FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	HAV/00HH/LDC/2025/6012
Property	:	Greenfield, 28 Thurlow Road, Torquay, Devon, TQ1 3EG
Applicant	:	R G Securities Limited
Representative	:	Remus Management
Respondent	:	Mr N P Poel (1) Mr L K Smith (2) Mr R Delacroix & Miss J Erberling (3)
Representative	:	Remus Management
Type of Application	:	To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
Tribunal Members	:	Judge N Jutton, Mr K Ridgeway MRICS, Ms T Wong
Date and Place of hearing	:	29 May 2025, Havant Justice Centre, The Court House, Elmleigh Road, Havant, PO9 2AL
Date of Decision	:	29 May 2025

DECISION

Summary of the Decision

1. **The Applicant is granted retrospective dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements in respect of works at the property being the erection of scaffolding to the front elevation and external repairs to the lead flashing and chimney stack.**

Background

2. Greenfield, 28 Thurlow Rd, Torquay, Devon is described as a three storey Victorian property divided into three residential flats ('The Property'). Each flat is held under the terms of a long lease. The first Respondent is the lessee of the top floor flat. The second Respondent is the lessee of the middle floor flat, and the third Respondents are the lessees of the basement flat.

3. The Applicant is the lessor responsible under the terms of the leases for the management (repair maintenance etc) of those parts of the Property not specifically demised to the lessees.

4. By an application dated 28 January 2025 the Applicant applies for retrospective dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (the 1985 Act) from the consultation requirements imposed by Section 20 of the 1985 Act in respect of works to prevent the ingress of water into the top floor flat. The works are described in the application as: '*erecting scaffolding on the front elevation of the building to access the chimney stack to carry out external repairs to the lead flashing and the chimney stack'* (The Works).

5. The Applicant says that the Works were required urgently to prevent further internal damage to the top floor flat and because of potential health and safety issues.

6. There was before the Tribunal a paginated bundle of documents of 87 pages containing the Application, the parties written submissions, copy correspondence, a copy lease and other documents. References to page numbers in this decision are references to page numbers in the bundle.

7. There was also before the Tribunal a case management application by the third Respondents dated 16 April 2025 seeking permission for the late submission of further documents (The Case Management Application).

8. **The Hearing**

9. The hearing was attended by Mr Daniel Morgan from Remus Management on behalf of the Applicant and by the 3rd Respondents Mr R Delacroix and Ms J Erberling. Also in attendance was Ms Beatrice Long an interpreter for the 3rd Respondents. All parties attended

remotely. The Tribunal reminded the parties at the start of the hearing that the only issue before it was whether or not it should grant dispensation to the Applicant from the statutory consultation requirements in respect of the Works.

The Law

10. Section 20 of the Landlord and Tenant Act 1985 ("the Act") and the related Regulations provide that where the lessor intends to undertake major works with a cost of more than £250 per lease in any one service charge year 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.

11. 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".

12. 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.

13. 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 of 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".

14. 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).

15. 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."

16. 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.

17. 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 cost of works arising or which have arisen.

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

19. The effect of Daejan has been considered by the Upper Tribunal in *Aster Communities v Kerry Chapman and Others* [2020] UKUT 177 (LC), although that decision primarily dealt with the imposition of conditions when granting dispensation and that the ability of lessees to challenge the reasonableness of service charges claimed was not an answer to an argument of prejudice arising from a failure to consult.

20. **The Case Management Application**

21. The Case Management Application sought permission to include in the papers before the Tribunal a document described by the third Respondents as 'Appendix 8'. Appendix 8 makes reference to changes to the fire alarm system at the Property. It refers to alleged unjust charges, an alleged absence of fire safety provisions and a dispute in relation to service charges raised historically in relation to the fire alarm system (or as the 3rd Respondents contend 'non-existent fire systems').

22. The Tribunal addressed the Case Management Application at the hearing. The Tribunal reminded the parties that the only issue before it was to determine whether or not it was reasonable to dispense with the statutory consultation requirements in respect of the Works. The documents referred to in the Case Management Application appeared to address matters irrelevant to that issue. As the Directions made clear, this application does not concern the cost of the Works or whether they are recoverable from the Respondents as service charges. Nor does it concern disputed service charges arising from other works of repair or maintenance carried out at the Property. The Respondent 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 payability and reasonableness of service charges whether that be in respect of the Works or otherwise.

23. For those reasons the Tribunal dismissed the Case Management Application.

24. **The Substantive Application**

25. **The Applicant's Case**

26. Mr Morgan confirmed that the Works had been completed in February or March of this year. As such, this was an application for retrospective

dispensation. There had been a degree of urgency to have the Works carried out because of the ongoing ingress of water into the top floor flat and a concern that was adversely affecting the health of the occupiers of that flat. Mr Morgan said that the Applicant had an obligation to ensure that the building was wind and water tight. In the hearing bundle there was copy email correspondence between Mr Morgan, Mr Poel the 1st Respondent and Torbay Council in which concerns as regards the ingress of water and damp into the top floor flat and the adverse effect upon the health of the occupiers were raised and thus the need for the Works to be carried out as a matter of urgency. In January 2025 Mr Poel indicated that the situation had become so bad that he had arranged to move into alternative accommodation (page 60).

27. **The Respondents Case**.

28. The Respondents statement of case was at page 86 of the bundle. The Respondents contended that the service charges imposed by the Applicant were invalid as '*…. the claimed services were either not performed or were executed inadequately and below contractual standards*'. That the charges invoiced did not correspond to actual work done or were reasonable. That the Works were never completed. That the roof continued to deteriorate posing a serious safety hazard.

29. The Tribunal asked the Respondents whether if the consultation requirements had been completed that would have made a difference to them. Mr Delacroix answered no it would not. Nonetheless he said that he would appreciate a consultation process because of the Respondent's financial circumstance and his deteriorating health.

30. **The Tribunal's Decision**

31. The factual burden rests with the Respondents to demonstrate prejudice suffered by them by reason of the failure to undertake the consultation process. What would have happened had the consultation process been followed? Did the failure to undertake that process cause prejudice to the Respondents by requiring them to pay a sum in the form of service charges that was not appropriate or was more than appropriate.

32. The Respondents have not overcome that factual burden. They have not established that they have been prejudiced by reason of the failure by the Applicant to undertake the consultation process. The Tribunal accepts the Applicant's case that there was a degree of urgency to undertake the Works not least because of the adverse effect that the ingress of damp and water into the top floor flat was having upon the occupants. There was no evidence before the Tribunal to suggest that had the consultation process been followed a better outcome would have been achieved for the Respondents. There was no evidence for

example that had the consultation process been completed the Works could have been carried out at a reduced cost. As the Tribunal explained in the Directions made by it and at the hearing the issue before the Tribunal was not whether service charges were payable in respect of the Works, (or indeed other works of repair and maintenance to the Property), and if so reasonable in amount, but whether dispensation should be granted to the Applicant form the statutory consultation requirements in respect of the Works.

33. For the reasons stated it is in the view of the Tribunal reasonable to grant retrospective dispensation pursuant to section 20ZA of the 1985 Act from the statutory consultation requirements in respect of the works to the Property as described in the application being the erection of scaffolding to the front elevation to the Property and external repairs to the lead flashing and chimney stack. The Tribunal grants dispensation accordingly.

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 rpsouthern@justice.gov.uk being the Regional office which has been dealing with the case.

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