



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

**Case Reference** : **BIR/00CN/LDC/2023/0028**

**Property** : **Flat 1 - 28 Midland Court, 39 Cox Street, St Paul's Square, Birmingham, B3 1RW**

**Applicant** : **Midland Heart Limited**

**Representative** : **None**

**Respondents** : **The leaseholders of Flats 1-28**

**Type of Application** : **An application under section 20ZA of the Landlord and Tenant Act 1985 for dispensation of the consultation requirements in respect of qualifying works.**

**Tribunal Members** : **Judge C Goodall  
V Ward BSc Hons FRICS – Regional Surveyor**

**Date and place of hearing** : **Paper determination**

**Date of Decision** : **14 March 2024**

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**DECISION**

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## Summary

The Tribunal **determines** that the Application for dispensation from consultation is granted. The Applicant may dispense with the consultation requirements contained in section 20 of the Landlord and Tenant Act 1985 in respect of the carrying out of the Works identified in paragraph 2 below.

## Background

1. On 11 October 2023, the Applicant applied for dispensation from all or some of the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (“the Act”) in respect of proposed works at the Property.

2. The justification for the application provided by the Applicant is as follows:

*“There is escape of water from the flat roof/gutter on one side of the building seeping into the apartments below, which is causing damp and mould. A surveyor has inspected the building and advised that it will require some hopper heads and downpipes from the flat roof into the guttering below. The guttering will also need to be cleared out and sealed in a water proof paint. Also the leadwork to the brick wall will need to be repaired/replaced and due to the size of the building, scaffolding will need to be erected.*

3. The work identified in the preceding paragraph is described in this decision as “the Works”.

4. On 6 November 2023, Regional Surveyor V Ward issued directions for the determination of the application. It was to be served by the Applicant on the Respondents, together with a statement explaining the purpose of the application and the reason why dispensation is sought, copies of any invoices and quotations relating to the proposed works, and any other relevant documents.

6. There are twenty eight Respondents each of whom has a long lease over one of the flats in the Property. The Respondents were invited to return a form to the Tribunal indicating whether the Respondent consented to or opposed the application, and whether a hearing was requested.

7. In an email dated 14 November 2023, the Applicant confirmed that it had complied with its obligation to serve the required documents on the Respondents.

8. The explanation provided was as follows:

“There is an escape of water entering into the flats facing the car park on the left-hand side of the building. The result of this has caused some of these flats to be damp and mouldy and so a risk to health of the residents.

A surveyor inspected the roof and advised that it will require some hopper heads and downpipes from the flat roof into the guttering below. The guttering will need to be cleared / cleaned out and sealed in a water proof paint. Also the leadwork to the brick wall will need to be repaired/replaced and due to the size of the building, scaffolding

will need to be erected. The contractors will also address any minor repairs that they may find.

Dispensation has been sought in order to allow Midland Heart to carry out the works as quickly as possible, without going through the full Section 20 process, to stop the leak into the flats and prevent further damage.”

9. Quotes were obtained from two companies; TMA and GP Roofing, both being based on a specification, which was not provided to the Tribunal. The TMA quote was for £6,064.92 including VAT. The Tribunal has not been provided with the quote from GP Roofing. In addition to the cost of works, the Applicant has stated that scaffolding is required for which a quote of £15,000.00 plus VAT has been obtained.
10. None of the Respondents has contacted the Tribunal or provided a completed form as they were invited to do.

### **Law**

11. Section 20 of the Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the consultation procedure that landlords must follow which are particularised, collectively, in the Service Charges (Consultation Requirements) (England) Regulations 2003. There is a statutory maximum that a lessee has to pay by way of a contribution to "qualifying works" (defined under section 20ZA (2) as works to a building or any other premises) unless the consultation requirements have been met. Under the Regulations, section 20 applies to qualifying works which result in a service charge contribution by an individual tenant in excess of £250.00.
12. A landlord may, instead of complying with the consultation procedures, apply to the Tribunal for those procedures to be dispensed with under section 20ZA of the Act. The Tribunal may grant dispensation if it considers that it is reasonable to do so.
13. The Supreme Court case of *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 (hereafter *Daejan*) sets out the current authoritative jurisprudence on section 20ZA. This case is binding on the Tribunal. *Daejan* requires the Tribunal to focus on the extent to which the leaseholders would be prejudiced if the landlord did not consult under the consultation regulations. It is for the landlord to satisfy the Tribunal that it is reasonable to dispense with the consultation requirements; it is for the leaseholders to establish that there is some relevant prejudice which they would or might suffer, and for the landlord then to rebut that case.

### **The leases**

14. The Applicant provided a sample lease of one of the flats at the Property. We work on the assumption that all leases contain similar obligations. A management company (Midland Court Management Company Ltd) is a party to the lease. It has covenanted to repair maintain clean and where necessary replace and renew the structure roof and foundations on the Maintained Property which includes the structural parts of the buildings including the roofs gutters rainwater pipes.
15. The Respondents are responsible for paying one twenty-eighth each of 79% of the cost of any works carried out that fall within the covenant referred to in the preceding paragraph.

16. The Applicant (or the management company) is likely to seek recovery of the cost of the Works from the Respondents. It would seem that the cost would exceed £250 per Respondent. Consultation is therefore required in order for the Applicant to avoid a substantial shortfall on the recoverability of the expenses for the Works.

### **Discussion**

17. The primary issue for the Tribunal is whether the grant of dispensation from consultation results in any prejudice to any of the Respondents. None have claimed that it would. Work in order to prevent current water penetration into some of the flats is clearly work that is necessary and reasonably urgent. The dispensation route is generally considered to be both less expensive and faster than a full section 20 consultation.
18. We therefore grant the dispensation requested. The obligation upon the Applicant to consult under section 20 on the carrying out of the works outlined in paragraph 2 above is dispensed with.
19. All parties should note that this decision is not to be taken as confirmation that the cost of the Works are covered within the service charge provisions in the leases, nor that the cost of the works will have been reasonably incurred. All Respondents retain their rights to bring an application under section 27A of the Act for a determination of whether the cost of the Works was reasonably incurred, or of whether they have been carried out to a reasonable standard.

### **Appeal**

20. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall  
Chair  
First-tier Tribunal (Property Chamber)