



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

**Case reference** : **CAM/11UF/LDC/2022/0008(P)**

**Property** : **1-4 Tweenfields, 5-8 Carmel Court  
and 9-12 Tower House, Marlow,  
Bucks SL7 2LG**

**Applicant** : **Highfield Flat Owners Ltd**

**Respondents** : **The leaseholders**

**Type of application** : **For dispensation of the  
consultation requirements under  
section 20ZA Landlord and Tenant  
Act 1985**

**Tribunal members** : **Judge K. Saward**

**Date of decision** : **6 May 2022**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a determination on the papers. A face-to-face hearing was not held because all issues could be determined on paper and no hearing was requested. The documents comprise the application form with list of leaseholders, structural survey, quotations, specimen lease, photographs, email exchanges and associated correspondence with the tribunal, the contents of which we have noted. The order made is described below.

## **Decision of the tribunal**

- (1) The tribunal determines under section 20ZA of the Landlord and Tenant Act 1985 to dispense with all the consultation requirements in respect of works to replace failing timber structural columns supporting two balconies at the property.

## **The application**

1. The applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985, as amended (“the 1985 Act”) for the retrospective dispensation of consultation requirements in respect of certain “qualifying works” (within the meaning of section 20ZA).
2. The applicant is the freeholder and landlord of 1-4 Tweenfields, 5-8 Carmel Court and 9-12 Tower House, Marlow, Bucks SL7 2LG (“the property”), being a former house converted into flats. The applicant acts through its property management agent Alba Management Services of Swan House, Savill Way, Marlow, Bucks SL7 1UB.
3. The respondents are the leaseholders of the flats in the property who are potentially responsible for the cost of the works under the terms of their lease.
4. The qualifying works are described in the application as urgent structural works to replace timber supporting columns to two balconies at the property.
5. The only issue is whether it is reasonable to dispense with the consultation requirements of section 20 of the 1985 Act and the Service Charges (Consultation etc)(England) Regulations 2003. Any issue as to the cost of the works may be the subject of a future application by the landlord or leaseholders under section 27A of the 1985 Act to determine the payability of any service charge under the lease.

## **Paper determination**

6. From the description within the specimen lease provided the property appears to be a building known as Highfield, Carmel Court and Tweenfields in which there are 12 self-contained flats.
7. A copy of the counterpart lease for flat 12 Tower House has been provided. It includes provision for the payment by the leaseholder of service charges for, amongst other things, works carried out by the landlord to keep the structure of the property in good and substantial repair and condition. The structure is defined to mean “the exterior and main structure” of the property and includes balconies demised to other flat owners.

8. The application is dated 11 March 2022. Directions were issued by Judge Wayte on 4 April 2022. Those directions required the applicant landlord by 11 April 2022 to send to each of the leaseholders, by hand delivery or first-class post, copies of the application form (excluding any list of respondents' names and contact addresses), and the directions. A copy of both were required to be displayed in a prominent position in the common parts of the property. By 13 April 2022 the landlord was directed to write to the tribunal to confirm that these steps had been done and stating the date on which this was done.
9. In an email timed at 14.02 on 19 April 2022 Alba Management Services confirmed that it had served the leaseholders with copies of the application and directions and placed copies of both in a prominent position in the common parts of the property. Two photographs were supplied in verification showing the documents on display.
10. The directions gave those leaseholders who oppose the application until 25 April 2022 to respond to the tribunal and to send to the landlord a statement in response to the application with a copy of their reply form.
11. No response or objection has been submitted by the respondents who have taken no active part in this application.
12. The directions required the landlord to prepare a bundle of documents containing all the documents on which the landlord relies, including copies of any replies from the leaseholders. Two copies of the paginated bundle were required to be sent to the tribunal in an A4 lever arch file by 29 April 2022. No such bundle was submitted to the tribunal in paper form as required although an electronic file was received by email as indicated above.
13. The directions provided that the tribunal would determine the application based on written representations unless any request for an oral hearing was received by 11 April 2022. No such request was received. Therefore, this application has been determined by the tribunal on the information supplied by the applicant.

### **The law**

14. Section 20ZA of the Act, subsection (1) provides as follows:

*'Where an application is made to a 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.'*

15. In the case of *Daejan Investments v Benson and others* [2013] UKSC 14 the Supreme Court set out certain principles relevant to section 20ZA. Lord Neuberger, having clarified that the purpose of sections 19 to 20ZA of the Act was to ensure that tenants are protected from paying for inappropriate works and paying more than would be appropriate, went on to state *'it seems to me that the issue on which the [tribunal] should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements'*.

### **Findings of fact**

16. For the following reasons the tribunal finds that there is cogent evidence adduced to show that there was urgency, that dispensation is justified, and an absence of evidence of prejudice.
17. The applicant gives the following reasons for seeking dispensation. Upon an inspection in late January 2022, it was noticed that existing timber structural columns affecting two balconies had deteriorated. Structural repairs are required as a matter of urgency and whilst temporary supports have been installed, there are health and safety grounds and loss of amenities to the leaseholders affected. The outcome of the section 20 process would have been the same if run, with the cheapest quote being accepted and being paid with service charge funds already held.
18. Among the background material supplied to the tribunal is a copy of an email from Alba Management Services to Stephen Smalley FRICS on 6 January 2022 to say that Highfield *"has these large wooden pillars holding up a balcony at the rear of the property. The pillars are starting to rot and there is a fear that they are structural."*
19. Following this email, a survey was carried out by Mr Smalley to ascertain if the balcony supports at the property are structural. His findings are contained within an email to Alba Management Services on 11 January 2022 which says:  
  
*"It appears to me that the tapered round timber columns are indeed supporting the centre of the balcony span above. The right hand column to [one flat] is severely decayed with wet rot, and through the hole in the casing I could see that there is no internal steel support. I had anticipated the timber columns, formed from sections of shaped timber, would be purely cosmetic and used as cladding for the main load bearing element. This is clearly not the case!"*
20. Mr Smalley recommended in the short term, and possibly as a matter of some urgency, that temporary support be provided to the balcony in the form of Acrow props. Sections of substantial timber should be

positioned between the top of the props and the underside of the balcony to spread the load. This only needs to be done to one flat as the columns for the second balcony look to be in much better condition. The surveyor advises that he needs to research the best form of replacement. Whatever the solution, steel posts should be introduced to the main structural support to the balconies and the timber columns would then just be cosmetic.

21. The applicant confirms that props were installed and both leaseholders instructed to refrain from using the balconies pending full repair.
22. Within the tribunal bundle is a copy quotation from Varney & Son Construction Ltd dated 12 January 2022 in the sum of £7,150 plus VAT (£8,580 total) for the replacement of structural columns and restoration of white painted balcony area at Highfields Flats, 1 Tweenfields. An alternative estimate dated 20 January 2022 is supplied from Greens Builders for £9,650 plus VAT. In summary, the works are to remove the existing failed timber columns and cast two new 300mm columns to a height of 2700mm and to fix 95S stainless steel EML sheeting to the underside of the balcony ceiling, render with two coats of sand and cement render and reinstate or repair all painted surfaces.
23. By letter dated 15 March 2022, Alba Management Services wrote to the leaseholders with an update on “*recent problems with one of the Alcove Pillars at Tweenfields*”. The letter advised that due to the urgency of the works required, the landlord had applied to the tribunal for dispensation from the consultation requirements within section 20 of the 1985 Act. The letter proceeds to say that the cost of the works will be covered from funds already held. The lowest quote of £7,150.00 plus VAT from Varney & Son Construction Ltd had been accepted and repairs would be conducted from 28 March 2022 with estimated completion within 5 weeks.
24. On the basis of the information submitted by the applicant, and in the absence of any objections or submissions from the respondents, the tribunal is satisfied that the qualifying works were necessary and urgent given the structural nature of the defect uncovered to the balconies and associated risk to health and safety.
25. As the respondents have raised no objection to the works, the Tribunal finds no evidence that the respondents would suffer prejudice if dispensation were to be granted.

### **The Tribunal’s decision**

26. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act “*if satisfied that it is reasonable to dispense with the requirements*”.

27. In the circumstances set out above, the tribunal considers it reasonable to dispense with consultation requirements. Accordingly, dispensation is granted pursuant to section 20ZA of the 1985 Act.
28. This decision does not affect the tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act as to the reasonableness and standard of the work and/or whether any service charge costs are reasonable and payable.
29. There was no application before the tribunal for an order under section 20C (limiting the ability of the landlord to seek their costs of the dispensation application as part of the service charge). This could be the subject of a future application in the event that any costs are charged to the leaseholders.
30. It is the responsibility of the applicant to serve a copy of this decision on all respondents.

**Name: Judge K. Seward**

**Date: 6 May 2022**

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).