



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

**Case reference** : **CHI/18UG/LDC/2024/0069**

**Property** : **The Salcombe, Fore Street, Salcombe,  
Devon TQ8 8JG**

**Applicant** : **The Salcombe Company Limited**

**Representative** : **Emily Braine Property Services**

**Respondents** : **The leaseholders of the Property**

**Type of Application** : **Application for the dispensation of  
consultation requirements pursuant to  
S.20ZA of the Landlord and Tenant Act  
1985**

**Tribunal Members** : **Judge Hugh Lumby**

**Venue** : **Paper determination**

**Date of Decision** : **21 May 2024**

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**DECISION**

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## **Decision of the Tribunal**

The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (Section 20ZA of the same Act).

### **The background to the application**

1. The Property is a block comprising 36 apartments, 35 of which have long leases granted in relation to them. It is located on the waterfront of the Salcombe & Kingsbridge Estuary and has 36 swinging moorings on a floating pontoon.
2. The Respondents are the 35 leaseholders of the Property. The Applicant is the freeholder.
3. The Applicant has become aware that the piles for the floating pontoon need replacement. However, numerous reports and licences are required before a replacement can be installed and the Applicant anticipates these will take around 18 months to obtain. It has therefore found an alternative way to do the works which will not impact the foreshore and seabed.
4. A consultation process was begun with the Respondents with a Stage 1 Notice of Intention sent to leaseholders on 20<sup>th</sup> October 2023. The Applicant states that no objections or observations to the work were received and no contractors were nominated for the tendering process.
5. However, due to the nature of the works, the Applicant cannot advance to a Stage 2 consultation. This is because the Applicant cannot obtain two or more comparable quotes as different engineers and contractors wish to use different methods of construction. As a result, the Applicant is applying for dispensation from any further consultation requirements pursuant to section 20 of the Landlord and Tenant Act 1985.
6. The repair works were considered to be urgent because the pontoon piles are said by the Applicant to have become extremely corroded due to the marine environment and could pose a threat to property or persons. There is additional urgency in that the Applicant wants to ensure that the works are completed before the main holiday season starts and the estuary is busy with boats and visitors. The Applicant stated that its contractor was aiming to start the works on the 22<sup>nd</sup> April 2024 and they were expected to last for four days and four nights. It is not known whether it proceeded with the works then or subsequently.
7. No indication of the cost of the works has been provided.
8. The Applicant has confirmed that the Respondents have been informed of this application and no objections have been received.

9. By Directions of the Tribunal dated 17 April 2024 it was decided that the application be determined without a hearing, by way of a paper case.
10. The Tribunal did not inspect the Property as it considered the documentation and information before it in the set of documents prepared by the Applicant enabled the Tribunal to proceed with this determination.
11. This has been a paper determination which has been consented to by the parties. The documents that were referred to are the Applicant's application, a specimen lease, a list of the leaseholders plus the Tribunal's Directions dated 17 April 2024, the contents of which has been recorded.

### **The issues**

12. This decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying long-term agreement. The Tribunal has made no determination on whether the costs are payable or reasonable. If a Lessee wishes to challenge the payability or reasonableness of those costs as service charges, including the possible application or effect of the Building Safety Act 2022, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.

### **Law**

13. Section 20 of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act") and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.
14. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by an application such as this one before the Tribunal. Essentially the Tribunal must be satisfied that it is reasonable to do so.
15. The Applicant seeks dispensation under section 20ZA of the 1985 Act from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act.
16. Section 20ZA relates to consultation requirements and provides as follows:

*"(1) Where an application is made to a leasehold valuation 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.*

*(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 subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.*

....

*(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.*

*(5) Regulations under subsection (4) may in particular include provision requiring the landlord—*

*(a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,*

*(b) to obtain estimates for proposed works or agreements,*

*(c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,*

*(d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and*

*(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.*

## **Findings**

7. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14, by a majority decision (3-2), the Supreme Court considered the dispensation provisions and set out guidelines as to how they should be applied.
8. The Supreme Court came to the following conclusions:
  - a. The correct legal test on an application to the Tribunal for dispensation is: <sup>[L11L11]</sup><sub>[SEP1SEP1]</sub>“Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord’s failure to comply with the requirements?”
  - b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.
  - c. In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord’s failure to comply.

- d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.
  - e. The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
  - f. The onus is on the leaseholders to establish:
    - i. what steps they would have taken had the breach not happened and
    - ii. in what way their rights under (b) above have been prejudiced as a consequence.
16. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.

### **Consideration**

- 17. Having read the evidence and submissions from the Applicant and having considered all of the documents and grounds for making the application provided by the applicants, the Tribunal determines the dispensation issues as follows.
- 18. The Tribunal is of the view that, taking into account that there have been no objections from the leaseholders, it could not find prejudice to any of the leaseholders of the Property by the granting of dispensation relating to the urgent works to the floating pontoon.
- 19. The Applicant believed that the works were urgent because the corrosion to the piles was likely to become a danger to property and persons and to ensure that the works are completed before the main holiday season begins. In addition, it argues that the specialist nature of the works makes a section 20 Stage 2 consultation impossible because it cannot obtain two comparable quotes. On the evidence before it, the Tribunal agrees with this conclusion and believes that it is reasonable to allow dispensation in relation to the subject matter of the application.
- 20. The Applicant shall place a copy of the Tribunal's decision on dispensation together with an explanation of the leaseholders' appeal rights on its website (if any) within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on its home page. It should also be posted in a prominent position in the communal areas. In this way, leaseholders who have not returned the reply form may view the Tribunal's eventual decision on dispensation and their appeal rights. The Tribunal will also serve a copy of this decision on the Respondents.

### **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)
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.