FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HE/LSC/2022/0090
Property	**:**	Apartment 7 Alverton Manor, Alverton Road, Penzance Cornwall TR18 4TR
Applicant	**:**	Mr S and Mrs A Pickard
Representative	**:**	
Respondent	**:**	Alverton Manor Management Company
Representative	**:**	DAC Beachcroft LLP, solicitors
Type of Application	**:**	Determination of Service Charges section 27A of the Landlord and Tenant Act 1985 ("1985 Act)

CROSS APPLICATION

Case Reference	**:**	CHI/00HE/LDC/2023/0052
Property	**:**	Alverton Manor, Alverton Road Penzance Cornwall TR18 4TR,
Applicant	**:**	Alverton Manor Management Company
Representative	**:**	DAC Beachcroft LLP, solicitors

Respondent	**:**	Carol Moseley (Flat 2) Mark Iles (Flat 3) Michael and Diane Bateman (Flat4) Scott and Elizabeth Ingram (Flat 5) Dora Eisele (Flat 6) Simon and Alina Pickard (Flat 7) Paul Holder (Flat 9) Anna Harcourt-Brown (Flat 10)
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 Member(s)	**:**	Judge Tildesley OBE Mr P Turner-Powell FRICS Ms T Wong
Date and Place of Hearing	**:**	12 July 2023 Havant Justice Centre
Date of Decision	**:**	18 August 2023

DECISION

Summary of Decision

1. The Tribunal is satisfied that Mr and Mrs Pickard would suffer relevant prejudice if unconditional dispensation is granted. The Tribunal, however, considers that it is appropriate to grant dispensation with conditions.

2. The Tribunal, therefore, grants dispensation in respect of the works to the exterior of the property and the repairs to the window frames and other wooden structure carried out to the end of December 2021 to the value of £47,456 subject to the Management Company accepting the following conditions:

    - The recoverable costs for the works done is limited to £30,000 (£3,000 per leaseholder; the Tribunal records that Mr and Mrs Pickard has paid £1,820 of that amount).

- The Management Company pays its own costs in relation to the proceedings. In those circumstances it is not necessary for the Tribunal to make order under section 20C of the 1985 Act, and paragraph 5A of schedule 11 of the Commonhold and Leasehold Reform Act 2002).

- The Management Company pays £400 towards the costs of Mr and Mrs Pickard in challenging the application. The £400 comprises £300 in Tribunal fees and £100 in travelling and subsistence costs.

The Applications

3. On 30 July 2022 Mr Simon and Mrs Alina Pickard applied for determination of service charges, namely: a balancing charge of £3,200 for the years ending 30 April 2018 and 2019; a balancing charge of £15,000 for the year ending 30 April 2020; the service charge for the year ending 30 April 2021; the service charge on account for the year ending 30 April 2022, and the service charge on account for the year 30 April 2023.

4. Mr and Mrs Pickard also applied for orders under section 20C of the Landlord and Tenant Act 1985, and paragraph 5A of schedule 11 of the Commonhold and Leasehold Reform Act 2002 preventing the landlord from recovering the costs of the proceedings from the Applicant either directly or through the service charge.

5. The issue in this case concerned the costs of major works which had been incurred on the decoration of the exterior of the property and repairs to the windows. Mr Tony Hayward, the sole director of Alverton Manor Management Company ("the Management Company"), stated that costs £47,457.66 had been incurred on the major works from 2019 to April 2021. Mr Hayward estimated that it would cost between £10,000 and £15,000 to complete the works. The Tribunal understands from Mr Hayward the works were halted in December 2021 because of the lack of funds to complete the works.

6. Mr and Mrs Pickard's ground for their application was that the Management Company had failed to comply with the consultation requirements under section 20 of the 1985 Act. On 20 April 2023 The Management Company applied for dispensation from consultation requirements pursuant to section 20ZA of the 1985 Act. The Application for dispensation named the leaseholders at the property as the Respondents except Mr Hayward.

7. The Applications were heard on 12 July 2023 at Havant Justice Centre. Mr and Mrs Pickard appeared in person. Mr John Beresford of Counsel represented the Management Company. Mr Hayward and Mr Mark Isles of Flat 3 gave evidence for the Management Company. Mr

Isles attended via a video link. Two bundles of documents, one for each of the Applications, were admitted in evidence.

8. The Tribunal confirmed at the commencement of the hearing that the issue in this case was whether the Management Company had complied with the consultation requirements under section 20 of the 1985 Act. **Mr Beresford made a formal admission on behalf of the Management Company that it had not complied with the statutory requirements for consultation.** In the light of the admission the Tribunal decided that the substantive dispute was whether it was reasonable to dispense with the consultation requirements in respect of the major works involving the decoration to the exterior of the property and the repairs of the windows.

9. Mr and Mrs Pickard confirmed to the Tribunal that the grounds for their service charge application were confined to the question on whether the Management Company had complied with the consultation requirements. The Tribunal identified that the dispute on their contributions of £320 and £1,500 to the balancing charges of £3,200 and £15,000 directly related to the costs of the major works. The Tribunal understands Mr and Mrs Pickard's challenge to the on account service charges was that they were prepared to contribute to the costs of building insurance but not to the remaining balance which they had assumed was paying for the major works. Mr and Mrs Pickard stopped paying their service charge in April 2021.

10. The Tribunal decided not to proceed with Mr and Mrs Pickard's application for determination of service charges for the following reasons:

    a. The ground of their Application was that the Management Company had not complied with the statutory consultation requirements. In view of the formal admission on behalf of the Management Company the ground for the Application was no longer in dispute.

    b. The issue, therefore, was whether it was reasonable to dispense with the consultation requirements which was the subject of the Management Company's application.

    c. Mr and Mrs Pickard's reasons for withholding payment of the interim service charge were questionable, and as a rule a leaseholder should pay the service charge until the dispute is resolved. However, it would appear to the Tribunal, the demands for the service charges on account were not accompanied by the Summary of Tenant's Rights and Obligations, which would be a valid reason for not paying the service charge.

    d. The decision not to proceed with Mr and Mrs Pickard's application for determination of service charge does not prejudice their right to bring a new application for

determination of the actual service charges for the periods ending 30 April 2021 to 30 April 2023.

11. Before dealing with the substance of the Application the Tribunal records two procedural matters that occurred during the hearing. The Tribunal refused Mr Pickard's application to admit photographs that had been supplied the day before the hearing which was objected to by Counsel for the Management Company. The Tribunal considered that the photographs were not relevant to the Application for dispensation before it. The photographs would have been relevant if the Tribunal was dealing with an application to determine the actual service charges. Mr Hayward did not return to the hearing after lunch until around 4pm. Counsel for the Management Company was content for the Tribunal to proceed in the absence of Mr Hayward.

Consideration

The Law

12. The 1985 Act provides leaseholders with safeguards in respect of the recovery of the landlord's costs in connection with qualifying works. Section 19 ensures that the landlord can only recover those costs that are reasonably incurred on works that are carried out to a reasonable standard. Section 20 requires the landlord to consult with leaseholders in a prescribed manner about the qualifying works. If the landlord fails to do this, a leaseholder's contribution is limited to £250, unless the Tribunal dispenses with the requirement to consult.

13. In this case the Tribunal's decision is confined to the dispensation from the consultation requirements in respect of the works under section 20ZA of the 1985 Act. The Tribunal is not making a determination on whether the costs of those works are reasonable or payable. If a leaseholder wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.

14. Section 20ZA does not elaborate on the circumstances in which it might be reasonable to dispense with the consultation requirements. On the face of the wording, the Tribunal is given a broad discretion on whether to grant or refuse dispensation. The discretion, however, must be exercised in the context of the legal safeguards given to the Applicant under sections 19 and 20 of the 1985 Act. This was the conclusion of the Supreme Court in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 & 54 which decided that the Tribunal should focus on the issue of prejudice to the tenant in respect of the statutory safeguards.

15. Lord Neuberger in Daejan said at paragraph 44

> "Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under s 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".

16. Thus, the correct approach to an application for dispensation is for the Tribunal to decide whether and if so to what extent the leaseholders would suffer relevant prejudice if unconditional dispensation was granted. The factual burden is on the leaseholders to identify any relevant prejudice which they claim they might have suffered. If the leaseholders show a creditable case for prejudice, the Tribunal should look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the leaseholders fully for that prejudice.

The Background

17. The Tribunal now turns to the facts of this case. The property, Alverton Manor, is a Victorian Grade II building which was constructed between 1821 and 1840. Between 2009 and 2013 the Property was converted into 10 apartments by Mr Crookes, Mr Bishop and Mr Moyle who remain the current freeholders of Alverton Manor.

18. The leases for the ten apartments are made between the freeholders (referred to as the Landlord), Alverton Manor Management Company Limited (the Management Company) and the long leaseholder(s) (referred to as "The Tenant"). The leases are for terms of 999 years from and including 1 January 2013 in return of rent in the sum of £100 per annum until 31 December 2023 which increases every 10 years thereafter in proportion to the Index published by Nationwide Building Society.

19. The terms of the leases are not material to this dispute. Briefly under paragraph 1 of schedule 8 to the lease the Management Company is responsible for keeping in good repair and decoration (as appropriate) and to renew and improve as and when the Landlord and/or Management Company may from time to time in its absolute discretion consider necessary the main structure of the Building which includes all the exterior and load bearing walls of the Building whether internal or external (but excluding the internal skins of the external walls) and the decorative external metal work. Paragraph 4 of schedule 8 requires the Management Company to decorate at least every 6 years as appropriate in a proper and workmanlike manner the exterior parts of the Building requiring such redecoration.

20. Paragraph 1 to schedule 5 to the lease obliges the Tenant to pay to the Management Company the Tenant's Maintenance Charge Proportion

of the expenses which the Management Company shall reasonably and properly incur in each Maintenance Year in complying with the covenants on its part contained in Schedule 8 (including any provision for future expenditure). Paragraph 1 enables the Management Company to demand on account service charges. The Maintenance Charge Proportion for each Tenant is one tenth.

21. Mr and Mrs Pickard are the long leaseholders of Apartment 7. They purchased the Apartment in November 2016 and initially rented the property out via a professional letting company. In June 2021 they re-located to Cornwall and live in Apartment 7 as their permanent residence.

22. Mr Hayward purchased Apartment 8 in July 2016 and Apartment 1 in November 2016 and which Mr Hayward lets out. Mr Hayward currently lives as a tenant in Apartment 9. Mr Hayward has been a private landlord since 1997. On 27 September 2017 he was appointed director of the Management Company and currently is its sole director. Mr Hayward acts as the de facto manager of the property. His responsibilities include arranging insurance for communal contents, carrying out weekly fire alarm checks, administering the service charge accounts and undertaking regular maintenance and ad hoc repairs. Mr Hayward originally performed the services free for the first eighteen months to two years after which he charged £125 per month but since 1 July 2021 he no longer makes a charge for his management services.

23. The Application for dispensation was served on the leaseholders except Mr Hayward. Mr and Mrs Pickard were the only leaseholder who objected to the application. Mr Mark Isles of Apartment 3, Mr Scott Ingram and Ms Elizabeth Ingram of Apartment 5 and Mr Paul Holder of Apartment 9 agreed with the Application. The other four leaseholders did not return the form asking whether they agreed or disagreed with the application. The fact that there are more leaseholders in favour of the application than against is a relevant consideration. Equally if the Tribunal finds that Mr and Mrs Pickard had suffered relevant prejudice from the failure to consult, the Tribunal is entitled to determine that the relevant prejudice affects all the leaseholders at the property (see *Aster Communities v Kerry Chapman, and others* [2021] EWCA Civ 660).

The Chronology of the Major Works

24. On the 27 September 2017 the members of Alverton Manor Management Company met and agreed that the windows and the external walls required painting in Spring 2018. The minutes of the meeting recorded Mr Hayward and Mr Maidment would seek quotations preferably three for the works.

25. The Management Company obtained quotations from:

- Jopson Painters and Decorators in the sum £26,980 plus VAT including the costs of scaffolding which was supported by a detailed specification dated 4 January 2018. The quotation mentioned that Jopson employed its own joiner and that all associated joinery repairs and replacement glass would be in addition to the quotation. Also if Jopson was successful with the quotation it would provide a Risk and Method Statement.

- Simon Williams Painters and Decorators in the sum of £22,908.56 (VAT inclusive) which included the cost of the scaffolding.

26. On 19 June 2018 the Management Company invoiced the leaseholders for the 2018 maintenance charge. The invoice provided an update on the decoration works stating that

> "The directors invited competitive tenders for the painting of the outside of the Manor House, sanding down and painting the 40 odd external windows and painting the doors and railings. The lowest tender from a local tradesman was some £ 23,000 which will include the cost of scaffolding the building to carry out the work. The fund held on behalf of the Leaseholders by the Company is currently some £ 12,500 and consequently the directors have decided to defer the commencement of the work until next year. The costs will be incorporated into the 2019 budget when the maintenance fees for that year are determined".

27. In December 2018 Mr Hayward obtained another quotation from a Dan Tellem-Woolf in the sum of £22,000 including scaffolding which did not include the costs of painting the railings and employing a joiner to repair the window frames.

28. According to Mr Hayward, he was persuaded by another leaseholder to employ another painter and decorator, a Mr Triggs who had quoted £7,750 in total to paint the windows and exterior walls. Mr Hayward said this was a ridiculously low quote, and it was obvious that Mr Triggs would not be able to do the work. However, Mr Hayward decided to give him a trial on one side of the building from July 2019. Mr Hayward was not satisfied with the work done, and he agreed with Mr Twigg a sum of £3,400 for the work done.

29. On 24 January 2020 the Management Company sent a detailed letter to all the leaseholders setting out the quotations received for the painting and repair works and the reasons why it chose to accept Mr Triggs' tender. The Management Company pointed out that Mr Triggs was not registered for VAT and that he intended to do the works with the use of a ladder and scaffold towers. The Management Company added that the building was last painted in 2015 by a contractor using ladders at a cost of £3,835. The Management Company then said that Mr Triggs had been paid off and that Mr Hayward had been able to secure the services of another painter, Mr Trevor Sutcliffe, who would

complete the work of the painting the building and making good the window frames.

30. The Management Company then gave a detailed explanation of the statement of accounts. The Management Company requested a one-off payment of £3,200 (£320 per leaseholder) to make good the deficits from the previous two years ending 30 April 2018 and 2019. The Management Company explained that the annual maintenance charge would return to £1,080 to replenish the reserves in order to pay for the next cycle of decoration to the building. The letter said:

> "The Manor House was last painted 5 years ago in 2015 but it makes sense to do it again whilst the windows are being done. The company will have to rebuild reserves to at least £10,000 to cover this future cost which works out at £200 per flat above the usual annual running costs in order to rebuild the funds".

31. On 2 May 2020 Mr Hayward updated the leaseholders on the exterior repairs and painting, explaining the work that have been done to the window frames of various apartments including that of apartment 7 followed by a detailed list of the works to be completed and the method for painting the south and east facing elevations. Mr Hayward then made an urgent request for additional funding, asking for £15,000 (£1,500 per leaseholder) to complete the works. Mr Hayward reminded the leaseholders of the various quotations received from the external contractors ranging from £22,500 to £32,000 to do just the painting and adding that they would have required a further £10,000 to £20,000 to carry out the repairs to the window frames. Mr Hayward said that Mr Sutcliffe who was tenant of his and had just turned 70 was self isolating and that the works would be done by Mr Hayward and Matt (Hedges). Mr Hayward stated that Mr Hedges was an experienced painter and carpenter, and that between them they had more than enough of the necessary skills and experience to complete the job. Mr Hayward said it was an impossible restoration project and paint job to price up, and with the current lockdown and restrictions on work and movements it was best to leave him and Mr Hedges to get on with it. Mr Hayward stated that Mr Sutcliffe was charging £17.50 per hour, and that he and Mr Hedges would not be charging more than £15 per hour. Finally Mr Hayward informed the leaseholders that he had purchased a brand new scaffolding tower for £1,754.

32. On 25 November 2020 Mr Hayward provided a detailed update on the works completed so far. Mr Hayward explained that he and Mr Hedges had hoped to complete the works by the end of the summer but this had not been possible because of the state of disrepair to the windows. Mr Hayward said they would continue with the works on the eastern side of the building followed by checking and fixing the windows and walls on the northern elevation. Mr Hayward supplied costings of £22,175 which had been incurred so far on wages of which almost £10,000 had not been paid to Mr Hedges.

33. On 8th January 2021 Mr Hayward wrote to all leaseholders enclosing the full breakdown of costs incurred between April 2020 and December 2020 comprising £23,229.75 (labour), £9395.53 (boom lift hire), £3,063.53 for equipment and £2,087.38 for materials making a total of £37,776.19. Mr Hayward set out the number of hours that Mr Hedges had completed on the windows of the various apartments (18 and one French Door) amounting to 676.5 hours, of which 139.25 hours were spent on apartment 7. Mr Hayward pointed out that no work had been started on Flats 1, 5 and 8. Mr Hayward said that he had tendered his resignation as director of the Management Company and manager of the building back in October 2020 but nobody took up his invitation to take over both of these roles. Mr Hayward concluded by saying:

> " I can't stress enough that even brand new, modern buildings require regular maintenance which can take both a fair amount of time and money; therefore a 200 year old Grade II listed Victorian property with almost 50, nearly all large wooden sash windows with many panes, combined with the extremely irregular shape and layout of the building with many high up 'nooks and crannies', and the fact that it has been severely neglected for many years and largely due to it not being used for residential purposes, are the reasons why we are, where we are now, and why even routine maintenance cannot be completed on a shoe-string budget.
>
> Had we used professional firms of scaffolders, carpenters, painters and roofers simply to carry out what we have done so far, then the costs would have far exceeded the £37,776 figure it has cost us to date; Matthew, for example, provided and will continue to provide all replacement timber free of charge from his own stock".

34. On 25 January 2021 Mr Pickard wrote to all leaseholders stating that he and his wife had never questioned the level of work needed to maintain this beautiful property but were alarmed at the amount spent of £37,776 to date. Mr Pickard expressed concern of the amount still owing to Mr Hedges, and that the costs of the works would consume the service charge for the year to the detriment of the ongoing day to day costs. Mr Pickard said that he had asked Mr Hayward to obtain quotes for the remaining works which will be on the more sheltered eastern and north facing sides of the property.

35. On 13 March 2021 Mr Hayward responded to the letter of 25 March 2021. Mr Hayward stated that he had informed Mr Pickard that he was happy to continue with Mr Hedges to complete the repairs, as his work was to the highest standard. Mr Hayward believed the majority of the leaseholders shared his view. Mr Hayward expressed caution about getting further quotations and reminded leaseholders of the poor quality of workmanship of Mr Triggs.

36. Mr Hayward wrote again to all leaseholders on 19 April 2021. This time he included a set of 120 photographs to show the states of the

building before and after the works. Mr Hayward relied on the photographs to show the poor condition of the south and west elevations and the extent of the works that were carried out to make good the poor condition. The works involved repairing wooden windows, frames (and French doors) fascias and soffits and then applying primer, two coats of undercoat and two coats of gloss to the wooden windows. In addition there were the repairs and filling to the cracks and weather damage to the masonry and render, followed by the application of stabilising primer and at least two coats of masonry paint, installing seagull repellent spikes on eight of the ten chimney pots and the priming and painting of the aluminium gutters and downpipes. Mr Hayward explained that the only costs going forward were the wage bill of Mr Hedges and the expense of more paint. Mr Hayward reiterated he was not in favour of asking for new quotations for the remaining works because of the potential risks of giving up the high quality work done by himself and Mr Hedges and that a new contractor would concentrate on the painting and not the repairs to the window frames. Mr Hayward asserted that if he and Mr Hedges were replaced with another contractor it would amount to a breach of contract. Mr Hayward then made various proposals for funding the remaining works.

37. Mr Pickard requested a copy of the Management Company's contract with Mr Hayward and Mr Hedges but no copy has been provided to him.

38. In January 2022 Mr Hayward supplied a job specification and schedule of works for the exterior repair and painting of the final two elevations of the property. Mr Hayward estimated that there was now approximately 40 per cent of the exterior of the building to repair and paint. Mr Hayward estimated that the remaining works would cost £10,000 (Labour) and £1,000 (materials).

39. Mr Hayward also supplied the unaudited financial statements for the Management Company for the years ended 30 April 2020, and 2022, and the service budgets for the years ended 30 April 2022 and 30 April 2023. Mr Hayward explained that the extra costs of the works had been met by some of the leaseholders paying their service charges in advance and by forgoing other items in the service charge budget. Mr Hayward said that Mr Hedges was willing to wait for payment of some of the monies owed to him. Mr Hayward also highlighted that two leaseholders had not made their payments towards ground rent and service charges which was not helping the situation.

40. The Tribunal understands that the works to the windows and painting the exterior were halted at the end of December 2021.

Reasons

41. This is a case where the Management Company in its capacity as landlord has admitted that it has failed to comply with the consultation

requirements in respect of the works to the exterior of the property including repairs to the window frames as set out in section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.

42. In view of the Management Company's admission there is no need for the Tribunal to make findings of fact on whether a breach of the consultation requirements has occurred.

43. The sole issue for the Tribunal is to decide whether it is reasonable to grant the Management Company dispensation from the consultation requirements.

44. The Tribunal starts by reminding itself of the key principles of the Supreme Court's decision in *Daejan*. The purpose of the landlord's obligation to consult tenants in advance of qualifying works is to ensure that tenants are protected from paying for inappropriate works or from paying more than would be appropriate. Adherence to those requirements is not an end in itself, and the dispensing jurisdiction under section 20ZA(1) of the 1985 Act is not intended to be a punitive or exemplary exercise. Thus the gravity of the landlord's failure to comply with the requirements, the degree of its culpability, the nature of the failure and the financial consequences for the landlord of failure to obtain dispensation are not relevant considerations for the Tribunal.

45. The issue for the Tribunal is whether the tenants are prejudiced by the failure to consult in two respects: paying for inappropriate works and/ or paying more for the works than would be appropriate. Prejudice in this context means to what extent the tenants would relevantly suffer if unconditional dispensation was accorded.

46. The landlord has the legal burden to prove that it is reasonable to grant dispensation but the factual burden of identifying relevant prejudice rests on the tenants. However, given that the landlord would have failed to comply with the requirements, the landlord could scarcely complain if the Tribunal views the tenants' arguments sympathetically, particularly because the Tribunal is having to undertake the exercise of what would have happened if the landlord had consulted with the tenants.

47. In this case the Tribunal finds that the Management Company should have consulted with the leaseholders on two separate occasions in respect of the works to the exterior of the property. First when it contracted with Mr Triggs in July 2019, and then when it decided around March 2020 to go ahead with Mr Hayward and Mr Hedges.

48. Mr and Mrs Pickard set out their grounds for prejudice in their reply to Management Committee's case to the service charge application which is then elaborated upon in their objection to the Management Committee's application for dispensation.

49. The Tribunal starts with Mr and Mrs Pickard's succinct articulation of prejudice in the Reply at [157]:

> "We are asked to show how we have been prejudiced, we are subject to a contract (*Mr Hayward and Mr Hedges*) that has never been provided, would appear to include onerous terms based on an open ended timeframe at a per hour amount. There is no total amount for the project costs because it was too difficult. This is due to Mr Hedges being a self taught painter and carpenter and we believe is not qualified to work on a property of this size, age and complexity being a Grade II listed building. Mr Hedges charged 65 hours to paint the front door and surrounding area at £15 per hour = total £975. This was not necessary or important when the windows were deemed the most important and we believe is one example that highlights that neither the Respondent (*Mr Hayward)* or Mr Hedges is qualified to run this project".

50. Mr and Mrs Pickard continue with this theme in their objection:

> "We would have obtained quotations from professional tradespersons who were qualified to offer an opinion of the true extent of the work, if as it is believed the work was more detailed than when original quotations were submitted. We would have then used these professionals' opinions to discuss and consult with all leaseholders. We certainly would not have started the work and then advised all leaseholders that a seascape artist and care home worker were running this project on an hourly basis".

> "The Applicant has stated that the extent of the works required to repair the windows and frames were not known until Mr Hedges and Mr Hayward used the boom hire to inspect the first and second floor windows. The Applicant was duty bound to report to all leaseholders the extent of the work rather than continue on their approach charging £15 per hour. They state that any quote obtained previously would have been subject to significant increases as a result, however they are not qualified to make that comment. Quotes should have been obtained from professional tradespersons to verify the true extent of the costs and the planned payment approach of the project. The project has been allowed to run on for four years and is still not finished, money is being paid over to the management company by the leaseholders who have at best been given late and inadequate information. The project should have been halted and all leaseholders advised that the true nature was that the original quotes between £23,000 and £33,000 were unrealistic and that we could be looking at a figure of almost double the highest original quote".

51. Mr and Mrs Pickard have put forward more grounds in their objection. The Tribunal, however, considers the grounds other than the ones cited above are not relevant to the issue of consultation. The Tribunal, also notes that Mr and Mrs Pickard has restricted the question of prejudice to the works carried out by Mr Hayward and Mr Hedges. The Tribunal is satisfied that Mr and Mrs Pickard has identified no relevant prejudice in respect of the works done by Mr Triggs.

52. The Management Company stated that Mr Hayward kept the leaseholders informed. The Management Company relied not only on the letters cited in the chronology about but on the informal communications Mr Hayward had with leaseholders. The Management Company asserted that Mr Hayward informed personally the majority if not all the leaseholders of its intention to proceed with Mr Hayward and Mr Hedges at the rate of £15 per hour. Further the Management Company pointed out that the rate of £15 per hour was lower than the rate of Mr Sutcliffe of £17.50 per hour.

53. The Management Company contended that the works were needed urgently to keep the building in repair and for health and safety reasons. According to Mr Hayward, the works could not wait because many apartments were suffering from water ingress due to the minimum amount of paint clinging to the exterior walls. Mr Hayward stated that the double electrical socket in the kitchen of Mr and Mrs Pickard's apartment was surrounded by water which was a fire hazard for the whole building. The Management Company argued that the quotations given in 2018 by Jopson Painter and Decorator Limited and other contractors were not reliable to be used as comparisons because they were two years old and limited to the costs of painting the exterior. The Management Company pointed out that in any event it was not possible to obtain other quotations when Mr Hayward and Mr Hedges embarked upon the works because it was during the lockdown imposed by COVID.

54. Mr Pickard in cross examination admitted that he had not nominated contractors for the work because at the time the works were taking place he and Mrs Pickard were not living in the property and had no local knowledge of suitable contractors in Cornwall.

55. Mr Pickard accepted that he had paid the additional sums demanded of £320 and £1,500 to fund the works because he thought the amounts were reasonable and that would be the end of the matter. Mr Pickard said he became concerned when he discovered in October 2020 that the costs had increased to £37,000. Mr Pickard said that he did not know about the requirement upon the landlord to consult on major works until he took advice from a solicitor around March 2021.

56. Mr Isles gave evidence that Mr Hedges had a long history of doing carpentry work for local people and had been given a lot of repeat business from them. Mr Isles confirmed that he had used Mr Hedges for works to the interior of Apartment 3 and to some of his other properties in Penzance. Mr Isles believed that Mr Hayward had complied with the spirit of the statutory consultation procedures, stating that he was content with the frequency and content of the information Mr Hayward was sharing with the leaseholders regarding the works in 2019 and 2020. In Mr Isles' view, adhering to the letter of section 20 of the 1985 Act would have resulted in all work stalling and would have meant that Alverton Manor falling further into disrepair.

57. Counsel for the Management Company contended that Mr and Mrs Pickard had not discharged the factual burden of demonstrating relevant prejudice. Counsel argued that Mr and Mrs Pickard would not have been able to suggest other contractors if the Management Company had engaged in the statutory consultation. Further Mr and Mrs Pickard had provided no evidence that the costs of the works were more than they should have been and that the photograph produced showing blistering of the paintwork on a window sill was plainly inadequate to demonstrate that the works carried out by Mr Hayward and Mr Hedges were not to the required standard.

58. The Tribunal does not accept the Management Company's submission that it had no time to engage the statutory consultation procedures because of the urgency of the works. The Tribunal is satisfied on the evidence that the Management Committee had identified that the works were necessary back in September 2017. The Tribunal finds that the Management Company had over two and half years to undertake the consultation process. The circumstances that the Management Committee faced at the beginning of the 2020 were of its own making, and not a valid reason for not embarking on the statutory consultation process in connection with the proposed works.

59. The Tribunal is not convinced about the accuracy and the relevance of the evidence asserting that the Management Company had complied with the spirit of the section 20 consultation process. The Tribunal's assessment of Mr Hayward's letters was that he was telling the leaseholders what would happen and providing justifications for the actions he had taken. The Tribunal found only one occasion when the views of the leaseholders were sought which was when Mr Hayward requested their views on the proposed colour scheme for the property.

60. The Tribunal at this juncture acknowledges Mr Hayward's hard work and commitment to doing what he sees is right for the property and the leaseholders without personal gain. The Tribunal recognises that Mr Hayward did not give his best at the hearing and was probably overawed by the solemnity of the Tribunal proceedings. The Tribunal wishes to assure Mr Hayward that it has read the correspondence and viewed the photographs he submitted in evidence.

61. The Tribunal considers Counsel's submissions about Mr Pickard's failure to adduce evidence on costs and quality of the works were not directly on the point about what the Tribunal has to decide under section 20ZA of the 1985 Act. Counsel's submission would be highly relevant if the Tribunal was determining an application on reasonableness of the costs under section 27A of the 1985 Act but it is not.

62. The starting point for the Tribunal's analysis under section 20ZA is to recreate what would have happened if the leaseholders had been given the opportunity to consult on the proposed works and the tender of Mr Hayward and Mr Hedges.

63. Mr Pickard stated that if he had been given the opportunity to consult, he would have asked questions about the scope of the proposed works, whether Mr Hayward and Mr Hedges had the necessary expertise and experience to undertake such a project, questioned the open-ended commitment to pay £15 per hour, and their method for controlling costs.

64. The Tribunal is satisfied that such questions fit the description of relevant prejudice articulated by Lord Sumption and adopted by the Supreme Court in *Daejan* at paragraph 67:

> "if the tenants show that, because of the landlord's non-compliance with the requirements, they were unable to make a reasonable point which, if adopted, would have been likely to have reduced the costs of the works or to have resulted in some other advantage, the LVT would be likely to proceed on the assumption that the point would have been accepted by the landlord".

65. The Tribunal is satisfied that the questions of Mr Pickard are blindingly obvious about the costs and appropriateness of the proposed works, and constitute reasonable points which the Management Company would have had to address if it had given the leaseholders an opportunity to consult.

66. The Management Company's answers to the questions posed by Mr Pickard were that it did not know the full scope of the works until Mr Hayward and Mr Hedges had started on the repairs, Mr Hedges was known to Mr Hayward and had a good reputation locally for his standard of carpentry, and that if the works had been carried out by the contractors who had tendered for them their costs would have been much higher if they had included the costs for carpentry and would not have been to the same standard of Mr Hedges' carpentry.

67. The Tribunal holds that the Management Company's response is insufficient to undermine Mr Pickard's case for relevant prejudice. In the Tribunal's view a prudent landlord would have assessed the scope of the works before going out to tender, and most probably have engaged the services of a surveyor. A prudent landlord would have critically evaluated the ability of Mr Hedges to perform such a job against the other tenderers. A prudent landlord would not have accepted an open-ended commitment and either insisted on a fixed price or at the very least put controls on costs in place.

68. The Tribunal is, therefore, satisfied that Mr Pickard would suffer relevant prejudice if unconditional dispensation is granted. Although not relevant to the finding of relevant prejudice, the Tribunal adds that it is clear from how the works have progressed that the Management Company had lost control of the costs, and the ultimate bill for the works is likely to be much higher than originally planned.

69. The question now for the Tribunal is whether the application for dispensation should be refused or dispensation with conditions should be granted.

70. The Supreme Court in *Daejan* established that the Tribunal when exercising its jurisdiction under section 20ZA(1) has power to grant a dispensation on such terms as it thinks fit provided the terms are appropriate in their nature and their effect. At paragraph 71 of *Daejan* Lord Neuberger said:

> "In so far as the tenants will suffer relevant prejudice as a result of the landlord's failure, the LVT should, at least in the absence of some good reason to the contrary, effectively require the landlord to reduce the amount claimed as service charges to compensate the tenants fully for that prejudice. That outcome seems fair on the face of it, as the tenants will be in the same position as if the requirements have been satisfied, and they will not be getting something of a windfall".

71. At paragraph 74 Lord Neuberger identified the two principles underpinning the Tribunal's power to dispense with requirements under section 20ZA: 1. exercised in a proportionate way consistent with their purpose, and 2. a fair balance between (a) ensuring that tenants do not receive a windfall because the power is exercised too sparingly and (b) ensuring that landlords are not cavalier, or worse, about adhering to the requirements because the power is exercised too loosely.

72. The Tribunal observes that works have been done to the South and West elevation of the property, and on the evidence of the photographs the works have been completed to a reasonable standard subject to any potential challenge under section 27A of the 1985 Act. The principal issue with the works is the costs and that they have spiralled out of control. Mr and Mrs Pickard have already contributed £1,820 towards those costs, and at the time of payment Mr Pickard considered those costs reasonable.

73. The Tribunal considers on the facts that if it refuses dispensation Mr and Mrs Pickard would receive a windfall by receiving a benefit from the works done without making a contribution. The Tribunal is, therefore, minded to grant dispensation but subject to conditions which are sufficient to compensate Mr and Mrs Pickard for the relevant prejudice suffered.

74. The Tribunal notes that the costs incurred on the works so far are £47,456. The Tribunal observes that if the works had gone out to tender Mr Hayward's preferred bidder would have been Mr Dan Tellem-Woolf. Mr Hayward estimated that if Mr Tellem-Woolf had completed all the woodwork repairs and replacements his costs would have risen to £42,000 [105 of service charge bundle]. This estimate would have applied to the whole building. Mr Hayward has stated that the remaining works to the building would cost in the region of £10,000 to

£15,000. The Tribunal doing the best it can on the estimated costs provided consider that the recoverable costs for the works completed should be capped at £30,000 or £3,000 per leaseholder. The Tribunal is satisfied the this figure strikes a fair balance between the tenant not receiving a windfall and the landlord not being cavalier with its legal obligations.

75. The Supreme Court in *Daejan* emphasised that the landlord seeking dispensation would have to pay its own costs of making and pursuing an application under section 20ZA of the 1985 Act and to pay the reasonable costs of the tenant in challenging the application.

Decision

76. The Tribunal, therefore, grants dispensation in respect of the works to the exterior of the property and the repairs to the window frames and other wooden structure carried out to the end of December 2021 to the value of £47,456 subject to the Management Company accepting the following conditions:

- The recoverable costs for the works done is limited to £30,000 (£3,000 per leaseholder; the Tribunal records that Mr and Mrs Pickard has paid £1,820 of that amount).

- The Management Company pays its own costs in relation to the proceedings. In those circumstances it is not necessary for the Tribunal to make order under section 20C of the 1985 Act, and paragraph 5A of schedule 11 of the Commonhold and Leasehold Reform Act 2002).

- The Management Company pays £400 towards the costs of Mr and Mrs Pickard in challenging the application. The £400 comprises £300 in Tribunal fees and £100 in travelling and subsistence costs.

77. It follows that if the Management Committee does not accept the conditions, the order for dispensation is refused but the orders for costs remain.

78. The Tribunal reminds the Management Company that it is still required to carry out a statutory consultation exercise in respect of the works still to be done to the North and East elevations of the property.

79. The Tribunal recognises that this decision is not going to resolve the ongoing issues at the property. Ultimately it is for the Management Company and the leaseholders to find a way forward. In the Tribunal's experience it is not uncommon for a residents' management company to fall foul of the statutory requirements in the hope of securing a consensus from the leasehold community. When this happens the

Management Company should consider all options for managing the property.

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 by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which 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.

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.