



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

Case Reference : HAV/00HQ/LDC/2025/0618

Property : Stevenson Lodge, 39 Pool Road
Westbourne BH4 9DH

Applicant : Churchill Retirement Living Limited

Representative : Churchill Estates Management 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 : Regional Tribunal Judge Whitney

Date of Decision : 7 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 repairs of the flat roof covering. 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 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act. The application was received on 3 February 2025.

3. The Property is described by the Applicant as follows:

The development is a 4 floor block of flats build in 2002. There are total of 32 apartments apartments [sic] served by 1 lift. This is a purpose-built development for occupants over 60 years old. The block contains a residents' lounge, kitchen, laundry room, communal toilet, and a guest suite. Residents have access to a landscaped garden and parking spaces.

4. The Applicant explains that:

Works are needed to repair the flat roof covering. This membrane has deteriorated beyond economical repair and is nearing its expected lifespan. Water penetration is evident in the top floor corridor in the section of the building under the flat roof. As we are in the middle of winter and mindful of the weather conditions and potential further damage, we will be accepting a quotation today from the most competitive contractor to progress the works. Therefore, we are seeking dispensation from full consultation.

In accordance with the requirements of Section 20 of the Landlord and Tenant Act 1985, a Notice of Intention was served on leaseholders on 29th January 2025. The Notice of Intention includes additional information advising leaseholders of the Dispensation Application and states that, as respondents, they will have the opportunity to log their responses.

5. Further:

The Applicant seeks partial dispensation from the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 in respect of roofing works. In accordance with The Sixth Schedule, points 2.1 and 2.1.1, the Landlord covenants to maintain, repair, cleanse, repaint, decorate, and renew the main structure of the building, including (but not limited to) the foundations, roofs, exterior, load-bearing or structural walls, and the windows.

Stevenson Lodge is a retirement housing development occupied by leaseholders over the age of 60 years. The development was built in 2002. Our Managing Surveyor assessed the situation and advised that, as this is an active leak, it needs to be repaired. Additionally, considering the age of the roof, a long-term repair is necessary to avoid further water penetration and a recurrence of the situation in the future.

Deterioration of the roofing materials on the flat roof is evident. Necessary works to ensure the area is made watertight include:

- Supply and install access scaffolding to the front of the building.
- Remove all existing asphalt and insulation from the roof and dispose of it.
- Disconnect existing outlets and set aside for reuse.
- Remove perimeter tiling and set aside for reuse.
- Supply and install Sopradere priming coat to the existing roof surface.
- Supply and install new Soprema Sopravap vapour control layer.
- Supply and install new 120mm PIR rigid insulation boards fully bonded to the surface with polyurethane glue.
- Reinstate set aside outlets back into original positions.
- Supply and install a new Soprema polyester-based mineral felt system consisting of Soprastick Venti FF followed by Sopralene Flam 250 AF mineral cap sheet.
- Reinstate set aside tiles back onto the roof, replacing any damaged tiles with those that match as closely as possible.

In line with our policy, a minimum of two quotations were sought from reputable contractors who specialize in roof works. The two comparable quotations below both exceed the Section 20 threshold of £6,494 for this development:

- CRS Complete Roofing Solutions (Dorset) Ltd: £8,306 + VAT = £9,967.20
- Reeves Roofing: £8,660 + VAT = £10,392

In accordance with the Landlord and Tenant Act 1985, a Notice of Intention was sent to all leaseholders on 29th January 2025. Additional information has been included in the Notice of Intention to advise leaseholders that the applicant is seeking dispensation from full consultation.

Being mindful of the following and considering the urgency to undertake the works, we are seeking dispensation from the First-tier Tribunal, and we will be appointing a contractor to start work as soon as possible:

- Damage to the ceiling tiles on the top floor is evident when it rains, and the spread of the damage is increasing.
- We are in the middle of winter, and the likelihood of heavy rain is high.
- Currently, there is no damage evident within the apartments. Our intention is to carry out works before any apartments are affected.
- Water ingress will cause damage to the roof structure as rain travels through the building to the ceiling tiles. Urgent works are needed to ensure that rain penetration does not cause structural damage to the roof.
 - The area of water ingress is near emergency lighting, and works are needed urgently to prevent water from reaching the lighting and causing a fire risk.

The area is currently cordoned off, so there is no danger to any users of the top floor corridor.

6. The Tribunal gave Directions on 17 February 2025 listing the steps to be taken by the parties in preparation for the determination of the dispute, if any. Following a case management application dated 25 February 2025, the directions were amended to show later dates for compliance.
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 lessee(s).
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. No reply forms have been received from any of 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 due to deterioration of the surface of the roof which needs to be made watertight. The Applicant further states that should there be any water penetration, if repairs were not undertaken, this could cause a fire risk. Given the nature of the works and the fact that it related to the safety and welfare of the building and its occupants, I am satisfied that the qualifying works were of an urgent nature.
23. There has been no objection to the dispensation of the consultation requirements from any of the Lessees and this was confirmed by the Applicant on 17 March 2025.
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.
27. This Decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying works for Stevenson Lodge as outlined at paragraphs 4 and 5. 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.
28. 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.

RIGHTS OF APPEAL

29. 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
29. 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.
30. 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.
31. 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.