



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

Case Reference	: HAV/00MW/LDC/2024/0650
Property	: Whitethorn Court, 17 Beachfield Road, Sandown, isle of Wight, PO36 8LT
Applicant	: Whitethorn Court Residents Company Limited
Representative	: Arquero Management Limited
Respondent	: Miss N Blackburn & Mr C Brown Mr M Simmonds Mrs K Green & Mrs M Green Ms L Weir Mr N & Mrs M Harding Mrs D Taylor Ms N White & Mr D Skelton
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 Members	: Judge N Jutton, Mr K Ridgeway, FRICS, 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	: 3 June 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 the work carried out to the roof, guttering and detailing of the Beachfield element of the Property to prevent water migration and damp penetration to flats 3 and 4 Whitethorn Court Beachfield Road (which for the purposes of identification cost a total sum of £7308.38 and were completed in about March 2024).**

Background

2. Whitethorn Court, 17 Beachfield Road, Sandown, Isle of Wight is described by the Applicant as two converted blocks forming a total of 12 residential flats. ('The Property'). Each flat is held under the terms of a long lease. It is understood that the Property was formally an hotel. For the purposes of the leasehold interests and the management of the Property it is divided into two parts or blocks known as Royal block and Beachfield block. This application is concerned with works carried out to Beachfield block.
3. The Applicant is the management company named in the lease responsible for the management (repair maintenance etc) of those parts of the Property not specifically demised to the lessees.
4. By an application dated 9 December 2024 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 and damp into flats 3 and 4 of the Beachfield block. The works are described in the application as works: *'... to the roof, guttering and detailing of the Beachfield element of the property to prevent water migration and damp penetration affecting the living condition of the leaseholders in flat 3 and flat 4 Whitethorn Court, Beachfield Road'* (The Works).
5. The Applicant says that the Works were required urgently because one of the affected leaseholders was suffering from respiratory issues.
6. There was before the Tribunal a paginated bundle of documents of 259 pages containing the Application, the parties written submissions, copy correspondence, copy leases and other documents. References to page numbers in this decision are references to page numbers in the bundle.
7. **The Hearing**
8. The hearing was attended by Myra Davies and Sonia Nye from Arquero Management Limited on behalf of the Applicant and by Lana Wier the lessee of flat 4 Beachfield. All attended remotely. The bundle included a brief written submission made by the first Respondent's Mr Colin

Brown and Ms Nativilana Blackburn dated 25 March 2025. Neither Mr Brown or Ms Blackburn attended the hearing. The Tribunal was satisfied that they had been properly served with details of the date time and location of the hearing, and proceeded in their absence.

The Law

9. 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.
10. 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”.
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 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”.
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 cost of works arising or which have arisen.
17. If dispensation is granted, that may be on terms.
18. 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.

19. The Applicant's Case

20. The Applicant says that the Works were required to be carried out as a matter of urgency. That the ingress of water and damp into flats 3 and 4 of Beachfield were adversely affecting the living conditions of the leaseholders. That the lessee of flat 3 was suffering health difficulties in the form of respiratory problems as a consequence of the damp. Miss Wier told the Tribunal that she found herself living in conditions that she described as very bad, with the walls of her flat wet to touch. She said that she had observed the health of her neighbour, the lessee of flat 3, deteriorating.
21. Mrs Davies told the Tribunal that the Works in the event had cost £7308.38 and been completed in or about March 2024. There was a discussion with the Tribunal as to how the works might best be described. Mrs Davis confirmed that the description contained in the application properly described the Works.

22. The Respondents Case.

23. None of the Respondents, save for Miss Wier, attended the hearing.
24. The only written objection to the application was received from the first named Respondents Colin Brown and Nativilana Blackburn the lessees of flat 1. The objection is in the form of a letter addressed to the Tribunal dated 25 March 2025 (page 254). The letter says that Mr Brown and Ms Blackburn strongly object to the application. They state that the Applicant: *'... have not consulted any of the Lease Holders proposed change and therefor are trying to do this by the back door'*.
25. None of the Respondents have contended or adduced any evidence to the effect that they had been prejudiced by reason of the failure of the Applicant to comply with the consultation regulations. Three of the lessees filed a form with the Tribunal consenting to the application for dispensation.

26. The Tribunal's Decision

27. The factual burden rests with the Respondents to demonstrate the 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.
28. 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. Indeed the only opposition to application was from Mr Brown and Ms Blackburn and they did not present an argument to the effect that they had been prejudiced by the failure to consult.
29. The Tribunal is satisfied from the submissions made by the Applicant and in particular from what it was told by Miss Wier that the Works were required to be carried out as a matter of urgency not least because of the poor living conditions borne by, and the risk to health to, the occupiers of flats 3 and 4 (of the Beachfield block) such that there was insufficient time to undertake and comply with the consultation regulations.
30. For those reasons 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 work carried out to the roof, guttering and detailing of the Beachfield element of the Property to prevent water migration and damp penetration to flats 3 and 4 Whitethorn Court Beachfield Road (which for the purposes of identification cost a total sum of £7308.38 and were completed in about March 2024). 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

