



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

Case Reference	: MAN/ooCB/LDC/2025/0608
Property	: 35 - 36 Hamilton Square, Birkenhead CH41 5BP
Applicant	: 35 - 36 Hamilton Square RTM Company Limited
Representative	: MVN Block Management Limited
Respondents	: The Residential Long Leaseholders
Type of Application	: Landlord & Tenant Act 1985 – Section 20ZA
Tribunal Members	: Judge R Watkin Huw Thomas BSc FRICS FCABE MEWI
Date of Decision	: 27 June 2025

DECISION

CROWN COPYRIGHT
2025

Decision

The Application is dismissed.

Documents

1. The Tribunal has not received a bundle of documents but has had the opportunity to consider the following documents:
 - a. The Application dated 11 February 2025 signed by Ms Thomas
 - b. List of the Respondents
 - c. Various emails.

The Application

2. The Application dated 11 February 2025 is made on behalf of 35 - 36 Hamilton Square RTM Company Limited (the “Applicant”), in relation to 35 - 36 Hamilton Square, Birkenhead, CH41 5BP (the “Property”). The Respondents are the leasehold owners of flats within the Property (the “Respondents”).
3. By the Application, the Applicant seeks a determination from the Tribunal that it is reasonable for it to dispense with the section 20 requirement to consult leaseholders in respect of qualifying works to the roof of the Property (the “Works”). The nature of the Works is broken down within the Application (page 7)
4. The Property consists of 15 individual apartments.
5. The Applicant states that urgent roof works are needed due to water ingress which causes damage to the interior of the Property. Whilst the Application records that a quote has been obtained from SSG and that the Council have issued directives requiring that the leaks be repaired, no documentary evidence has been provided.
6. Whilst the Applicant states (in the Application dated 11 February 2025), that the Works are urgent and immediate remedial work is required, there is no indication that the Works have been carried out, despite the contractor being available to start the Works immediately (as at the date of the Application). The Tribunal considers that it is likely that the Applicant will have been aware that it takes time for an application for dispensation to be processed. If the Applicant was not so aware, then enquiries could have been made.

The Respondent's Position

7. The Tribunal has been provided with incomplete emails from Mr and Mrs Nailor of Apartment 3 and Mr Christian of Apartment 2 who oppose the Application.
8. Mr and Mrs Nailor state:
 - a. there has been little or no maintenance since 2022 and no maintenance in the last six months.
 - b. The managing agents charge £4,500 for a caretaker but are unable to confirm whether there actually was a caretaker.
 - c. The right to manage director agreed for the Works to be carried out in January but has not done so, stating that it was waiting for a report from a contractor.
 - d. Whilst there are missing tiles on the roof, “the roof generally looks in very condition”. From the context of the paragraph, it seems likely that this should read “the roof generally looks in very good condition”. It is unfortunate that the images and drone footage referred to have not been produced.
9. Mr Christian objects to the dispensation but states that if the Application is granted that it should be conditional on other work being carried out. Mr Christian gives the following reasons for his concerns:
 - a. The managing agents do not respond to their complaints about a leak in the roof at the entrance to their apartment.
 - b. Repairs are continually neglected.
 - c. Concerns over whether the costs billed would be reasonable or payable given the ongoing failure to provide basic services.

The Law

10. Section 20(1) Landlord and Tenant Act 1985 provides:

- (1) *Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—*
 - (a) *complied with in relation to the works or agreement, or*

(b) dispensed with in relation to the works or agreement by (or on appeal from) [the appropriate tribunal].

11. S.20ZA of the Act reads as follows:

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 or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

12. The consultation requirements are set out at schedule 3 of the Service Charges (Consultation Requirements) (England) Regulation 2003.

13. In the case of **Daejan Investments Ltd v Benson [2013] UKSC 14** (“Daejan”), the Supreme Court noted the following:

- a. The only express stipulation within section 20ZA(1) in relation to an application to dispense with the consultation requirements is that the tribunal must be “satisfied that it is reasonable” to do so.
- b. The purpose of the requirements is to ensure that the tenants are protected from either i) paying for inappropriate works or ii) paying more than would be appropriate, the tribunal focus should be on the extent to which the tenants are prejudiced in respect of the failure to comply.
- c. The “*main, indeed normally, the sole question*” for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord’s breach of the consultation requirements. (Paragraph 50).
- d. The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
- e. Dispensation should not be refused solely because a landlord seriously breached, or departed from, the consultation requirements and it would not be convenient or sensible for the Tribunal to distinguish between “a serious failing” and “a technical, minor or excusable oversight”, (paragraph 47).
- f. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms imposed are appropriate.

- g. The Tribunal has power to impose a condition that a landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the application under section 20ZA (1).
- h. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants/leaseholders.
- i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
- j. The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.

Decision

- 14. Pursuant to **Daejan**, the Tribunal considers whether it can be satisfied that it is reasonable to dispense with the consultation requirements in the circumstances of this Application. The Respondents must be protected from either i) paying for inappropriate works or ii) paying more than would be appropriate, and whether the leaseholders may suffer prejudice from the consultation not having taken place.
- 15. The Tribunal notes that the Applicant contends that the Works are required to be carried out urgently but that the Works have not yet been carried out and no documentary evidence has been provided to show that the Works are required. The Respondents appear to state that the Works are not necessary. Whilst the Respondents have not provided documentary evidence either, in light of their comments, and the absence of documentary evidence from the Applicant, the Tribunal is unable to conclude, on the balance of probabilities that the Works are required.
- 16. The Respondents who have responded also express concerns generally in relation to the Applicant's failings as managing agents. Taking this into account, together with the fact that the Applicant states that the Works are urgent but has neither carried out the Works nor taken steps to comply with the consultation requirements, leads the Tribunal to be concerned in relation to the Applicant's intentions.
- 17. The Tribunal also notes that the building is Grade I listed and it is not clear whether any consultation with the local authority conservation officer has taken place.
- 18. It would be in the best interests of the Respondents for the consultation requirements to be carried out, there is no clear reason why this has not occurred. The Tribunal does not

accept that the Applicant has not complied due to the Works being urgent as there has been time for the Works to be completed between the date of the Application and the determination.

19. On balance, the Tribunal is not satisfied that it is reasonable to dispense with the consultation requirements or that the Respondents would be protected from either i) paying for inappropriate works or ii) paying more than would be appropriate if the dispensation is granted. Therefore, there is a real risk of prejudice to the Respondents if the Application is granted.

20. The Application is, therefore, dismissed.

Appeal

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge R Watkin

27 June 2025