



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

**Case reference** : **LON/00BK/LDC/2024/0227**

**HMCTS code** : **P: PAPERREMOTE**

**Property** : **Embassy Court, 45 Wellington Road,  
London, NW8 9SX**

**Applicant** : **Wellington Road properties Limited**

**Representative** : **Fiona Docherty of James Andrew  
Residential**

**Respondent** : **The leaseholders of Embassy Court, 45  
Wellington Road, London, NW8 9SX**

**Type of application** : **Application to dispense with statutory  
consultation requirements under  
section 20ZA of the Landlord and  
Tenant Act 1985**

**Tribunal members** : **Judge Tueje  
Mr M Cairns MCIEH**

**Venue** : **10 Alfred Place, London, WC1E 7LR**

**Date of decision** : **28<sup>th</sup> October 2024**

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**DECISION**

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**Description of hearing**

This has been a remote hearing on the papers which has been consented to by the Applicant and not objected to by any Respondent. The form of the remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested a hearing and all issues could be determined on paper.

## **Decision of the Tribunal**

*In this determination, statutory references relate to the Landlord and Tenant Act 1985 unless otherwise stated.*

- (1) The Tribunal grants unconditional dispensation pursuant to section 20ZA in respect of works to eliminate the health and safety risk arising from defective two balconies at the property known as Embassy Court, 45 Wellington Road, London, NW8 9SX (the “Property”).
- (2) These works cost £11,460.00 including VAT, which cost also includes hiring scaffolding.
- (3) This decision does not affect the Tribunal’s jurisdiction upon any future application to make a determination under section 27A in respect of liability to pay, for a reason other than non-consultation in respect of the subject works, and the reasonableness and/or cost of the subject works.

## **The Application**

1. This Application under section 20ZA, is dated 9<sup>th</sup> August 2024, and seeks dispensation from the statutory consultation requirements in respect of the above-mentioned works required at the Property.

## **Background**

2. The Applicant is the landlord of the Property, which is a complex comprising self-contained residential flats. The Respondents are the leasehold owners of the flats within the Property.
3. The Property is managed by James Andrew Residential (“JAR”), who are the Applicant’s representative.
4. The Application relates to two of the balconies which form part of the property; they are stone balconies and two of them have cracks, resulting in a risk that debris may fall on anyone beneath them.
5. The Tribunal was provided with a 72-page electronic bundle including:
  - 5.1 The application form requesting dispensation;
  - 5.2 A schedule of the Respondent leaseholders;
  - 5.3 A sample lease;
  - 5.4 Copy of a letter sent by JAR to all leaseholders dated 13<sup>th</sup> May 2024;
  - 5.5 The Tribunal’s directions order dated 3<sup>rd</sup> September 2024;

- 5.6 A statement dated 11<sup>th</sup> October 2024 from Ms Docherty, Managing Director at JAR;
- 5.7 Photographs of the relevant balconies;
- 5.8 Estimates from:
- (i) Vesta Construction Group Ltd dated 13<sup>th</sup> May 2024 for £9,550 excluding VAT.
  - (ii) Pavehall PLC dated 6<sup>th</sup> March 2024 for £9,875.00 excluding VAT; and
  - (iii) ATD Scaffolding (for comparison purposes only) dated 12<sup>th</sup> March 2024 for £6,445 excluding VAT
- 5.9 Confirmation from the Applicant's representatives that the Application and the Tribunal's directions order have been sent to leaseholders, with a copy of the notification e-mail sent to leaseholders, all dated 12<sup>th</sup> September 2024.
6. On 13<sup>th</sup> May 2024 Ms Nicyte, a former employee of JAR, wrote to all leaseholders notifying them that there were cracks to two balconies, which for health and safety reasons required prompt repairs. The letter continued that quotations for the repairs had been obtained, the lowest was £11,4600.00, and JAR intended to apply to the Tribunal for dispensation in respect of the cost of the repairs.
7. The grounds for the Application, as stated in the form, was as follows:
- The apartments have balconies which are made of stone. The bottom section of two of the balconies have cracked in the corners and it is highly likely that the stone will fall off as it is currently only held on by glue inside of the stone.*
8. In accordance with the Tribunal's directions order dated 3<sup>rd</sup> September 2024, the Applicant e-mailed the Respondents on 12<sup>th</sup> August 2024 attaching a copy of the Application and the directions, a copy of both documents were also displayed at Embassy Court.
9. In her statement dated 11<sup>th</sup> October 202, Ms Docherty states none of the leaseholders have informed JAR of any objections to the Application.

### **The Legal Framework**

10. So far as is relevant, section 20 states:
- (1) *Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsections (6) or (7) (or both) unless the consultation have been either-*
- (a) *Complied with in relation to the works or agreement, or*

- (b) *Except in the case of works to which section 20D applies, dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.*
- (2) *In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by payment of service charges) to relevant costs incurred on carrying out the works under the agreement.*
- (3) *This section applies to qualifying works if relevant costs incurred or on carrying out the works exceed an appropriate amount.*
11. Section 20ZA(1) continues:

*Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.*

### **The Determination**

12. In making its decision, the Tribunal took into account the information provided by the Applicant in the bundle, as set out above.
13. In ***Daejan Investments Limited v Benson and others [2013] UKSC 14*** the Supreme Court provided the following guidance when dealing with section 20ZA applications for dispensation of the statutory consultation requirements:
- 13.1 The purpose of sections 19 to 20ZA is to ensure leaseholders are not required to pay any more than is necessary for services provided, and that they are not required to pay for unnecessary or unsatisfactory services.
- 13.2 The Tribunal is to focus on the extent to which leaseholders have been prejudiced by a landlord’s failure to comply with the requirements under section 20.
- 13.3 Ordinarily, where the failure to comply with section 20 had not affected the extent, quality and costs of the works carried out, dispensation is more likely to be granted.
- 13.4 The Tribunal’s main focus on such applications is what prejudice, if any, have leaseholders suffered.
- 13.5 The leaseholders bear a factual burden of identifying some relevant prejudice that they would or might suffer.
- 13.6 Where leaseholders make a credible case regarding prejudice, the landlord bears the legal burden to rebut this.

13.7 If appropriate, the Tribunal may grant conditional dispensation.

### **The Tribunal's Approach to the Evidence**

14. The Tribunal reached its decision after considering the documents in the bundle, and taking into account its assessment of that evidence.
15. This determination does not refer to every matter raised, or every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised or documents not specifically mentioned were disregarded. If a point or document was relevant to a specific issue, it was considered by the Tribunal.

### **The Tribunal's Decision**

16. The Tribunal grants dispensation pursuant to section 20ZA in respect of the repairs, as quoted for by Vesta Construction Group, costing £11,460.00 including VAT.

### **The Tribunal's Reasons**

17. The Tribunal has had regard to the nature of the works and finds the works were necessary. The photographs support Ms Nicyte and Ms Docherty's view that the condition of the balconies posed a risk from falling debris. Therefore, the Tribunal considers these works were necessary and required prompt attention for health and safety health reasons, and this is our primary reason for granting dispensation.
18. Additionally, the Tribunal takes into account that leaseholders were notified about the Application, and by paragraph 2 of the directions order, leaseholders were afforded an opportunity to object to this application, yet they raised no objections. Therefore, the Tribunal proceeds on the basis that the leaseholders have no objections to the application, and that there has been no relevant prejudice to the leaseholders, because it's likely they would have objected to the application if they considered they would be prejudiced.
19. We have balanced the requirement to consult leaseholders against the need to carry out these repairs promptly. On balance, we have concluded that the need for these repairs to avoid the risks of falling debris justifies granting dispensation.
20. For the reasons stated at paragraphs 17 to 19 above, the Tribunal is satisfied that it is appropriate to grant dispensation from the consultation requirements bearing in mind the Supreme Court decision in ***Daejan Investments Limited v Benson and others [2013] UKSC 14***.

**Name:** Judge Tueje

**Date:** 28<sup>th</sup> October 2024

## **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).