



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

Case Reference : **MAN/00CK/LDC/2024/0070**

Property : **Arcade Park, Tynemouth, NE30 4HP**

Applicant : **The Arcade Apartments Management Company Limited**

Respondents : **The Residential Long Leaseholders**

Type of Application : **Landlord and Tenant Act 1985
- Dispensation application – s.20ZA**

Tribunal Members : **Judge J A Adams
Tribunal Member J Gallagher, MRICS**

Date of Decision : **2 May 2025**

DECISION

DECISION

1. The application for dispensation pursuant to s.20ZA Landlord and Tenant Act 1985 is granted in respect of the window replacement works, being qualifying works, to the Property at Arcade Park, Tynemouth.
2. Whilst the applicant was required by section 20 of the Landlord and Tenant Act 1985 to undertake the consultation procedure set out in Part 2 of Schedule 4 to the Service Charges (Consultation Requirements)(England) Regulations 2003 (“the Regulations”), pursuant to s.20ZA (1) the Tribunal finds it reasonable to dispense with the requirements.

REASONS

BACKGROUND

1. On 11 September 2024 the applicant applied for dispensation pursuant to s.20ZA Landlord and Tenant Act 1985 (Dispensation) in respect of qualifying works to the Property known as Arcade Park in Tynemouth, NE30 4HP.
2. Arcade Park is a converted building, split into 12 residential flats, occupied pursuant to residential long leases. It is positioned on a residential high street and has 2 communal entrances. The applicant is the Arcade Apartments Management Company Limited, a Resident Management Company. The respondents are the residential leaseholders of flats 1-12 in Arcade Park.
3. The application sought Dispensation for urgent works yet to be undertaken, in respect of windows at flats 11 and 12 at the Property. The application set out the following:

“There are 5 x dormer windows - 2 within number 11 and 3 within number 12. These windows are 4 storeys high and are holding up part of the structure of the roof. The windows are timber construction and are in very bad condition. They are causing damages to both flats every time it rains and the timber is beyond repair. There is concern for the damages caused by the water ingress but also for the structural part of the roof. If these were to collapse the roof would also collapse. We would like to start the replacement work within the next 21 days before the weather turns and is too late for the work to start.”

4. The applicant advised that the cost of the works would be £15,000 and that the respondents had been notified for the need for works at an AGM, to which all of the respondents agreed the work was urgent. The applicant in their application advised that the timescales in the consultation procedure would mean the works were delayed and a start date in November/December 2024 was not feasible as the contractors approached to quote for the works advised that they could not be undertaken in the winter period. The applicant also advised that water ingress was taking place and delays would risk further property damage. As such the applicant asked that Dispensation be given in advance of the works.

5. Clause 5.4.1 of the Lease provided for flat 9 (it is understood all leases contain the same provisions) provides that the applicant is to *maintain and keep in good and substantial repair and condition a) the main structure of the building and d) the external window frames of the building.*
6. It is understood that the applicant undertook the works to the windows whilst awaiting determination of their application, and as such now requests Dispensation following completion of the qualifying works. The works were undertaken by Peter Hedley Roofing and Building Contractors and the applicant provided an invoice for the works, dated 30 January 2025, in the sum of £15,000.
7. The works invoiced included removal of 5 wooden dormer windows, their replacement with PVC units and consequential roof repairs. The applicant advised that the works were invoiced to the leaseholders as follows, £11,000 split in equal 1/12 shares between flats 1 to 12 (£916.66 each) and £4,000 split equally between the leaseholders of flats 11 and 12, being the cost of the glass, falling within the leaseholders repairing obligations.
8. The applicant provided details of 2 further quotes obtained for the works undertaken, Trustmark Building and Roofing in the sum of £27,540.00 and MTM Limited in the sum of £28,200.00.

THE CONSULTATION PROCEDURE

9. As the cost to each leaseholder was expected to exceed £250, the applicant was required by section 20 of the Landlord and Tenant Act 1985 to undertake the consultation procedure set out in Part 2 of Schedule 4 to the Service Charges (Consultation Requirements)(England) Regulations 2003 (“the Regulations”).
10. Consultation can be dispensed with pursuant to s.20ZA(1) Landlord and Tenant Act 1985 if the Tribunal finds it reasonable to do so.

THE APPLICATION

11. The application was listed for paper determination, without a property inspection. The respondents were provided the opportunity to provide a response to the application pursuant to the directions issued on 20 February 2025, and no such response was received by the applicant or the Tribunal.
12. The Tribunal proceeded to determine this matter by way of paper determination on 2 May 2025 in accordance with the Directions issued and had regard to the statement of case lodged by the applicant dated 13 March 2025 alongside the bundle filed.

FINDINGS AND CONCLUSION

13. The Tribunal noted that the applicant appointed the contractor to complete the works who had provided the lowest quotation for the necessary works. It was further noted that the respondents had been advised of the need for

urgent works and had been kept up to date as to the likely costs alongside the application for dispensation being made.

14. Further the Tribunal found that on the basis of the information set out in the application and the statement of case, which was unchallenged by the respondents, the window works to the Property at Arcade Park were urgent in nature.
15. The Tribunal considers the leading case on dispensation to be the Supreme Court decision in *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 ('*Daejan*'). In *Daejan*, Lord Neuberger stated that in deciding pursuant to section 20ZA whether it is reasonable to dispense with consultation requirements, a tribunal should consider whether any relevant prejudice would be suffered by the leaseholders. Lord Neuberger stated that whilst the legal burden of proof rests throughout on the landlord, the factual burden of identifying some relevant prejudice that they would or might have suffered rested on the tenants. Lord Neuberger went on to hold that a Tribunal is permitted to grant dispensation on terms, including compensating leaseholders for any prejudice suffered by requiring a landlord to reduce the amount claimed as service charge, and including an order for costs.
16. In view of the decision in *Daejan* and the Tribunal considering that there has been no prejudice to the respondents by the failure to comply with the consultation requirements, it is appropriate to grant Dispensation pursuant to s.20ZA (1) Landlord and Tenant Act 1985, the Tribunal, finding it reasonable to do so. As such the service charge contribution to the cost of window works is not limited to £250 per leaseholder.
17. The Tribunal expresses no view as to whether any costs associated with the Works are reasonable in amount, whether the Works were necessary or of a reasonable standard or whether the costs intended to be recovered by way of service charge are contractually payable under the leases or within the meaning of 'relevant costs reasonably incurred' in sections 19 and 27A of the Act. No such applications are currently before this Tribunal and the Tribunal's decision does not include or imply any determination of such matters.

Annex

Respondent Leaseholders

Mr Edward & Mrs Elaine Corbett

Mr David John Coulson

Ms Caron Vivien Pearson

Miss Victoria Marie Coates

Mr Peter and Mrs Helen White

Rev Clive and Mrs Valerie Harper

Mr Daniel George Ballard

Mr James Andrew Kingston

Mr David & Mrs Pauline Skevington

Mrs Pauline Stretton

Dr David Pachter

Mr Sean David Longstaff