FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LDC/2024/0120**
Property	**:**	**Spire House, Lancaster Gate, London, W2 3NP**
Applicant	**:**	**Spire House RTM Company Limited**
Representative	**:**	**Foot Anstey**
Respondents	**:**	**The leaseholders of the Property**
Section 20C Applicants	**:**	**Primavista Properties Corporation SA (1) and City Investments Ltd (2)**
Representative	**:**	**Watson Farley & Williams**
Type of Application	**:**	**Application for the dispensation of consultation requirements pursuant to S.20ZA of the Landlord and Tenant Act 1985** **Application for an order under Section 20C of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge Hugh Lumby** **Kevin Ridgeway MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Hearing	**:**	**6 June 2024**
Date of Decision	**:**	**22 July 2024**

DECISION

Decision of the Tribunal

(1) The Tribunal unconditionally 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).
(2) The Tribunal refuses the application by the Section 20C Applicants for an order pursuant to section 20C of the Landlord and Tenant Act 1985.

The background to the application

1. The Property comprises a church tower and spire dating from the 1850s with a modern building beside it, constructed in the 1980s comprising 23 flats on six floors. The spire is surrounded by four pinnacles. This application relates to the church tower and spire, both of which are said to be in urgent need of repair.

2. The freehold of the modern building and a long lease of the tower and spire and a garden are also vested in Eastern Pyramid Group Corporation SA (the "Freeholder"). That company was a party to these proceedings but removed by agreement between the parties. The London Diocesan Fund is the freeholder of the leasehold parts.

3. The Applicant is the Right to Manage Company for the Property. It acquired those rights in February 2022 after protracted litigation with the Freeholder. The Respondents are the leaseholders but the parties who have challenged the Applicant's application for dispensation are the Section 20C Applicants, who are also leaseholders (Primavista Properties Corporation SA, being the leaseholder of flats 16 and 19, and City Investments Ltd, who are the leaseholder of flat 23). They have also applied for an order pursuant to section 20C of the Landlord and Tenant Act 1985, preventing the landlord recovering the cost of the dispensation application from those leaseholders. They are technically the applicants in respect of that application with the Applicant being the respondent. The Section 20C Applicants are linked to the Freeholder.

4. The Applicant has applied for dispensation from the statutory consultation requirements as a result of professional advice received that the church spire was in a serious state of disrepair and needed to be repaired immediately. The application is said to be urgent because of immediate risk of debris falling from any of the four pinnacles, which also have the risk of collapsing.

5. This is not the first application in relation to dispensation for works to the church spire. Prior to the Applicant acquiring the Right to Manage, the Freeholder had served a Notice of Intention on 24 February 2020 and a Notice of Estimates was served on 1 September 2020, both in relation to the full repair of the spire. Building Control at the London

Borough of Westminster also became involved, requiring priority action to remove any imminent risk of harm to others. On 17 December 2021, the Freeholder obtained a dispensation from the Tribunal in relation to consultation requirements for emergency works to scaffold and net the spire and remove the pinnacles. The netting works were carried out but the pinnacles were not removed.

6. Universal Stone were the chosen contractors for that work. It was Michael Whelton from Universal Stone who alerted the Applicant in 2024 to a serious deterioration in the pinnacles. Universal Stone produced an updated report on 24 March 2024. That report stated that the condition of the north east pinnacle was concerning, with erosion making the stone potentially unstable and liable to failure. It recommended that this pinnacle should be dismantled and lowered to the ground, together with the north west and south west pinnacles. Universal Stone provided an estimated cost of the works of £189,163 plus VAT and professional fees. With other remedial works, the total cost of the works has been estimated at £450,173.83.

7. The proposed works are detailed in the bundle and have been summarised as:

(1) Access and Hoisting works and adaptation of the existing scaffolding for the purposes of the dismantling works.

(2) Surveying and detailing the masonry prior to dismantling the pinnacles for future reproduction purposes.

(3) Dismantling three pinnacles and lowering the stonework to the ground.

(4) Extra over dismantling the south west pinnacle

(5) Providing a soft capping to protect the exposed top of the shaft stone.

8. The Applicant wrote to the leaseholders of the Property on 10 April 2024, notifying them of the urgent need for the works, the likely costs and the intention to make this dispensation application.

9. No objections were received to the dispensation itself although by a letter dated 18 April 2024 from Watson Farley & Williams (the solicitors acting for the Section 20C Applicants), concerns were raised at the delay on the part of the Applicant in carrying out the emergency works. It was made clear that the Section 20C Applicants did not oppose the dispensation application in principle, they argued that it should be on the basis that the Applicant should bear the cost of the application and not recover it from the leaseholders.

10. The Applicant contends that no service charge has been paid by the Section 20C Applicants since the Applicant acquired the Right to Manage, causing financial issues for the Applicant. It is also applying for an order to vary the Respondent's leases due to issues with service charge recovery. That application is not being considered as part of this application for dispensation.

11. The dispensation application was made to the Tribunal on 19 April 2024.

12. The Tribunal issued Directions dated 8 May 2024 in relation to the conduct of the case. The Applicant was responsible for serving copies of the application and the Directions on the Respondents, which was carried out by a letter dated 10 May 2024.

13. Following the issue of the Directions, the Section 20C Applicants submitted to the Tribunal an application pursuant to section 20C of the 1985 Act that the costs of the Applicant's application should not be recoverable from the Section 20C Applicants pursuant to their service charge. They argued that such an order should be made due to the Applicant's failure to proceed with the works sooner, utilising the previous dispensation.

14. 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.

15. The Tribunal has been provided with a bundle consisting of 735 pages, skeleton arguments on behalf of the Applicant and the Section 20C Applicants and a 155 page authorities bundle.

Hearing

16. The hearing was held in person. Mr James Fieldsend of counsel attended on behalf of the Applicant and Mr Jonathan Upton of counsel attended on behalf of the Respondent. The only witness was Mr Michael Whelton of Universal Stone who gave evidence by VHS video link. Representatives from the solicitors for each side were also in attendance.

The issues

17. The issue for the Tribunal to decide are first whether or not it is reasonable to dispense with the statutory consultation requirements and, if so, whether any conditions should be imposed on that dispensation. Secondly, whether it is just and equitable to grant an order pursuant to section 20C of the 1985 Act that the Applicant's cost in

making the dispensation application should not be recoverable from the Section 20C Applicants pursuant to their service charge obligations.

18. This application does not concern the issue of whether or not service charges will be reasonable or payable. The Tribunal has made no determination on whether the costs of the works are payable or reasonable. If a leaseholder 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

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. The Supreme Court came to the following conclusions:

a. *The correct legal test on an application to the Tribunal for dispensation is: "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 and, if so, whether any conditions should be applied to that dispensation.

Respondents/Section 20 Applicants' submissions

17. The Section 20C Applicants do not oppose the application for dispensation. However, they argue that the Applicant has delayed the carrying out the works and has had sufficient time to carry out the works using the previous dispensation or to carry out a compliant consultation. As a result, they argue that the dispensation should be subject to a condition that the Applicant does not recover as a service charge from the Section 20C Applicants the legal costs incurred in connection with the application for dispensation. They also seeking an order preventing the Applicant from recovering as a service charge from the Section 20C Applicants any costs in connection with the application for dispensation.

18. They contend that the Applicant knew about the need to do the works from at least February 2020 and would have been aware of the 2021 dispensation for the repair works. Having acquired the Right to Manage two years later, they argue the Applicant did nothing until prompted by Michael Whelton in February 2024.

19. Following *Daejan*, they argue that the Tribunal has the power to grant a dispensation on such terms as it thinks fit provided that any such terms are appropriate in their nature and their effect. In deciding whether to grant dispensation, it should not take into account the nature of or financial consequences of not granting a dispensation. Instead it should focus on prejudice to tenants, either by having to pay for unnecessary services or services which are provided to a defective standard or by having to pay more than they should for services which are necessary and are provided to an acceptable standard.

20. The Section 20C Applicants argue that the party seeking dispensation is claiming what can be characterised as an indulgence from a tribunal at the expense of another party. If as a result, the other party incurs costs in considering the claim and arguing about whether it should be granted and the terms of any grant, it should be paid those costs as a term of the applicant being given the requested indulgence. They point to *Daejan* where the Supreme Court ordered the landlord to pay the tenants' costs and made an order pursuant to section 20C of the 1985 Act in the tenants' favour.

21. Submissions were also made in relation to the section 20C application they had made. They argued that the delay in dealing with those works was of the Applicant's making; they dismissed the Applicant's arguments that it did not have sufficient funds as it did not need extensive funds to

conduct a consultation, as indeed it had in relation to boiler repairs and reconnections. The Section 20 Applicants claim the Applicant acquired the Right to Manage in full awareness of the issue and should not now complain of lack of funds to remedy the issue. Moreover, they argue that there is no evidence that bearing the costs of the dispensation application would render the Applicant insolvent, suggesting that the leaseholders that control the Applicant have sufficient financial resources to fund any shortfall.

Applicant's submissions

22. The Applicant argues that as none of the Respondent has opposed the dispensation application or raised any prejudice, the application should be granted.

23. It argues that there are different tests to be considered in relation to whether to impose a costs condition on the dispensation and in considering a section 20C application. The former is whether a condition is "appropriate in its nature and effect" or whether it would not be reasonable to dispense with the consultation requirements in the absence of a costs condition (citing the case of *Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point [2023] UKUT 271 (LC)*. The Applicant argues that *Adriatic Land* makes a distinction between prospective and retrospective works and emphasises whether the absence of a consultation has caused any prejudice. They also point to the confirmation in that case that there is no principle that the imposition of a costs order is appropriate whenever an application for dispensation is made.

24. The test for section 20C is whether it is "just and equitable in all the circumstances".

25. On the section 20C application, reference is made to various factors that can be taken into account in considering an application, including the conduct and circumstances of the parties, the financial and practical consequences of an order and the fact that an order interferes with the parties' contractual rights.

26. The Applicant argues the urgency in this case results from the very recent change in the condition of the pinnacles. It also argues that the application is prospective not retrospective – the Applicant is not seeking an indulgence from its failure to comply with the consultation requirements, instead seeking to act in an urgent manner. The consequences of a failure to recover all or part of the application costs would mean it would face a shortfall that could threaten its solvency or ability to continue to exercise its Right to Manage; it is suggested that this is the Section 20 Applicants' intent.

Consideration

27. Having read the documentation provided and heard the submissions from the parties and having considered all of the documents and grounds for making the application provided by the Applicant, the Tribunal determines the issues as follows.

Dispensation

28. The Tribunal began by considering the application for dispensation.

29. This is a prospective application to carry out works which need to be done urgently. The Tribunal accepts the urgency of the need to do these works, noting that the Section 20C Applicants' solicitors were urging the Applicant to proceed faster with the works, writing on 18 April 2024 [bundle page 346]:

> *"6. Primavista and City Investments are further concerned that the RTM Co appears to still be set on delaying emergency works even further, pending completion of a dispensation application and/or voluntary funding from the residents. We refer to paragraph 3.2 of your letter in this regard.*
>
> *7 Your client should be discharging its duties by proceeding with the emergency works immediately. AM Surveying's recent report highlights the urgency for the works via its grave commentary about the condition of the tower and spire, in addition to their state of disrepair (and risks emanating from the Premises because of these) at section 2.2. If required, the RTM Co may then pursue a dispensation order from the tribunal retrospectively."*

30. The Tribunal finds that, taking into account that there have been no objections from the Respondents or prejudice identified, there is no prejudice to any of the leaseholders of the Property by the granting of dispensation relating to the works the subject of the application.

31. On the evidence before it, the Tribunal finds that it is reasonable to allow dispensation in relation to the subject matter of the application.

Costs condition

32. Having found that it is reasonable to grant a dispensation, the Tribunal considered whether it should make the dispensation subject to a condition that the costs of the application are not recoverable through the Property's service charge.

33. It is not a matter in dispute between the parties that the Tribunal has the power to impose a costs condition of the type requested. The Tribunal's

attention was drawn to paragraph [68] of the *Daejan* decision in this regard. This provides:

"The LVT should be sympathetic to the tenants not merely because the landlord is in default of its statutory duty to the tenants, and the LVT is deciding whether to grant the landlord a dispensation. Such an approach is also justified because the LVT is having to undertake the exercise of reconstructing what would have happened, and it is because of the landlord's failure to comply with its duty to the tenants that it is having to do so. For the same reasons, the LVT should not be too ready to deprive the tenants of the costs of investigating relevant prejudice, or seeking to establish that they would suffer such prejudice. This does not mean that LVT should uncritically accept any suggested prejudice, however far-fetched, or that the tenants and their advisers should have carte blanche as to recovering their costs of investigating, or seeking to establish, prejudice. But, once the tenants have shown a credible case for prejudice, the LVT should look to the landlord to rebut it. And, save where the expenditure is self-evidently unreasonable, it would be for the landlord to show that any costs incurred by the tenants were unreasonably incurred before it could avoid being required to repay as a term of dispensing with the Requirements."

34. The Tribunal notes that this relates to a retrospective application, talking about landlord default and the cost of reconstructing what has happened. It provides that the Tribunal should not be too ready to deprive tenants of proper costs in seeking to identify prejudice but also makes it clear that tenants should not be given carte blanche in recovering the cost of investigating or looking to establish prejudice.

35. The distinction between a retrospective and prospective application is made clear in *Adriatic Land*, where it is made clear at paragraph [81] that "*where a tribunal makes a clear finding that the tenants have failed to establish any prejudice and … have failed to produce any evidence to support a case of prejudice, it seems to me that Lord Neuberger's reasoning at [68] ceases to apply*"

36. The Upper Tribunal also made it clear in that judgment at paragraph [84] that there is no principle that a costs condition should automatically be imposed on granting dispensation.

37. Applying this to the current case, the Tribunal has made a clear finding of fact that there has been no prejudice to the Respondents by granting the dispensation. This is a prospective application so there has been no default by the Applicant in doing works without consultation, even though the Section 20 Applicants urged them to do so. The Applicant is not therefore seeking an indulgence where the exclusion of the costs from the service charge is a reasonable quid pro quo.

38. The Tribunal therefore concludes that it has the right but not the obligation to impose a condition that the cost of the application is excluded from the service charge.

39. The Section 20 Applicants argue that it is reasonable to impose this condition because of the delays by the Applicant in progressing the works. They point to their own dispensation and the fact that these were urgent then. Mr Whelton acknowledged in cross-examination that the removal of the pinnacles was urgent in 2021. If the Applicant had progressed the works earlier, this application would not have been necessary.

40. The Applicant argues that these are not the same works as were contemplated in 2021. Mr Whelton explained that the issue in 2021 was with the spire itself rather than the pinnacles. The immediate danger then was addressed by the netting installed at that time. It argues, as Mr Whelton explained, that the issue in 2024 is due to the deterioration of the metalwork keeping the pinnacles in place, an issue not known in 2021. This gives increased urgency to the removal of the pinnacles.

41. The Tribunal accepts that there is a new urgency to removing the pinnacles which was not appreciated in 2021 and that there was a reasonable conclusion reached then that the netting had addressed the issue for the time being. It finds that it was reasonable for the Applicant to defer carrying out these works until it had the funding in place to carry them out, which meant addressing issues like lease defects.

42. It is also noted that the cost of the dispensation application and the timing consequences of the process followed has in all likelihood been greatly increased by the Section 20C Applicants seeking the costs condition applied for. The Section 20C Applicants did not object to the dispensation being granted and will have spent considerable amounts in legal fees in seeking the imposition of this condition which they will have to bear themselves – indeed, they made the point on a number of occasions that they were not applying for reimbursement of their own fees. Their purpose in taking this action was not explained by them in any meaningful manner and it is noted that they related entities with the Freeholder who strongly resisted the Applicant acquiring the Right to Manage. The Tribunal finds that they would have been aware that success in one or both of their applications would damage the Applicant, possibly to the extent that its Right to Manage would no longer be possible.

43. Irrespective of the Section 20C Applicants' motivations, their actions in relation to this application mean that a condition that the costs of the application should not be recoverable through the service charge is not appropriate in nature and effect. The application for dispensation did not cause prejudice and would have been granted unconditionally by the Tribunal in the normal course; the imposition of the condition would not have represented the difference between the grant or refusal of the

application. This is not a situation where a party has ignored its obligations but a prospective application in the interests of all the Respondents.

44. As a result, the Tribunal therefore unconditionally grants the Applicant's application for dispensation from the consultation requirements of section 20 of the Landlord and Tenant Act 1985 in respect of the works the subject of its application.

45. 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 of the Property.

Application under s.20C

46. The Tribunal turned to the Section 20C Applicants application for a cost order under section 20C of the Landlord and Tenant Act 1985 ("**Section 20C**").

47. The relevant part of Section 20C reads as follows:-

(1) "A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before … the First-tier Tribunal … are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant…".

48. A Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the Applicant in connection with these proceedings cannot be added to the service charge of the Section 20C Applicants.

49. The test for a Section 20C application is different from that for a dispensation application. In this case, the test is whether it is just and equitable in all the circumstances to grant the Section 20C Applicants an exclusion (a dispensation exclusion can apply to all tenants). It is accepted by the parties that the Tribunal has a wide discretion in making its decision and can into account factors such as the conduct of the parties and the practical and financial impact of them of making or not making an order. The Tribunal can make a Section 20C order even if grants unconditional dispensation.

50. The Section 20C Applicants argue that the delays by the Applicant in carrying out the works mean it is inequitable for them to recover the costs of an application that arose as a result of their tardiness. The

Applicant argues that it is unjust for the Section 20C Applicants to be placed in a more favourable position than the other leaseholders who will have to pay more as a result; in addition, they contend that it may well affect the solvency of the Applicant as its only income is from service charge.

51. In this case, the Applicant has been successful on the substantive point, which was whether the dispensation should be granted subject to conditions. In doing so, the Tribunal found that the costs of the application for dispensation were likely to have been substantially increased as a result of the Section 20C Applicants' request for a costs condition and its Section 20C application. The Tribunal considers it is not just and equitable in all the circumstances for an order to be made under section 20C of the 1985 Act which would result in the Section 20C Applicants being spared payment of costs and other leaseholders having to pay more, as a result of the Section 20C Applicants' actions. The Section 20C Applicants' application is therefore dismissed.

Name: Tribunal Judge Lumby **Date:** 22 July 2024

Rights of appeal

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. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application. If the application is not made within the 28-day time limit, such application 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. 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 grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).