FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**HAV/23UB/LDC/2025/0600**
Landlord /Applicant	**:**	**Cromwell Business Centre Management Company Limited**
Property	**:**	**Cambray Court, Cheltenham, Gloucestershire GL50 1JU**
Representative	**:**	**Mr Simon Allison KC, instructed by Trowers & Hamlins LLP (Ref: CFW.110382.00001)**
Tenants/ Respondents	**:**	**The Lessees of Cambray Court set out on the attached schedule**
Representatives	**:**	**Ms Huot, Mr Parmar, Ms Roberts and Mr Phillips in person; the other lessees did not appear and were not represented**
Type of Application	**:**	**Dispensation from consultation requirements under section 20ZA of the Landlord and Tenant Act 1985**
Tribunal	**:**	**Mr C Norman FRICS Valuer Chairman Mr M Ayres FRICS Mr M Jenkinson**
Date of Hearing	**:**	**9 April 2025**
Date of Decision	**:**	**20 July 2025**

DECISION

Decision

1. Dispensation from the consultation requirements in respect of costs incurred with river wall replacement at Cambray Court is **GRANTED CONDITIONALLY.**

2. The first condition is that those lessees who attended the hearing on 9 April 2025 shall each receive costs of attendance summarily assessed at £150 each, payable within 28 days.

3. The second condition is that the applicant cannot recover its costs of the application against any Objector, via the service charge.

Reasons

Background

4. This case arises in connection with cases CHI/23UB/LSC/2023/0118 and CHI/23UB/LSC/2023/0119 ("the related cases"). It was heard immediately following the conclusion of those cases on 9 April 2025. The tribunal received a bundle of 234 pages.

5. The background of the application is set out in the decisions in those cases and it unnecessary to repeat it.

6. On 31 December 2024 the landlord/applicant applied for dispensation from the statutory consultation requirements in respect of:

> "works …to a river bank wall. Walsh Construction Limited were awarded the contract at a price of £1,009,144 (including VAT). The works commenced in May 2023. The total cost of the works, including professional fees, and project management fees, as demanded from leaseholders totals £1,510,004.00 (including VAT)"

7. On 20 January 2025, the Tribunal directed that the case would be heard with cases CHI/23UB/LSC/2023/0118 and CHI/23UB/LSC/2023/0118. Following an application for alternative service of documents, a case management decision was given to ensure proper publicity for the application. The landlord/applicant was directed to serve the application and directions on the tenants/respondents and give publicity within the common parts of the property. The tenants/respondents were invited to serve objections if they so wished, using a proforma appended to the directions.

8. The first matter giving rise to the application was a potential finding by the tribunal that the consultation documents for inspection had been located in Birmingham which was not a "reasonable location" within the meaning of the consultation requirements. The Tribunal has now made a finding that that effect in the related cases. The second matter was a concession made at the hearing of 9 April 2025 that the lessee of

Flat 18, Ms Huot, had not been sent the section 20 notices in respect of the river wall project.

Procedural matter

9. Two objectors submitted that the application be struck out because the freeholder had not served the application on the Cambray Court Tenants Association ("CCTA"). However, the directions did not require the CCTA to be served, as they are not a recognised tenants association. In addition, the chairman of the CCTA had received the application, had objected and attended the hearing. There was therefore no prejudice. These applications were therefore refused.

The Landlords/Applicants' Case

10. Mr Allison KC referred the Tribunal to *Deajan v Benson* [2013] UKSC 14. His submission was that whilst a number of points had been made by responding leaseholders, no proper case of relevant prejudice has been made out. No one has suggested that a different outcome would have been arrived at had the address for inspection been different. No one had set out what observations they would have made had they seen the tender documents at the time.

11. As to Ms Huot's submissions, there was still no prejudice because she did not lose the opportunity to halt the process and. The consultation process does not provide for a lessee to halt a project. Secondly the right to challenge the reasonableness and payability of charges are unaffected. Ms Huot was able express her concerns in front of the tribunal. For these reasons unconditional dispensation should be granted.

The Tenants/Respondents' cases

12. Mr Mark Phillips of flat 5 objected but did not provide a written statement. However, the tribunal allowed him to make a brief oral submission. He said that he would have liked to have looked at the bill of materials and have asked for a design specification for the river wall. He also suggested that the [nearby] church hall or possibly a serviced office could have been used as a local venue at which the tender documents could have been inspected.

13. John and Angela Cooper at flat 19 objected but did not provide a statement.

14. Mr Ian Bickerdyke and Ms Denise Venables of flat 46 objected and provided a statement. Their objection was that MetroPM had consistently failed to properly engage with leaseholders; the tender documentation should have been made available to leaseholders to easily inspect at no cost. They did not own a car and travel from Cheltenham to Birmingham to inspect the documents would have been costly and time-consuming. If leaseholders were unable to inspect documents observations made to the freeholder were likely to be incomplete.

15. Ms Ann Henry, flat 27 objected and provided a statement as follows. The expectation for leaseholders of 56 flats, the majority of whom are elderly, to travel from Cheltenham to Birmingham, a 3 hour round trip by public transport, was inappropriate and unreasonable. The leaseholders were sidelined preventing meaningful involvement with the section 20 process for a high value tender. Consequently, the flats are now unsaleable at realistic prices.

16. Ms Huot objected and provided a statement which may be summarised as follows. Mr Ahmed [the landlord's witness from MetroPM] in answer to a question from the tribunal in the [related cases] at the hearing of 14 October 2024, stated that he did not consider that Birmingham was a reasonable location for inspecting consultation documents for a property in Cheltenham.

17. The notice of intention referred to at paragraph 20 of the applicant' s statement of case referenced sheet piling of the retaining wall. Following re-tendering, Walsh was not one of the contractors whose estimates were presented by RBA to MetroPM by email on 21 March 2022. Walsh was suggested as a possible contractor to the CCTA in 2020, but this was not a formal nomination of the contractor in response to a section 20 notice.

18. The application for planning permission received on 7 May 2021, was for a sheet pile retaining wall. The application plan was superseded on 26 May 2021 by a revised plan showing a precast concrete retaining wall. On 6 July 2021 a further plan was proposed, showing a cavity fill retaining wall backed and faced in bricks. Therefore, the applicant revised their scheme twice between 7 May 2021 and 6 July 2021.

19. The only possible explanation was given by Mr Ahmed at paragraph 15 of his witness statement [on 14 October 2024] when he stated that all piled or anchor designs were unacceptable to the local planners. The only reason given in the accompanying letter to the notice of intention dated 9 August 2022 were the technical difficulties caused by adopting aggressive hydraulic [construction] methods. In response to the observations raised during the consultation period, the notice of estimates states that there are very sensitive buildings in the near vicinity that may be damaged if a pile hammer was used. The two revisions of proposed plans within weeks followed by dubious or non-existent reasons given to the leaseholders cast doubts on the abilities of the appointed surveyor RBA, and the transparency of both the applicant and their managing agents.

20. Ms Huot has suffered prejudice by not being informed of all consultations on the section 20 issues. She had lost all opportunity to halt the process. Further the location for inspection of documents was not reasonable. At the time, MetroPM had an office in Cheltenham. Inspection should also have been available on Saturdays rather than weekdays only. None of the section 20 notices offered to supply copies of estimates or documents, either electronically or by hard copy.

21. An objection was received from Helen McDonnell flat 37. She disputed that the contractor was a nominated person and therefore submitted that consultation was ineffective. Ms McDonnell was secretary of CCTA at the time. One of the tenants suggested Walsh but not in response to the section 20 notices served in 2022. The tenant had previously found Walsh to be good value and providing good workmanship in various civil engineering works including sheet piling on embankment slippages.

22. Mr Parmar objected and his objections insofar as relevant to the question of consultation may be summarised as follows. He is a professional chartered engineer. The repair works could have been carried out for less than £100,000. MetroPM and RBA failed to conduct the issues to a reasonable standard of professionalism and failed to communicate. The application is an abuse of process significantly prejudicing lessees. The landlord failed to implement the decision of the previous tribunal to find a cheaper alternative.

23. The question of the ownership of the river wall should be revisited. The landlord is a wealthy investor, and the walls have not been maintained over several decades. 20 years ago, the cost was significantly lower.

24. The Birmingham office was an unreasonable location for inspection of documents. They should have provided a local accessible location such as a church hall. Vital information and documentation were not available in a timely fashion, and he has therefore lost the chance to get an independent consultant engaged early. He had contacted around 30 RICS contractors/expert witnesses in the field of construction projects similar to this. It was a tortuous affair to find anyone who can actually do this type of work or who was prepared to do so. This is a specialised major project. It was not managed well.

25. Walsh was not proposed by a lessee during the consultation exercise. Any credible expert would be well aware of the environment in which they would be required to undertake the works, yet only at the last minute did they realise that the solution proposed could was not practicable owing to nearby buildings. Delays to the project meant that temporary measures had to be implemented at additional cost to lessees. *Daejan v Benson* does not give landlords carte blanche to ignore consultation requirements as non-compliance can result in conditions imposed by tribunals.

26. Ms Louise Roberts, CCTA chairman, objected and gave a statement as follows. The location for inspection of documents was not reasonable. They should have been made available in Cheltenham. The local church hall, which is regularly used by the parties could have been used to provide access at minimal cost. Ms Roberts disputed the assertion that there was regular communication from the managing agent. There were a significant number of outstanding serious building maintenance issues which were being ignored. The property is not kept in a good state of repair. The managing agent's fee is based

on a percentage of total project costs with no upper limit or penalty clauses, and this creates a conflict of interest. Had the documents been made available questions relating to the design and specification would have been raised. The final product has been over-engineered. In May 2023, the respondent discovered drawings published online showing a suggested outline of a new development for the site of these works. A Walsh engineer confirmed to her that the works installed would be capable of supporting such a [future] construction. This would explain the change in design from sheet piling to complete rebuilding of the wall. The respondent would like to have seen a bill of materials.

The Law

27. Section 20ZA is set out in the appendix to this decision. The Tribunal has discretion to grant dispensation when it considers it reasonable to do so. In addition, the Supreme Court Judgment in *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 empowers the Tribunal to grant dispensation on terms or subject to conditions.

Findings

28. *Deajan v Benson* makes clear that the onus is on lessees to show that they have suffered prejudice as a result of consultation breaches. The Tribunal is not an investigatory body and is reliant on evidence produced by parties. Neither in this nor in the related cases, has any lessee called any expert evidence. (Mr Parmar also informed the Tribunal in the hearing of 14 October 2024 that he had tried to get the CCTA to support instructing an expert, but that it had refused). No lessee had asked to see the tender documents. No lessee had set out what observations they would have made had they seen the tender documents at the time. There is therefore no evidence that the outcome would have been any different.

29. Ms Huot's situation is different. The Tribunal explained that its jurisdiction concerns service charges between landlord and tenant. Issues arising from answers on an LTE1 from the landlord's agent in connection with her purchase of her flat were not matters for the Tribunal.

30. Ms Huot was aware of proposed river wall works both before and after buying the flat and she was not in a position to halt the works. The Tribunal accepts that the provision of planning documents is not required to meet consultation requirements and that that matter is not therefore a relevant consideration.

31. In terms of other points raised, the tribunal responds as follows. The tribunal finds that the MetroPM office in Cheltenham was closed on 31 December 2022 as evidenced from an email from the applicant. This was before the notice of estimates was given on 27 February 2023. However, the tribunal does not find that this obviates the need for a reasonable location to be found where documents could be inspected.

It is not for the tribunal to prescribe any particular location, but it did not receive any evidence as to why the documents could not be placed in the common parts of the building or why the church hall could not be used. The tribunal finds that whatever the relationship between itself and its agents, it is the applicant that ultimately bears responsibility for ensuring that the consultation requirements are complied with.

32. The tribunal accepts that the applicant has not received financial benefit from the works, or the choice of contractor. The previous decision of the tribunal in 2020 did not direct the landlord to identify cheaper alternatives, as the tribunal has no jurisdiction to give such a direction. Rather the tribunal was explaining its decision not to sanction a further large payment on account based on the submissions and evidence as they then stood in that case, heard in 2019.

33. With reference to the suggestion that the works were over-specified in order to provide a foundation upon which new construction could take place, although Miss Roberts provided a drawing showing potential new construction, there was no further evidence, or any evidence that a planning application had been made. Furthermore, even if the prospect of future construction had been factually proved, it does not follow that the river wall works were over specified.

Conclusion

34. Having regard to the above findings the tribunal considers that the just outcome is that dispensation for the river wall works be granted conditionally. The conditions are firstly that the reasonable costs of attendance of objectors at the hearing on 9 April 2025 be paid by the landlord/applicant. The second condition is that the applicant's costs in connection with the application and hearing of the section 20ZA application be irrecoverable from any of the Objectors via the service charge. The Tribunal summarily assesses reasonable attendance costs at £150 per objector, which must be paid within 28 days.

35. However, this decision has no bearing on the question of the reasonableness of costs to be incurred or their payability. The Tribunal makes no findings in this decision in relation to those matters but has made such findings in the related cases.

20 July 2025

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against 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.

- 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.

- 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.

- 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.

Schedule of Lessees/ Respondents

Lesley Barry
Mark William Hambling
Lesley Barry
Hilary Judith Pearce & James Lee Pearce
Mark Phillips
Mr John Paul & Mrs Joy Ginley
Mrs T Averies
Neil Quinn Executor of the late Mr James Raymond Quinn
Mrs Pauline Ann White
Hamro Plc
S Small & J Wright
Richard A Chamberlain
Joseph Gould & Marilyn Gould
Mr Michael John Davis & Mrs Josephine Davis
Andrew James Mottram
Pete John Hadlon & Margaret Ann Lamont
Mr W R Barton
Charlotte Agnes Marie Huot
John Cooper & Angela Cooper
Mr Timothy Edwin Byng and Mrs Helen Margaret Byng
Simon James Craven
John R Martin & (The Late) Charlotte L Martin
Flowerdale Property Management
Stephen John Pearse
Ines Salvadora Zancada Martinez
Louise Clare Roberts
Ann E Gilbert & Philip H Watson
John O Rawson
Deborah Louise Crinion

Jo-Anne Hooper
Keith Ronald Musgrave
Mr Thomas Carl Cox
June Marguerite Rowse
June Marguerite Rowse
Annabel K Ager
Mr And Mrs Wallhead
Mrs Helen Mcdonnell
Mrs A M Haywood
Mr Vernon Henry Robjohn
Mr L Morris
Mrs G E Taylor & Mr J D S Taylor
Mr Paresh Parmar
Nicholas Thomas Buzzard & Marguerita Paula Misconi
John Burgess & Lynn Burgess
Andrew Brian Howell
Ian Bickerdyke & Denis Susan Venables
Simon Robert Scrivener
Andrew Barlow
John William Hickman
Mr J Twining
Mr M J Hodgson
Mr B Ferris
Sybil Ruth Goldsmith
Mr James Postle
Michael Simon William Pearce and Clare Anne Pearce
Pamela Jenkins

Appendix

Section 20ZA Landlord and Tenant Act 1985

(1)Where an application is made to [the appropriate 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.

(3)The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a)if it is an agreement of a description prescribed by the regulations, or

(b)in any circumstances so prescribed.

(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.

(6)Regulations under section 20 or this section—

(a)may make provision generally or only in relation to specific cases, and

(b)may make different provision for different purposes.

(7)Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.