FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HE/LDC/2022/0040 CHI/00HE/LDC/2024/0021
Property	**:**	1-12 Salt Apartments, Belyars Lane St Ives, Cornwall, TR26 2GH
Applicant	**:**	SF Ground Rents No 23G Ltd
Representative	**:**	JB Leitch Solicitors
Respondent	**:**	The Leaseholders
Representative	**:**	Jury O'Shea LLP
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 J Dobson
Date of Decision	**:**	30th 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 imposed on the landlord by Section 20 of the 1985 Act in respect of major works, being to the roof of the Property and additional structural works to address the failure of water- proofing of the balcony to Flat 11 and related effects. The Tribunal has made no determination on whether the costs of the works are reasonable or service charges are payable at all or in any given sum.**

The application and the history of the case

2. The Applicant first applied by an application made in 2022 for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 ("the Act") from the consultation requirements imposed by Section 20 of the Act in respect of major works to the roof of the Property.

3. As may easily be surmised from the date of that application and the date of this Decision, all has not gone smoothly. In particular, a decision was made but was later set aside on procedural grounds.

4. The second application was subsequently made in respect of additional works. Thar was accompanied by a statement of case, which contained much of the relevant information and was accompanied by a number of attachments. There was also an application by the leaseholders under s.27A of the 1985 Act as to reasonableness of service charges with number CHI/00HE/LSC/2024/0052 but that has since been withdrawn, amongst various changes to the former situation as part of terms agreed by the parties.

5. There have been various sets of Directions in relation to or partly in relation to these applications in the circumstances, although the Tribunal has explained that the key issue for the Tribunal is whether, or not, it is reasonable to dispense with the statutory consultation requirements, as opposed to any question of whether any service charge costs are reasonable or payable. The most recent Directions dated 13th February 2025 listed the steps to be taken by the parties in preparation for the determination of the dispute, if any.

6. The Directions further 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. None did. Having considered the application further and prior to undertaking this determination, the Tribunal is satisfied that a determination on the papers remains appropriate.

7. This the Decision made on that basis and following a paper determination.

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. That is to say that dispensation is granted but only if the landlord accepts- and fulfils- appropriate conditions. Specific reference was made to costs incurred by the lessees, including legal advice about the application made.

17. 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.

18. More generally, the Tribunal considers that the case authorities demonstrate that the Tribunal has a very wide discretion to, if it considers it appropriate, impose whatever terms and conditions are required to meet the justice of the particular case- in *Daejan* it was said "on such terms as it thinks fit- provided, of course, that any such terms are appropriate in their nature and their effect".

Consideration

19. The Applicant is the freeholder of the Property and has been since mid-2017. It is said that the Property comprises a four- storey purpose- built block of twelve residential flats.

20. The Applicant explained the position as to the roof works as being that it had failed, that a warranty claim had been submitted but that due to the time taken by the insurer to deal with claims, it was necessary to proceed with the works. It was said that if settlement could be achieved with the insurer, the leaseholders would be reimbursed. A part of the consultation process was indicated to have been undertaken.

21. The reason why dispensation from consultation requirements was said as to the roof works to be required was that there was water ingress into several flats and further damage and so the issues were urgent.

22. The Applicant explained in respect of the further works that the original scope of the works had widened. It was explained that there had been a failure of the water- proofing system to the balcony of Flat 11 and impact on Flat 8. Various works were said to be required to address that. Those are detailed in the statement of case and need not be repeated here. By that point the main roof and re- instatement works were said to be underway with scaffolding erected to facilitate that. No formal consultation had been undertaken with regard to the additional works.

23. Those further works were also said to be urgent to prevent the water ingress. It was also at least implicit that the undertaking of the additional works without delay would ne able them to be undertaken in conjunction with the roof works and utilising the scaffolding erected.

24. The Lease of Flat 1 has been provided ("the Lease"). The Tribunal understands that the leases of the other Flats are in the same or substantively the same terms and certainly the Applicant's statement of case so asserts and without that being contradicted. In the absence of any indication that the terms of any other of the leases differ in any material manner, the Tribunal has considered the Lease.

25. The Applicant has various obligations under the Lease, principally set out in the Sixth Schedule, including pursuant to paragraph 1 of that Schedule the repair and maintenance of the Property (described as "the Block"). A lessee is required to contribute to the costs and expenses of the Applicant complying with obligations pursuant to clauses 1 and 2 and the Fifth Schedule.

26. The works appear at first blush to fall within the responsibility of the Applicant and may be chargeable as service charges.

27. There has been no response from any of the Lessees in response to the most recent Directions opposing the application or indeed at all. Reply forms had been submitted in 2024 objecting to the grant of dispensation but matters have moved on somewhat since then as indicated above.

28. 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.

29. The Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process.

30. 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.

31. This decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying long-term agreement. The Tribunal has made no determination on whether the costs incurred are reasonable and whether service charges are payable in any given sum or at all. If a Lessee wishes to challenge the reasonableness of those costs and/ or the payable service charges, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.

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 the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk

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 allow 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.