



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : HAV/00MS/LDC/2025/0632/JC

Property : Brook House, 66 Middle Road,
Southampton, SO19 8BP

Applicant : B&S K (Southampton) Ltd

Representative : Residential Management Group Limited

Respondent : The Leaseholders of flats 1 to 15 Brook
House (details in Appendix)

Representative :

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 R Cooper

Hearing Venue : Paper determination

Date of Decision : 23 May 2025

DECISION

The Applicant's application for dispensation from the statutory consultation requirements pursuant to s20ZA of the Landlord and Tenant Act 1985 is granted on the condition set out in paragraph 26 below.

This dispensation does not affect the Respondents' rights to make an application to the Tribunal as to the reasonableness of the

works or costs of the works or the payability of the service charge under sections 27A and 19 of the 1985 Act.

The application

1. On 14 March 2025 the Tribunal received an application from Residential Management Group Limited on behalf of B&S K (Southampton) Ltd ('the Applicant'). The Respondents to the application are the 15 leaseholders whose details appear in the Appendix to this decision ('the Respondents')
2. 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 by Section 20 of the 1985 Act in respect of qualifying works required to repair both the external and internal damage caused to flats in Brook House, 66 Middle Road, Southampton, SO19 8BP ('the Property') by an ASDA van rolling down the slope and colliding with the wall of the block.
3. Brook House is described as a three-storey purpose-built block dating from the 1990s comprising 15 flats with five flats on the lower ground floor, five on the ground floor and five on the first floor.
4. The Applicant seeks dispensation on the grounds that works were urgently required on health and safety grounds as there was cracking to external walls of ground and first floor flats around the windows, distortion of the cavity wall and cracking and displacement of internal walls in flat 1, and cracking between the windows in flat 6. Although a temporary repair to the hole in the wall caused by the collision was said to have been carried out it is said the pregnant leaseholder of flat 1 claims the increased airflow was causing an exacerbation of mould growth in the flat.
5. Directions were given by a legal officer on 24 March 2025. These included directions requiring the Applicant:
 - (i) to send to the Tribunal and the Respondents by 31 March 2025 confirmation as to whether an insurance claim had been made for the incident which caused the requirement for major works, and if so, for details of the claim and outcome to be provided.
 - (ii) To confirm to HMCTS by 9 April whether any objection had been received from the leaseholders.
6. The Respondents were directed to notify the Applicant and the Tribunal if they objected to the application.

7. Directions were also given about the procedures that needed to be followed if objections were received.

Consideration

8. The Tribunal considered the application and supporting documents, comprising the lease for flat 1, directions, correspondence from the Applicant appointing Residential Management Group Limited, and correspondence from the Applicant's representative.
9. This was a determination made on the papers and there was no inspection. None of the parties requested a hearing or inspection, and it was not considered necessary for a fair determination of the issues.

Determination and reasons

10. Having considered the application and totality of the evidence, the Tribunal is satisfied that it is reasonable for dispensation to be granted to the Appellant from the consultation requirements under s20 of the Landlord and Tenant Act 1985 ('the 1985 Act') and the Service Charges (Consultation Requirements) (England) Regulations 2003 for the reasons set out below on the conditions stipulated in paragraph 26.
11. The purpose of the statutory consultation process under s20 of the 1985 Act is to ensure that leaseholders are given the fullest opportunity to comment on expenditure for which they will be partly liable to pay through the service charge.
12. The relevant law relating to this application is s20ZA of the 1985 Act which allows the Tribunal to grant dispensation from the statutory consultation requirements if it is satisfied it is reasonable to do so.
13. In reaching this decision I have borne in mind the principles laid down by the majority in the Supreme Court in *Daejan Investments Ltd v Benson & others* [2013] UKSC 14 when considering whether it is reasonable for dispensation to be given under s20ZA. I remind myself, however, that they also confirmed that it would be inappropriate for such guidance to be seen as a fetter on the exercise of discretion and given the almost infinite circumstances in which s20ZA must be applied, the principles outlined should not be regarded as rigid rules.
14. The Supreme Court confirmed proper purpose of the consultation requirements in s20 of the 1985 Act is to ensure that tenants are protected from paying for inappropriate works or from paying more than would be appropriate and the role of the Tribunal in considering an application for dispensation under s20ZA is to determine the extent to which the tenants have been prejudiced by the failure to consult. The factual burden is, therefore, on tenants to identify the prejudice they

would not have suffered had the formal requirements been fully adhered to, but which they would suffer if unconditional dispensation was given. The Supreme Court recognised the invidious position tenants may be in if denied their rights of consultation, and accepted the Tribunal should not be unsympathetic to their situation. However, a mere loss of opportunity to be consulted is not sufficient. The Court confirmed that if the Tribunal decide to grant dispensation, it may do so on whatever terms or conditions it sees fit provided they are in all the circumstances appropriate.

15. The Applicant seeks dispensation on the grounds that works were urgently required on account of the structural damage to the Property resulting from the ASDA van colliding with the wall of the block. The Applicant says the works are deemed imperative as there is a health and safety risk. A temporary seal of the hole had been carried by Ingram Building & Maintenance Ltd, the site building contractor, but the pregnant leaseholder of flat 1 apparently claims that the increased airflow was impacting on mould growth in the flat.
16. The Applicant instructed a building surveyor, Day Associates, to assess the damage, prepare a schedule of works and conduct and prepare a tender report. No copy of Day Associates' report has been provided, but it is said the building surveyor advised demolishing and rebuilding the external wall, the stripping and realigning the inner leaf of the external wall in the bedroom, refixing the internal finishes and radiator, and filling and redecorating the connection between the wall and the lounge partition.
17. It is said that four contractors were invited to tender, and four tenders were received. Majengo Ltd tendered at £21,973.00, J&T Building & Maintenance at £20,920.00, The Complete Property Group at £13,637.84 and Hawke Property Services at £11,536.00.
18. Hawke Property Services were appointed by the Applicant to carry out the works which commenced on 21 April 2025. The total cost of the works was said to be £11,536.00 plus VAT.
19. Although no copy has been provided with the application it is said that a bespoke letter was sent to all leaseholders detailing the scope of the works required, the costs and the Applicant's intention to apply for dispensation. The Applicant also confirmed that a copy of the application for dispensation had been served on all leaseholders.
20. No objections to the application were received by the Tribunal by the 7 April 2025, the deadline given in the directions of the 24 March 2025. The Applicant also confirmed by email dated 9 April 2025 that none of the Respondents had objected to the dispensation application.

21. However, the Applicant has not served details of any insurance claim made or details of the outcome, as it had been directed to do.
22. As the Respondents have not objected to this application, no evidence has been provided by them indicating they would suffer any prejudice on account of the failure to consult.
23. There is no other evidence before the Tribunal suggesting the Respondents would be prejudiced by a failure of the landlord to consult. Clearly, such damage to the structure of the building needs to be repaired as swiftly as possible. The Tribunal is satisfied that the Applicant did obtain advice on scope of the works that would be required required and conducted a competitive tender for the works, albeit without any notification to the Respondents in advance or any invitation to comment on the tenders received.
24. In all the circumstances, although the Applicant does not appear to have attempted to seek the leaseholders views or comments, the Tribunal was satisfied it was reasonable to grant dispensation under s20ZA of the 1985, due to the nature of the damage caused by the collision, including structural damage to both internal and external structures in the block and the need for such works to be carried out in a timely fashion.
25. The Tribunal considered whether to impose conditions on that grant of dispensation, and decided it was appropriate to do so. This is because the Applicant failed to serve details of any insurance claim on the Tribunal, as they were directed to by the 31 March 2025. The Tribunal finds there is a reasonable degree of likelihood that the Respondents will not have been served these details either. Clause 8 of the lease requires the Applicant to keep the Property insured, and the adequacy of any insurance policy and the question of whether the Applicant has made a claim in respect of the damages caused by the collision are relevant to the question of the costs that may be applied to the service charge in due course.
26. The Tribunal concludes, therefore, that it is reasonable to grant dispensation from the s20 consultation requirements under s20ZA of the 1985 Act, but for that dispensation to be with the following condition.
27. The condition imposed on the grant of dispensation is that the Applicant must within 14 days of the date on which this Decision is issued serve on the Respondents:
 - (i) A copy of the Applicant's certificate of insurance and policy document valid on the date of the collision,

- (ii) confirmation as to whether an insurance claim had been made for the incident which caused the requirement for major works, and
- (iii) if so, for details of the claim to be provided and the outcome, and
- (iv) if no insurance claim had been made, the reasons for that failure and confirmation as to when a claim will be made.

28. Although it has granted dispensation to the Applicant under s20ZA of the 1985 Act, the Tribunal is not making any determination about either:

- the reasonableness of the works that have been carried out,
- the reasonableness of the costs of those works or
- whether they are payable by the Respondents though the service charge.

Those are matters which the Tribunal may consider on an application under sections 27A and 19 of the 1985 Act.

Judge R Cooper
23 May 2025

Note: Appeals

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 that has been dealing with the case.
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, and should be sent by email to rpsouthern@justice.gov.uk.
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.

Appendix

Respondents to the application

Flat 1, Brook House - Mr L Martin & Ms Elisha Farugia
Flat 2, Brook House - Mr Mark Stanley & Miss Jane Bliss
Flat 3, Brook House - Dr Rouncefield, Mrs Dawson & Miss Warbrick
Flat 4, Brook House - Mr Gary Porch
Flat 5, Brook House - Mrs E Wood & The Estate of the Late Mr Wood
Flat 6, Brook House - Mr T Mitchell
Flat 7, Brook House - Mr D Woodley
Flat 8, Brook House - Mr James White & Ms Megan Moody
Flat 9, Brook House - Ms Joanna Paterson
Flat 10, Brook House - Ms Alice Elizabeth Clifford
Flat 11, Brook House - Mr Paul Wallbridge
Flat 12, Brook House - Ms Allison Humby-Gibbings
Flat 13, Brook House - Mr Mark Aaron White
Flat 14, Brook House - Mr J & Mrs P Kemp
Flat 15, Brook House - Mr A Rumsey