FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00GA/LDC/2024/0617**
Property	**:**	**1 - 23 (inclusive) St Owen Court, Mill Street, Hereford, Herefordshire HR1 2NT**
Applicant	**:**	**Green Square Accord Limited**
Representative	**:**	**Natalie Sheer**
Respondents	**:**	**The leaseholders 1 - 23 St Owen Court**
Type of Application	**:**	**An application under section 20ZA of the Landlord and Tenant Act 1985 for dispensation of the consultation requirements in respect of qualifying works**
Tribunal Members	**:**	**V Ward BSc Hons FRICS – Regional Surveyor** **Deputy Regional Judge M K Gandham**
Date of Decision	**:**	**13 June 2025**

DECISION

Background

1. The Applicant Landlord seeks dispensation from all or some of the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 ("the Act").

2. The only issue for the Tribunal to determine under this application is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be reasonable or payable.

3. The application relates to works due to a broken sewer drain. The justification for the application provided by the Applicant, in the application form, is as follows:

> *When the broken drain issue was first identified we referred the matter to our insurers. However, they disputed that this was an insurable issue as they claimed the drain had failed due to 'wear and tear'. Although we continue to dispute this, it became clear the we* [sic] *could wait for the issue with our insurer to be resolved.*
>
> *Urgent repairs were needed due to the potential health risk to residents, given the nature of uncontained effluent in the lift shaft and flats. If left unchecked this would have resulted in damage and decommissioning of the lift, which would have badly affected several elderly people in the building.*
>
> *We therefore took the decision that we could not reasonably wait to complete a S20 consultation before commencing the works, given the distressing situation for the residents of the affected flats and other residents in the building due to the terrible smell, health risk and having to take the lift out of use.*
>
> *The estimated cost of repair are currently approx £40,000.00 at present (excluding decant accommodation costs), which divided by the 23 units is far above the normal S20 threshold for qualifying works, so normally a S20 consultation should have been carried out in advance of works.*
>
> *The contractors we have had to use are not under a qualifying long term agreement and therefore the consultation would have taken approx 3 months, delaying commencement of the repair works.*

The works have now been completed.

4. Directions were issued by the Tribunal requiring the Applicant to provide all lessees with a copy of the application for dispensation, a statement explaining the purpose of the application and the reason why dispensation was sought, the Directions and copies of any invoices relating to the works.

5. The Directions allowed for all lessees to respond to the application for dispensation by completing a form (the Tribunal Reply form) and sending it to the Tribunal and the Applicant. The form allowed the lessees to indicate whether they consented or objected to the application, and whether they wished for the Tribunal to hold a hearing.

6. No request for a hearing was received. The Tribunal accordingly has determined the application on the basis of the written documentation received. This document sets out our decision and the reasons for it.

The Law

7. The Act imposes statutory controls over the amount of service charge that can be charged to long leaseholders. If a service charge is a "relevant cost" under section 18, then the costs incurred can only be taken into account in the service charge if they are reasonably incurred or works carried out are of a reasonable standard (section 19). It not, a service charge payer can challenge those costs under section 27A of the Act.

8. Section 20 of the Act imposes an additional control. It limits the leaseholder's contribution towards a service charge to £250 for works, unless "consultation requirements" have been either complied with or dispensed with. There are thus two options for a person seeking to collect a service charge for works on the building or other premises costing more than £250. The two options are: comply with "consultation requirements" or obtain dispensation from them. Either option is available. There are also restrictions on entering into long term agreements without consultation.

9. To comply with consultation requirements a person collecting a service charge has to follow procedures set out in the Regulations (see section 20ZA(4) of the Act). There are detailed procedures (including an obligation to seek competitive quotes) which normally take in the region of three months to complete.

10. To obtain dispensation, an application has to be made to this Tribunal. We may grant it if we are satisfied that it is reasonable to dispense with the consultation requirements (section 20ZA(1) of the Act).

11. The Tribunal's role in an application under section 20ZA is therefore not to decide whether it would be reasonable to carry out the works, but to decide whether it would be reasonable to dispense with the consultation requirements.

12. The Supreme Court case of *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 (hereafter *Daejan*) sets out the current authoritative jurisprudence on section 20ZA. This case is binding on the Tribunal. *Daejan* requires the Tribunal to focus on the extent to which the leaseholders would be prejudiced if the landlord did not consult under the consultation regulations. It is for the landlord to satisfy the Tribunal that it is reasonable to dispense with the consultation requirements; if so, it is for the leaseholders to establish that there is some relevant prejudice which they would or might suffer, and for the landlord then to rebut that case.

The Applicant

13. In their statement, the Applicant gave additional background to the works. On 31 July 2024, the Applicant was notified about the leakage of sewage into flat 6 through the shower and effluent build up in the lift pit. The cause of the issue was identified as a broken sewer drain under the sub floor of the building (running underneath flats 5 and 6 of the Property). Upon inspection, the Applicant's survey team was of the view that this damage had potential to make the subfloor structure unstable, as well as making flats 5 and 6 uninhabitable and, additionally, had the potential to make the lift inoperable until the leak was fixed. The lift shaft had to be pumped clear of effluent twice a week in order to keep it operating.

14. The Applicant made enquiries with their insurer about whether they would cover the repairs and ancillary costs related to the works required or provide a contractor to complete the works. The insurer confirmed, on 17 September 2024, that Green Square Accord should make arrangements to "attend and repair the pipe as soon as possible". The Applicant's surveyor then obtained quotes for the works from two specialist drainage contractors. This resulted in the following:

    - Williams Water who quoted a price of £10,800 (inc vat) and are not under Green Square Accord (GSA) contract.
    - Birmingham Drains who are under contract with GSA who quoted an initial price of 1,854.00 (inc vat).

15. Following a review of the quotes, the Applicant appointed Birmingham Drains to carry out the repair works. Birmingham Drains were selected as they are an experienced specialist drainage contractor who work across the Midlands area. They were also selected because they could start the repair work quickly and offered the best value for money. On 7 October 2024, work commenced at the Property to

investigate in full the extent of the damage via CCTV camera inspection, excavate the drain and to make repairs.

16. In order to carry out the works identified, the kitchen and bathroom of flat 5 had to be removed to excavate through the floor to access the damaged drain. As flat 5 was uninhabitable, the leaseholder of the flat had to be temporarily rehoused in an apartment, hotel and a care home for the duration of the works. The leaseholder in flat 6 was also moved into a care home due to being unable to use the toilet and other sanitary fixtures prior to and during the repair period. Repairs were carried out to the drain but unfortunately, a subsequent leak was identified once the initial section was repaired and the Applicant was able to re-test the pipe. Further excavations and repairs were carried out under the bathroom and hallway floor of flat 5 as further issues were identified, this resulted in further costs being incurred.

17. A CCTV camera survey was carried out to confirm the damage was properly repaired and the excavated flat floor reinstated. A new kitchen and bathroom were fitted to replace the one that was removed for access, as the original kitchen and bathroom were not fit for re-instatement. An environmental level clean had been undertaken in both flat 5 and 6 due to contamination by effluent. A structural engineer had been appointed to advise on the proper reinstatement of the floors and the structural integrity of the sub floor. This needed to be undertaken before the floor repair could be completed.

18. The Applicant believed that these works are major works, as the estimated cost of repair was in the region of approximately £40,000.00, but were unable to finalise the same at the time of the application. The estimated cost of repair excluded the costs for alternative accommodation. The costs when divided by the individual units will exceed £250 for any one resident. Accordingly, Section 20 of the Landlord & Tenant Act 1985, along with Service Charges (Consultation Requirements) (England) Regulations 2003 will apply.

19. The Applicant understood that, ordinarily, the Applicant was permitted to utilise the sinking fund paid by the Respondent to cover some or all of the cost of major works if the Applicant has followed the Section 20 Landlord & Tenant Act 1985, along with Service Charges (Consultation Requirements) (England) Regulations 2003 consultation process.

20. In relation to the Property, the Applicant was applying to the Tribunal for dispensation of the usual consultation requirements. This was on the basis that the extent of the repair works required to the Property were significant as well as urgent. The Applicant stated that they could not delay works to the Property due to the inherent health risks and poor quality of life that would have been experienced by the Respondents if the Applicant had complied with a S20 consultation. The works were required due to the potential health risk to the Respondents. Due to the nature

of uncontained effluent in the lift shaft and flats, if left unchecked this would have resulted in damage and decommissioning of the lift, which would have severely affected vulnerable elderly people in the building. The decision to carry out the works was made as the situation for the residents of the affected flats was distressing. Other residents in the building were also distressed due to the terrible smell caused by the pipe, the health risk and no access to the lift.

21. If the Applicant had carried out a section 20 consultation, the consultation process would have taken approximately three months, delaying commencement of the repair works. The Applicant could not legally or morally justify delaying the repair works to the Property for a three-month period. Although the Applicant had not been able to comply with the usual consultation requirements, they stated that they had tried to act reasonably where possible. Three letters were sent to Respondents during the works to keep them updated.

22. The Applicant initially approached the insurance company, but they were unwilling to cover the costs of the repair works to the Property. Due to the urgency of the repair works and to avoid further damage to the Property as well as exposing the Respondents to risk, the Applicant proceeded with carrying out the repair works.

23. The Applicant stated that they had, in the background, persisted with the insurance company who had now confirmed that they would cover a substantial amount of the costs, except the costs incurred in repair of the pipe. In the opinion of the Applicant, this demonstrated that the Applicant had acted reasonably to mitigate costs to the Respondents.

The Respondents

24. Only one Respondent submitted a reply form. This was an objection made by Susan Powell on behalf of her mother Diana Frances Pritchett of Flats 21 and 22. The objection was not structured, however, the following is an extract from the covering email sent to the Tribunal.

The situation at St. Owens Court has been going on since 29th July when sewage first came up in flat 6 making it immediately uninhabitable. The situation is not yet resolved. All the residents in this privately owned retirement block know is that they are possibly going to be landed with a huge bill for a repair that only cost a few thousand. They fear that the whole of their accumulated reserves in the sinking fund (currently £91,000) will be taken and that there may even be a call by Green Square Accord for a further capital sum.

There just seems to be a huge problem with their management company, Green Square Accord getting things done quickly and effectively. Their left hand does not know what their right hand is doing. They are defensive with any approaches by

residents. They want the residents to trust them to do it their way. Which is turning out to be very expensive and long winded and possibly not even effective.

25. The submission included photographs of the works being carried out i.e. excavations to the ground floor flats and lift shaft. Copies of invoices and emails from Ms Powell to the Applicant querying varying aspects of the work were exhibited. Also provided was a summary report (partially obscured) of a CCTV Survey carried out by a contractor instructed by Ms Powell. This appeared to question the remedial works carried out by the Applicant's contractor.

Discussion and Determination

26. The purpose of this application is for the Tribunal to consider whether or not it is reasonable under section 20ZA of the Landlord and Tenant Act 1985 to grant retrospective dispensation to the Applicant to dispense with the consultation procedures set out in section 20. As set out above unless a Landlord follows the consultation procedures, or obtains dispensation, they are unable to recover more than £250.00 per leaseholder for the works carried out. If the Applicant had decided to follow the consultation procedures this would have delayed the works by at least two months and probably significantly longer. In the opinion of the Tribunal, it was sensible and pragmatic management to carry out these works without delay to the benefit of the Respondents and occupiers of the Property, and the Tribunal can find no fault with the Applicant's actions in this regard.

27. The objection by Ms Powell does not address the issue of whether the Tribunal should grant dispensation or not. There is no indication of what prejudice the Respondents may suffer as a result of dispensation being granted, in fact Ms Powell complains about the delays in getting the works done which would have only been exacerbated by the Applicant following the consultation procedures. In the CCTV report provided by Ms Powell there is a comment that the works may have been done differently, however, the overriding need in this scenario was to get the works done as quickly as possible.

28. The objection lodged by Ms Powell also appears to indicate concern regarding some of the costs relating to the works. As was set out in the directions, this is not an application dealing with whether or not service charge costs are reasonable or payable but simply whether to grant dispensation or not. It is open for any Respondent to make an application as set out in paragraph 30 below for a determination of that kind although, as indicated by the Applicant, it appears that an element of the costs of the works may in any event be recoverable from insurers.

29. The Tribunal cannot identify any prejudice that would be suffered by the Respondents and accordingly we determine that the application is granted. The

Applicant may dispense with the consultation requirements contained in section 20 of the Act in respect of the carrying out of the works.

30. This decision does not operate as a determination that any costs charged to any Respondent for the works are or would be reasonably incurred. They may well have been, but that is an entirely different issue, and Respondents remain at liberty to challenge such costs under section 27A of the Act in the future should they wish.

Appeal

31. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.