



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

Case Reference : **CAM/22UD/LDC/2022/0028**

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

Property : **46 Danes Way, Pilgrims Hatch,
Brentwood CM15 9JS**

Applicant : **Brentwood Borough Council**

Representative : **Birketts LLP**

Respondents : **Martin Thomas Brown**

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

Tribunal members : **Judge David Wyatt**

Date of decision : **10 February 2023**

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; all issues could be determined on paper. The documents I was referred to are 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 to cap and replace the water supply pipework, described in more detail in paragraph 13 below.

Reasons for the tribunal's decision

The application

1. The Applicant applied for dispensation with the statutory consultation requirements in respect of qualifying works to remedy a leaking water supply pipe.
2. The Applicant said the work was urgent, because Essex and Suffolk Water had given notice requiring the Applicant to carry out remedial works within ten days or authorise Essex and Suffolk Water to undertake the repair for the Applicant. It was said that the pipe was leaking over 24,000 litres of water per day.
3. The relevant contributions of the Respondents 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 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. **This application does not concern the issue of whether any service charge costs of the relevant works will be reasonable or payable, or what proportion is payable.**

The Property and the parties

6. The Applicant said the Property is a two-bedroom maisonette located on the first floor within a purpose-built block of flats, with one house on each end of the block.

7. The application is made by the landlord, Brentwood Borough Council. The application was made against Mr Brown of Flat 46 (the “**Respondent**”), who is the only leaseholder. The other flats are occupied by tenants and the Applicant does not expect to have the right under their tenancy agreements to seek a contribution from them towards the costs of the relevant works.

Procedural history

8. The Applicant landlord sent its application on 25 May 2022. On 22 August 2022, when the application fee had been paid, a procedural judge gave case management directions. These required the Applicant to by 31 August 2022 serve on the Respondent copies of the application form, confirmation of the total estimated cost of the proposed works, and the directions.
9. The directions included a reply form for the Respondent leaseholder to return to the tribunal to indicate whether they opposed dispensation and wished to have an oral hearing. The Applicant was directed to produce the requisite bundle of documents by 19 September 2022. The directions provided that this matter would be determined on or after 26 September 2022 based on the documents, without a hearing, unless any party requested an oral hearing.
10. The Respondent objected to dispensation (as described below) but did not request a hearing. The Applicant attached copy earlier correspondence informing the Respondent of the work that needed to be carried out and why it was said to be urgent; including the estimated total cost and estimated individual contribution. However, the Applicant failed to produce the bundle and the documents which were produced did not give an adequate explanation.
11. Accordingly, on 20 October 2022, further directions were issued, requiring the Applicant to submit a bundle as directed by paragraph 6 of the case management directions by 28 October 2022 and to include explanations of specified matters. When the Applicant failed to comply, it was given a final deadline of 8 December 2022 to send the bundle and the Respondent was given until 22 December 2022 to send any further submissions in response. The Applicant then instructed representatives and delivered the requisite bundle.
12. As summarised below, the Respondent made further submissions in accordance with those final directions but, again, did not request an oral hearing. In the circumstances, under rule 31(3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the parties are deemed to have consented to this matter being determined without a hearing. On reviewing the documents, I 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

13. The notice from Essex and Suffolk Water that the leak had been identified is dated 19 May 2022. It seeks excavation of the rear garden, cutting and capping the existing water pipe and installation of a new shared water supply to 40-48 and internal connections to ground floor maisonette 42 and 44 and house 48.
14. The notice stated that, if the Applicant intended to repair the leak, the repair work should be undertaken within ten days. The Applicant said (in essence) that they were unable to tender the work in a short period of time or procure it under their existing qualifying long-term agreement because it was outside the scope of that agreement. It is said that this could not wait for consultation, given the amount of water said to be leaking every day and the warnings in the notice about the potential costs of legal action if the leak was not stopped. The Applicant has confirmed that on 24 May 2022 it authorised Essex and Suffolk Water to carry out the work on its behalf.
15. On 25 May 2022, the Applicant wrote to the Respondent with a notice of intention in respect of the works. They estimated that the cost of the work would be £6,691.52 and the Respondent's contribution to that cost would be £1,338.30. The notice indicated that the work would be carried out by Axis, but the Applicant has since explained this was a mistake; it had by then already authorised Essex and Suffolk Water to carry out the work.
16. The bundle prepared by the Applicant includes a copy of the invoice with a total cost of £6,990.35 for supply pipe renewal work carried out from 10 to 12 August 2022. In the Applicant's statement of case they explained that the work was delayed by Essex and Suffolk Water because they did not have contractors available to attend until then.

The Respondents' position

17. The Respondent, Mr Brown, wrote to the tribunal on 8 September 2022. Mr Brown set out four grounds (summarised below) as his reasons for opposing this application.
18. First, Mr Brown said the work was not an emergency. He said the Applicant should have provided more detail about the discovery of the leak, the severity and urgency of the work needed to rectify the leak. Mr Brown does not believe that the leak had any negative impact on the tenants in relation to supply or consumption of water.
19. Second, Mr Brown said he had suffered prejudice in that he was the only person who may be charged in relation to the work, because he is the only leaseholder, which he argued was unfair. Third, Mr Brown

said that he had suffered prejudice in that the costs should be reasonable and be capped at £250. Fourth, Mr Brown contended that the Council should bear the cost as the freeholder, and they should have taken precautionary measures including specific insurance to cover such risks.

20. Further, Mr Brown wrote to the Tribunal on 18 December 2022, in response to the bundle belatedly produced by the Applicant, to say that the Applicant should not have been given more time and to reiterate his four grounds for opposing the application. He also argued that the cost of seeking a contribution of about £1,338 from him is not an appropriate use of public money.

The tribunal's decision

21. I am satisfied that it is reasonable to dispense with the consultation requirements. Following the Supreme Court decision of *Daejan Investments Ltd. v Benson* [2013] UKSC 14, normally the key issue for the Tribunal is whether a Respondent has suffered prejudice from the failure to comply with the consultation requirements.
22. The Respondent has not identified any prejudice which would not have been suffered if the consultation requirements had been complied with. He denies that the work was urgent, but has not made any case or provided any evidence to suggest that any of the work was not necessary or that (for example) he would have proposed an alternative contractor to carry out the work at lower cost. In response to the communications from Essex and Suffolk Water in May 2022, it was reasonable for the Applicant to promptly authorise the works when their own contractors could not carry them out. It appears the delays since then in carrying out the works were attributable to Essex and Suffolk Water.
23. The Respondent's other concerns all relate to questions about whether he is liable to pay for the works under his lease, whether it is reasonable for him alone to contribute to the cost when the Applicant is bearing the remainder and whether the costs were reasonably incurred. The tribunal is not determining any such matters in this application. If the parties are unable to reach agreement about whether any service charge is payable under the Respondent's lease for the costs of the relevant works, it remains open to either of them to apply to the tribunal under section 27A of the 1985 Act (form Leasehold 3, available on the public website) to determine whether any service charges are reasonable and payable and the amount of any such charges.
24. The Applicant did fail to comply with directions despite warnings that it was at risk of sanctions. However, the direction of 2 December 2022 was an appropriate case management decision to set a final deadline in terms that, if the Applicant failed to deliver the bundle by 8 December

2022, their application would automatically be struck out. They then complied with that direction and the Respondent was given the opportunity to make any further submissions in reply, which he did.

25. The tribunal therefore determines under section 20ZA of the 1985 Act to dispense with all the consultation requirements in relation to the works to cap and replace the water supply pipework.
26. **As noted above, this decision does not determine whether the cost of these works was reasonable or payable under the lease, only whether the consultation requirements should be dispensed with in respect of them.**
27. There was no application to the tribunal for an order under section 20C of the 1985 Act. The Applicant landlord shall be responsible for serving a copy of this decision on all relevant leaseholders.

Name: Judge David Wyatt

Date: 10 February 2023

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).