



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

**Case Reference** : **MAN/00CM/LDC/2024/0022**

**Property** : **8 Elms West, Ashbrooke,  
Sunderland SR2 7BY**

**Applicant** : **8 Elms West Management Company Limited**  
**Representative** : **Potts Gray Management Company Limited**

**Respondents** : **The Residential Long Leaseholders set out in  
the Annex to this Decision**

**Type of Application** : **Landlord & Tenant Act 1985 – Section 20ZA**

**Tribunal** : **Tribunal Judge L Brown  
Tribunal Member I Jefferson  
Judge R Anderson (sitting as a Lay Member)**

**Date of Decision** : **7 May 2025**

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**DECISION**

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**The Application is refused.**

## **DETERMINATION**

The Tribunal determines that dispensation from consultation for the works as detailed in the application be refused pursuant to s20ZA Landlord and Tenant Act 1985.

## **INTRODUCTION**

1. By application dated 12 March 2024 (the Application) the Tribunal was asked to grant to the Applicant dispensation from the consultation requirements of s20 of the Landlord and Tenant Act 1985 in relation to works proposed to repair the roof at the Property (the Works).
2. Directions were made by a Legal Officer on 24 October 2024 and by Judge McLean following a Case Management Hearing on 12 December 2024. The matter was listed to be determined by way of remote hearing by video which took place on 12 March 2025. There was no difficulty with the technology and all attendees were able to participate fully.
3. Mr Ryan Crompton of Potts Gray Management attended the hearing as representative of the Applicant.
4. Present from the Respondents were Mrs J Cripps (owner of long leasehold of Flat 8C), Mrs L Marshall (owner of long leasehold of Flat 8B) and Mr I Alade (owner of long leasehold of Flat 8A).

## **THE APPLICATION**

5. The Application set out as follows in support of the request:

*“Following a leak from the roof into one of the apartments which was affecting the property very severely, we actioned a dispensation to 8 Elms West to all the owners to inform them off [sic] the process we would be carrying out. As there was a lack of funds we had no other options but to write out for a section 20 dispensation.*

*If there was any delay to the works to the roof, would of [sic] implied a lot more to be done on the apartment and also the roof, as this was in a a state of disrepair and needed desperate need of attention”*

6. One Respondent replied to the Application, Mrs Cripps, and provided a statement dated 27 December 2024.

## **THE LEGISLATION**

7. The relevant legislation is contained in s20ZA Landlord and Tenant Act 1985 which reads as follows:

s20 ZA Consultation requirements: supplementary

- (1) 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....., the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

“qualifying works” means works on a building or any other premises;

.....

(4) In section 20 (setting out the consultation requirements) and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

8. The related regulations are the Service Charges (Consultation Requirements) (England) Regulations 2003. They set out a procedure for the landlord to consult with affected leaseholders before commencing relevant works. The consequence of a failure to consult appropriately, unless dispensation is granted by the Tribunal, is that the landlord is restricted to recovering from each leaseholder a maximum of £250 towards the cost of those works.

## THE EVIDENCE

9. In support of the Application the Tribunal was presented with a copy of a draft pro-forma letter from the Applicant’s Representative, which we were informed by Mr Crompton had been sent to each Respondent. Its content was:

*“We are writing to inform you of a Notice of Dispensation Section 20 to advise that mandatory works are required to replace part of the Roof of 8 Elms West, Ashbrooke, Sunderland SR2 7BY.*

*Under the Dispensation Section 20 requirements listed below and not limited to:*

- Works are urgently needed.*
- Delays would cause an unreasonable escalation of costs.*
- The health, safety and welfare of lessees or adjoining owners will be affected if works are not carried out urgently.*
- The repairs required could not have been anticipated.*

*I can confirm the cost of the required works are £4200 inclusive of VAT. This will be apportioned between the 5 apartments as per your service charge contribution percentage. These works will be instructed as a matter of urgency.*

*I enclose an invoice for payment to be paid with immediate effect.*

*Thank you in advance for your co-operation with this matter.*

*If you have any further questions, please do not hesitate to contact us.”*

10. In oral evidence, Mr Crompton stated that no major works to the Property had been carried out in the last 4 years. He explained that the leak had been above Flat 8B. When asked whether funds for the work could have been provided by a service charge reserve fund he stated that there were no funds so held and any monies retained had most likely been spent on previous repairs, about which he could provide no evidence.
11. Mrs Cripps set out a number of complaints regarding management of the Property, deficient preparation of annual accounts, increased cost of service charges, and about operation of the Applicant, in particular regarding its directorships. She stated that after the correspondence referred to in paragraph 9 she had requested the Representative call an AGM of the Applicant. Also (on 1 February 2024) *“I referred to the Section 20, requesting three quotes and whether the reserve funds would be made available”* – directed to Mr Potts.
12. Mrs Cripps explained *“Three quotes were not supplied. Repairs to the rear roof were completed and invoiced by Express Roofing on 25 July 2024. This work took less than a week to complete with scaffolding erected and dismantled.*

*A previous Section 20 was carried out with extensive repairs to the windows and external elevations. On that occasion three quotes were obtained and parties were invited to vote accordingly for their preferred contractor. This work was done to an extremely poor standard, resulting in water ingress to both the front and rear of my property. This is now very unsightly and compromises the integrity of the building. Despite many communications this has still not been rectified. At the time of writing I was aware that there was a leak and water coming through the ceiling of my flat, despite chasing this up with Potts Gray I am unaware whether this was resolved.”*

13. She recorded that the service charge for her flat for 2024/25 was £2,278.09. She set out a number of “suggestions”, conceding that some were not relevant to the Application. She confirmed that the three attending Respondents had *“....paid the monies requested for these current works.”*
14. At the hearing Mrs Cripps, supported by Mrs Marshall and Mr Alade, complained that there was a lack of transparency in management of the Property, creating a lack of trust. She said there was an element of the annual service charge apportioned to a reserve fund, but she had no information about its balance. She said she had spoken to Express Roofing and had been told the Works had been undertaken and billed on 29 July 2024.

## **THE DETERMINATION**

15. The Tribunal has jurisdiction under section 20ZA to dispense with consultation before works have been carried out, as relevant here. The Application does not concern the issue of whether any service charge costs resulting from any such works are reasonable or indeed payable and it will be open to lessees to challenge any such costs charged by the Applicant under section 19 of the Act.

16. It is commonly recognised that the purpose of the consultation requirements is to empower leaseholders, so they are protected from (a) paying for inappropriate works, or (b) paying more than would be appropriate. However, the dispensation route for a landlord exists because either there has been an error in the formal consultation procedure and it is at risk of the sum it potentially can recover from leaseholders being capped, or because the works are urgent.
17. In the case of *Auger v Camden LBC* [2008] HHJ Huskinson in the Upper Tribunal confirmed that the Tribunal has broad judgment akin to a discretion in its jurisdiction for prospective dispensation under s20ZA. The exercise of discretion to grant dispensation requires the clearest of reasons explaining its exercise.
18. Dispensation was considered in depth by the Supreme Court in *Daejan v Benson* [2013] UKSC14 which concerned a retrospective application for dispensation. Lord Neuberger confirmed that the Tribunal has power to grant a dispensation on such terms as it thinks fit, providing that the terms are appropriate in their nature and effect.
19. The Tribunal should consider prejudice to leaseholders in making a determination and Daejan confirms that the approach is to consider the extent that they would “relevantly” suffer if an unconditional dispensation was accorded. The Tribunal needs to construct what might happen if the consultation proceeded as required - for instance whether the works would have cost less, been carried out in a different way or indeed not been carried out at all, if the leaseholder (after all the payers) had the opportunity to make their points.
20. The Tribunal found from discussion in the hearing that none of the attending Respondents objected to the Application and nor were there any other objections before us. However great dissatisfaction with the standard of management was expressed by all three Respondents.
21. Notwithstanding the Works being presented by the Applicant as comprising repair to the roof of the Property, the Applicant had failed to provide in support of the Application a report, specification, description or schedule of works, or invoice for the cost. Nor was there an explanation of reasons for the urgency of the Works. These omissions were contrary to the Direction of the Tribunal of 10 October 2024 – paragraph 4.
22. The Applicant was unable to explain whether funds might be available to pay for the Works from a service charge reserve fund, despite Mrs Cripps’ argument that there ought to be funds available from such a source. Indeed, Mr Crompton could not inform the Tribunal if any monies were so held.
23. In consequence of this absence of information set out in the preceding two paragraphs the Tribunal firstly had doubt whether works on a building had been undertaken, so as to engage “qualifying works” for section 20 consultation obligations. We had no persuasive, corroborated, evidence that

any works had been carried out. At the hearing Mr Crompton could not provide any detail.

24. However, even if such works have been undertaken, the Tribunal was not satisfied that it is reasonable to dispense with the requirements for consultation. We found that the Works were not adequately identified to the Respondents or the Tribunal. While the Applicant made a demand for payment it provided insufficient information for the Respondents or the Tribunal, to understand the operations for which payment was being demanded. We found that the information recorded in paragraph 9 was woefully inadequate to be reasonably understood as to the manner or extent of work.
25. Section 20ZA is not a means to bypass the consultation requirements, it is a power to the Tribunal to be engaged in considering permitting dispensation when there is a reason to do so and we found on the facts as presented to us that no such reason was presented. Further, there is obvious prejudice to the Respondents were this Application to be granted, because of the overwhelming absence of information. Therefore, we determine that it is not reasonable to dispense with the consultation requirements. The Application is dismissed.

**Tribunal Judge L Brown**

## Annex

### Leaseholders

Mr Isaac Alade

L A Marshall

Ms Joanne Cripps

KPLP Properties Limited

Lemonstone Properties Limited