



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

**Case Reference** : HAV/00HQ/LDC/2024/0612

**Property** : The Pinnacle Flats 1 – 55, 57 St Peter’s Road,  
Bournemouth. BH1 2LH

**Applicant** : The Pinnacles Management Company Limited

**Representative** : Minster Property Management

**Respondents** : The leaseholders of the 55 flats within the  
Property

**Type of Application** : To dispense with the requirement to consult  
lessees about major works section 20ZA of the  
Landlord and Tenant Act 1985

**Tribunal** : Judge C A Rai

**Date of Decision** : 10 December 2024

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**DECISION**

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**This is a formal order of the Tribunal which must be complied with by the parties.**

**Communications to the Tribunal MUST be made by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk). All communications must clearly state the Case Number and address of the premises.**

### **Summary of the Decision**

- 1. The Applicant is granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act in relation to the works outlined in the notice of intention to leaseholders dated 9 September 2024. The Tribunal has made no determination on whether the costs of the works are reasonable or payable.**

### **Background**

2. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 and from the consultation requirements imposed on the landlord by Section 20 of the same Act. The application was received on 11 October 2024.
3. The Property is described in the application as:

A multi occupancy building located in St Peter's Road Bournemouth built in approximately 2002. It is a detached purpose built block. The majority of the external walls of the building are constructed from a Sto EPS insulated render system over a masonry inner wall with areas of the window walling on the top floor and gabion walling to the car park. The building has a flat roof.

1 x main exit/entrance. 8 x Floors. 55 x Flats. Protected concrete stairs as the sole escape for residents above the ground floor. 1 x lift servicing all floors (not an evacuation lift). Lift opens into lobbied area on each floor. Car park on two levels accessed from the ground floor and the first floor with 60 minute protection. Smoke extraction system installed with vents in each flat lobby area. 2 door lobby protection to flats on all floors. Timber decked balconies.

Approx size 47m x 24m. The building operates a stay put policy with a single stair and two exits. Fire Safety Height - 20.4 meters. Height of topmost storey >18.

[Construction details written by the Fire Assessor]

4. The Applicant explains in the application that currently there are proposed rectification works being agreed with the original developer (Redrow), but the full scope of the works has not yet been agreed.
  - A Fire Risk Assessment (FRA) stated that an audible fire alarm system should be installed as a temporary measure. Currently there is no audible system although there is an extraction system to remove smoke from the lobbies.

- During discussions with Redrow, it advised that they were not seeking quotes for this as the rectification works would be carried out shortly.
- Redrow's rectification works were put on hold. We contacted them to remind them that if they didn't do the rectification works, then this fire alarm needed to be installed.
- Redrow then confirmed that they are not responsible for any fire alarm system.
- The Man Co have instructed Andy Miles of Ellis Belk to obtain estimates for a new audible fire alarm system for The Pinnacle.
- The Applicant received the revised Fire Risk Assessment document PAS9980 from Redrow (produced by their fire engineers MAF). Within this document, the risk level for the block was changed from 'medium' to high.'
- The Applicant sent a copy of this revised report to the fire risk assessor, and they have confirmed that this change to the risk level means that it has no choice but to advise that the development needs a 'Waking Watch' until the new fire alarm system has been installed.
- The Applicant expected that the new fire risk assessment would be sent to it during the following week. Thereafter it would then need to implement the recommendations and Waking Watch as soon as possible with an anticipated cost for this of around £15,000 per week. It stated it would require a minimum of six weeks.
- Fire alarm upgrade: It expected that the fire alarm test would be carried out on Wednesday 16th October 2024 (those flats chosen) have been contacted and notices have been put through doors. It is now critical to obtain the fire alarm quote back as quickly as possible. The Applicant stated "so I truly hope that residents (sic) give access to the contractors on Wednesday. Once this test has been carried out, we hope to have the fire alarm quote back within 7 days. The fire alarm will need detectors and sounders in each flat and Waking Watch will continue to charge and attend until these have all been installed. Acces (sic) into flats will be critical. The Man Co will be responsible for organising and paying for the fire alarm, certainly in the first instance".

And further AGM INFORMATION SHARED RECENTLY:

EWS1 – Following the suspension of the EWS1 certificate, Redrow – the parent company of the original developer – were contacted. After initial discussions they agreed to carry out an investigation into whether there are latent safety defects around the windows and behind the cladding. Redrow have confirmed that they will undertake the following works:

- External façade – provide a new fire barrier and water proofing detail along the compartment floor slab level, behind the aluminium spandrel panels.
  - Replacing timber decking on the balconies with non-combustible materials.
  - Replace and upgrading communal doors
  - Renewing the fire stopping around all flat front door frames and adjusting the gaps. Access will be required to your flat front doors to facilitate this.
  - Internal compartmentation and fire stopping to the communal areas.
  - The Management Company have appointed a local Chartered Building Engineer, Andy Miles of Ellis Belk, and he has provided a report which basically states that in his opinion, the windows need further investigation. Redrow had initially provided a report that stated that the windows themselves formed a cavity closer to prevent the spread of fire. Mr Miles’ report disagrees with this assessment and requests that Redrow undertake further investigations. The report, undertaken in April 2024 and passed to Redrow in May 2024 stated that the current installation of the windows does not comply with Approved Document Part B Volume 1, nor earlier versions at the time of construction. His recommendation is that that fire barriers should be installed around each window and door to ensure full fire resistance. To date, we have not had a reply from Redrow on this report. Redrow have stated that they have passed the report to their own advisors and are awaiting their instructions.
  - The Management Company have appointed Forsters LLP of 22 Baker Street, London as their appointed solicitor to provide advice to the Man Co and to assist Ellis Belk Associates Limited in their role as advisor to the management company.
5. The Applicant stated in the Application that the Notice of Intention under section 20 letter was issued on 9 September 2024.
  6. The Tribunal gave Directions on 21 October 2024 listing the steps to be taken by the parties in preparation for the determination of the dispute, if any.
  7. The Directions stated that Tribunal would determine the application on the papers received unless a party objected in writing to the Tribunal within 7 days of the date of receipt of the Directions. No party has objected to the application being determined on the papers.
  8. **The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This application is not about the proposed costs of the works, and whether they are recoverable from the leaseholders as service charges or the possible application or effect of the Building Safety Act 2022. The leaseholders have the right to make a separate application to the Tribunal under**

**section 27A of the Landlord and Tenant Act 1985 to determine the reasonableness of the costs, and the contribution payable through the service charges.**

**The Law**

9. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the related Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease, the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.

10. 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.

11. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of **Daejan Investment Limited v Benson et al [2013] UKSC 14.**

12. The leading judgment of Lord Neuberger explained that a Tribunal should focus on the question of whether the lessee will be or had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were a means to an end, not an end in themselves.

13. The factual burden of demonstrating prejudice falls on the **lessee**. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessees.

14. Where the extent, quality and cost of the works were in no way affected by the lessor’s failure to comply, Lord Neuberger said as follows:

I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be- i.e. as if the requirements had been complied with.

15. The main, indeed normally, the sole question, as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.
16. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.
17. If dispensation is granted, that may be on terms.
18. There have been subsequent Decisions of the higher Courts and Tribunals of assistance in the application of the Decision in **Daejan**, but none are relied upon or therefore require specific mention in this Decision.

### **Consideration**

19. The Directions attached a reply form for the Respondents to complete to confirm whether they agreed with the application or not and if opposed, to provide a statement setting out why they oppose.
20. The Tribunal has not received replies from any of the lessees.
21. Having considered the application and prior to undertaking this determination, I am satisfied that a determination on the papers remains appropriate, given that the application remains unchallenged.
22. The reason why dispensation from consultation requirements is to enable the Applicant to reduce the section 20 procedure to enable the Applicant to install the audible fire alarm system thus reducing the cost to the Lessees of putting in place, retaining and funding a “Waking Watch”.
23. There has been no objection to the dispensation of the consultation requirements from any of the Lessees.
24. None of the Lessees have therefore asserted that any prejudice has been caused to them. The Tribunal finds that nothing different would be done or achieved in the event of a full consultation with the Lessees, except for the potential delays and potential problems.
25. The Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process.
26. The Tribunal consequently finds that it is reasonable to dispense with all the formal consultation requirements in respect of the major works to the building described in this Decision.

27. This Decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying works to install the audible fire alarm system as outlined at paragraph 4. The Tribunal has made no determination on whether the costs are payable or reasonable. If a Lessee wishes to challenge the payability or reasonableness of those costs, then a separate application under section 27A of the Act would have to be made.
28. In reaching my decision I have taken account of the fact that no party has objected to the application. The Lessees have had opportunity to raise any objection, and they have not done so.

### **Judge C A Rai**

### **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 by email at [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk)
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.