



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

<b>Case Reference</b>	: CHI/00HE/LDC/2024/0026
<b>Property</b>	: Carew Wharf, Marine Drive, Torpoint, Cornwall PL11 2FH
<b>Applicant</b>	: Carew Wharf Management Company Limited
<b>Representative</b>	: Freehold Management Services Ltd
<b>Respondents</b>	: The Leaseholders
<b>Representative</b>	:
<b>Type of Application</b>	: To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
<b>Tribunal Member</b>	: Mrs J Coupe FRICS
<b>Date and Venue of Hearing</b>	: Determination on Papers
<b>Date of Decision</b>	: 19 February 2024

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DECISION

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## **The Application**

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act. The application was received on 30 January 2024.
2. The property is described as a Grade II Listed converted warehouse, dating from 1800, and situated along the River Tamar. The property comprises 11 residential flats.
3. The proposed works are described as:

“Replacement of a Seawater Pump Station to stop flooding within the ground level flats.  
Along with a crude Pump Station dealing with sewerage as a separate item have both been authorised by Mr Austen based on the one quote received from ARLO.  
Plans to receive and install w/c 5th March 2024, so as to be able to alliviate the danger of flooding due to the expected exceptionally high spring tides between 12th and 19th March 2024.

Two quotes were obtained for dealing with both pumps however one company has since pulled out and no other company has been found, that are willing to provide a second quote. Directors have instructed us to seek a tribunal decision due to the time restrictions in this case.

The only reason for this action is the time scale.”
4. On 2 February 2024 the Tribunal directed that the application would be determined on the papers without a hearing unless a party objected in writing within 7 days. No objections were received.
5. The Tribunal directions stated that neither the question of reasonableness of the works, nor the costs incurred were included in the application, the sole purpose of which is to seek dispensation.
6. The Tribunal required the Respondents to return a pro-forma to the Tribunal and to the Applicant by 12 February 2024 indicating whether they agreed or disagreed with the application.
7. The Tribunal has not received any response to the application from the Respondent leaseholders and nor has the Applicant notified the Tribunal of any objections.

## **Determination**

8. 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.

9. 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.
10. 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.
11. 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”.
12. 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.
13. The Tribunal now turns to the facts.
14. The Tribunal is satisfied that the Applicant considers it necessary to undertake the proposed works in order to alleviate the risk of flooding to the ground floor flats during the high spring tides of 12-19 March 2024. The Tribunal accepts that such work is considered urgent and that the Applicant has endeavoured to obtain an alternative quotation.

The Tribunal takes account of there being no objections from any of the Respondents and no prejudice has been demonstrated or asserted.

15. On the evidence before it the Tribunal is therefore satisfied that the leaseholders would suffer no relevant prejudice if dispensation from consultation was granted.

### **Decision**

16. **The Tribunal grants an order dispensing with the consultation requirements under S.20 of the Landlord and Tenant Act 1985 in respect of works to alleviate the risk of flooding, as outlined in the application, on the condition that the Applicant provides a copy of this decision to all leaseholders and confirms to the Tribunal within 7 days that it has done so.**

### **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](mailto: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.