



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

Case Reference : **CAM/34UF/LDC/2021/0016**

**HMCTS code
(paper, video, audio)** : **P:PAPERREMOTE**

Property : **Flats 1 & 4 - 10 The Chambers, 28
St Edmunds Road, 28A & 28B St
Edmunds Way and Flats 1 & 2, 77
Ethel Street, Northampton NN1
5ET**

Applicant : **R G Securities (No. 3) Limited**

Representative : **Charlene Brown, Warwick Estates**

Respondents : **All leaseholders of the property**

Type of application : **For dispensation from consultation
requirements - Section 20ZA of the
Landlord and Tenant Act 1985**

Tribunal members : **Mary Hardman FRICS IRRV(Hons)**

Date of decision : **3 August 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was P:PAPERREMOTE. A hearing was not held because it was not necessary, and all issues could be determined on paper. The documents that I was referred to are in a 54 page bundle from the Applicants. I have noted the contents and my decision is 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 respect of qualifying works to remedy issues with waste drainage.

Reasons for the tribunal's decision

The application

1. This is an application to dispense with the statutory consultation requirements in respect of works to replace broken waste drainage to the property.
2. It says that that contractors had identified a Buchan trap in the casement which had failed causing the waste from the apartments to seep out of the broken pipework. This needed to be replaced urgently as if it were left it was believed that the pipework would fully collapse, and the basement and ground floor area would have been flooded with sewage.
3. The relevant contributions of leaseholders through the service charge towards the costs of these works would be limited to a fixed sum unless the statutory 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:
 - (i) were complied with; or
 - (ii) are dispensed with by the tribunal.
4. In this application, the Applicant seeks a determination from the tribunal, under section 20ZA of the 1985 Act, to retrospectively dispense with the consultation requirements. The tribunal has jurisdiction to grant such dispensation if satisfied that it is reasonable to do so.
5. **In this application, the only issue for the tribunal is whether it is satisfied that it is reasonable to dispense with the consultation requirements.**
6. **This application does not concern the issue of whether any service charge costs of the relevant works will be reasonable or payable or by whom they are payable.**

The Property and parties

7. The Property is a three-storey conversion comprising 12 flats, occupying a corner position close to the centre of Northampton.
8. The application is made by Warwick Estates on behalf of the landlord, R G Securities (No. 3) Limited. The application was made against the leaseholders of the flats (the “**Respondents**”)

Procedural history

9. The Applicant said that the works were urgent, as explained below.
10. Case management directions were given on 27 May 2021, requiring the Applicant by 11 June 2021 to serve on the Respondents copies of the application form, any other evidence relied upon in relation to the matters in the application form and these directions. They were to file with the tribunal a certificate to confirm that this has been done and stating the date(s) on which this was done.
11. On 2 June 2021 the Applicant emailed the tribunal to confirm that this had been done.
12. The directions included a reply form for any leaseholder who objected to the application to return to the tribunal and the Applicant, also indicating whether they wished to have an oral hearing. Any such objecting leaseholder was required to respond by 25 June 2021.
13. The directions further provided that this matter would be determined on or after 7 July 2021 based on the documents, without a hearing, unless any party requested an oral hearing
14. No leaseholder has responded to the tribunal, and no party has requested an oral hearing.
15. On reviewing these documents, the tribunal considered that an inspection of the Property was neither necessary nor proportionate to the issues to be determined and that a hearing was not necessary.

The Applicant’s case

16. Documentation provided by the Applicant states that a contractor attended the site to investigate an issue with blockages. Investigations revealed a broken Buchan trap located in the basement. This was causing waste to back up and flood the upstream chamber.
17. The recommendation was that the trap should be removed, and the pipework repaired to avoid further flooding.

18. Two quotes had been obtained and they proceeded with the lower quote of £4770 including vat.
19. All leaseholders were served with a notice of intent on 10 May 2021.
20. The work was carried out and completed on 19 May 2021.

The Respondents' position

21. 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.
22. The tribunal has not received any response or statement of case opposing the application, or comments on the Applicant's statements in the application form. In the circumstances, the tribunal concluded that the application was unopposed.

The tribunal's decision

23. Following the Supreme Court decision of *Daejan Investments Ltd. v Benson* [2013] UKSC 14, the only issue for the Tribunal is whether the Respondents have suffered prejudice in dispensing with the requirements.
24. This application for dispensation from the consultation requirements was not opposed by the Respondents, who have not challenged the information provided by the Applicant in the application form, identified any prejudice which they might suffer because of the non-compliance with the consultation requirements, nor asked to be provided with any other information.
25. Accordingly, 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 works.
26. For the purposes of this application, the tribunal determines under section 20ZA of the 1985 Act to dispense with all the consultation requirements in relation to repairs to the waste drainage.
27. **This is not an application for the tribunal to approve the reasonableness of the works or the reasonableness, apportionment or payability of the service charge demand. I make no finding in that regard and the leaseholders will continue to enjoy the protection of section 27A of the Act.**

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

Mary Hardman FRICS IRRV(Hons)
3 August 2021

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).