



FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)

Case Reference : HAV/24UJ/LDC/2024/0618

Property : Holmwood,  
The Rise,  
Brockenhurst,  
Hampshire, SO42 7AF.

Applicant : Pegasus Homes  
(Managing Agent and Landlord)

Representative : Mr A Scott  
Pegasus Homes

Respondents : The Leaseholders of Holmwood

Representative : None

Type of Application : To dispense with the statutory consultation  
requirements for qualifying works under  
section 20ZA, Landlord and Tenant Act  
1985

Tribunal Members : Mr J G G Wilson MRICS FCI Arb  
Mrs J Coupe FRICS - Regional Surveyor

Date of Decision : 3 February 2025

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DECISION

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## The Decision

1. The Tribunal grants the application for dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from the statutory consultation requirements imposed on the landlord by section 20 of the 1985 Act in respect of the qualifying works required to replace four submersible pumps, that pump rainwater and foul water up to the road level where the main sewer is located, which have failed.
2. This decision does not affect the Tribunal's jurisdiction upon any future application from the leaseholders to make a determination under section 27A of the 1985 Act in respect of the reasonableness and/or cost(s) associated with the qualifying works proposed.
3. On receipt of this Decision the Applicant will send the same to the Respondents (the leaseholders of Holmwood) and shall confirm by 17 February 2025 this has been done.

## Background and the Application

4. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from the consultation requirements imposed on the landlord for qualifying works by section 20 of the 1985 Act. The application is dated 25 October 2024 and was received the same day.
5. The property is described as a retirement development of three buildings, each with residential apartments, arranged over three floors. In addition, there are two cottages to the rear.

Main House – six apartments,  
Upper Lodge – eight apartments,  
Lower Lodge – eight apartments, and  
Two Cottages.  
Total – 24 (twenty-four) dwellings (residences).

6. The Applicant explains under 'Grounds for seeking Dispensation' in the application "1. There is a holding tank at the back of the site that has four submersible pumps that pump rainwater and foul [sic] up to road level where the main sewer is located. The holding tank is not being emptied of the rainwater and foul discharge.

We have a pump van attending [sic] but this is not cost effective.

We are due to issue a Purchase Order to the contractor to attend site and replace the failed pumps."

7. At 2. Of the same, the applicant describes the consultation that has been carried out, 'We have issued a letter to all residents advising them of the situation and that we will be applying to the FtT to dispense as we cannot wait to get these pumps replaced. This can be sent to you if required.  
We have also supplied the residents with two quotes that have been obtained from contractors to give them an indication of the cost once the work is instructed.'

The Tribunal has neither been provided with copies of the two quotes obtained from contractors, nor has it been given an indication of the quantum of cost(s) involved.

8. In its explanation to seek dispensation, the Applicant says "3. We cannot wait for the required timeframe as the holding tanks need working pumps and if the pump vans do not turn up then the tank will overflow and dispense with rainwater and foul water over the site. We need new pumps fitted immediately to ensure the health & safety and welfare of our residents is not jeopardized [sic] and contaminated water flooding the development."
9. The Directions dated 15 November 2024 stated the Tribunal would determine the application on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing to the Tribunal within 7 days of the receipt of these Directions.
10. 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 cost(s) of the proposed works to replace the four pumps and whether they are recoverable from the leaseholders. The leaseholders have the right to make a separate application to the Tribunal under section 27A of the 1985 Act to determine the reasonableness of the cost(s) and their respective contributions payable through the service charge provisions in their leases.

## The Law

11. Section 20 of the 1985 Act and the related Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease per 12 month period, the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum per annum unless the required consultation processes have been undertaken or the requirement has been dispensed with by the Tribunal. An application to the Tribunal may be made retrospectively.

12. The relevant section of the 1985 Act reads as follows:

S.20 ZA (1) Consultation requirements: supplementary  
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 long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

13. In *Daejan Investments Limited v Benson and Others* [2013] UKSC 14, the Supreme Court set out certain principles relevant to section 20ZA. Lord Neuberger, having clarified that the purpose of sections 19 to 20ZA of the 1985 Act was to ensure that tenants are protected from paying for inappropriate works and paying more than would be appropriate, went on to state *"it seems to me that the issue on which the [tribunal] should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements"*.
14. Furthermore, and following *Daejan v Benson*, the Tribunal has power to grant dispensation on terms.

#### Consideration and Decision

15. The Tribunal notes, in the Application, the Respondent is listed as 'Pegasus Homes' in its capacity as Managing Agent and Landlord. Pegasus Homes is the Applicant (landlord) and the leaseholders of the 22 (twenty-two) apartments and two cottages (in aggregate, the residences) at Holmwood are the Respondents.
16. The Tribunal first considered whether it felt able to decide this application reasonably and fairly based on the papers submitted only, with no oral hearing. Having read and considered the papers and given that the application is interpreted by the Tribunal as having been unchallenged, it decided it could do so.
17. The Directions state, paragraph 13, 'The application shall stand as the Applicant's case'.
18. In its application, the Applicant states the case is appropriate to be dealt with on the Fast Track basis and goes on to say 'The four failed pumps are causing the holding tank to overflow. The holding tank pumps rainwater and foul water from the lower levels of the development which are below the main sewers. We urgently need these pumps replaced and until then we are instructing a pump van to empty the tank contents. This will continue until the pumps are replaced. The cost to replace the pumps is high and the cost to have a van attend (almost daily) is not cost effective.'

19. The Directions attached a reply form for the Respondents with a date for it to have been completed and to have been returned by to the Applicant to confirm whether the Respondents: (1) agreed with the application, or not; and (2) similarly agreed the Tribunal may decide the matter on the basis of written representations only (no hearing), or not.
20. At paragraph 12 of the Directions, the Applicant is to have confirmed by 20 November 2024 that upon receipt of the same, "shall send them including the Statement of Rules and procedures and Guidance on pdf bundles together with a copy of the application (if not already sent) to each Respondent."
21. Following paragraph 18 above, the Tribunal has been provided with a schedule of the leaseholders at Holmwood, with their respective apartments. The apartments number 1 to 24 inclusive, which corresponds with the outline description of the property.
22. In an email dated 21 November 2024 to the Tribunal, Mr Scott forwarded the completed reply form from the leaseholders of Apartment 23. The reply form had been returned within the timeframe specified in the Tribunal's Directions.
23. In a subsequent exchange of emails between the Tribunal and Mr Scott on 9 December 2024, Mr Scott confirmed, 'I have received no objections from the Respondents.'
24. From the information provided by Mr Scott and the copy reply form received from one of the leaseholders, it can be interpreted that no objections have been received to the application and therefore the Tribunal can proceed to issue its decision on the case.
25. The bundle includes a copy of a draft lease of an apartment at Holmwood. In outline the draft lease includes the following provisions and covenants, inter alia: (1) External Common Areas and Items (c) such of the Utilities on the Estate serving more than one of the Residences which are not maintainable at public expense or by a statutory undertaker or statutory utility service supplier; (2) Running Costs; (3) Service Charge; (4) Utilities; (5) Rent and Service Charges; (6) Provision of the Services and Service Costs; and (7) The Services and their Costs.
26. The reason why dispensation from the consultation requirements of the 1985 Act is sought by the Applicant is due to the failure of four submersible pumps that pump both rainwater and foul water from the holding tank from the lower levels of the development, up to the higher level of the main sewers.

27. Since the four pumps failed, a contingency plan has been put in place to provide a 'pump van' to empty the tank contents. The requirement to provide a pump van will continue until the failed pumps have been replaced. Whereas the cost(s) to replace the failed pumps is high, the continuing requirement to provide a pump van (almost daily), is not cost effective. There is also the continuing risk the holding tanks will overflow in the event the pump van fails to attend, for whatever reason.
28. The Applicant confirms in their application, 'We have issued a letter to all residents advising them of the situation and that we will be applying to the FtT to dispense [sic] as we cannot wait to get these pumps replaced.'
29. The Tribunal is satisfied the qualifying works to replace the four failed pumps required are urgent in nature and delay will lead to further costs to provide a pump van, which in the short to medium term is not cost effective. In addition, there is the ongoing risk the holding tanks will overflow in the event the pump van fails to attend.
30. Taking all the above into consideration and the Tribunal's interpretation there having been no objections to the application for dispensation of the consultation requirements from any of the leaseholders (paragraph 23 above), coupled with none of the same having asserted that any prejudice would be caused to them, the Tribunal consequently finds it is reasonable for the Applicant to be granted dispensation with the consultation requirements under the 1985 Act in respect of the qualifying works required to replace the four pumps.
31. Thus, the Tribunal grants the application from Mr Alan Scott, in his capacity as Buildings & Communities Manager for Pegasus Homes, dated 25 October 2024 for dispensation under section 20ZA of the 1985 Act from the statutory consultation requirements imposed on the landlord by the same.

## RIGHTS OF APPEAL

32. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making a 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. All communications must clearly state the Case Number and the address(s) of the premises.
33. 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.
34. If the person wishing to appeal does not comply with the 28 days' 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 days' time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
35. 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.