



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

<b>Case Reference</b>	<b>: MAN/ooEX/LDC/2023/0068</b>
<b>Property</b>	<b>: Derwent Heights, Darwen BB3 1LU</b>
<b>Applicant</b>	<b>: Derwent Heights Management Company Limited</b>
<b>Representative</b>	<b>: Scanlons Property Management LLP</b>
<b>Respondents</b>	<b>: The Residential Long Leaseholders (See Annex A)</b>
<b>Type of Application</b>	<b>: Section 27A Landlord and Tenant Act 1985 – Section 20ZA</b>
<b>Tribunal Members</b>	<b>: Tribunal Judge J.E. Oliver Tribunal Member S. A. Kendall</b>
<b>Date of Determination</b>	<b>: 15<sup>th</sup> April 2024</b>
<b>Date of Decision</b>	<b>: 1<sup>st</sup> May 2024</b>

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**DECISION**

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## **Decision**

1. The application to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and The Service Charges (Consultation Requirements) (England) Regulations 2003 relating to Qualifying Works (“QW”) is granted.
2. The QW relates to roof repairs required to prevent water ingress.

## **Background**

3. This is an application made by Derwent Heights Management Company Limited (“the Applicant”) for the dispensation of the consultation requirements imposed by Section 20 of the Landlord & Tenant Act 1985 (“the Act”) and The Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Consultation Requirements”) relating to urgent roof repairs at Derwent Heights, Darwen (“the Property”).
4. The Applicant advised urgent remedial work was required to the roof at the Property to prevent further water damage to two of the flats, numbers 34 and 36. Two quotes were obtained for the work, one from GAP, roof and water proofing specialists, at a cost of £8928.00 and the second from Hall Roofing at a cost of £10550. It had been found the felt under the tiles had multiple holes and the tiles were not aligned, causing water to enter the flats. A quote for a replacement of half of the roof, at a cost of £80,000, was unaffordable and it was agreed the repair work would be carried out and was guaranteed for 5 years.
5. Under the requirements of Section 20 of the Act, the Applicant served a Notice of Intention to the various leaseholders on 25<sup>th</sup> October 2023, to which no observations were received. The consultation period ended on 23<sup>rd</sup> November 2023. The Applicant then served a Notice of Reasons to confirm the work was to be carried out by GAP. This Notice was undated.
6. The Applicant advised it would apply for dispensation from the requirements of s.20 of the Act due to the urgency of the work, given the forecasts for heavy rain for November, December and January. It applied to the Tribunal for that dispensation on 30<sup>th</sup> October 2023. Directions were issued on 24<sup>th</sup> January 2024 providing for the filing of any objections by the Respondents and for the application to be listed for a paper determination.
7. No representations were received by either the Applicant or the Tribunal and the matter was thereafter listed for determination on 15<sup>th</sup> April 2024.

## **The Law**

8. Section 20 of the Act provides:

*(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either-*

*(a) complied with in relation to the works or agreement, or  
(b) dispensed with in relation to the works or agreement by (or on*

*appeal from) a tribunal*

*(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement*

*(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.*

*(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement-*

*(a) if relevant costs incurred under the agreement exceed an appropriate amount, or*

*(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.*

*(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be the appropriate amount-*

*(a) an amount prescribed by, or determined in accordance with, the regulations, and*

*(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with the regulations.*

*(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.*

*(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined”*

9. In the event the requirements of section 20 have not been complied with, or there is insufficient time for the consultation process to be implemented, then an application may be made to the First-tier Tribunal pursuant to section 20ZA of the Act.

10. Section 20ZA of the Act provides:

*(1) Where an application is made to a tribunal for a determination to dispense with all or any 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 section (3) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.*

11. In **Daejan Investments Ltd v Benson [2013] UKSC 14** it was determined that a Tribunal, when considering whether to grant dispensation, should consider whether the tenants would be prejudiced by any failure to comply with the Consultation Requirements.

12. In **Wynne v Yates and others [2021] UKUT 278 LC** Upper Tribunal Judge Elizabeth Cooke said:

*“There must be some prejudice to the tenants beyond the obvious fact of not being able to participate on the consultation process.”*

### Submissions

13. The Tribunal was provided with a copy of a sample lease for the Property and copies of the Notices relevant to Section 20 of the Act.
14. The Applicant confirmed the works had been completed to avoid further damage to the Property.

### Determination

15. The Tribunal is being asked to exercise its discretion under section 20ZA of the Act. Section 20ZA (1) provides the Tribunal may do so where *“if satisfied that it is reasonable to dispense with the requirements”*.
16. The Tribunal, having considered the submissions made by the Applicant, is satisfied there is good reason to dispense with the Consultation Requirements. The Applicant has confirmed remedial work was urgently required to avoid further damage caused by water ingress. The Respondents were advised of the necessary work and steps were taken to comply with the requirements of Section 20. No objections were received. The work had to be completed prior to the completion of the consultation prior to avoid further damage and cost.
17. The Tribunal does not consider there is prejudice to the Respondents by the Applicant’s failure to comply with the requirements of Section 20 prior to carrying out the works. The Applicant had obtained alternative quotes and appointed the firm providing the lower cost.
18. The granting of dispensation does not affect the Respondents’ rights to the challenge the reasonableness or the payability of the service charges under a separate application pursuant to section 27A of the Act.

## **Rights of appeal**

1. 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.
2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission to appeal must be made to the First-tier Tribunal at the regional office which has been dealing with the case.
3. The application for permission to appeal must be arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
4. If the application is not made within the 28 day time limit, such applications 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.
5. 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 rounds of appeal and state the result the party making the application is seeking.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## Annex A

Mr & Mrs F & J Dowling  
Ms Kathlyn A Tait  
Hindle Jepson & Jennings Ltd  
Mr Matthew D Hayes  
Mr Michael G Fairclough  
Mr Michael S Allen  
Ms Jacqueline Watson  
Mr Sean S Colbert  
Miss Sarah L Baxendale  
MBS Property Solutions  
Mr G Byrn & Mrs Rhiannon Naylor  
Mr Sean Gaughran  
Mr G Brennen  
Mr Lewis J Holt  
Mr V Treacy  
Ms Claire Kindle-Brand  
Mr Andrew Dalton  
Mr Andrew Scollan & Ms Stella Scollan  
Mr Paul Woodhouse  
Mr & Mrs E Flanagan  
Mr F Eyre