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

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| **Case Reference** | **:** | HAV/24UD/LDC/2025/0633 |
| **Property** | **:** | The Pulse, Hut Farm Place, Chandlers Ford, Eastleigh, SO53 3LQ |
| **Applicant** | **:** | Whitelake Properties Investment Limited |
| **Representative** | **:** | Mr Y Jamalkhan<br>Residential Management Group |
| **Respondent** | **:** | Various leaseholders (see schedule attached) |
| **Representative** | **:** | N/A |
| **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<br>Mr MJF Donaldson FRICS<br>Ms T Wong |
| **Date of hearing** | **:** | 18 September 2025 |
| **Venue** | **:** | Havant Justice Centre |
| **Date of decision** | **:** | 17 November 2025 |

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**DECISION**

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## Summary decision

1. The Applicant's application pursuant to s20ZA of the Landlord and Tenant Act 1985 for dispensation from the statutory consultation requirements is granted with the following conditions:
   (a) none of the Applicant's costs of this application for dispensation (including costs of RMG) are to be recovered from the leaseholders through the service charge, and
   (b) a copy of reports of the fire risk assessments conducted on 22 September 2022 and 28 September 2023 and copies of the final invoices from Target Maintenance GB Limited for the fire stopping works and EEFS Solutions for the fire alarm works are to be provided to the Respondents within 28 days.

2. This grant of dispensation does not affect the Respondent leaseholders' right to challenge the reasonableness or payability of the service charges in respect of these matters under s27A and 19 of the 1985 Act. If they wish to do so, they must make a separate application to the Residential Property Tribunal for that purpose.

Documents where referred to in this decision are referenced by [ ].

## The application

3. On 30 March 2025 the Tribunal received an application from Resident Management Group ('RMG') on behalf of the freeholder, Whitelake Properties Investment Limited ('the Applicant').

4. The Applicant requests dispensation from the consultation requirements imposed on them as a landlord by Section 20 of the Landlord and Tenant Act 1985 Act ('the 1985 Act'). Their application is made under Section 20ZA of the 1985 Act for dispensation in respect of costs totalling £173,951 excluding VAT (total £208,741.20)
   - Works to remedy defects in the fire alarm system ('the fire alarm works')
   - Works to remedy defects in the compartmentation between flats, between individual flats and communal areas and in service areas ('the fire stopping works') £44,185 excluding VAT and
   - Costs of a waking watch pending completion of the works ('the waking watch costs') £129,766 excluding VAT [28]

5. The property for which they seek dispensation in relation to these matters is described as comprising four residential blocks (the Jazz, the Rythm, the Circuit, and the Beat) which between them contain a total of 59 apartments ('the Property'). A more detailed description of the blocks is set out in paragraph 3 of the statement of case [33].

6. The Applicant seeks dispensation, in summary, on the grounds that the fire alarm and fire stopping works were urgently required, and the need for a waking watch and new evacuation policy as an interim measure was recommended by Osterna, who had carried fire risk assessments. Works were completed in January 2024 [27].

7. Following directions given on 23 May 2025 and 16 July 2025 the Tribunal received responses from 23 of the 59 leaseholders [137] and [171] to [211]. All but one objected to the application.

8. In summary, the objections were as follows:
   (a) An objection to the leaseholders having to pay for the waking watch, which was either not necessary or alternative cheaper temporary provisions could have been put in place until the fire alarm works were completed (such as battery-operated fire alarms).
   (b) Delay in the waking watch being stood down after completion of the works,
   (c) The failure of RMG to provide information about the works, reasons for them and the urgency, such as a copy of the fire risk assessment, information from Hampshire Fire and Rescue, evidence of costs and details of the government grant,
   (d) A failure to act over years or months which then resulted in urgent works relating to fire safety being required.
   (e) Complaints regarding RMG's management of the Property more generally (e.g. failure to reset alarm panel for weeks, poor communication, failure to adhere to lease terms, parking arrangements, lack of redecoration and repairs etc.)

9. There was no inspection. No party requested a hearing or inspection, and it was not considered necessary for a fair determination of the issues.

**The hearing**

10. Mr Y Jamalkhan of RMG represented the Applicant. Ms S Jones of RMG (property manager for the Pulse) gave evidence. Also in attendance were Ms K Noemie and Ms C Haines, both of RMG.

11. None of the Respondent leaseholders attended and no reasons were given for their absence. The start of the hearing was delayed by 15 minutes to see whether they would attend.

**Preliminary matters**

12. The first consideration was whether Tribunal should proceed in the absence of the Respondents. Having considered Rules 3 and 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the Tribunal was satisfied it should proceed in their absence. The

Tribunal was satisfied notice of hearing (and the change in hearing time) had been notified to the Respondents. The objections to the application had been set out in writing, and it was not essential to hear from them directly. As most of the objections related to the reasonableness of the works and whether the costs were reasonably incurred, those are matters which can be raised in a separate application under s27A of the 1985, so proceeding would not deprive the Respondents of having an opportunity for the Tribunal to consider them. In all these circumstances, the Tribunal was satisfied that it was fair and in the interests of justice to proceed in their absence. The Applicant had no objection.

**The Documents**

13. The Applicant had provided a bundle of documents for the hearing comprising 252 PDF pages. Additionally, there were four short witness statements dated 11 September 2025 from the four employees of RMG present at the hearing. During the course of the hearing, Mr Jamalkhan referred to other documents which had not been included in the bundle, for which he apologised. These included two EEFS Solutions' invoices for the fire alarm works and the Notice of Intention which RMG says was sent to leaseholders.

**Determination and reasons**

14. Having considered the application, the totality of the evidence including the oral evidence and submissions, the Tribunal is satisfied that it is reasonable for dispensation to be granted from the consultation requirements under s20 of the Landlord and Tenant Act 1985 ('the 1985 Act') on the conditions set out below for the following reasons.

<u>The legal framework</u>

15. The purpose of the statutory consultation process in s20 of the 1985 Act and the Service Charges (Consultation Requirements) (England) Regulations 2003 is to ensure that leaseholders are given the fullest opportunity to comment on expenditure which they will be liable to pay for (at least in part) through the service charge.

16. A failure to consult in respect of 'qualifying works' or 'qualifying long term agreements' results in the freeholder being unable to recover more than £250 per flat unless dispensation is granted by the Tribunal (s20(1), (6) and (7)).

17. The relevant law relating to an application for dispensation is s20ZA of the 1985 Act. In summary, the Tribunal may grant dispensation from the consultation requirement if it is satisfied it is reasonable to do so.

18. The majority of the Supreme Court in *Daejan Investments Ltd v Benson & others* [2013] UKSC 14 laid down principles to guide Tribunals considering how to determine s20ZA dispensation applications (paragraphs 40 to 69). As the proper purpose of the consultation requirements is to ensure tenants are protected from paying for inappropriate works or from paying more than would be appropriate (paragraph 42), the Supreme Court said the Tribunal must determine the extent to which the tenants have been prejudiced by the failure to consult (paragraph 44). They confirmed that tenants, therefore, must identify the prejudice they would suffer if dispensation was given which they might or would not have suffered had the formal requirements been fully adhered to. . In other words, the tenants must be able to identify what they would have said or done had they been properly consulted (paragraph 65 to 69). The Supreme Court also confirmed that conditions could be imposed on any dispensation granted.

Was there a failure to consult?

19. The Tribunal finds that the Applicant carried out works at a very substantial cost with total disregard of its legal duty to consult with leaseholders.

20. Mr Jamalkhan submitted that RMG had communicated with the leaseholders and had given them opportunities to comment even if the formal consultation requirements were not followed. However, the Tribunal found this not to be the case. The Tribunal found that no meaningful attempts to consult had been made.

21. It is said in the application that a Notice of Intention was served on 13 October 2023 [28]. In the statement of case, however, it is said one was served on the leaseholders on 18 October 2023 [32]. No copy of a Notice of Intention was provided in the bundle for the hearing, for which Mr Jamalkhan apologised. Although Ms Jones in evidence said that one *'would have been sent'*, the Tribunal gave little weight to her statement in the absence of documents supporting it. No copy of a notice could be produced in the hearing (although other missing documents were found electronically), and although Mr Jamalkhan confirmed a copy would be sent after the hearing, it has not been received.

22. There is, however, a letter of 18 October 2023 included in the bundle [114], but this is simply a letter informing residents of the various steps that were going to be taken by RMG following the fire risk assessment, including a waking watch being put in place, identification of vulnerable individuals, upgrading of the fire alarm system and compartmentalisation works. Apart from stating that they would ask the company that maintains the fire alarm system to provide costs for extending the system, and confirming a government grant would be

applied for to cover that cost, the letter makes no reference to obtaining any other costs estimates or identifying potential contractors. Nor does it invite comments.

23. The Tribunal is satisfied on balance that no Notice of Intention was served.

24. Even if works were urgently required which might justify departing from the full formal consultation (which would take a minimum of 60 days), notification of costs or proposed contractors and a copy of the fire risk assessment could have provided to the leaseholders, but they were not. No effort was made to seek comments even on a truncated basis (for example 5 rather than 30 days). No meeting was called to inform leaseholders of the position or reasons for the urgency.

25. Leaseholders were simply told that works would be carried out, and given the dates when access to their flat was required for the fire alarm works [128] to [131]. Although they were told they could contact the contractors over access arrangement, the leaseholders were not told about which contractors had been chosen and why. Nor were they informed of the costs estimates that had been obtained. It appears from RMG's response to Mr McKay of Flat 151 [140] that copies of the costs estimates had still not been provided to the leaseholders even by the date of the application for dispensation in March 2025 more than a year after works were completed. This is despite Ms Jones confirming that the leaseholders had already been billed for the costs of the fire stopping works and the waking watch through the service charge.

26. The Tribunal is satisfied the leaseholders were unaware of the scope of the works, the reasons a waking watch was required, the likely costs that might be incurred, much of which might be charged to them in due course.

27. Even in its application to the Tribunal RMG failed to provide the correct information about the contractors they had instructed to carry out works and the costs that had actually been incurred. Mr Jamalkhan apologised for RMG's failure to mention that in addition to Target Maintenance GB Limited (who had carried out the fire stopping works for £44,184 plus VAT (total £53,022), they had also contracted with EEFS Solutions to carry out the fire alarm works. He provided information that their invoices totalled £62,766 (including VAT).

Have the Respondents demonstrated they suffered prejudice?

28. In relation to the substantial costs of the waking watch (£129,766 excluding VAT), the Tribunal is satisfied that the Respondents have identified that they may have suffered prejudice by the failure to consult.

A number of Respondents refer to the temporary use of battery powered alarms until the fire alarm extension works were completed as a substantially cheaper alternative to a waking watch. Had the leaseholders been consulted, this clearly should have been explored by the Applicant at the time, which might have reduced the cost of the waking watch.

29. Other Respondents complain about the duration of the waking watch. Ms Jones in her evidence to the Tribunal said the waking watch had to continue until there was a sign off on reverting to the 'safe to stay' policy. She said it was stood down on 11 January 2024 in less than 24 hours. However, that evidence is at odds with her letter of 11 January 2024 which confirmed that although the waking watch was being stood down the Simultaneous Evacuation Policy would remain in place as further fire stopping works were still required [132]. Had the leaseholders been consulted, the duration of the waking watch could also have been explored, again potentially reducing the substantial costs.

30. However, although the Respondents have alleged prejudice, the Tribunal is satisfied there was no legal duty on the Applicant to consult with leaseholders under s20 of the 1985 Act about the waking watch.

31. This is because the duty to consult only applies to 'qualifying works' or a 'qualifying long term agreement'. These are defined in s20ZA(2) as '*works on a building or any other premises'* and *'an agreement entered into by or on behalf of the landlord… for a term of more than twelve months'* (respectively). The Upper Tribunal in *Holding and Management (Soltaire) limited v leaseholders of Sovereign View* [2023] UKUT 174 (LC) confirmed that a waking watch does not come within the definition of qualifying works.

32. The Respondent's objections to the necessity for, the costs of and duration of the waking watch do not, therefore, fall within the scope of this application. However, any such objections as to the reasonableness of the costs and consideration as to whether such costs fall within the scope of their service charge (as defined by the lease) are matters that can be considered by the Tribunal if an application under s27A of the 1985 Act is made.

33. In relation to the fire alarm works and fire stopping works, the Tribunal finds that the Respondents have not established that they have suffered prejudice by the failure of the Applicant to comply with the s20 consultation requirements.

34. The Applicant says that the fire alarm and fire stopping works were first identified as being required in the fire risk assessment following an inspection by Osterna on 28 September 2025 (which was validated on 18 October 2024) [36]

35. The Tribunal finds, from the fire risk assessment report, that defects both in the fire alarm system and compartmentation resulted in there being a moderate risk of fire [44]. This means the risk of fire is likely, and that the outbreak of a fire could foreseeably result in injury (including serious injury) of one or more occupants [90].

36. The report identified a risk of fire from arson due to unsecured bin stores in two of the blocks [45], risks from external cladding and combustible materials on balconies [49], significant breaches and defects in compartmentation throughout the building [52] to [55], and defects identified in the fire alarm system requiring immediate interim measures pending further investigations [61] and [61]. Although the leaseholders may not have seen that document until provided with the bundle for this application, the Tribunal was satisfied that works had been identified that were urgently required in the light of the risks to the occupiers.

37. Ms Jones was unable to assist the Tribunal in understanding why these problems had not been identified by Osterna at the time of their fire risk assessment in September 2022.

38. In their objections to the application, the Tribunal finds the Respondents have not identified any prejudice suffered as a consequence of not being consulted about the fire alarm and fire stopping works. They have not set out what they would have said had they been consulted.

39. In relation to the costs of the works carried out by EEFS Solutions relating to the updating and extension of the fire alarm system (£62,766 including VAT), the Tribunal is satisfied these were met in full by the grant obtained from the Government. They should not, therefore, be passed on to the leaseholders through the service charge, and there is, therefore, no prejudice.

40. The Respondents have not provided any information about what alternatives to the fire stopping works might have resulted in lower costs or better provision had they been consulted. Several clearly supported such works being carried out.

41. Many of the objections to the application are about matters totally unrelated to the application (such as complaints about RMG's failures to carry out other repairs or redecoration). As such they cannot be taken into account.

42. Having considered the totality of the evidence, the Tribunal concluded that in principle it was reasonable for dispensation to be given in relation to the costs of the fire stopping works to remedy to compartmentation defects and the fire alarm works. They were necessary and urgent (due to the risks of fire spread through the building). Delay in completing the works for the formal consultation would not only have prolonged risks to the residents but would have also increased costs due to the employment of the waking watch, and no prejudice to the leaseholders had been demonstrated.

Should dispensation be granted conditionally or unconditionally?

43. Mr Jamalkhan confirmed that the Applicant accepts costs incurred by the Applicant in making the application to the Tribunal should not be recovered from the leaseholders through the service charge. Had such a concession not been made, the Tribunal would itself have considered such a condition reasonable.

44. Mr Wheeler (of Flat 111) requested that should dispensation be granted, the Tribunal should impose conditions including a full breakdown of costs, disclosure of decision-making rationale and that any recoverable charges be subject to a reasonableness determination under s27A of the 1985 Act [186].

45. The Tribunal considers it reasonable for a condition to be imposed that the copies of reports of the fire risk assessments carried out on 22 September 2022 and 28 September 2023 and for full details of the invoices for the fire stopping and fire alarm works to be provided to the Respondents. It is clearly information a number of leaseholders have been requesting. As the purpose of the consultation requirements is to protect leaseholders from paying for inappropriate works or from paying more than would be appropriate, in the light of the Applicant's total failure to consult in the past, it is reasonable for information to be provided now.

46. The Tribunal cannot make it a condition that any recoverable charges be subject to a reasonableness determination under s27A of the 1985 Act as a separate application must be made. However, that does not prevent any of the Respondents from making an application under s27A if they wish to do so.

## Decision

47. The Tribunal is satisfied for the reasons set out above that it is reasonable to grant dispensation under s20ZA of the 1985 Act from the s20 consultation requirements in respect of the fire alarm works and compartmentation works, and that it is reasonable for that dispensation to be on condition that
    (a) none of the Applicant's costs of this application for dispensation (including costs of RMG) are to be recovered from the leaseholders through the service charge, and
    (b) a copy of reports of the fire risk assessments conducted on 22 September 2022 and 28 September 2023 and copies of the final invoices from Target Maintenance GB limited for the fire stopping works and EEFS Solutions for the fire alarm works are to be provided to the Respondents within 28 days.

48. Although the Tribunal has granted dispensation, it has not made any determination either as to whether the costs were reasonably incurred or whether services (such as the waking watch) or the works were of a reasonable standard. Nor has it made a determination as to whether the costs are recoverable from the Respondents though the service charge. Those are matters which the Tribunal may consider but only if a separate application is made to the Tribunal under s27A and 19 of the 1985 Act.

**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.

## Schedule of Respondents (various leaseholders at the Pulse)

| Name | Number |
|---|---|
| Ken McKay | 151 |
| Anne Bashford | 109 |
| Avril Nobbs | 95 |
| Amanda Pike | 104 |
| Nicholas Wheeler | 111 |
| Louise Jones | 123 |
| Bernadette Weetman & Jordan Alexander | 142 |
| Jennie Robertson | 94 |
| Thresiamma Malamel & Paulson Malamel | 106 |
| Jane Elizabeth Hampshire | 114 |
| Lorraine Matcham | 133 |
| Nigel Moorse | 118 |
| Philip George | 145 |
| Athena Cotterill | 150 |
| Malcolm Pickup | 127 |
| John Neill & Linda Neill | 132 |
| Laura Steel | 140 |
| Chris Baker | 112 |
| Diane Grandvionet | 115 |
| Isabel Noble | 122 |