



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

<b>Case Reference</b>	<b>:</b> <b>CHI/29UC/LDC/2023/0142/AW</b> <b>CHI/29UC/LDC/2023/0144/AW</b> <b>CHI/29UC/LDC/2023/0145/AW</b> <b>CHI/29UC/LDC/2023/0146/AW</b>
<b>Property</b>	<b>:</b> <b>Staner Court, Ramsgate, Kent CT12 6HR</b> <b>Harbour Towers, Ramsgate, Kent, CT11 9EY</b> <b>Kennedy House, Ramsgate, Kent, CT11 8PF</b> <b>Trove Court, Ramsgate, Kent, CT11 8PQ oJB</b>
<b>Applicant</b>	<b>:</b> <b>Thanet District Council</b>
<b>Representative</b>	<b>:</b> <b>Mr P Tapsell</b> <b>Beckett Chambers</b>
<b>Respondents</b>	<b>:</b> <b>The Leaseholders</b>
<b>Representative</b>	<b>:</b> <b>None</b>
<b>Type of Application</b>	<b>:</b> <b>To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985</b>
<b>Tribunal Members</b>	<b>:</b> <b>Mr I R Perry FRICS</b> <b>Mr P E Smith FRICS</b>
<b>Date of Hearing</b>	<b>:</b> <b>13<sup>th</sup> February 2024</b>
<b>Date of Decision</b>	<b>:</b> <b>13<sup>th</sup> February 2024</b>

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**DECISION**

**Re-issued on 24<sup>th</sup> February 2024 with two typographical corrections  
under rule 50 shown in strike through and **corrections in red** at pages 4  
and 5.**

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## **Summary of Decision**

1. The Tribunal grants dispensation from the consultation requirements of Section 20 Landlord and Tenant Act 1985 in respect of “Tower Block Refurbishment and Retrofit Programme” dated February 2023.

## **Background**

2. The Applicant, Thanet District Council (“TDC”) 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 Landlord and Tenant Act 1985 (“the Act”).
3. Staner Court, Harbour Towers, Kennedy House and Trove Court are purpose-built blocks of some 316 flats of which 284 are owned by TDC as social landlord. TDC is the Freeholder responsible for the management and maintenance of the blocks.
4. In Staner Court there are 89 flats of which 6 flats are owned by private leaseholders. In Harbour Towers there are 48 flats of which 17 are owned by leaseholders. In Kennedy House there are 90 flats of which 3 are owned by leaseholders and in Trove Court there are 89 flats of which 6 are owned by leaseholders.
5. The Applicant explains that there are major works to be carried out to the blocks to increase energy efficiency, replace external wall cladding for fire safety and carry out cyclical work, including replacement of doors and windows, repair and decorate balconies, replace roof coverings, repair and decorate common areas.
6. The Applicant submitted a report entitled “Tower Block Refurbishment and Retrofit Programme” dated February 2023. This report related to 5 tower blocks in total which are part of the overall programme, but Invicta House has no leaseholders, so dispensation is not requested. The programme outlines the works and an estimated total cost, for all 5 blocks, of £19,868,379.47. The report explains that a substantial proportion of the works will be funded by grants from the Social Housing Decarbonisation Fund (“SHDF”) and the Building Safety Fund (“BSF”).
7. TDC has made a successful bid to the SHDF for £4.25 million, which must be matched by TDC, for specific retrofit measures that improve energy efficiency. This funding is time sensitive and must be drawn down by end of March 2025 with works complete by the end of June 2025.
8. TDC has made a further successful bid from the BSF which provides up to 100% grant for the replacement of External Wall Insulation (“EWI”) which is essential to improve fire safety but will also improve energy efficiency.
9. The cost of scaffolding alone for the 5 blocks is more than £3 million. To save long term costs TDC propose to carry out cyclical work now, in order to minimise further costs in the long term by taking advantage of the access provided by the scaffolding.

10. Less than 10% of the total number of flats over the 4 blocks are owned by leaseholders so the large percentage of the cost of the works will be borne by the Applicant. TDC has an interest in securing the best price, balanced with speed and quality of delivery to ensure that the funding timetable is met.
11. On receipt of the original Application the Tribunal issued directions on 13<sup>th</sup> November 2023. Following a later case management application from TDC further directions were issued by the Tribunal on 1<sup>st</sup> December 2023 which, at the Applicants request, extended the time for leaseholders to respond.
12. A hearing by the Tribunal video CVP system was arranged for and held at 10.00 a.m. on Tuesday 13<sup>th</sup> February 2024.

### **The Law**

The relevant section of the Act reads as follows:

S.20 ZA Consultation requirements: Where an application is made to the Leasehold Valuation Tribunal for a determination to dispense with all or any of the consultation requirements in relation to qualifying works or qualifying long-term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

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**

The Applicants had provided the Tribunal with a separate bundle for each of the 4 blocks, although the bulk of the content and argument was common to all 4 blocks. The Tribunal was taken through the submissions by Mr P Tapsell of Beckett Chambers representing TDC.

The Government has set a target for all social housing providers to attain a minimum Energy Performance Rating ("EPR") of 'C' by 2035 at the latest, and 2023 for 'fuel poor' households.

£4.25 million of 50% matched grant funding is allocated from the ~~SHCF~~ SHDF to the programme which must be drawn down by the end of March 2025 and works finished by June 2025. TDC has also attracted 100% funding from the BSF for the replacement of external wall insulation. This work to be carried out at the same time as the insulation, as both works require scaffolding of the towers.

If a s20 consultation process is to be carried out, then the procurement and project design processes would have to be repeated and would take many months. These delays would likely make it impossible to fulfil the grant criteria on timing.

TDC has decided that with contractors on site and expensive scaffolding in place it would be sensible to carry out some cyclical repair or refurbishment. In particular, replacing windows which will become a necessity but by including these works now, within the SHCF funding, the costs are reduced to the benefit of freeholder and leaseholders.

The Applicant has written to all leaseholders providing notice of their intention to carry out Qualifying Works. The Applicants state their intention to hold a consultation event to which all leaseholders will be invited.

The Applicant explains why the works need to be carried out as a matter of urgency in order to draw down the grant funds within the deadline. The Applicant, who is responsible for just over 90% of the cost of the works, say that they would not be able to afford the works without the grant aid.

The Applicant states that all occupiers of the building will benefit from the proposed works as insulation levels are improved and energy use reduced, and that leaseholders will not be disadvantaged financially by the Tribunal granting dispensation, rather the reverse is the case as without the matched funding that is subject to a timetable the cost of the works would be higher.

It is proposed that the works will be carried out by contractors who already have a working relationship with TDC through an existing procurement framework. The

framework has an existing fee of 3% but TDC will negotiate this fee and expect to reduce it to 1% due to the overall value of the contract.

The proposed project management consultancy Potter Raper Ltd have been in contract with TDC for the past 24 months providing options for structural work, fire safety work and heating on the Council's tower blocks.

The Applicant states that it would take 6-9 ~~months~~ months to go through an open tender procurement exercise, so they propose Mears as the main contractor who already carry out maintenance on the blocks, have a supply chain in place to implement the programme, have knowledge of the blocks, have a proven resident engagement plan and are committed to social value.

Mr J Kitenge, the Applicant's solicitor told the Tribunal that Mears had last gone through a tender process for TDC in 2010, that the long-term contract is due for review in 2025 and that they have exclusive rights under the existing long-term contract.

### **Leaseholders' Responses**

The Tribunal was told that all leaseholders in the 4 blocks had been sent the original Directions from the Tribunal office with response forms. The financial contribution required from leaseholders would vary across the 4 blocks but was in the region of £10,000 per flat.

2 responses had been received for Harbour Towers. Both leaseholders agreed with the application and were content for the Tribunal to decide the matter based on written representations.

3 responses had been received from leaseholders at Kennedy House. 2 of these were in favour of the application and one was against but was content for the Tribunal to decide the matter on the papers.

Mrs Evi Taku, a resident of Kennedy house, attended the online hearing. She asked how financial contributions would be requested by TDC. Mr Tapsell replied that this would be done in the normal way through the Service Charge. It was explained to Mrs Taku that this Tribunal was not considering whether the costs of the works were reasonable nor as to who was responsible for the costs and that she could, if she wanted, raise this issue later by a separate application to the Tribunal. She expressed her concerns about affordability but, having heard the evidence, was happy for the works to proceed.

1 response had been received from a leaseholder at Trove Court who agreed with the Application and no responses were received from leaseholders at Staner House.

### **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*. The primary consideration is whether the interests of the leaseholder have been prejudiced.

14. In this case the Applicant has clearly made the case that the proposed works are to the benefit of all occupiers. Fire safety will be improved, insulation and energy efficiency will be improved, and the cost of cyclical works will be reduced by completing works with a contractor already on site, and by making maximum use of scaffolding which will cost more than £3 million pounds across the 5 blocks in the programme.
15. TDC is the freeholder of all the blocks and direct Landlord of over 90% of the flats in the 4 blocks. TDC states that if dispensation is not given then it would not be able to comply with the time limits on the substantial grant funds and that without those funds TDC would be unable to afford the proposed works.
16. In this case the Tribunal clearly understands that if dispensation is **not** given the programme is most likely to fall and the direct interests of the leaseholders will be prejudiced.
17. The Tribunal was also mindful that if the programme falls now the eventual costs of the works without grant aid will eventually fall on all of the occupants, including leaseholders, of the blocks through taxation.
18. Furthermore, the proposed works should help control all occupier's energy bills, including leaseholders or, where they have sublet, their tenants. The leaseholders will surely benefit from peace of mind as soon as the fire safety works can be completed.
19. As far as it was able the Tribunal had questioned the Applicant about the procurement process which results in the appointment of project managers and contractors for the scheme.
20. The Tribunal also considered that, as TDC are responsible for costs on more than 90% of the flats within the 4 blocks, they will clearly benefit by keeping costs to a minimum and have already stated that they expect to be able to reduce the framework fee. Whilst this is not an overriding reason to grant dispensation it does carry some weight in this case.
21. Following Mrs Taku's representation in person the Tribunal noted that all of the leaseholders who had responded to the Tribunal had confirmed that they were in favour of the Application.

### **Decision**

22. **Having considered the written submissions and the evidence given on the day the Tribunal determined that it would grant dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the Tower block refurbishment and retrofit programme dated February 2023.**
23. **Within 14 days of the date of this decision the Applicant shall serve a copy of this decision on all leaseholders within the 4 tower blocks.**
24. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or by whom they are payable.

### **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 to the First-tier Tribunal at the Regional office which has been dealing with the case. Where possible you should send your application for permission to appeal by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) as this will enable the First-tier Tribunal Regional office to deal with it more efficiently.
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.