locating the leak and identifying any damage caused;
  - (iv) providing bottled water to the occupants of the Flats in what were originally houses Nos 3 and 4 when their stopcock is turned off;
  - (v) testing before reinstating the tanking; and
  - (vi) repair of flooring, reinstating the kitchen and bedroom in Flat 17, reinstating the corridor and making good.

### **The Respondents' position**

19. As mentioned above, the directions provided for any Respondent who wished to oppose the application for dispensation to complete the reply form attached to the directions and send it to the tribunal and the Applicant.
20. Neither the Applicant nor the tribunal has received any response or statement of case opposing the application, or comments on the arrangements proposed in the Applicant's statement.
21. In the circumstances, the tribunal concluded that the application was unopposed.

### **The Tribunal's decision**

22. The application was not opposed by the Respondents. The Respondents have not challenged the information provided by the Applicant, identified any prejudice which they might suffer if the consultation requirements are not complied with, or asked for or provided any other information.
23. In the circumstances set out in this decision, the tribunal is satisfied that it is reasonable to dispense with the consultation requirements in relation to the relevant works.
24. The tribunal determines under section 20ZA of the 1985 Act to dispense with all the consultation requirements in relation to the works described in the application form and the statement from the Applicant at pages 44 and 45 of the bundle.

25. There was no application to the tribunal for any order under section 20C of the 1985 Act.
26. The Applicant landlord shall be responsible for serving a copy of this decision on all leaseholders.

**Name:** Judge David Wyatt                      **Date:** 10 June 2020

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).