



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : HAV/00HE/LDC/2025/0608

Property : 1 – 18 Gallinas Point, Talland Road, St Ives,
Cornwall. TR26 2FD.

Applicant : Gallinas Point Limited.

Representative : Blue Bay Property Management Ltd.

Respondent : The 17 leaseholders of the Property.

Type of Application : To dispense with the requirement to consult
lessees about major works section 20ZA of the
Landlord and Tenant Act 1985.

Tribunal : Judge C A Rai.

Date of Decision : 11 March 2025.

DECISION

This is a formal order of the Tribunal which must be complied with by the parties.

Communications to the Tribunal MUST be made by email to rpsouthern@justice.gov.uk. All communications must clearly state the Case Number and address of the premises.

Summary of the Decision

1. The Applicant is granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the same Act in relation to the works described in its application dated 20 January 2025. The Tribunal has made no determination on whether the costs of the works are reasonable or payable.

Background

2. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 and from the consultation requirements imposed on the landlord by Section 20 of the same Act. The application was received on 20 January 2025.

3. The Property is described in the application as a:

A purpose built block of 17 apartments comprising 11 two bedroom apartments and 6 three bedroom apartments over three stories with a car park and gardens.

4. The Applicant explains in the application that:

Major works are planned to commence February 2025 (awaiting delivery of new windows and support package from supplier) in order to address major structural damage caused by water ingress into apartments and main building fabric following original failure of contractor/installers during original building of the development. Major works will include removal of the windows and frames in apartment 17, fitting of new support package, roofing works for leading to seal and installation of all new frames and remedial works to make good.

And further

All leaseholders are being informed of the qualifying works and the requirement to ensure the repairs to the impacted apartments and the structure of the building as part of the call for funds. Issue will be discussed at the AGM though owners are invited to ask questions and will be kept informed of works progress.

There is no reasonable method to prevent water ingress continuing into the affected apartments or into the structural support parts of the block building. Given the coastal location Zone 1 conditions, saltwater ingress is a notable impact material for steel beams in the structure and is causing ongoing damage to the timber portions of the window frames and surrounds. Timber is required as part of local planning considerations. The window frames are an imported brand and there is only one major contractor able to source and fit the brand which is

required to match the current installation. Standard tender process is therefore not feasible under S.20 consultation. Damage is ongoing due to weather conditions and emergency repairs are required at the very earliest opportunity to halt further damage and prevent major rebuild work impacting all leaseholders. Window frame and support packages must be ordered immediately in order to arrive earliest, February 2025. Leaseholders primarily use the properties for holiday let purposes and have stated a preference for any works to take place out of letting season to avoid major disruption to business.

5. The Applicant says that it has provided a detailed description of the works that are required to the Respondents. The Applicant says that the work is remedial in nature required to address a defect in the original construction and that only one contractor is able to source and fit the brand of windows required to match the current installation
6. The Tribunal gave Directions on 4 February 2025 listing the steps to be taken by the parties in preparation for the determination of the dispute, if any.
7. The Directions stated that Tribunal would determine the application on the papers received unless a party objected in writing to the Tribunal within 7 days of the date of receipt of the Directions. No party has objected to the application being determined on the papers.
8. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This application is not about the proposed costs of the works, and whether they are recoverable from the leaseholders as service charges or the possible application or effect of the Building Safety Act 2022. The 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, and the contribution payable through the service charges.

The Law

9. Section 20 of the Landlord and Tenant Act 1985 ("the Act") and the related Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease, 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. The relevant section of the Act reads as follows:

S.20 ZA Consultation requirements:
Where an application is made to [an appropriate 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.
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 lessees
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. There have been subsequent Decisions of the higher Courts and Tribunals of assistance in the application of the Decision in Daejan, but none are relied upon or therefore require specific mention in this Decision.

Consideration

19. The Directions attached a reply form for the Respondents to complete to confirm whether they agreed with the application or not and if opposed, to provide a statement setting out why they oppose.
20. The Applicant confirmed in an email dated 26 February 2025 that it has not received any objections from the Respondents.
21. Having considered the application and prior to undertaking this determination, I am satisfied that a determination on the papers remains appropriate, given that the application remains unchallenged.
22. The reason why dispensation from consultation requirements is said to be required is to enable the repair of major structural damage which has been caused by water ingress into the apartments and the fabric of the building following the failure of the original construction and or installation. Given the nature of the works and the vulnerability of the building and its exposure to saltwater rains and upon advice that there is no other reasonable method to prevent water ingress into the affected apartments, I am satisfied that the qualifying works are of an urgent nature.
23. There has been no objection to the dispensation of the consultation requirements from any of the Lessees.
24. None of the Lessees have therefore asserted that any prejudice has been caused to them. The Tribunal finds that nothing different would be done or achieved in the event of a full consultation with the Lessees, except for the potential delay and potential problems.
25. The Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process.
26. The Tribunal consequently finds that it is reasonable to dispense with all of the formal consultation requirements in respect of the major works to the building as described in this Decision. This dispensation is conditional upon the Applicant serving a copy of this Decision on all the Lessees within 14 days of it receiving a copy of this Decision.
27. This Decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying works outlined at paragraph 4. The Tribunal has made no determination on whether the costs are payable or reasonable. If a Lessee should wish to challenge the payability or reasonableness of those costs, a separate application to this Tribunal under section 27A of the Act may be made.
28. In reaching my decision I have taken account of the fact that no party has hitherto objected to the application. The Lessees have been afforded the opportunity to raise any objection and have not done so.

Judge C A Rai

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 the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk
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.