



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

Case Reference : CHI/00HY/LDC/2024/0075/BS

Property : Fountain Court, West End, Westbury,
Wiltshire, BA13 3JY

Applicant : Retirement Lease Housing Association

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 Member : Regional Judge Whitney

Date of Decision : 24 April 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 1985 Act in relation to the roof repairs carried out in 2024 with a total cost of £15,844.13, which was required to fix the leaks and prevent further damage. The Tribunal has made no determination on whether the costs of the works are reasonable or payable.**

Background

2. The Applicant sought 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. This application was first received on 22 April 2024 but withdrawn due to non-payment of the application fee. It was subsequently established that the fee had in fact been paid but allocated to another region of the Property Tribunal. This unfortunately, has led to a significant delay in the determination being reached.
3. The Applicant is described in the application as the 'Landlord and Managing Agent'.
4. Attached to the application was a copy letter to the leaseholders dated 22 April 2024; a job service report dated 3 April 2024 and two quotes dated 12 February 2024 and 9 April 2024 all from 'Fxtive Solutions Limited'.
5. The Property is described in the application as a:

Leaseholder independent living estate comprised of 39 units plus communal areas. 1980s purpose built.
6. The Applicant explains in the application:

Reports of roof leaks. Upon carrying out trace and access, it was found roof tiles had been stripped off halfway up the roof, the felt underneath had deteriorated in multiple places, causing a large hole in the centre and along the verges. It has also collapsed into the cavity, causing damp issues in the same places on the opposite side of the roof. Works are required urgently to prevent further damage.

7. Describing the works as:

The felt in the roof has deteriorated in multiple places causing leaks and mould in some of the properties. The proposed works are as follows:

1. Erect additional scaffolding to allow access to both flanks of the roof.
2. Access the roof from the scaffold and strip off all roof tiles, setting them aside on the scaffold.
3. Strip off ridge tiles and remove all old mortar from tiles and ridge.
4. Strip off existing mortar to verges.
5. Strip off all existing batten and felt.
6. Supply and lay new felt and batten to the entire roof at the correct gauge.
7. Supply and fit eaves trays to gutter level.
8. Re-lay existing roof tiles.
9. Re-lay existing ridge tiles on a new mortar bed and point in.
10. Re-point verges.
11. Remove all waste from the site.

We believe that these measures will effectively address the current issues and prevent further damage to Fountain Court. The required works will exceed the section 20 threshold for this estate. We have enclosed a formal written quotation.

We have written to all leaseholders detailing the required works and why we believe consultation is not feasible on this occasion. (Please find enclosed). We have asked leaseholders to contact us if they have any concerns. Our Estate Manager has also kept residents informed on site.

8. Dispensation is sought because:

Fountain Court is home to residents of retirement age and the damage to the roof is causing mould issues within some properties. To complete consultation procedures [sic] would delay the required works for an extended period which we deemed to be unreasonable. Works are required urgently to prevent further damage.

9. The Tribunal gave Directions on 4 March 2025 listing the steps to be taken by the parties in preparation for the determination of the dispute, if any.
10. 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.
11. **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

12. 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.

13. 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.

14. 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.
15. 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.
16. 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).
17. 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.

18. 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.
19. 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.
20. If dispensation is granted, that may be on terms.
21. 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

22. 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.
23. No Respondent has returned the reply form; however, 2 Respondents did contact the Applicant directly with comments seeming to refer to this application. The Applicant has now forwarded copies of those emails to the Tribunal for review.
24. The first being an email from Stewart Findlay to the Applicant dated 11 March 2025, to which the Applicant sent two replies of 14 March 2025 and 28 March 2025. Mr Findlay describes himself as the Chairman of the Residents Committee.
25. The second being an email dated 14 March 2025 from Paul and Christine Taylor to the Applicant, to which the Applicant responded by email on 26 March 2025.
26. Having considered this correspondence, it is noted that although they do raise concerns to the Applicant, neither Respondent has returned the reply form to the Tribunal or the Applicant.
27. Mr and Mrs Taylor raise their concerns over whether or not the Applicant should have been aware of the need for works. Mr Findlay challenges the fact that a new contractor was employed thereby incurring further costs. He references that a previous contractor was not called back to repair their sub standard work. He agrees works were required but is concerned over the lack of transparency and consultation.
28. Having considered the application and prior to undertaking this determination, I am satisfied that a determination on the papers

remains appropriate, given that in my judgment the emails do not challenge this application.

29. The reason why dispensation from consultation requirements is said to be required is to prevent further damage being caused that would result if the full consultation period was adhered to. Given the nature of the works and the fact that if left too long further damage would be caused to the building affecting its occupants, I am satisfied that the qualifying works were required to be undertaken. Both Mr and Mrs Taylor and Mr Findlay appear to accept the need for works to be undertaken.
30. I have considered the responses and in my judgment the matters raised relate to the cost and the ability of the Applicant to recover such costs from the leaseholder. These are separate matters to those within this application.
31. I am satisfied that nothing raised by any of the leaseholders amounts to prejudice.
32. The Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process.
33. 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.
34. This Decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying works for the roof works conducted in 2024, of £15,844.13 as outlined at paragraph 6. The Tribunal has made no determination on whether the costs are payable or reasonable. If a Lessee wishes to challenge the payability or reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.
35. In reaching my decision I have taken account of the fact that no party has formally objected to this 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.

RIGHTS OF APPEAL

36. 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

37. 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.
38. 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.
39. 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.