



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

<b>Case Reference</b>	: CHI/00ML/LDC/2024/0098
<b>Property</b>	: 25 Lansdowne Place, Brighton & Hove, East Sussex, BN3 1HF
<b>Applicant</b>	: Lansdowne-Holland RTM Company Ltd
<b>Representative</b>	:
<b>Respondents</b>	: Deena Bourne – Flat 1 Colin & Grajina Carswell – Flat 1a Paul Leybourne – Flat 2 Ben Johnson – Flat 3 Deborah Bell – Flat 4 Chyrese Carpenter & Eleanor Brindle – Flat 5
<b>Representative</b>	:
<b>Type of Application</b>	: To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
<b>Tribunal Member</b>	: Regional Surveyor Clist MRICS A.Crawford MRICS ACI Arb T.Wong
<b>Date of Hearing</b>	: 12 February 2025
<b>Date of Decision</b>	: 12 May 2025

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**DECISION**

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## **Background**

1. 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 6 June 2024.
2. Directions were issued on 1 October 2024 setting a timetable for the exchange of documents preparatory to a determination on the papers and required the Respondents to complete a reply form and submit any objections to the Tribunal and to the Applicant.
3. The Tribunal received replies from Flats 1a, 2, 3 & 5 all agreeing to the application.
4. One objection was received from Flat 4 along with a supporting statement.
5. No response was received from Flat 1.
6. Given the objection, the Tribunal set a hearing date to consider whether or not the comments raised in the Respondent's objection show prejudice, and if so, the Tribunal will need to consider if the application for dispensation should be granted and/or whether conditions should be attached to any grant of dispensation.
7. References in [ ] are to pages within the hearing bundle.

## **The Law**

8. 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.
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 *Marshall v. Northumberland & Durham Property Trust* [2022] UKUT 92 (LC) to which were referred.

### **The Hearing**

18. The hearing took place remotely on 12 February 2025. In attendance were Mr Johnson (Leaseholder of Flat 3) and Mr Leybourne (Leaseholder of Flat 2), in the capacity of the Applicant.
19. The Respondents were not present and as such the start of the hearing was delayed whilst the clerk contacted Mrs Bell (Leaseholder Flat 4) to establish whether she would be attending the hearing. The phone number provided was answered by Mr Bell who explained that they had been unaware of the hearing and was unable to attend as was currently at a hospital. There was no request for an adjournment made.
20. The Tribunal was satisfied that the Directions dated 18 December 2024 had provided details of the hearing date. Subsequent emails had also

been sent to the Respondent providing details as to how to access the remote hearing platform.

21. The Tribunal sought the views of the Applicant who stated that all correspondence had been sent to Mr and Mrs Bell to the known correspondence address and that there had been no communication or engagement from them prior to the hearing date, including that relating to the contents of the bundle. Mr Johnson added that there had been a consistent pattern of behaviour from the Respondents whereby it had been said in the past that documents had not been received such as the Tribunal's Respondent Reply Form when it was said that they had indeed been sent.
22. The Tribunal considered that it was satisfied that Mrs Bell was aware of the hearing and that it was in the interest of justice to proceed. It would do so on the basis of the Respondent's written submissions.
23. Mr Leybourne made an opening statement explaining that there had been an unexpected collapse of a balcony section to the first floor (Flat 4) of the building necessitating emergency works. The managing agent had advised that an application for dispensation was made as due to the nature of the disrepair there would not be time to follow the full consultation procedure. At that time the extent of the works required and associated costs to repair the balcony were unknown. The managing agent also served a S.20 notice of intention to carry out works for those that could be subject to a full consultation, excluding those items to which dispensation would be sought.
24. It was explained that the dispensation is related to investigations relating to the balcony collapse which included an assessment of the safety of the structure. The items [62] related to scaffolding costs, surveyor and structural engineer fees and investigations for the specification of works required.
25. It was said that on 3<sup>rd</sup> June 2024 a Notice of Intention was sent to the Respondent leaseholders for the urgent works. No consultation had been undertaken as yet in relation to the specification of major works to the balcony as the same had not yet been received from the appointed structural engineer but was expected imminently and would form the second stage of the consultation process, providing an estimate of costs and seeking quotations from contractors. It was only the early investigative works that they had been unable to consult upon.
26. No responses had been received from any leaseholder in respect of the Notice of Intent.
27. The Tribunal requested that Mr Leybourne address the Respondent's objections [58].
28. Mr Leybourne referred to the Respondent's first objection, suggesting that the application was an extreme course of action. It was explained

that the Respondent was also the freeholder of the building, was unhappy with the formation of the right to manage (RTM) company and the objection related to the same. The application had been on the basis of advice provided by the managing agent.

29. As to the Respondent's suggestion that there had been a lack of transparency regarding costs, Mr Leybourne stated that leaseholders were not aware of individual costs as not all invoices had been settled to date. At the time of the notice of intent, the costs were unknown. By way of example, Mr Leybourne referred to difficulties experienced with a structural engineer who delayed investigations and failed to provide a report. Those costs could not have been advised to leaseholders. It was further explained that scaffolding was erected on 10 June 2024 to investigate the disrepair to the balcony and remains in place to date. It is unknown how long the scaffolding will be required to remain in place for until the specification of works are received. Estimated costs had been included within the hearing bundle simply to aid the Tribunal and a speculative end date of 31 March 2025 had been adopted.
30. Mr Leybourne reiterated that a S.20 notice of intent had been served on 3 June 2024 and that the Applicant intended to follow the full consultation process in respect of the repair works.
31. Upon questioning by the Tribunal, Mr Leybourne stated that leaseholders were advised on 3 October 2024 that there was an intention to provide details of the costs as part of the second stage of the consultation process.
32. In relation to the historical dispute regarding the RTM, Mr Leybourne explained that the RTM is legitimate and had provided evidence of the same within the hearing bundle. The Respondent had not provided any evidence to show that the RTM is illegitimate, nor have any rational submissions on the matter been made that are understandable to the Applicant. Mr Leybourne stated that the Respondent had failed to communicate to the Applicant regarding the formation of the bundle, no evidence was submitted to support the basis of the objection and with no engagement in general with the Applicant. Furthermore, the Respondent is in support of the required works of repair. It was therefore suggested that the objection relates more to the historical dispute surrounding the formation of the RTM rather than the dispensation application to which the Respondent alleges is a cover up. Mr Leybourne stated that the Applicant disagrees with such a suggestion.
33. The Tribunal asked Mr Leybourne whether he would be prepared to provide the Respondent with details of the costs incurred to date to ease any concerns related to a lack of transparency to which Mr Leybourne confirmed that the Applicant would be happy to do so and would support such being a condition should dispensation be granted.
34. My Leybourne made his closing statement.

35. It was said that the RTM had acted reasonably in applying for dispensation relating to the collapse of the balcony section. The RTM had maintained communication with the managing agent with the objective that the works were carried out as promptly as possible and the Applicant remained committed to continuing the S.20 process for the remaining works, of which would hopefully reassure the Respondent and provide an opportunity to respond to estimates at the second stage.
36. It was explained that the RTM has a legitimate authority to act in the way it has and to appoint a managing agent and to make the application for dispensation. The latter was a reasonable action taken on the basis of having received professional advice on the matter. It could not be said that the action was irrational or extreme, it was in accordance with the governing rules of the managing agent.
37. In conclusion, Mr Leybourne stated that the RTM was open to meeting with the Respondent to discuss their concerns surrounding the RTM and its decision making. It was said that since the RTM was established, there had been no real understanding of the Respondent's position.

### **Decision and Reasons**

38. **We grant the Applicant dispensation from the requirements to consult conditional upon them providing all leaseholders with full details of costs incurred and an outline of events to date.**
39. The Tribunal considered all the documentation within the hearing bundle and took particular care to read the statement made by the Respondent [53-54] in their absence.
40. It is accepted by the Applicant that they did not comply with the statutory consultation requirements, hence an application for retrospective consent. The qualifying works relate to the investigation as to the collapse of a balcony section and a specification of works required to repair the same. The Applicant states the following works to be the subject of the application [62]:
- Scaffolding provided by Ventnor Building Services Ltd
  - Scaffolding Adaptive Scaffolding
  - Grumitt Wade Mason Ltd inspection, liaise with structural engineer, produce specification of works, preparing tendering to contractor and tender report, contract administration of project
  - HOP Consulting Ltd structuring inspection report
  - HOP Consulting Ltd Scheme Design, CAD Drawing and Building Regulation Purposes, RC Detailing and Schedules.
  - Se Surveying Ltd digital survey of structure

41. The application for dispensation does not extend to the works to repair the balcony, it is said by the Applicant that the full consultation process will be carried out in respect of such.
42. The Tribunal accepts the Applicant's witness evidence relating to the collapse of the first floor balcony section to Flat 4, this does not seem to be challenged by the Respondent. Further, the Respondent accepts that works will be required to repair the same.
43. The Respondent's statement outlines the reasoning for their objection to the application which primarily relates to the historical dispute with Lansdowne-Holland RTM Company Ltd, thereby necessitating the need for a full consultation process.
44. The Tribunal finds on the basis of the evidence provided by the parties that the RTM Company is legitimate having acquired the right to manage the premises on 4 June 2019.
45. The Tribunal considers the case of Daejan whereby Lord Neuberger reminded us that we should be sympathetic to tenants in determining if they have suffered prejudice. In this case, the issues raised by the Respondent, in main related to their historical dispute with the Applicant.
46. Whilst the Respondent has indicated that she would have participated in the S.20 process, her statement is silent on what she would have been done differently had the full process been followed. Further, the Tribunal noted that the Respondent had not made any written observations to the S.20 Notice of Intention dated 3 June 2024 [102].
47. Consequently, the Tribunal finds that nothing would have been done or achieved differently had a full consultation been carried out in respect of the qualifying works other than cause further issues and delay.
48. The Tribunal finds that in light of the nature of disrepair and the urgency to assess and secure the structure of the building, it was reasonable for the Applicant to undertake investigations and apply for dispensation from the consultation process.
49. Whilst the Respondent has not indicated what would have been done differently had the full consultation process been carried it, she had concerns with regard to the lack of transparency regarding the costs and the process.
50. The Applicant accepted that full details of costs incurred to date had not been provided to Respondent, adding that it had intended to do so once the specification of works had been received which would be the subject of the second stage of the S.20 consultation process.

51. Daejan makes clear that the Tribunal has broad discretion as to what, if any, condition should be attached to a grant of dispensation.
52. The Tribunal considers a condition to provide the Respondent with costs incurred and the history of events to date to be appropriate, a preposition that the Applicant supported.
53. The Tribunal consequently finds that it is reasonable to dispense with all of the formal consultation requirements in respect of the qualifying works to the building, subject to the condition that the Applicant provides the Respondent with costs incurred and outline of events to date are provided to the leaseholders.
54. This decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying works. 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.

### **RIGHTS OF APPEAL**

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk). 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.

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.