



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

<b>Case Reference</b>	:	CHI/00MR/LDC/2022/0076/AW
<b>Property</b>	:	Windsor House, 1 Canal Walk, Portsmouth PO1 1RB
<b>Applicant</b>	:	MYA Property Limited
<b>Representative</b>	:	
<b>Respondent</b>	:	
<b>Representative</b>	:	
<b>Type of Application</b>	:	To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
<b>Tribunal Member</b>	:	D Banfield FRICS Regional Surveyor
<b>Date of Decision</b>	:	12 October 2022

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**DECISION**

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The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the repairs listed in the appendix to this decision.

In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

The Applicant is to send a copy of this determination to each lessee liable to contribute to service charges.

## Background

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act. The application was received on 8 August 2022. Qualifying works have been started.
2. The Applicant explains that the *“Building comprises of 37 flats across 6 floors. The building is in a poor state of dilapidation. The building has been subject to a lot of media attention due to the poor conditions. Local authority and fire service are inspecting regularly & will be issuing notices.”*
3. Dispensation is sought due to the *“urgency of works required.”* In order to highlight the issues, the Applicant attaches a summary of major findings that was provided by Portsmouth City Council following their inspection, fee agreement and conditions of engagement from Eddisons (a chartered building surveyor) dated July 2022 and evidence copied from both BBC and Portsmouth News websites.
4. Attached to a letter from the Applicant received on 22 August 2022 was a letter from Harrison Clarke dated 18 August 2022 which sets out what was described as a high level summary of the emergency works to be carried out. (See the appendix attached).
5. The Tribunal made Directions on 11 August 2022 indicating that it considered that the application was suitable to be determined on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected.
6. The Tribunal required the Applicant to send its Directions to the parties together with a form for the Leaseholders to indicate to the Tribunal whether they agreed with or opposed the application and whether they requested an oral hearing. Those Leaseholders who agreed with the application or failed to return the form would be removed as Respondents.
7. The Applicant confirmed that the documents had been served and that no objections had been received. In accordance with the above the lessees have been removed as Respondents.
8. No requests for an oral hearing were made and the matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal’s Procedural Rules.
9. Before making this determination, the papers received were examined to determine whether the issues remained capable of determination without an oral hearing and it was decided that they were, given that the application remained unchallenged.

## The Law

10. The relevant section of the Act reads as follows:
  - i. S.20 ZA Consultation requirements:
  - ii. Where an application is made to a Leasehold Valuation Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long-term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
  
11. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson*. In summary the Supreme Court noted the following;
  - b. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
  - c. The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
  - d. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
  - e. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
  - f. The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).
  - g. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
  - h. The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable

standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.

- i. The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- j. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

### **Evidence**

12. The Applicant's case is set out in paragraphs 2 to 4 above and the attached appendix.

### **Determination**

13. Dispensation from the consultation requirements of S.20 of the Act may be given where the Tribunal is satisfied that it is reasonable to dispense with those requirements. Guidance on how such power may be exercised is provided by the leading case of Daejan v Benson referred to above.
14. Clearly this is a building requiring considerable amount of work to bring it to an acceptable standard the costs of which will be substantial. The only information as to the works for which dispensation is sought is contained in the attached appendix. The list contains 17 items of which some are not considered to be urgent. Whilst urgency is a relevant factor the issue I must consider is whether, by not being consulted as required by S.20, the Lessees have suffered prejudice.
15. As no objections have been received and no evidence of prejudice has been provided the Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the repairs listed in the appendix to this decision.
16. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
17. The Applicant is to send a copy of this determination to each lessee liable to contribute to service charges.

D Banfield FRICS  
12 October 2022

## **Appendix**

1. Assessment of and remedial works in relation to the fire safety of the cladding to the top two storeys of the building;
2. Assessment and remedial works in relation to the fire management and life safety installations, including fire stopping, provision of smoke vents and remedial work/upgrade to the fire alarm;
3. Making the building wind and weather tight, stopping leaks to the building's envelope;
4. Investigating all internal leaks and remedial works;
5. Investigation of all causes of water ingress through the external walls and roofs and necessary remedial work;
6. Overhaul or replacement of access system;
7. Making good all internal and external damage caused by deliberate acts, accidental damage, and lack of maintenance, including making good and redecoration upon completion;
8. Replacement of floor finishes, including installation of floor finishes as the exposed timber floor boarding has been identified as an arson risk;
9. Replacement of all security arrangements of the lower ground floor car park (all current access doors are severely damaged);
10. Bringing the car park into such a condition to make it useable, including stopping water ingress, removal of a very large quantity of rubbish (possibly three or more roll-on-roll-off skip loads) and addressing outstanding maintenance;
11. Provision of a bin store to reduce arson risk;
12. Repairs to the concrete structure within the car park and externally;
13. Removal of all waste from the grounds, which includes removal of a large quantity of sharps;
14. Tidying up of external grounds, including works necessary to make safe handrails and address trip hazards;
15. Removal of any redundant plant and equipment;
16. Investigate works required to reinstate the lift to this six-storey building, including presentation of costs for consideration (this is included as it will require opening up and some reinstatement/making good works);
17. Address any pest issues within the building.

## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.