



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

Case Reference	: HAV/00HD/LDC/2024/0602
Property	: Coopers Court, Blue Cedar Close, Yate, Bristol, South Gloucestershire. BS37 4FF.
Applicant	: McCarthy & Stone Retirement Lifestyles Limited.
Representative	: McCarthy & Stone Management Service Karen Hewlett.
Respondent	: The 44 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	: 10 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 outlined in quotation from Vertex Specialist Roofing Ltd dated 19 July 2024. 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 25 September 2024.
3. The Property is described in the application as a:

A purpose built block of flats comprising one and two bedroom apartments; age-restricted community for the over sixties.
4. The Applicant explains in the application that;

Initially the flat roof started to leak in 2020. Subsequently a number of remedial works took place. In February 2023 the roof leak became significantly worse. Estimates were obtained for a major repair/relay works because additional areas began to “pose an issue”.

And further

Due to the high level of the quotations, a meeting with the leaseholders was held on 13 November 2023 to discuss the issues with them and whether an application should be made for dispensation to enable the works to be carried out as soon as possible. Mc Carthy Stone were tasked with re-evaluating the works. A second meeting of the leaseholders took place on 8 February 2024, and it was agreed to apply for dispensation.

A further delay occurred whilst a claim was raised with the NHBC but when this was subsequently rejected it was agreed by the leaseholders that the Applicant proceed with an application for dispensation.

Works commenced on 19 August 2024 and were completed the following week.

5. The Applicant provided copies of the four letters sent to the leaseholders which outlined the works required and enclosed the quotation from Vertex Specialist Roofing Ltd dated 19 July 2024.

6. The Tribunal gave Directions on 22 January 2025, listing the steps to be taken by the parties in preparation for the determination of the application, 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 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.
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. Subsequently eleven leaseholders returned the forms stating that they did not object.
20. The Applicant's representative confirmed in an email to the tribunal, dated 12 February 2025, that it had not received any objections to the application.
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 has been made is to enable the Applicant to carry out a major repair to the roof and make it watertight.
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.