



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

Case reference : HAV/OOMW/LDC/2025/0668

Property : James House, Church Lane, Ryde, Isle of Wight, PO33 2LX

Applicant : Elmbirch Properties Ltd

Representative : Robyn Cunningham of counsel

Respondent : Sarah Pickard (Flats 1 & 2)
Helen Osborn (Flat 3)
Simon Hastain (Flat 4)
Pauline Rorke (Flat7)

Representative : none

Type of application : To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985

Tribunal member(s) : R Waterhouse FRICS,
J Reichel MRICS
P Gravell

Venue : Remote by video platform

Date of decision : 8 December 2025

DECISION

Summary of Decision

Dispensation is granted unconditionally.

Factual Background

1. In this case the Applicant seeks dispensation from the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985.
2. The Applicant is Elmbirch Properties Ltd (“The Applicant”). The Respondents to the application are leaseholders of the premises affected by the application, which is James House, Church Lane, Ryde, PO33 2LX (“The premises”).
3. The premises were previously managed on behalf of the Applicants, before the Applicants took on direct responsibility for management, by B W Residential Ltd.
4. The property comprises 3 ground floor commercial units and 8 residential flats let on long leases. A sample copy of a lease was included in the Bundle [62]-[98] and it is not in dispute that the Applicant is entitled to charge the Respondents a service charge.
5. The premises is a listed building that has a complicated roof that has for some time experienced leaks. The application for dispensation relates to a section of the roof that had repairs following ingress of water that the parties agree was urgent.

The Application

6. The Applicant has applied for dispensation from the statutory consultation requirements in respect of works, the extent of which is best set in the Bundle [51] and [111]. The works comprised;

“Scaffolding for access to external elevation and roof: £5,520

Internal Scaffolding for safe access to skylight: £1080

Skylight Replacement: £2,280

Relining of valley above Flat 8: £1680

Adaption of existing scaffolding, strip off existing roof tiles and batons above flat 7, fit closed board system, felt and re slate: £15,750

Total for all the works £26,310”

7. For the avoidance of doubt in this decision any reference to “the Works” is defined by reference to the above extract from the Bundle [51].

The Responses

9. Of the 8 leaseholders there were 4 responses from the following leaseholders:
 - a. Sarah Pickard (Flat 1 and 2)
 - b. Helen Osborn (Flat 3)
 - c. Simon Hastain (Flat 4)
 - d. Pauline Rorke (Flat 7)
10. Each of the responses is contained within the bundle but a summary of the points raised objecting to the application is as follows:
 - a) The need for the Works has been known about for several years and so the Applicant could have complied with the consultation process set out in Landlord and Tenant Act 1985 section 20;
 - b) The Works could not be said to be an emergency because they had been known about for some time and critically that the works should not have been left so long given the various reports that had highlighted them.
 - c) Previous works to the roof had been carried out piecemeal over time and this has led to wasted money on repairs that needed to be redone.

The law on dispensation

11. The statutory basis for the application is found in s20ZA Landlord and Tenant Act 1985:

“20ZA 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.
- (2) In section 20 and this section— “qualifying works” means works on a building or any other premises, and “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement— (a) if it is an agreement of a description prescribed by the regulations, or (b) in any circumstances so prescribed.
- (4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—

- (a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
- (b) to obtain estimates for proposed works or agreements,
- (c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
- (d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
- (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

12. The leading judicial guidance in how to apply the tribunal’s discretion is set out in the supreme court decision of *Daejan Investments v Benson* [2013] UKSC 14 and it worthwhile summarizing the facts and rationale in that case.

13. The Supreme Court, allowing the appeal (Lord Hope of Craighead DPSC and Lord Wilson JSC dissenting), held that:

- The correct legal test on an application to the Tribunal for dispensation is: “Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord’s failure to comply with the requirements?”

- The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.

- In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord’s failure to comply. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.

- The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

- The onus is on the leaseholders to establish what steps they would have taken had the breach not happened and in what way their rights under (b) above have been prejudiced as a consequence.

14. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the Applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above and, if so, whether any conditions should be applied to that dispensation.

Summary of Submissions at the Hearing

15. The Applicant Elmbirch Properties Ltd was represented by Robyn Cunningham of counsel. Jamie Fisk of the previous managing agents was present but did not take part in the hearing. Of the Respondents, the following were present, Sarah Pickard of flats 1 and 2, Helen Osborn of flat 3, and Simon Hastain of flat 4 present and gave submissions to the Tribunal. At the hearing, the Tribunal had the benefit of submissions from counsel for the Applicant and the Respondents identified above. The Tribunal had the benefit of a 5-page skeleton argument from Robyn Cunningham and a Bundle of 114 pages.
16. None of the parties advanced new arguments in respect of the positions and simply sought to underline and develop their positions set out in the papers.

Consideration

17. The Tribunal considered each of the Respondent's objections as summarised in paragraph 10 and made the following findings (using the same numbering as paragraph 10):
 - a) Although the need for the Works had taken a long time to reach a point where work had commenced and had reached a point of considerable urgency, given the volume of water entering the property, complying with consultation requirements would have resulted in further delay damage and cost which was to be avoided;
 - b) The description of the works constituting an "emergency" even though the need for the works had been known about for some time as evidenced by surveys, does not in itself detract from the point that complying with consultation requirements would have resulted in further delay, damage and cost;
 - c) As to the history of piecemeal works, in the view of the Respondents leading to unnecessary past expenditure, and a different approach would have been beneficial, it is not for this Tribunal to assess whether costs of works carried out are or were reasonable. The Respondents have the opportunity to challenge the costs of works pursuant to s27A of the Landlord and Tenant Act 1985.

Determination

18. On its face the application has merit. It was clearly necessary to carry out the Works urgently.

19. There was no evidence of prejudice of the type envisaged in *Daejan* being suffered by the leaseholders.
20. Accordingly, the Tribunal agrees to give dispensation unconditionally in relation to the application. **It is emphasized again that the dispensation does not affect the leaseholders' ability to challenge the service charges pursuant to s.27A Landlord and Tenant Act 1985.**

RIGHTS OF APPEAL

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 which has been dealing with the case by email at rpsouthern@justice.ogv.uk
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.
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.