FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	HAV/21UC/LDC/2025/0630
Property	:	High Trees, 22 Carew Road, Eastbourne, East Sussex, BN21 2JB
Applicant	:	High Trees (Carew Road) RTM Company Limited
Representative	:	Wishtower Limited
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 Member	:	Judge N Jutton
Date of Determination	:	4 April 2025

DECISION

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 works to replace the fans in the roof vents at the Property and to undertake necessary associated electrical works.**

The application and the history of the case

2. The Applicant applies for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.

3. The Applicant says that the Property is a purpose built block of 32 residential flats, garages and surrounding grounds. Dispensation is sought in relation to urgent works to replace the fans in the roof vents and to undertake necessary associated electrical works, in order to stop mould growth in affected flats (the Works).

4. The Applicant says that the fans are not removing moisture from the flats which in turn causes the mould which has had an adverse impact on the health of residents. That the leaseholders have been informed of the situation at an AGM and have been told that the Applicant was looking to resolve the issue as soon as it could. That if the statutory consultation process was first followed that would cause delay which would create an undue safety risk to all residents.

5. The Tribunal made Directions on 17 March 2025. The Directions provided that the Tribunal was satisfied that the application may be determined on the papers without an oral hearing and that it would proceed accordingly unless a party objected in writing within 7 days of receipt of the Directions. No objections have been received accordingly the Tribunal proceeds to determine the application on the papers.

6. The Directions also provided for the Applicant to send to each Respondent the application and the Directions. The Directions made provision for the Respondents to complete a reply form and return that to the Tribunal and to the Applicant stating whether or not the application was opposed, and if so stating why. No objections have been received from the Respondents. The Tribunal has received one reply form from the leaseholder of flat 31 consenting to the application.

7. The Directions made it clear that this application does not concern the issue of whether or not service charge costs arising from the Works will be payable and if so reasonable in amount or of the possible application or effect of the Building Safety Act 2022. That the Respondent 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 of the proposed works, and the contribution payable through the service charges both in general and in particular because of the provisions of and the protections provided by the Building Safety Act 2022.

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 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 charges 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.

Decision

18. The Applicant says that the Works are required to be carried out urgently because of the health and safety risk to the residents. That the fans in the roof vents were failing to remove moisture from the flats causing mould which was having an impact on the health of residents. The Applicant says that a resident or residents had been taken to hospital with respiratory conditions as a result of the mould.

19. I am satisfied from the evidence before me that it is in the best interests of the Respondents for the Works to be carried out as soon as possible. That if the Works were delayed whilst the statutory consultation process were carried out there may be a risk to the health of the residents of the Property.

20. None of the Respondent leaseholders have objected to the application for dispensation from the statutory consultation requirements. One of the Respondents has replied consenting to the application.

21. There is no evidence before me to the effect that the Respondents are prejudiced by the failure on the part of the Applicant to complete the statutory consultation process in respect of the Works. In my judgment it is just and equitable to grant dispensation from the statutory consultation requirements in respect of the works to replace the fans in the roof vents at the Property and associated electrical works.

22. In reaching my decision I have taken account of the fact that no party has objected to the application. The leaseholders have had opportunity to raise any objection and they have not done so. I do however **Direct** that the dispensation is conditional upon the Applicant or their agent sending a copy of this decision to all the leaseholders so that they are aware of the same.

23. For completeness I confirm that in making this determination I make no findings as to the costs of the works and whether they are recoverable form leaseholders as service charges, whether they are reasonable in amount or of the possible application or effect of the Building safety Act 2022.

Judge N Jutton

4 April 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 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 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