



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

Case Reference	: CHI/19UC/LDC/2024/0081
Property	: Flats 1-6 Chalfont Court, Flats 1-6 Cheynies Court, Flats 1-6 Hambledon Court, Flats 1-6 Wycombe Court, all at Christchurch BH23 5DY and BH23 5DX
Applicant	: Cliff Close Management Company Limited
Representative	: Arquero Management Limited
Respondent	: The Leaseholders
Representative	:
Type of Application	: To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
Tribunal Member	: Judge N Jutton
Date of Determination	: 3 December 2024

DECISION

Summary of the Decision

1. **The Applicant is granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements in respect of works undertaken at the Property to resolve the ingress of water into flat 1 Chalfont Court. Those works being more particularly set out in paragraph 4 of this Decision.**

The application and the history of the case

2. The Applicant applies for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.
3. The Applicant says that the Property comprises four purpose-built blocks of flats, each block containing six flats. That the lease of each flat requires the lessee to pay an equal 1/24 share of the cost of works of repair undertaken at the Property.
4. The Applicant says that works were required to resolve water ingress affecting flat 1 Chalfont Court. That works had previously been carried out which had appeared to resolve the issue. However the water ingress returned. A building surveyor advised as the works required to be undertaken to resolve the issue. Those were the introduction of a lead cavity tray under the patio doors, the installation of new balcony waterproofing and horizontal DPC's to flat 3 Chalfont Court. That it was also necessary to check the cavity wall on the western elevation of Chalfont Court. The total cost of the works came to £9015.36 (altogether 'the Works'). The Works commenced on 15 February 2024 and were completed in April 2024.
5. The Applicant states that the need to investigate the ingress of water affecting flat 1 Chalfont Court was discussed at an annual general meeting of the Applicant company in October 2023. That it was noted that it was a priority to investigate the issue because of the effect that the ingress of water was having on flat 1 Chalfont Court over a period of time. The Applicant says that there was need to progress the works to prevent further damage. That there was a risk presented by water entering the building close to the electrical system. That concern had been expressed for the health of the leaseholders of flat 1 Chalfont Court and of the length of time that it was taking to resolve the issue.
6. The Tribunal gave Directions on 23 October 2024. The Directions provided that the Tribunal was satisfied that the application may be determined on the papers without an oral hearing and that it would proceed accordingly unless a party objected in writing within 14 days of receipt of the Directions. No objections have been received accordingly the Tribunal proceeds to determine the application on the papers.

7. The Directions also provided for the Applicant to send to each Respondent the application and supporting documents. The Directions made provision for the Respondents to complete a reply form and return that to the Tribunal and to the Applicant stating whether or not the application was opposed, and if so why. No objections have been received from the Respondents. The Tribunal has received reply forms from 12 Respondent leaseholders consenting to the application.
8. The Directions made it clear that this application does not concern the issue of whether or not service charge costs arising from the Works will be payable and if so reasonable in amount or of the possible application or effect of the Building Safety Act 2022. That the Respondent leaseholders have the right to make a separate application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 to determine the reasonableness of the costs of the proposed works, and the contribution payable through the service charges both in general and in particular because of the provisions of and the protections provided by the Building Safety Act 2022.

The Law

9. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the related Regulations provide that where the lessor intends to undertake major works with a cost of more than £250 per lease in any one service charge year the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.
10. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation “if satisfied that it is reasonable to dispense with the requirements”.
11. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14.
12. The leading judgment of Lord Neuberger explained that a tribunal should focus on the question of whether the lessee will be or had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were “a means to an end, not an end in themselves”.
13. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having

been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).

14. Where the extent, quality and cost of the works were in no way affected by the lessor's failure to comply, Lord Neuberger said as follows:

“I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be- i.e. as if the requirements had been complied with.”

15. The “main, indeed normally, the sole question”, as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the Lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.
16. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.
17. If dispensation is granted, that may be on terms.
18. The effect of Daejan has been considered by the Upper Tribunal in *Aster Communities v Kerry Chapman and Others* [2020] UKUT 177 (LC), although that decision primarily dealt with the imposition of conditions when granting dispensation and that the ability of lessees to challenge the reasonableness of service charges claimed was not an answer to an argument of prejudice arising from a failure to consult.

Decision

19. The Applicant explains that there had been an historic issue of water ingress adversely affecting flat 1 Chalfont Court. That following the advice from a surveyor work was undertaken to address that issue which appeared to resolve it as at November 2022. However the water ingress returned. Further works were identified that were required to be undertaken to resolve the issue. The view was taken that it was necessary to progress the repair work without delay to prevent further damage to flat 1 Chalfont Court, not least because of the potential risk occasioned by water entering the Property close to the electrical system. Concerns were also raised as to the effect of ongoing ingress of water upon the health of the occupiers of flat 1 Chalfont Court.
20. I have set out detail of the Works carried out at paragraph 4 above. The total cost of the Works triggered the need to undertake the consultation process required by section 20 of the Landlord and Tenant Act 1985.
21. None of the Respondent leaseholders have objected to the application for dispensation from the statutory consultation requirements. 12 of

Respondents have replied saying that they consent to the application. There is no evidence before me to the effect that the Respondents have been prejudiced by reason of the failure of the Applicant to undertake the statutory consultation process.

22. In my judgment it is just and equitable to grant dispensation from the statutory consultation requirements in respect of the Works. I am satisfied that the Works were required to be undertaken as a matter of some urgency to prevent the further ingress of water and potential damage to the Property. I also bear in mind the apparent length of time it had taken (and I don't make any finding of fault in that regard) to resolve the ingress of water into flat 1 Chalfont Court and the potential effect that had upon the health of the occupiers of that flat.
23. In reaching my decision I have taken account of the fact that no party has objected to the application. The leaseholders have had opportunity to raise any objection and they have not done so. I do however **Direct** that the dispensation is conditional upon the Applicant or their agent sending a copy of this decision to all the leaseholders so that they are aware of the same.
24. For completeness I confirm that in making this determination I make no findings as to the costs of the works and whether they are recoverable from leaseholders as service charges or of the possible application or effect of the Building safety Act 2022.

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 to the First-tier Tribunal at rpsouthern@justice.gov.uk being the Regional office which has been dealing with the case.
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

