



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

<b>Case reference</b>	<b>:</b>	<b>CAM/00MC/LSC/2021/0027</b>
<b>Property</b>	<b>:</b>	<b>Flats 1 – 20 Kendrick Court, Kendrick Road, Reading RG1 5DS</b>
<b>Applicant</b>	<b>:</b>	<b>Kendrick Court Block A RTM Company Limited (1) Kendrick Court Block B RTM Company Limited (2) Kendrick Court RTM Company Limited (1)</b>
<b>Representative</b>	<b>:</b>	<b>Alan Draper of Common Ground E &amp; PM Limited (managing agents)</b>
<b>Respondent</b>	<b>:</b>	<b>Kendrick Court Limited (1) Swanlane Estates Limited (2) The leaseholders at the Property (see application form)</b>
<b>Representative</b>	<b>:</b>	<b>Ms Olivia Hammond representative for Mr E Hammond</b>
<b>Type of application</b>	<b>:</b>	<b>For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985</b>
<b>Tribunal members</b>	<b>:</b>	<b>Judge Dutton Mr D Barden MRICS</b>
<b>Venue</b>	<b>:</b>	<b>Holiday Inn, Reading on 2 November 2021</b>
<b>Date of decision</b>	<b>:</b>	<b>22 November 2021</b>

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**DECISION**

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## **Decisions of the tribunal**

- (1) For the reasons set out below the tribunal dismisses the application**
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985**
- (3) The tribunal orders Mr Hammond to refund the application fee for the dispensation claim in the sum of £100 within 28 days.**

## **The application**

1. The Applicant seeks a determination pursuant to s.27A(3) of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to whether, if the costs were incurred in respect of repair and maintenance works to boundary walls and surface and wastewater, with associated works, they would be payable as set out in the provisions of s27A(3)(a) – (e).

## **The hearing**

2. The Applicant was represented by Mr Alan Draper at the hearing accompanied by Mr Raz Sheikh and Mr Mike Thomas, both directors of the RTM companies and Mr William Beaucham the Property Manager. The Respondent, Mr Edward Hammond the freeholder of Kendrick Court Limited and a flat owner was represented by his daughter Ms Olivia Hammond
3. Prior to the hearing we had been sent a bundle of papers, running to some 649 pages and on the morning were supplied with a more user-friendly copy of the report prepared by Brian Aldridge Associates dated December 2017 (the Report). We were also provided with additional plans showing the foul and surface water drainage.

## **The background**

4. The property which is the subject of this application comprises four blocks comprising 20 flats in total on a rectangular site in Reading. Block A to C are under the control of the Applicant Companies and house 14 flats. The fourth block (block D) is owned by Kendrick Court Limited, which is, in effect controlled by Mr Hammond. He also owns the garages on the development, and we believe some 4 flats in the development.
5. The tribunal inspected the property before the hearing in the presence of those named in paragraph 2 above. It is a relatively well-maintained development although in need for some external decorative attention. To

the rear of the development are garages, although what was once a central block of garages has recently been demolished and the remaining rear wall is now supported by wooden struts. The driveway serving the garages to the rear runs to the left of the development and is patterned concrete.

6. The Applicants are the three companies holding the right to manage block A – C, such management being undertaken by the directors of the RTM companies and through the management company Common Ground Estate & Property Management Limited (CG). The long leases of the flats in the development requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

### **The issues**

7. As we indicated above, we were provided with an extensive bundle of documents to be relied upon by the parties. For the Applicants we had a submission, the contents of which we noted. In addition, the Report was supplied, together with the Section on consultation under the Act, including letters to each lessee, which was something of an overkill, a specification document prepared by Mr Thomas, copies of a lease, various emails and other documents under section F and statements by Mr Thomas and Mr Sheikh to which, in each case, various additional documents were annexed. There then followed a statement by Mr Hammond on his own behalf and on behalf of KCL and various leases for the garages, emails, and other papers. As necessary these papers have been read and the contents noted by us
8. The application lodged by the Applicants raises three issues. The first relates to repair and maintenance costs in respect of boundary walls at the development, which appear to be sought by Kendrick Court Limited (KCL). The Applicants appear to be seeking a declaration as to whether KCL has the right to seek to recover the anticipated costs for the repair to these boundary walls (circa £50,000) from the leaseholders and indeed whether KCL had the right to carry out the works given the Right to Manage arrangements in place. We will return to this matter in due course.
9. Of more pressing need was the Applicants request for a determination that costs to be incurred in respect of surface and foul water drainage should be approved by us (the Works). Consultation under s20 of the Act was said to have been completed. Demands dated 15 July 2021 were issued in the sums of £4,241.65 or £5,768.92. Determination is sought whether, if the contribution for the driveway said to apply to garage leaseholders is included, the costs were reasonable and would be payable.

10. In support of the Applicant's case, we were provided with the Report. This is headed a "Continuation Survey" and is dated December 2017, the previous report, it would seem, having been prepared some two years earlier but the recommendations were not implemented. The Report sets out the steps taken to investigate the issues which included damp penetration, inspections of roof spaces and a review of the roof and chimneys at each block, soil investigation, investigations into foundation depth and a CCTV investigation of the drains throughout the site.
11. The report under the "Introduction" heading says this – *"The drainage inspection in Chapter I goes further than confirming our 2015 suspicions: to revealing a horrific situation in which extensive sections of drain both surface and foul are not functioning"*.
12. The Report includes a detailed CCTV camera survey report by KS Maintenance Limited trading as Kenclean dated 29 September 2017. Under the heading "Conclusion" it is said that apparent from the survey *"the drainage system is suffering from lack of maintenance and is in a very poor condition. Many sections are contaminated causing varying restrictions to flow and as mentioned above, some areas could not be surveyed such is the severity of the contamination. The foul system probably suffers from blockages already and these will intensify if left untreated."* The report proceeds to state that the contamination of the surface water system could be worse than the foul and may be causing or contributing to the structural problems. The report goes to give recommendations as to solving the issues, which includes high pressure jet washing, in some cases using superior jet washing and suction, the insertion of structural liners and patches and in some cases the replacement of the drains by excavation.
13. In addition to the above, the Report included Structural Investigations by Thomasons, undertaken in September 2017, but the works are not the subject of this application. There are several unclear photographs. Finally, there is what appears to be a further report from Brian Aldridge Associates which seeks to pull together the information from others and includes a Scope and Schedule of Works relating to the drainage and roof and chimney works. Under recommendations the Report says this *"This report is an amalgam of the findings of separate discipline inspections in the wake of our 2015 survey. Considering the deplorable condition of the site attributable to neglect, ill-conceived and mismanaged work, we strongly recommend the rectification of the failings falling into the Urgent Immediate Category required by RTM be investigated at the earliest possible moment."*
14. It is with this background that the Applicants started the section 20 consultation with a Notice of Intention dated 27 December 2019, which is, of course, some two years after the date of the Report. This refers to surface water drain repairs, foul water drains repairs, replacement driveway plus new balcony supports to Block A. We were told at the

hearing that this last item was not included as it had been undertaken without consultation being required. From the papers available to us it would seem that Notice of Estimates were provided by letter dated 2 July 2020 and on 16 July 2021 the Notice of the award of the contract was issued. This set out that the following contractors had quoted:-

- Todor Landscape & Build in respect of drive works at a cost of £67,200
- Drain Surgeons UK Ltd at a cost of £26,081.40 and
- Stephen Hodge to project manage at a cost of £8,352

15. The Todor quotation is dated 3 December 2019, the Drain Surgeons UK Ltd is dated 14 May 2019, to expire on 14 June 2019 and the Stephen Hodge costings are dated 25 June 2019. No updated figures were available to us, and we will return to this in due course.
16. At the hearing Mr Draper told us that the Applicants had been trying to move on with the Works for some time but that they had been frustrated by Mr Hammond. There had been problems since 2015 and in that time, to now, there had been three managing agents, with CG returning to the role. He told us that the Property no longer had subsidence insurance cover but that this would be reinstated once the Works were completed.
17. He recounted the S20 procedures, and that Mr Hammond had put in objections, he said in August 2020 and that without funding the Applicants could not put the works in hand. He said it was Mr Hammonds wish to re-run the s20 process on the basis of a complete replacement of the drainage systems. Mediation had been suggested through the RICS, but this was apparently declined. A Memorandum of Understanding to deal with the management of all blocks was put in place, but Mr Hammond withdrew from this in February 2021.
18. Mr Thomas told us that there had been an earlier claim for subsidence to Block B and that a drain had been repaired and apparently there had been no further obvious problems. Thames Water had been approached but would not take responsibility. It was suggested that the problems with damp in Block B may have been due to the driveway, which had been replaced under Mr Hammond's tenure as a director of an RTM company, when it was said driveway works were undertaken without planning permission.
19. We asked Mr Draper if approaches had been made to the nominated contractors to update their quotes, they now being at least two years old, but we were told they had not been asked to do so. He told us that a total replacement was not the preferred route for the Applicants. We were told that in February this year planning was obtained for the alteration to the driveway.

20. In response Ms Hammond, on behalf of her father told us that he had made representations in August 2020 at page 383/4 of the bundle. She complained that the Applicants had not taken notice of his objections and dealt with them in accordance with the Service Charges (Consultation Requirements) (England) Regulations 2003. It is noted that he repeated his concerns in an email to the residents, including CG on 2 August 2020.

21. In support of Mr Hammond's contention that complete replacement was the way forward he produced an email from Interlock Paving dated 14 March 2019. This includes the following;

*“The best possible route to have maintenance free drainage would be to renew the full drainage system, including foul/sewer drainage and rainwater drainage. These works should be renewed in new 100mm plastic underground drainage. Along with new manholes and inspection chambers were (sic) necessary.”*

The estimate was in the region of £85 - £90,000. There was also criticism of the existing driveway, which as we understood it had been installed at the time of Mr Hammond's involvement in the running of the development. Shock was expressed at the installation and the possibility of damp. There were additional costs for the driveway which we noted.

22. As there appeared to be a challenge to the consultation process, we invited the Applicants to make a section 20ZA application upon agreeing to pay the fee of £100, which they have done. We did ask Mr Hammond to carefully consider his position, but he indicated through his daughter that we would wish to continue with the objection on the ground that his observation had not been properly deal with under the Regulations.

23. For the Applicants Mr Draper said that Mr Hammond had not suffered any prejudice. An AGM was held on 23 November 2020, which Mr Hammond attended and appears to have taken a full part and a further meeting on 16 January 2021 when Mr Hammond appeared to wish to be involved in the quotes from Todor and Drain Surgeons.

24. Mr Hammond said that he had not followed up as suggested in the January 2021 meeting, preferring, he said, the replacement rather than patch repair scenario. He confirmed that he had no building qualifications and had not obtained a report to support his contention as to replacement. He did however say that if fresh quotes were obtained for replacement of the drainage system, he would not object.

25. There are a couple of issues we should record. Firstly, the removal of the central garage block to the rear could not have been dealt with until Mr Hammond bought the land which was in 2020 and the removal occurred shortly thereafter.

26. Mr Draper told us that planning had not been granted for the driveway until February this year as they had not realised it was required, the previous works having been undertaken without planning. He also told us that no other leaseholder had complained about the proposed works. We were told that a move for the Appointment of Manager was under way. A section 22 Notice had been served but was on hold pending the outcome of these proceedings.
27. On the question of mediation, which was not pursued, Mr Hammond said he had not proceeded with this as he was not sure of the remit of same.

### **Tribunal Findings**

28. We will firstly deal with a couple of extraneous matters. The first is the request by the Applicants to in effect make a declaration as to the ownership of the boundary walls and the ability of KCL to charge leaseholders for repair works. Our position is this. As was made clear in the directions of Judge Wyatt on 18 June 2021 we do not have jurisdiction to make declarations. Even if we did, we had no compelling evidence before us upon which any finding could be made. An inspection was inconclusive as to the rear boundary wall. The right-hand boundary looking at the Property from the road would seem to line up with the neighbouring property, which we understand is in the ownership of Mr Hammond. The left-hand boundary may well lie within the development as it appears to abut a public footpath. The front boundary does not appear to be in dispute. If this is a matter to be reviewed, we would suggest that an application to the Land Registry could be made, or an application to Court or the Land Registration Tribunal but that is for the parties to seek advice upon.
29. The next matter is consultation and dispensation therefrom. The Notice of Estimates is dated 20 July 2020 and there was a response from Mr Hammond on or about 1 August 2020. This required that the observations were considered (see paragraph 3 of Part 1 of Schedule 4 of the Regulations) The award of the contract was by notice dated 16 July 2021, but we are not aware that Mr Hammond made any further observations in relation thereto. On that basis we do not consider any failure in the consultation process took place. Even if there was a failure, we have no doubt that Mr Hammond was fully able to involve himself, see above and has failed to produce any evidence of alternative costings or works, other than the somewhat self-serving the email from Interlock. Accordingly, if required so to do we would grant dispensation. However, this is of little moment and something of a pyrrhic victory for the Applicants.
30. As to the main thrust of the Application, a determination by us as to the amount payable for the costs of the Works, we do not feel able to support the Applicant. The tribunal, which of course included a chartered

Surveyor, have reviewed the survey and report of Brian Aldridge Associates in conjunction with the plans available to us, including those given on inspection. We have no doubt that there are extensive defects in the foul and surface water drainage system and that substantial works are required.

31. The works the Applicants wish to undertake are predicated on the Report, which is now some four years old and would seem to indicate that there had been deterioration from the report undertaken but two years before. The survey by the drain company Kenclean is couched in a number of uncertainties as access to the some of drains was impossible without further jet washing, which might expose more serious problems.
32. The matter does not stop there. We are being asked to support quotes which are, in the main, more than two years old. The Drain Surgeons quote says it only stands until 14 June 2019. In the intervening period Brexit has been finalised and the World has suffered a pandemic. We find it almost impossible to believe that the quotes would not have been affected. The Applicants did not seem to think it necessary to at least approach the contractors for an update. A substantial increase would likely result in the need to reconsult with the leaseholders.
33. Such is the uncertainty that we do not consider we can find that the costs are reasonable and would be payable. It would be inappropriate not to comment on Mr Hammond's role. There is no doubt that he has caused delays in the process. He might have some support for the view that the whole system should be replaced but has produced no evidence to counter the Report.

#### **Application under s.20C and refund of fees**

34. We do not propose to order a refund of the tribunal fees for the application and the hearing. We will however order that Mr Hammond should refund the Applicants the £100 application fee for the dispensation application, such refund to be made within 28 days. The reason for this is that we do not consider there was a failure in the consultation process, and we gave Mr Hammond ample time to consider his position, but he pressed on with the application in any event.
35. In the statement of case the Respondent applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. It is not anticipated that they would be great.



Andrew Dutton

**Name:** Judge Dutton

**Date:** 22 November 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).