



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

Case Reference : **HAV/21UH/LDC/2025/0627**

Property : **Flats 28–43 St.Swithins, Little Trodgers Lane, Mayfield TN20 6BF**

Applicant : **Mayfield Court Estate Management Company Limited**

Representatives : **Bolt Burdon LLP**

Respondents : **The 16 Leaseholders of flats 28-43 St Swithins named in the list attached to the application**

Type of Application : **Application for the dispensation of consultation requirements pursuant to S. 20ZA of the Landlord and Tenant Act 1985**

Tribunal Members : **Mr Duncan Jagger MRICS**

Date of Determination and Decision : **14 July 2025**

DECISION

Decisions of the Tribunal

- (1) The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (Section 20ZA of the same Act).
- (2) The reasons for the Tribunal's decision are set out below.

The background to the application

1. The property **Flats 28–43 St.Swithins, Little Trodgers Lane, Mayfield TN20 6BF** comprises 16 self-contained flats forming part of a block built in 2008.
2. The building forms one of two blocks which comprise the estate. The second block is comprised of flats 44-66 St Bartholomews, Little Trodgers Lane, Mayfield TN20 6BF. This block contains 23 flats and a separate application for dispensation has been made on identical grounds.
3. The block containing flats 44 to 66 St Bartholomew's has recently undergone substantial works due to defects identified as follow replacement of defective stone coping, repairs to deal with leak issues, and repointing of brickwork.
4. All of these remedial works were covered under a 10-year New Build Warranty. During these works, it was determined some concerns regarding the integrity of the gutters and repairs were required, however these works have not been included in the schedule of works covered by the New Build Warranty.
5. It was necessary to erect scaffolding for these works which began on the 3 June 2025 and the contractor completed the schedule of works on the 21 October 2025.
6. It was following an inspection of by Steve Hunt Partnership Ltd, the structural engineer overseeing the building work that there was a recommendation to reline defective gutters to the block. The applicant was issued with a contractor's quotation for the guttering works which reflected the fact that scaffolding had already been erected in relation to the works to the roof and as such the applicant instructed the contractor to proceed without delay, to take advantage of the scaffolding already erected. This decision was made by The Board of Directors of the Management Company in order to avoid incurring additional scaffolding costs. However, given the urgent nature of the situation, there was insufficient time to consult with the leaseholders prior to issuing the instruction, the total cost of these works is £74,400, with two invoices provided.

7. The applicant now seeks dispensation from all consultation requirements in relation to these works carried out and paid from Reserve Fund. It is noted that the Service Charge and reserve funds for both buildings are administered as a single account. As mentioned above, an application for dispensation has also been made in respect of the building containing flats 28 to 43 St Swithin's, Mayfield Grange, Little Trodgers Lane, Mayfield TN20 6BF.
8. The Tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination.
9. The Applicant seeks dispensation for the relining of the gutters under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act, (see the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987), Schedule 4.)
10. Section 20ZA relates to consultation requirements and provides as follows:

"(1)Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

*(2) In section 20 and this section—
 "qualifying works" means works on a building or any other premises, and "qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.*

....

(4)In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5)Regulations under subsection (4) may in particular include provision requiring the landlord—

- (a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,*
- (b) to obtain estimates for proposed works or agreements,*
- (c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,*

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

11. Directions prepared on the 22 May 2025 and 2 July 2025 (Review of the bundle - suitability for paper determination) required any tenant who opposed the application to make their objections known on the reply form produced with the Directions. It was confirmed that there was one objection to the works received from Michael Bramfitt the leaseholder of flat 36 and this matter is considered later in this decision.
12. In essence, the works mentioned above are required to ensure that the building is watertight, in order to make the building safe for habitation and to comply with the Landlords covenants in the lease.

The decision

13. The Tribunal had before it a bundle of documents prepared by the applicant that contained the application, grounds for making the application, the list of leaseholders, a specimen copy lease and copy Tribunal Directions.

The issues

14. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether or not service charges will be reasonable or payable.**
15. Having read the evidence and submissions from the Applicant and having considered all of the copy lease, documents and grounds for making the application provided by the Applicant, the Tribunal determines the dispensation issues as follows.
16. Section 20 of the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.
17. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by such an application as is this one before the Tribunal. Essentially the Tribunal must be satisfied that it is reasonable to do so.

18. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14, by a majority decision (3-2), the Supreme Court considered the dispensation provisions and set out guidelines as to how they should be applied.
19. The Supreme Court came to the following conclusions:
 - a. The correct legal test on an application to the Tribunal for dispensation is:

“Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord’s failure to comply with the requirements?”
 - b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.
 - c. In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord’s failure to comply.
 - d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.
 - e. The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
 - f. The onus is on the leaseholders to establish:
 - i. what steps they would have taken had the breach not happened and
 - ii. in what way their rights under (b) above have been prejudiced as a consequence.
20. Accordingly, the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the lessor/applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.
21. The Tribunal has considered the objection received from Mr Micheal Bramfitt. This objection was as follows: (1) It is stated that the contractors quotation for the gutter works which reflected the fact that scaffolding was already erected was absent from the bundle of documents. The Tribunal concludes the documents include two invoices from Landmark Solutions Ltd in connection with the works.

22. A second limb to the objection is that the remedial works to the gutters was not authorised or indeed necessary. The Tribunal relies on evidence set out in an email dated 23 June from Andre Demushi of Bolt Burdon LLP to Mr Bramfitt which confirms the gutter defects were identified by Steve Hunt of Steve Hunt Partnership Ltd, the structural engineer overseeing the building project and following a formal recommendation to the Board of Directors of the Management Company the works received approval on the 11 September 2024.
23. In his email of the 26 June 2025, Mr Demushi sets out a timeline of the events which led to the Management Company being unable to comply with the three key stages of the section 20 consultation requirements.
24. The final objection is that the service charge and reserve funds for the two buildings should be administered separately where the cost of major works is involved. In this case, Mr Bramfitt states the leaseholders of St Swithins have no benefit whatsoever as a result of works undertaken to St Bartholomews. In other words, why should we pay for works to a separate building. To consider this matter we must seek the definitions in the lease. Under clause 1, Interpretation The Buildings are defined as “ *the buildings (including the building containing the property) on the estate but excluding any part of the Buildings included in the demise of Transfer of the dwelling*” Based upon this interpretation, the service charge for both St Swithins and St Batholomews are administered jointly.
25. On balance, the Tribunal is satisfied that it could not find prejudice to any of the tenants of the properties by the granting of dispensation relating to the gutter works set out in the documentation in the trial bundle submitted in support of the application.
26. The Tribunal was mindful of the fact that the works were undertaken by Landmark Solutions which commenced on the 23 September 2024 and the scaffolding was taken down on the 4 October 2024.
27. The Applicant believes the gutter works were necessary and there significant savings given the fact that the scaffold was already erected. In effect the leaseholders of the properties have not suffered any prejudice by the failure to consult and that therefore dispensation is wholly appropriate.
28. On the evidence before it the Tribunal agrees with this conclusion and believes that it is reasonable to allow dispensation in relation to the subject matter of the application. It must be the case that the necessary gutter works should be carried out as a matter of urgency to ensure the upkeep of the fabric of the building and hence the decision of the Tribunal.

29. Rights of appeal made available to parties to this dispute are set out in an Annex to this decision.
30. The Applicant shall be responsible for formally serving a copy of the Tribunal's decision on all 16 leaseholders. Furthermore, the Applicant shall place a copy of the Tribunal's decision on dispensation together with an explanation of the leaseholders' appeal rights on its website (if any) within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on its home page. Copies must also be placed in a prominent place in the common parts of the block. In this way, leaseholders who have not returned the reply form may view the tribunal's eventual decision on dispensation and their appeal rights.

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.