FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**MAN/30UH/LDC/2024/0030**
Property	**:**	**Monthall & Herlebeck Rise, Herlebeck Rise, Lancaster, LA1 3HU**
Applicant	**:**	**Places for People Homes Limited**
Representative	**:**	**Residential Management Group**
Respondents	**:**	**Various Residential Long Leaseholders**
Representative	**:**	**Allen Corbet**
Type of application	**:**	**Dispensation with Consultation Requirements under section 20ZA Landlord and Tenant Act 1985.**
Tribunal member(s)	**:**	**Judge J White** **Mr W A Reynolds MRICS**
Venue	**:**	**Paper (P)** **Northern Residential Property First-tier Tribunal, 1 floor, Piccadilly Exchange, 2 Piccadilly Plaza, Manchester, M1 4AH**
Date of decision	**:**	**8 January 2025**

DECISION

The Decision

(i) The Tribunal grants this application to dispense with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 without condition in respect of the specified urgent roof repair above Flat 11 at a cost of £6,754.5 (£5,628.54 plus VAT) as set out in Rescom LTD Job Sheet 617573.

(ii) **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

The Application

1. The Applicant is the freeholder and landlord for Monthall & Herlebeck Rise, Herlebeck Rise, Lancaster LA1 3HU ("the Property"). The Property is circa 1980. The flats are 1-16 (excluding 13) Monthall Rise and 1-16 (excluding 13) Herlebeck Rise. They are in a 3 and 4 storey block of 15 flats, making a total of 30 units, situated either side of a public highway.

2. Each building is constructed with pitched, hipped, and tiled roofs and main walls of cavity type brickwork, with a partial rendered finish. There are 4 accessible elevations for each block, which are covered in decorative concrete render from the 1st to 3rd floor.

   The flats located within the Property form part of an 'Estate' and are subject to long residential leases. Service charges are payable in respect of the Estate under the lease. Residential Management Group Ltd (RMG) is the authorised managing agent.

3. On 9 April 2024, the Applicant applied for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (the Act) from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.

4. The application relates to roof works undertaken from 16 December 2022 to 13 February 2023 to stop water ingress into flat 11 amounting to £5,628.54 plus VAT.

5. On the application the Applicant stated: "*Our understanding of prejudice is that this would occur if the works resulted in an unreasonable financial cost to the leaseholder because the works:*

   - were unnecessary or inappropriate

   - were carried out to an inappropriate standard

   - have resulted in an unreasonable amount of costs

   The works were necessary and urgent, as recommended by the contractor, Rescom Ltd. The Applicant considered all the relevant factors and determined it is reasonable to break the full s20 consultation and carry out the works immediately. The Applicant acted within a reasonable conduct."

6. On 15 October 2024, the Tribunal issued Directions. In accordance with those directions, the Applicant submitted a bundle of documents to the Tribunal and each leaseholder. The residents association responded on behalf of the tenants.

7. The Directions also stated that the Tribunal did not consider an inspection would be needed and it would be appropriate for the matter to be determined by way of a paper determination. Neither party had objected. The Tribunal convened on 8 January 2025 without the parties to determine the application on the papers. It decided that there was enough evidence to determine the application without the need for an inspection or oral hearing. It was in the interests of justice to do so and in accordance with the Overriding Objective.

The Law

8. The relevant section of the Act reads as follows:

20ZA Consultation requirements:

(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.

9. The consultation procedure applies where there are qualifying works (works where costs to each Leaseholder is over £250). The landlord must send out a notice of intention to do the works and give the tenants at least 30 days to make observations; it must obtain estimates, including from anyone nominated by the tenants; it must give notice to the tenants about the estimates and give them 30 days to make representations; and within 21 days of engaging a contractor it must (unless the contractor gave the lowest estimate or was nominated by a tenant) give the tenants a statement of its reasons for doing so.

10. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson et al [*2013] UKSC 14. In summary the Supreme Court noted the following

(i) The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.

(ii) The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.

(iii) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.

(iv) The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.

(v) The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).

(vi) The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.

(vii) The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the noncompliance has in that sense caused prejudice to the tenant.

(viii) The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.

(ix) Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

The Applicants case

11. The need for the works depended on the fact that the Applicant could not leave the resident of flat 11 with an unusable bedroom and growing mould in his property. Speed was essential to prevent further damage. The Applicant considered the urgency of the matter based on its duty of care and health & safety.

12. Rescom Ltd completed the original inspection as they held a repairs and maintenance contract on site, at the time. The contractor submitted a quote promptly. Rescom Ltd is one of the Applicant's key contractors, and as such is a reputable contractor with reasonable costs.

13. Due to its working relationship and trust in the contractor, the Applicant is confident that the pricing of such works by Rescom Ltd was reasonable.

14. It was left in a difficult position to obtain a 2nd quote for roof works during the winter period, due to a shortage of contractors available during the end of year festive season and New Year, and the wet weather.

15. The Notice of Intention invited leaseholders to nominate a contractor, and the Applicant gives it due diligence. The Applicant gives consideration to observations and must obtain quotes from any nominations proposed by the leaseholders.

16. The Respondents raises irrelevant issues that are not related to the application under consideration which concerns works to the roof affecting flat 11.

The Response

17. Under the terms of the Lease, Places for People were responsible for the inspection and maintenance of the exterior of the buildings [Clause 5 (3) and 5 (3a)]. Rescom Ltd was the only company assigned to do the repairs.

18. The residents association, whilst not officially recognised at the time of the work that is the subject of the application has been in place for a number of years. More recently they incorporated as Monthall & Herlebeck Rise Residents Association (HMRA) and since March 2024 have obtained the right to manage and have responded in that role.

19. Almost concurrently with the roof issues that are the subject of the application there was another issue with the roof at Herlebeck Rise in which the resident of No. 15 was forced to leave his flat as the insurers had declared it uninhabitable due to mould and dampness caused by wear and tear of the roof which had not been inspected or maintained for many years. The resident first reported the problem in 2015 at a meeting held in the Ridge Community Centre with RMG. After numerous phone calls to RMG by the resident, the roof was left to deteriorate further. The newly formed HMRA took up the cause in 2021 including representations after water penetration into flat 15.

20. The current resident of flat 11 moved in in 2021 and had complained of mould growth in his bedroom. This became worse and he reported it on 10 December 2022, as set out in his complaint to the ombudsman. He was not offered alternative accommodation until he involved his MP and made an official complaint as a precursor to complaining to the Property Ombudsman. Internal works were not completed until 8 September 2023.

21. The new RMC have not used Rescom LTD due to delays, poor workmanship and over inflated prices.

22. They have provided photographs dated May 2024 of the area just outside flat 11 and the roof showing a broken tile dated July 2024.

23. They did not respond to the Notice of Intention dated 23 February 2023 as the works had already been completed 10 days earlier. The resident of flat 11 had been informed that only RMG approved contractors can be used.

The Determination

Findings:

24. In 2021 the Applicant had instructed Rescom LTD to undertake works to the roof above flat 15. It had suffered water penetration which required an extensive strip out and drying. The works included replacement of hip and main top ridges, of damaged felt and a small number of tiles, and gutter clearance. The works to the roof that were affecting flat no.15 did not require a S20 consultation. The Tribunal notes it is also provided with invoices provided by Rescom dating from December 2021 and January 2022 relating to roof repairs with the invoice dated 31/12/2021 making reference to a leak into flat 11. At that time Rescom raked out and repointed valleys, apex and ridges, made repairs and sealed tiles.

25. On 10 December 2022, the Leaseholder of flat 11 reported water penetration from the roof into the flat. The Applicant appointed the contractor Rescom Ltd to investigate the matter. On 16 December 2022 Rescom conducted an internal and an external inspection and reported that water was running down inside the bedroom walls and mould was forming quite severely as a result. They found the cause to be a result of a metre section of mortar that was missing on the eaves, and on the dry verge edge bottom leaving the roof exposed. The ridge tiles had also started to delaminate, with clear gaps. Rescom proposed remedial works. Rescom had to erect scaffolding to inspect and work safely at height. Rescom quoted £5,628.54 plus VAT for erecting the scaffolding and undertaking the necessary work including replacement of the cap end and the ridge tiles.

26. The roof works were completed on 13 February 2023. Some internal flat repairs were completed within a 5-day period ending 3 May 2023, though not finally completed until 8 September 2023 after further complaints from the tenant of Flat 11 to the ombudsman. The internal works are not part of this application. The Leaseholder made a complaint to the ombudsman relating to delays who reported on 14 May 2024 and recommended compensation.

27. A letter with a Notice of Intention was issued to the leaseholders on 23 February 2023. The Notice set out the proposed works. The Leaseholders were invited to nominate a contractor and submit written observations with the consultation period identified as ending on 30th March 2023.

28. No observations were received following the Notice of Intention for the reasons set out below.

Reasons:

29. The Consultation requirements provide important safeguards for leaseholders and should not be dispensed with unless the Tribunal is satisfied that it is reasonable to dispense with the requirements as set out in the case of *Daejan* set out above.

30. On an application for dispensation the focus of the Tribunal must be on the relevant prejudice if any suffered by the lessees as a direct result of the lessor's failure to consult:

"Given that the purpose of the requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(l) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements." Daejan Investments Ltd v Benson [2013] UKSC 54 [44] per Lord Neuberger.

31. "*As the Supreme Court made clear in Daejan, the consultation requirements are not an end in themselves; they can be dispensed with if there is no relevant prejudice to the leaseholders, meaning prejudice that arose because of the lack of consultation rather than any reason.*" Holding & Management (Solitaire) Limited v Leaseholders of Sovereign View [2023] UKUT 174 (LC) [21].

32. The sort of prejudice that will have a bearing on dispensation is where the Leaseholders can show that they would have been able to suggest a better or cheaper way of doing the work (Marshall v Northumberland & Durham Property Trust Limited [2022] UKUT 92 (LC)). In that case a Leaseholder had expertise such that if he had been consulted, he would have made suggestions which would have resulted in the work being done more cheaply and had provided an alternative quote. As a result, dispensation was granted on condition that the cost to leaseholders was limited to the sum the landlord would have had to spend had the tenant been consulted.

33. The Tribunal has to consider if the Respondents have been prejudiced because of the lack of consultation. We have concluded that the Respondents have not been prejudiced because of the lack of consultation and no conditions are imposed for the following reasons:

(i) **Delay:** The Tribunal acknowledges that there have been long standing issues with the roof, including water ingress into flat 11 in December 2021. The Applicant states this is wear and tear. As part of this application the Tribunal cannot consider whether there has been a breach of repairing obligations that may have caused the leak. We have to consider whether the lack of consultation following the leak resulted in any prejudice.

(ii) **Urgency:** The works were clearly urgent as water was penetrating into a bedroom and causing mould growth that can affect health. The applicants rely primarily on this ground. However, urgency is not a precondition, though it is a factor to consider.

(iii) **No consultation:** The Applicant states that there was an opportunity to suggest alternative contractors when the notice was sent on 23 February 2023. However, this was after the works were completed and the resident of flat 11 said he was told he could not suggest alternatives as the Respondent only uses preferred suppliers, and they had already

been contracted to do some works as early as December 2022. This means that the Respondents had no opportunity to make suggestions, despite continued dialogue between them and the residents association and ongoing complaints about the lack of maintenance to the roof, the impact on the flats and that it was Rescom who held the maintenance contract.

(iv) **Quality:** though the Tribunal do not have alternative quotes, the Respondents Residence Association have obtained the RTM and have not used Rescom due to poor quality of work and cost. In support of this claim are photographs from May 2024 that appear to show either a continued leak through the roof in the vicinity of flat 11 or a failure to carry out remedial work necessary as a consequence of roof leaks. This, and the fact that the Residents Management Association have subsequently instructed a local contractor to undertake roof repairs themselves together with long standing complaints raises issue of the contractor appointed; the situation may have been different if consultation had been carried out. On the other hand, the Respondents state that they did not respond to the consultation as RMG only used preferred suppliers and the consultation notice was given after an instruction to undertake the works had already been given to the landlords preferred contractor

(v) **The cost of works:** The Tribunal notes that the cost of the works is for £6,754.5 and there are 30 Leaseholders included in this application. It therefore appears that the works may be below the £250 threshold required for consultation.

(vi) **Conditions:** The Respondents have not asked for any conditions to be imposed.

34. Taking account of these factors, on balance, the Tribunal, whilst making no findings as to the reasonableness or payability of any service charge costs grants dispensation. Whilst the Tribunal has sympathy with the Respondents position, it is aware that the ultimate cause of water ingress arising from roof problems can be notoriously difficult to establish and that it is not unusual for repeat works to require to be undertaken. The Tribunal is however clear that remedial works were urgently required. It had been a year since the previous leak to flat 11. Furthermore, the principles established in Daejan identify that 'dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements' whilst 'the factual burden of identifying some “relevant” prejudice that they would or might have suffered is on the tenants'. In addition, delay caused by consultation may have resulted in further internal damage and potentially higher costs whilst the works themselves were quite clearly urgent. The Tribunal had to consider whether the Leaseholders made out a case clearly identifying relevant prejudice only in relation to fixing the leak above flat 11 that was reported by the tenant on 10 December 2022 as set out in his complaint to the ombudsman. Weighing the factors set out above we have concluded there to be insufficient evidence they were so prejudiced.

35. For the reasons set out above the Tribunal grants dispensation from the consultation requirements of S.20 the Act in respect of the Application of roof works specified in the Rescom Ltd Work Sheet for £6,754.5 (£5,628.54 plus VAT), including:

    (i) Erection and removal of fixed scaffold,

    (ii) Completion of works identified to the eaves, mortar and dry verge edges, - Preparation of cement

    (iii) Supply and fit new cap end,

    (iv) Supply and fit approximately 7m of ridges,

    (v) Clean after completion.

36. No conditions are imposed.

37. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

Judge J White
8 January 2025

RIGHTS OF APPEAL

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.