



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

Case reference	: MAN/ooDA/LDC/2024/0013
Property	: Tower Mews, Tower Lane, Hill Top, Leeds LS12 3SA
Applicant	: Freehold Managers (Nominees) Limited
Representative	: Premier Estates Ltd
Respondents	: The Residential Long Leaseholders as set out in the Appendix
Representatives	: None
Type of application	: An application under section 20ZA of the Landlord and Tenant Act 1985 for the dispensation of the consultation requirements in respect of qualifying works
Tribunal member	: Judge C Goodall Regional Surveyor V Ward FRICS
Date and place of hearing	: Paper determination
Date of decision	: 21 January 2025

DECISION

Background

1. The Applicant has applied for a decision by this Tribunal that it may dispense with the consultation requirements contained in section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of qualifying works to provide building services to carry out repairs to the flat roof above flat 11 of Tower Mews (“the Works”). The legal provisions are explained in more detail below.
2. Unless there is full compliance with the consultation requirements, or a dispensation application is granted, the Applicant is prevented by law from recovering more than £250.00 from each Respondent in respect of the cost of the Works. Therefore it has made the Application, which was dated 12 February 2024.
3. Directions were issued on 21 October 2024 requiring the Applicant to serve all the Respondents with full details of the Works and explaining why it had decided to seek dispensation rather than carry out a full consultation.
4. The Respondents were all given an opportunity to respond to the Application and make their views known as to whether the Tribunal should grant it. None have responded.
5. The Application has been referred to the Tribunal for determination. This is the decision on the Application.

Law

6. 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).
7. Section 20 imposes an additional control. It limits the leaseholder’s contribution towards a service charge to £250 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. The two options are: comply with “consultation requirements” or obtain dispensation from them. Either option is available.
8. 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)).

9. To obtain dispensation, an application has to be made to this Tribunal. We may grant it if we are satisfied that it is reasonable to dispense with the consultation requirements (section 20ZA(1) of the Act).
10. 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 or enter into the long term agreement, but to decide whether it would be reasonable to dispense with the consultation requirements.
11. 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.
12. The Tribunal may impose conditions on the grant of dispensation.
13. The general approach to be adopted by the Tribunal, following *Daejan*, has been summarised in paragraph 17 of the judgement 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 Application

14. The application was made on the grounds that the Applicant became aware that works are required to the Property because of a roof leak affecting apartment 11 who were experiencing water ingress. The ceiling was cracked and bowing.
15. Due to the urgent nature of the works, a contractor was instructed to remove the bowing ceiling, repair the roof and complete remediation works to the apartment.

16. The Works were required to be carried out as soon as possible because of safety risks to the occupiers of apartment 11.
17. The Applicant has provided evidence showing that it kept the Respondents informed of the need for the Works and of its intention to apply for a dispensation from the consultation requirement.
18. Three quotes for the Works were obtained, ranging from £9,600.00 to £10,542.50 all plus VAT. There are 13 flat owners in the Property, so it is reasonable to assume that the cost of the Works, if passed on through the service charge, would invoke the requirement to comply with the consultation regulations or obtain dispensation.
19. No Respondent has objected to the Application.

Discussion and decision

20. The Tribunal accepts that it is reasonable to apply for dispensation rather than pursuing a full consultation. The grant of dispensation is likely to be at a lower cost and obtained more speedily than carrying out the processes of full compliance with section 20 of the Act.
21. No Respondent appears to the Tribunal to have suffered or be likely to suffer any prejudice as a result of the grant of the Application.
22. I **determine** that the Application is granted. The Applicant may dispense with the consultation requirements contained in section 20 of the Act in respect of the carrying out of the Works.
23. This decision does not operate as a determination that any costs charged to any Respondent for the Works are or would be reasonably incurred. They may well have been, but that is an entirely different issue, and Respondents remain at liberty to challenge such costs under section 27A of the Act in the future should they wish.

Appeal

24. 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.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)

Appendix – The Respondents

Mr Barry Gould

Mr Robert Carter & Ms Sarah Wilson

Mr O Afilaka

Ms Bethany Lomas

Ms Claire Elizabeth Shearsby

Mr David Simpson

Ms Marie-Christine Hertoghe

Mr Wayne Ian Richardson

Mr Liam James Hudson

Miss Annemerel Herder

Mycroft Investments Limited

Mr Jonathan Eric Daniels

Mr Francis McNeill & Mrs Rebecca Jane McNeill