



FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)

Case Reference : CHI/19UC/LDC/2024/0082

Property : Flats 4-25 Liberty House, Guildford Street,  
Chertsey, KT16 9GU  
Flats 1-7 Regency House, Guildford Street,  
Chertsey, KT16 9GW  
Flats 1-40 Charles House, Guildford Street,  
Chertsey, KT16 9GT  
Flats 1-25 Fox House, Guildford Street,  
Chertsey, KT16 9GY

Applicant : Fox Lane Management Company Limited

Representative :

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 Members : Judge N Jutton, Mr C Davies FRICS, Ms T  
Wong

Date and Place of  
hearing : 6 February 2025, Havant Justice Centre,  
The Court House, Elmleigh Road, Havant,  
PO9 2AL

Date of Decision : 10 February 2025

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DECISION

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## 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 the agreement reached between the Applicant and Octopus Rentals Limited in October 2023 to terminate a rental agreement dated 8 April 2005 between those parties by the payment by the Applicant to Octopus Rentals Limited of £76,057.42.

## Background

2. Liberty House, Regency House, Charles House and Fox House, Guildford Street, Chertsey are four purpose built blocks of flats (together 'The Property').
3. The residential flats at The Property are held on long leases. The Applicant is a management company responsible under the terms of the leases for the management (repair maintenance etc) of those parts of the Property not specifically demised to the lessees.
4. By a written agreement dated 8 April 2005 made between Octopus Rentals Limited and the Applicant ('The Agreement') The Applicant agreed to let from Octopus Rentals limited ('Octopus') certain equipment comprising door entry systems, CCTV and satellite receiving equipment for a term of 20 years (which commenced following the installation of the equipment at the Property). The Agreement provided for the payment of an annual rent payable on 1 January each year in advance, increased annually in line with the Retail Prices Index (or any replacement index). The Agreement provided that repairs carried out by Octopus during the term of the Agreement (and any continuation thereof) which were not due to fair wear and tear would be paid for by the Applicant. Ownership of the equipment under the terms of the Agreement remained with Octopus.
5. In October 2023 the Applicant accepted an offer from Octopus to terminate the Agreement on terms which included the purchase of the equipment. The offer was time limited such that there was insufficient time for the Applicant (the Applicant says) to undertake the consultation process with the lessees as required by section 20 of the Landlord and Tenant Act 1985 ('the 1985 Act'). The consideration agreed with Octopus to terminate the Agreement and to buy the equipment was £76,057.42, which sum in turn the Applicant seeks to recover from the lessees as part of the service charge payable by them (and which exceeds the sum of £250 per lessee).
6. The Applicant applies for retrospective dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (the 1985 Act) from the

consultation requirements imposed by Section 20 of the 1985 Act in respect of the termination agreement reached with Octopus.

7. There was before the Tribunal a paginated bundle of documents of 213 pages containing the Application, the parties written submission, the Agreement, copy correspondence, copy leases and other documents. References to page numbers in this decision are references to page numbers in the bundle.

### The Law

8. 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.
9. 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".
10. 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.
11. 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 of 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".
12. 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).
13. 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."

14. 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.
15. 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 cost of works arising or which have arisen.
16. If dispensation is granted, that may be on terms.
17. 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.
18. The Applicant’s Case
19. The Applicant was represented at the hearing by Ms Myra Davies from the Applicant’s managing agents and by a director of the Applicant company Mr Peter Scrutton.
20. There is a copy of the Agreement at pages 103-105 of the bundle. The term of the Agreement (clause 2) is expressed as: ‘... *the period ending 31st December of the year the installation is completed and the following Twenty Years (the Initial Term)*’. The rent is payable on 1 January each year in advance and clause 17 allows Octopus to increase the rent each year by the same percentage as the increase in the RPI. The rent due on 1 January 2024 was, the Applicant says, £25,352.47.
21. Clause 9 of the Agreement provided that the equipment installed would remain the property of Octopus. Clause 15 allowed Octopus to retake possession of the equipment following the termination of the Agreement.
22. On 1 October 2023 Octopus made an offer to the Applicant. The offer was to terminate the Agreement and for the Applicant to purchase the equipment for a total sum of £76,007.42 (inclusive of VAT). There is a copy of an email from Octopus setting out the offer at page 101. The offer was expressed in effect to be available for acceptance until 31 October 2023.
23. The Applicant and Octopus both believed at the time that the offer was made that there were a further three years to run of the contractual term (expiring on 31 December 2026). The Applicant also understood that the purchase cost of the equipment at the end of the term would equate to a sum equivalent to one year’s rent at that time. Assuming annual rental increases in line with RPI of 3.4% the Applicant

calculated that if the Agreement was allowed to run to the end of its term that the total cost to the Applicant to include rental payments, the cost of the purchase of the equipment and ongoing maintenance charges would be £108,057.42. Accordingly by accepting Octopus's offer to terminate there would be a saving to the Applicant, (and thus to the level of service charges levied against the Respondents), over that period of some £32,000 (£108,057.42 -£76,057.42). There is a copy of the Applicant's calculation at page 114 which is within a letter dated 15 January 2025 from the Applicant. The letter made the point, realised by the Applicant only after the offer to terminate had been accepted, that it might have been the case that the installation of the equipment might not have been completed until 2008. If that were correct the 20 year term of the contract would not have ended until 31 December 2027 thus incurring a further years rental payment.

24. There was also an attraction to the Applicant in taking over the control and ownership of the equipment. It would mean that the Applicant would no longer be dependent upon Octopus to maintain the equipment. Disputes had arisen between the Applicant and Octopus from time to time as to the responsibility for system faults and breakdowns and as to the cost of repairs. Ms Davies made the point to the Tribunal that the call panels at the Property had been replaced by Octopus in 2022 and that they were therefore relatively new. They were she said bespoke panels made for the Property. She described the call panels as representing the majority of the equipment. That it was not the case as had been suggested by the Respondents therefore that the equipment was old and in need of replacement.
25. Because the offer made by Octopus to terminate the Agreement was only open for acceptance until 31 October 2023 there was insufficient time for Applicant to undertake the consultation process required by section 20 of the 1985 Act. It therefore, for the above reasons, accepted the offer to terminate the Agreement and did not undertake the consultation process.
26. The cost of terminating the Agreement was funded from the service charge reserve fund and in the form of temporary loans of £20,000 each from two of the directors of the Applicant company. To spread the cost thereof for the benefit of the leaseholders it was agreed to replenish the reserve fund over a three year period by putting a sum of approximately one third of the cost of the termination into the reserve fund each year (albeit in the event because of certain calls on the reserve fund that payment has been suspended for the current year). The additional annual reserve fund contribution was in effect a sum similar to that which would have been paid in ongoing rental charges had the Agreement not been terminated and thus on a cash flow basis the amount of service charge each year payable by the leaseholders was not adversely affected by the termination of the Agreement.
27. Had the consultation process been followed, the Applicant says, the chance to terminate the agreement would have been lost. But it was

difficult to understand in any event what the consultation process would have achieved. This was not a case where alternative quotes for anticipated or undertaken works could have been obtained.

28. The Respondents Case.

29. The Tribunal heard from Mr Dean Mistlin of 3 Regency House and from Ms Daniela Trupia of 9 Liberty House. There were in addition written representations in the hearing bundle from Mr Mistlin and Ms Trupia as well as from Paula McDonnell of 24 Charles House, Victoria di Placito of 20 Fox House, Andy Judge and Damien Millership (various properties) and Matthew Knight of 7 Liberty House.

30. Mr Mistlin said that he felt that it had been irresponsible to enter into the agreement to terminate the Agreement. That 'the biggest issue' was the level of the service charges which were approaching £4500 per annum. That the Applicant should he believed have continued to the end of the term of the Agreement. That they could then have looked at the cost of purchasing or renting a new system although he didn't know what that might have cost because he hadn't looked into it. He said that he felt that the agreement to terminate 'didn't sit right' with him. He also felt that better terms to terminate the Agreement might have been reached with Octopus given time. In answer to a question put to him by the Tribunal as to what steps he might have taken had a section 20 consultation process been followed he said he would have taken advice before deciding whether or not to accept the offer to terminate. There was he said a loss of opportunity. That the consultation process would have allowed more time within which to negotiate with Octopus. That had there been a consultation process he believed that it might have been decided not to go ahead with the offer to terminate.

31. Ms Trupia said that ultimately she and her fellow leaseholders who paid the service charges were customers and that there was no customer care demonstrated by the Applicant. She felt disregarded. From what she'd heard it sounded like the termination of the Agreement had done the leaseholders a favour but that it didn't feel like it.

32. In their written submissions the Respondents suggested that the termination of the Agreement had imposed service charges on them that were unmanageable. That because of the depletion of the reserve fund they were now having to pay additional service charges to cover the expense of remedial works to the Property which would otherwise have been funded from the reserve fund. That the equipment that had been purchased from Octopus with old and outdated. That it was faulty. That a consultation should be followed retrospectively so that the lessees could consider whether termination of the Agreement was a sensible option. That would also allow time for an impact assessment to be carried out and to obtain alternative quotes for a more modern system.

### 33. The Tribunal's Decision

34. The Applicant has explained its reasoning behind its decision to agree to terminate the agreement with Octopus. That by its calculation termination allowed for a saving of approximately £32,000 ultimately to the benefit of the Respondents together with other benefits in the form of flexibility and control. That because the offer to terminate the Agreement was only open for acceptance for a limited period of time there was insufficient time to undertake the section 20 consultation process. That had the consultation process been followed the opportunity to terminate the Agreement would have been lost.
35. The factual burden rests with the Respondents to demonstrate the prejudice suffered by them by reason of the failure to undertake the consultation process. What would have happened had the consultation process been followed? Did the failure to undertake that process cause prejudice to the Respondents by requiring them to pay a sum in the form of service charges that was not appropriate or was more than appropriate.
36. The Respondents have not overcome that factual burden. They have not established that they have been prejudiced by reason of the failure by the Applicant to undertake the consultation process. The Tribunal accepts the Applicant's case that there was limited time to accept the termination offer put forward by Octopus. That had the Applicant undertaken the consultation process, because of the time that would have taken, the offer would have been lost. There was no evidence before the Tribunal to suggest that had the consultation process been followed a better outcome would have been achieved for the Applicant and thus for the Respondents, indeed quite the reverse. In the view of the Tribunal had the consultation process been followed almost certainly a worst outcome for the Respondents, certainly in financial terms, would have been achieved. It is not the case that the ability to obtain alternative quotes for the supply of equipment to the Property would have made any difference. There were two parties to the Agreement. The question faced by the Applicant was whether or not termination of the Agreement on terms was in the best interests of the Respondents or not. Obtaining quotes for the cost of the supply of equipment to the Property from third parties was not relevant to that question.
37. For those reasons it is in the view of the Tribunal reasonable to grant dispensation pursuant to section 20ZA of the 1985 Act from the statutory consultation requirements in respect of the agreement to terminate the contract (the Agreement) with Octopus in October 2023. The Tribunal grants dispensation accordingly.

Judge N Jutton  
10 February 2025

## 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](mailto: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



