



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

<b>Case Reference</b>	: CHI/24UF/LDC/2023/0131
<b>Property</b>	: Block 25-33 Crown Mews, 15 Clarence Road, Gosport, Hampshire, PO12 1DH
<b>Applicant</b>	: Crown Mews (Gosport) Management Company Limited
<b>Representative</b>	: LKJB Residential Property Management Ltd
<b>Respondent</b>	: The Leaseholders
<b>Representative</b>	: None
<b>Type of Application</b>	: To dispense with the requirement to consult lessees about major works S.20ZA Landlord and Tenant Act 1985
<b>Tribunal Member</b>	: D Banfield FRICS
<b>Date of Decision</b>	: 7 December 2023

**DECISION**

- 1. The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of repairs to the south side of the south west facing gable**
2. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
3. The Applicant must send copies of this determination to the lessees.

1. An application seeking dispensation pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“1985 Act”) from the consultation requirements imposed on the landlord by section 20 of the 1985 Act was received by the Tribunal on 19 October 2023.

2. The Property is described as a:

“7 STOREY PURPOSE BUILD RESIDENTIAL APARTMENT BUILDING AT CROWN MEWS.

PART OF THE THE DEVELOPMENT FOR CROWN MEWS COMPRISING OF 7 BLOCKS OF APPROX 6 APARTMENTS IN EACH.ALONG PO12 1DH

WITH ANOTHER 2 LISTED BUILDINGS WITHIN NORTH STREET PO12 1DJ ONE WITH 6 FLATS (INN) AND THE BALLROOM HAS 4 FLATS/PROPERTIES.

BLOCK 25-33 HAS 7 STOREYS AND HAS A LIFT - IT IS THE ROOF OF THIS PROPERTY THAT HAS SUFFERED STORM DAMAGE REQUIRING REPAIR.”

3. The Applicant explains that the works are:

“INCREDIBLY URGENT - GOSPORT BOROUGH COUNCIL AND BUILDING CONTROL HAVE GIVEN US A NOTICE OF DANGEROUS STRUCTURE DUE TO ROOF TILES UNSTABKE (sic) AND MISSING FROM THE 7 STOREY ROOF.

LOCAL PUBLIC CAR PARK SHUT AND BIN STORES CANNOT BE ATTENDED TO.

WE HAVE BEEN GIVEN LESS THAT 30 DAYS TO COMPLETE THE WORKS - THEY THREATEN US WITH VARIOUS SECTIONS UNDER THE NOTICE/ORDER.”

4. The proposed works are described as:

“erect scaffolding strip off all the tiles to the south side of the south west facing gable where a large no. of tiles have been blown off to block E (25-33) replace and reinstall new matching eternit slats (sic) including replacement battens to match profile of the existing for an areas of approx 30m2 include verge clips, pointing and fixtures etc.”

The Applicant further states:

“The leaseholders have been notified that the roof is damaged and that we have received a notice from Gosport Borough Council/Building control.

The leaseholders habe (sic) been informed that I have contacted you with a very view to get this matter resolved in s (sic) timely matter.

THE NEXT PROCESS IS TO BOOK THE WORKS BY PLACING A PERMIT FOR THE WORK – WE NEED TO DO THIS TO SECURE A DATE FOR THE WORKS, WE WILL THEN ADVISE LEASEHOLDERS THAT WE CURRENTLY UNDERSTAND THAT THE REPAIRS WILL NOT BE COVERED UNDER THE INSURANCE POLICY THEREFORE WE WILL BE SEEKING APPROVAL VIA THIS PROCESS AND USE CURRENT RESERVE FUND

NO supplementary service charge is required.

WE NEED WORK DONE URGENTLY - DANGEROUS BUILDING - TILES MAY FALL FROM ROOF AND HURT SOMEONE.

WE BELIEVE THEREFORE THIS IS (sic) A HEALTH AND SAFETY MATTER

WE DO NOT BELIEVE THAT THERE WILL BE ANY OBJECTIONS IN CARRYING OUT THESE WORKS

WE WILL KEEP ALL LEASEHOLDERS INFORMED

WE LOOK TO REPAIR TO PREVENT ANY FURTHER DAMAGE TO THE BUILDING AND/OR TO THE APARTMENTS DIRECTLY UNDER THE ROOF STRUCTURE.”

5. On 27 October 2023 the Tribunal issued Directions which included, at paragraph 12, a requirement that the Applicant confirm to the Tribunal by 1 November 2023 that various documentation had been served on each Respondent.
6. The Directions stated that failure to inform the Tribunal by such date that the requirement had been met would result in the application being struck out without further notice.
7. The Applicant failed to inform the Tribunal by 1 November 2023 that the Directions had been complied with.
8. In accordance with the warning within the Directions the application was struck out under Rule 9(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on 13 November 2023.
9. On 14 November 2023 the Applicant submitted a case management application to the Tribunal applying for reinstatement of the application under Rule 9(5) of the Tribunal Procedure Rules.
10. The Applicant stated that the failure to comply with the Directions arose by way of a clerical error on their part. As at the date of the case management application the documentation had not been provided to the Respondents.
11. The Tribunal was disappointed that despite the Applicant repeating the assertion that the application is urgent, the Applicant, as at the date of

the case management application for reinstatement, had still failed to serve any documentation on the Respondents. Nevertheless the Tribunal was prepared to afford the Applicant a further opportunity to comply with the Directions and reinstated the application and issued further directions.

12. On 23 November 2023 the Applicant confirmed that the Tribunal's directions had been sent to the Respondents.
13. No objections were received from the respondents and there were no requests for an oral hearing. The matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal's Procedural Rules.
14. 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**

15. The relevant section of the Act reads as follows:

S.20 ZA Consultation requirements:

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.

16. 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.
  - a. 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.
  - b. 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.
  - c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
  - d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
  - e. 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).
  - f. 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.

- g. 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.
- h. 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.
- i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

### **Evidence**

- 17. The Applicant’s case is set out in paragraph 2 to 4 above.

### **Determination**

- 18. 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.
- 19. No objections have been received from the lessees and in these circumstances I am prepared to grant conditional dispensation.
- 20. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of repairs to the south side of the south west facing gable**
- 21. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
- 22. The Applicant must send copies of this determination to the lessees.

D Banfield FRICS  
7 December 2023

### 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.