



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

**Case reference** : **LON/00AH/LDC/2023/0154**

**Property** : **105 Dagnall Park (Osbourne House),  
London, SE25 6NS**

**Applicant** : **Osbourne House (Dagnall Park) RTM  
Company Limited**

**Representative** : **Acorn Estate Management  
(Molly McKenna)**

**Respondent** : **The leaseholders of Flats 1-7 and A-B,  
105 Dagnall Park**

**Type of Application** : **Application for the dispensation of  
consultation requirements pursuant to  
S.20ZA of the Landlord and Tenant Act  
1985**

**Tribunal Members** : **Judge Hugh Lumby  
Mr S Mason BSc FRICS**

**Venue** : **Paper determination**

**Date of Decision** : **19<sup>th</sup> October 2023**

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**DECISION**

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## **Decision of the Tribunal**

The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (Section 20ZA of the same Act).

## **The background to the application**

1. The property is a converted residential block containing seven above ground and two basement flats.
2. There has been damp and water ingress into Flat 6, which is one of the upper floor flats. The penetration appears to come from the roof which has been inspected and an initial survey provided. That shows evidence of dry rot, gaps in the roof, damp around the chimney breast and loose roof tiles. Photographs showing this have been provided.
3. The Tribunal did not inspect the property as it considered the documentation and information before it in the set of documents prepared by the Applicant enabled the Tribunal to proceed with this determination.
4. This has been a paper hearing which has been consented to by the parties. The documents that were referred to are in a bundle containing 81 pages and including the Applicant's application, a buyer's survey in relation to Flat 6, a surveyor's report identifying works that are required immediately, a quotation for those works and a specimen lease for the Property. The Tribunal has also viewed the Tribunal's Directions dated 29 June 2023, details of the leaseholders and evidence of compliance with directions. The contents of all these have been noted.
5. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act, (see the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987), Schedule 4).
6. The request for dispensation concerns urgent works to remove foliage and install lead flashing to three sides of the chimney stack as well as slate repairs/inspections. Further works may be required in due course but are not covered by this application.
7. The application is said to be urgent, as the works should be carried out to avoid further damage to Flat 6.
8. The works in question are referred to in an email from Tom Cresswell of APC Surveyors Limited dated 15 May 2023, stating:

“As discussed on the phone, following my inspection today, please see attached photos showing where works are required immediately to stop the leak to Flat 6’s living room. This can’t wait until the rest of the external works are specified as it is an active leak.

The chimney requires renewal of cement fillets around the base which are cracked – ideally replaced in lead or zinc.

The chimney stack requires removal of foliage on the top, and replacement of cement flaunching.”

The email has photographs attached showing the chimney stack, the roof void above Flat 6 and damage caused to the flat.

9. A quotation has been provided for carrying out these works, comprising £1,350 plus VAT for scaffolding and £1,180 plus VAT for the actual works. The scaffolding is required to access the chimney stack.
10. The managing agents intend to invoice the leaseholders for the cost of the works, presumably relying on the right in clause 2 of the specimen lease provided to make demands at any time during the term for payment of a proportion of amounts expended by the landlord or reasonably required on account of anticipated expenditure.
11. Section 20ZA relates to consultation requirements and provides as follows:

*“(1) 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.*

*(2) In section 20 and this section—*

*“qualifying works” means works on a building or any other premises, and “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.*

*....*

*(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.*

*(5) Regulations under subsection (4) may in particular include provision requiring the landlord—*

*(a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,*

*(b) to obtain estimates for proposed works or agreements,*

*(c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,*

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

12. Whilst no consultation has been carried out, the leaseholders have been made aware of the application to seek dispensation. No objections have been provided to the Tribunal.
13. By Directions of the Tribunal dated 29 June 2023 it was decided that the application be determined without a hearing, by way of a paper case. No objections to proceeding in this way were received.

### **The issues**

14. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether or not service charges will be reasonable or payable.

### **Findings**

15. Having read the evidence and submissions from the Applicant and having considered all of the documents and grounds for making the application provided by the Applicant, the Tribunal determines the dispensation issues as follows.
16. Section 20 of the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.
17. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by an application such as this one before the Tribunal. Essentially the Tribunal must be satisfied that it is reasonable to do so.
18. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14, by a majority decision (3-2), the Supreme Court considered the dispensation provisions and set out guidelines as to how they should be applied.
19. The Supreme Court came to the following conclusions:
  - a. The correct legal test on an application to the Tribunal for dispensation is: <sup>[11]</sup><sub>[SEP]</sub> "Would the flat owners suffer any relevant

prejudice, and if so, what relevant prejudice, as a result of the landlord's failure to comply with the requirements?"

- b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.
  - c. In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord's failure to comply.
  - d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.
  - e. The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
  - f. The onus is on the leaseholders to establish:
    - i. what steps they would have taken had the breach not happened and
    - ii. in what way their rights under (b) above have been prejudiced as a consequence.
20. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.
21. The Tribunal is of the view that, taking into account that there has been no comments or objections from the leaseholders, it could not find prejudice to any of the leaseholders of the property by the granting of dispensation relating to the urgent works to address the leaks through the roof into Flat 6, as set out in the application.
22. The Tribunal was mindful of the fact that the works proposed to be undertaken by the Applicant are supported by a surveyor's report.
23. The Applicant believes that the works are urgent to prevent further damage to Flat 6. On the evidence before it, the Tribunal agrees with this conclusion and believes that it is reasonable to allow dispensation in relation to the subject matter of the application.
24. The Applicant shall be responsible for formally serving a copy of the Tribunal's decision on the leaseholders. Furthermore, the Applicant shall place a copy of the Tribunal's decision on dispensation together with an explanation of the leaseholders' appeal rights on its website (if any) within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on its home page. It should also be posted in a prominent position in the communal areas. In this way,

leaseholders who have not returned the reply form may view the Tribunal's eventual decision on dispensation and their appeal rights.

**Name:** Tribunal Judge Lumby      **Date:** 19 October 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).