



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

**Case reference** : **BIR/00CN/LDC/2021/0025**

**Properties** : **17 Apartments at 5 New Market St,  
Birmingham, B3 2NH**

**Applicant** : **Fifty 5 Management Group Ltd**

**Representative** : **HML Group**

**Respondents** : **17 leaseholders of the Apartments at 5  
New Market Street (as on the  
application form)**

**Representative** : **None**

**Type of application** : **Application under section 20ZA of the  
Landlord and Tenant Act 1985 for  
dispensation from consultation in  
respect of qualifying works**

**Tribunal member** : **Judge C Goodall  
Regional Surveyor V Ward FRICS**

**Date and place of  
hearing** : **Paper determination on 8 February  
2022**

**Date of decision** : **08/02/2022**

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**DECISION**

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## **Background**

1. The Applicant seeks dispensation from the obligation to carry out a statutory consultation on proposed works on a block of Apartments at 5 New Market Street, Birmingham (“the Property”).
2. The proposed works are repair works to the AOV smoke vents (“the Vent Works”), on the basis that they are not working, causing a severe risk to the safety of occupiers of the Property.
3. The application was dated 10 December 2021. Directions were issued by the Tribunal on 13 December 2021 which required the Applicant to provide an explanatory statement to each Respondent by 21 January 2022. The Applicants informed the Tribunal that they complied with this direction on 12 January 2022. The Respondents were required to indicate by 1 February 2022 whether they, or any of them objected to the application. None did.
4. This is therefore an unopposed application.
5. The Tribunal met on 8 February 2022 to consider the application. This is our decision, with our reasons.

## **Law**

6. The Landlord and Tenant Act 1985 (as amended) (“the Act”) imposes statutory controls over the amount of service charge that can be charged to long leaseholders. If a service charge is a “relevant cost” under section 18, then the costs incurred can only be taken into account in the service charge if they are reasonably incurred or works carried out are of a reasonable standard (section 19). A challenge to the reasonableness of a service charge can be brought under section 27A of the Act.
7. Section 20 imposes another control. It limits the leaseholder’s contribution towards a service charge to £250 for works, and to £100 for payments due under a long term service agreement unless “consultation requirements” have been either complied with or dispensed with. There are thus two options for a person seeking to collect a service charge for either works on the building or other premises costing more than £250 or payments for services under a long term agreement (i.e. for a term of more than 12 months) costing more than £100. The two options are: comply with “consultation requirements” or obtain dispensation from them. Either option is available.
8. To comply with consultation requirements a person collecting a service charge has to follow procedures set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (see section 20ZA(4)). The processes are set out in Part 2 of Schedule 4 of those regulations.

9. To obtain dispensation, an application has to be made to the Property Chamber of the First-tier Tribunal who may grant it if it is satisfied that it is reasonable to dispense with the consultation requirements (section 20ZA(1) of the Act).
10. The Tribunal's role in an application under section 20ZA is therefore not to decide whether it would be reasonable to carry out the works or enter into the long term agreement, but to decide whether it would be reasonable to dispense with the consultation requirements.
11. The Supreme Court case of *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 (hereafter *Daejan*) sets out the current authoritative jurisprudence on section 20ZA. This case is binding on the Tribunal. *Daejan* requires the Tribunal to focus on the extent to which the leaseholders would be prejudiced if the landlord did not consult under the consultation regulations. It is for the landlord to satisfy the Tribunal that it is reasonable to dispense with the consultation requirements; it is for the leaseholders to establish that there is some relevant prejudice which they would or might suffer, and for the landlord then to rebut that case.
12. The Tribunal may impose conditions on the grant of dispensation. Commonly, a Tribunal might require that the landlord should pay the leaseholders costs of seeking dispensation.
13. The general approach to be adopted by the Tribunal, following *Daejan*, has been summarised in paragraph 17 of the judgement of His Honour Judge Stuart Bridge in *Aster Communities v Chapman* [2020] UKUT 0177 (LC) as follows:

“The exercise of the jurisdiction to dispense with the consultation requirements stands or falls on the issue of prejudice. If the tenants fail to establish prejudice, the tribunal must grant dispensation, and in such circumstances dispensation may well be unconditional, although the tribunal may impose a condition that the landlord pay any costs reasonably incurred by the tenants in resisting the application. If the tenants succeed in proving prejudice, the tribunal may refuse dispensation, even on robust conditions, although it is more likely that conditional dispensation will be granted, the conditions being set to compensate the tenants for the prejudice they have suffered.”

## **Facts**

14. From the papers, the following facts can be established:
  - a. On 2 December 2021, engineers from a firm called Fire Compliance Services identified that 6 actuators for the automatic opening vents

(AOV) at the Property had failed as the chains no longer extend and reset correctly;

- b. In the Applicant's view, this failure created a substantial risk to the health and safety of occupiers at the Property;
- c. On 9 December 2021, a Notice of Intention to Carry Out Works in respect of lift replacement and the Vent Works was served on the Respondents;
- d. On 10 December 2021, the application for dispensation was issued to the Tribunal. It identified that Fire Compliance Services had costed the Vent Works at £3,240.00 including VAT;
- e. The leases of the Apartments are tri-partite leases (i.e. they are made between the freeholder, a management company, and the lessee). The management company is the Applicant in these proceedings;
- f. The leases contain an obligation upon each lessee to pay a percentage of the "Maintenance Expenses", being moneys actually expended or reserved for periodical expenditure by the Management Company in carrying out its obligations under Schedule 5 of the leases. The contributions range from 3.86% to 8.12%. The percentage that would take a lessee's contribution above £250.00, if the Vent Works cost the estimated sum of £3,240.00, is 7.71%. Only Apartments 8 and 12 have a contribution percentage above that level;
- g. Paragraph 2 of Schedule 5 requires the Applicant to repair and keep the Property in good and substantial repair and condition.

### **Discussion and determination**

- 15. The question we are asked to determine is limited. It is whether to grant dispensation from consultation only. We are not determining that it would be reasonable to incur expenditure on the Vent Works; if any Respondent wishes to challenge that expenditure, an application under section 27A of the Act could be made. Nor are we being asked to grant dispensation from the obligation to consult in respect of the proposed replacement of the lift, which we note is work the Applicant's propose to carry out, and in respect of which we presume they will continue with the statutory consultation process.
- 16. In relation to the Vent Works, we agree with the Applicant's concern that non-working smoke vents pose a risk to the safety of the occupiers of the Property, and it is appropriate to carry out repairs as soon as possible.
- 17. We note that the cost of the Vent Works would not trigger the need for consultation for all lessees except Apartments 8 and 12, if the actual cost matches the estimate.

18. We do not consider that granting the application results in any prejudice to the Respondents, and none have claimed it would.
19. In all the circumstances, we consider it is appropriate to grant the unopposed application for dispensation in relation to the Vent Works, as requested, and we so determine.

### **Appeal**

20. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall  
Chair  
First-tier Tribunal (Property Chamber)