



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

**Case Reference** : **BIR/00GA/LDC/2024/0021**

**Property** : **Nos 16, 24 & 84 Oak Crescent Hinton Hereford  
HR2 6AJ**

**Applicant** : **Connexus Homes Limited**

**Representative** : **Robert Weale (Contracts Manager)**

**Respondents** : **Rona Morris (No 16)  
Jon Watson (No 24)  
Hugh Davis (No 84)**

**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** : **V Ward BSc Hons FRICS – Regional Surveyor  
Judge David R Salter**

**Date of Decision** : **13 December 2024**

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**DECISION**

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## **Background**

1. The Applicant seeks dispensation from all or some of the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (“the Act”).
2. Section 20 of the Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the procedures landlords must follow. These 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.

**The only issue for the Tribunal to determine under this application is whether or not it is reasonable to dispense with the statutory consultation requirements.**

**This application does not concern the issue of whether any service charge costs will be reasonable or payable.**

3. The Applicant is the freeholder of a block of 12 flats. The Respondents are the leaseholders of three of those flats. Background information indicates that the Applicant is a charitable community benefit society. Its principal activities are the management and development of social housing (and related services) and support.
4. The works that are the subject of the application essentially seek to improve the energy efficiency of the subject properties and reduce condensation and mould.
5. Directions were issued on 21 August 2024. These instructed the Applicant to provide the following to the Respondent leaseholders:
  - a) A copy of the Directions issued on 21 August 2024.
  - b) A copy of the application form.
  - c) A statement setting out the likely cost of the works per Respondent.
6. The Applicant confirmed on 4 September 2024 that they had complied with the Directions above.
7. The costs per Respondent were given as follows:

16 Oak Crescent, Hinton, Hereford, HR2 6AJ - £38,000.00

Oak Crescent, Hinton, Hereford, HR2 6AJ - £38,000.00

84 Oak Crescent, Hinton, Hereford, HR2 6AJ - £41,300.00

8. The Directions gave the Respondents an opportunity to respond to the application and make their views known as to whether the Tribunal should grant dispensation and further if they required an oral hearing. Only one Respondent replied to the effect that he supported the application for dispensation from consultation for the works proposed and further that he did not require an oral hearing.
9. The Tribunal has therefore determined this application on the basis of the written submissions of the parties and without an inspection.

## **Law**

10. The Landlord and Tenant Act 1985 (as amended) imposes statutory controls over the amount of service charge that can be charged to long leaseholders. If a service charge is a “relevant cost” under section 18, then the costs incurred can only be taken into account in the service charge if they are reasonably incurred or works carried out are of a reasonable standard (section 19).
11. Section 20 imposes an additional control. It limits the leaseholder’s contribution towards a service charge to £250.00 for works, unless “consultation requirements” have been either complied with or dispensed with. There are thus two options for a person seeking to collect a service charge for works on the building or other premises costing more than £250.00. The two options are: comply with “consultation requirements” or obtain dispensation from them. Either option is available.
12. To comply with consultation requirements a person collecting a service charge has to follow procedures set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (see section 20ZA(4)).
13. To obtain dispensation, an application has to be made to this Tribunal. It may grant it if it is satisfied that it is reasonable to dispense with the consultation requirements (section 20ZA(1) of the Act).
14. The Tribunal’s role in an application under section 20ZA is therefore not to decide whether it would be reasonable to carry out the works, but to decide whether it would be reasonable to dispense with the consultation requirements.
15. 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; if so, 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.

16. The general approach to be adopted by the Tribunal, following *Daejan*, has been summarised in paragraph 17 of the judgment of His Honour Judge Stuart Bridge in *Aster Communities v Chapman* [2020] UKUT 0177 (LC) as follows:

“The exercise of the jurisdiction to dispense with the consultation requirements stands or falls on the issue of prejudice. If the tenants fail to establish prejudice, the tribunal must grant dispensation, and in such circumstances dispensation may well be unconditional, although the tribunal may impose a condition that the landlord pay any costs reasonably incurred by the tenants in resisting the application. If the tenants succeed in proving prejudice, the tribunal may refuse dispensation, even on robust conditions, although it is more likely that conditional dispensation will be granted, the conditions being set to compensate the tenants for the prejudice they have suffered.”

## **The Submissions of the Parties**

### *The Applicant*

17. The Applicant’s statement provided the following information:

*Connexus Homes Ltd 'Warmer Homes' (ERDF/SHDF) project is one of our main works programmes and is our commitment to customers to give them warm, energy efficient homes where we also reduce the risk of condensation and mould. The SHDF works (applicable to Oak Crescent) were part funded by grant.*

*Sustainable Building Services (SBS) were awarded the first phase of the Warmer Homes refurbishment project; this was awarded through a competitive tender process to complete works to 36nr flats, 4nr blocks at Hunderton Road, Hereford, HR2 7AE and to 16nr flats, 3nr blocks at The Oval, Hereford, HR2 7HG. This work was successfully delivered and completed. The second phase was to 66nr flats, 6nr blocks, at River View, Hereford, HR2 6EB. SBS were awarded this directly through Central Housing and Investment Consortium (CHIC) Multiple Elements of the Built Environment Framework but based on the same costs and design established on phase one. SBS have successfully delivered this project. There were no leaseholders in these blocks.*

*This work was successfully delivered and completed during 2023. The latest phase of the 'Warmer Homes' works project is to 48nr flats, 4nr blocks, at Oak Crescent, Hereford, HR2 6AJ. Works were again with the same design and work content as phases one and two, with SBS appointed under the CHIC Multiple Elements of the Built Environmental Framework.*

*Works commenced in September 2023 and has been successfully delivered with practical completion April 2024.*

*For 'Warmer Homes' works Connexus has carried out a full tender process; 18 Contractors expressed an interest and registered for the project. Only one tender was received and this has been assessed by Michael Dyson Associates (MDA), Connexus' Employer's Agent for the scheme and they produced a tender report indicating that the costs submitted were reasonable. A copy is available for your perusal, if you request further supporting evidence in this application.*

*Subsequent phases have been awarded to SBS under the CHIC Multiple Elements of the Built Framework. MDA conducted a Cost Analysis/Value for Money Review and Report on SBS cost proposals for the latest phase of the 'Warmer Homes' project at Oak Crescent. As per MDA recommendations approval was sought with Connexus Executive Management Team to proceed to contract via EMT Waiver Report. EMT approval was confirmed September 2023. A Copy of the MDA VFM report can be made available as part of supporting evidence in this application. Connexus is therefore unable to fully comply with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 as it is unable to provide 2 estimates in its paragraph B statement in accordance with paragraph 4 of Schedule 4 part 2 of the Service Charges (Consultation Requirements) (England) 2003. Due to the nature of the funding arrangements in place, and the availability of match funding in the current financial year, Connexus had to proceed with the works as any significant delay could result in the condition of the roof and external walls deteriorating further and such levels of funding might not be available in future.*

*A full tender process was unlikely to change the outcome or costs of the project, but would have resulted in further delays, with the risk of the project not being delivered within available resources or timescale.*

*Dispensation is therefore sought from the section 20 consultation requirements set out in paragraphs 4, 5 and 6 of Schedule 4 part 2 of the Service Charges (Consultation Requirements) (England) 2003.*

18. As indicated above, no there were no objections to the application and one Respondent supported it.

### **Discussion and decision**

19. The Tribunal accepts the rationale for making the Application. Despite carrying out a full tender process, only one company submitted a tender. This was considered by the Applicant's agents - Michael Dyson Associates who are described as providing Specialist Housing Consultancy Services – and found to be reasonable.

20. No Respondent has objected and or identified any prejudice that they might be suffered if the application were granted.
21. The Tribunal therefore determines that the application is granted. The Applicant may dispense with the consultation requirements contained in section 20 of the Act in respect of the implementation of the works.
22. This decision does not operate as a determination that any costs charged to any Respondent for the works are or would be reasonably incurred. The Respondents remain at liberty to challenge such costs under section 27A of the Act in the future should they wish.

### **Appeal**

23. 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.