



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

Case Reference	:	MAN/00CB/LDC/2024/0033
Property	:	Apartments 1-12, 140-142 Whetstone Lane, Birkenhead, Wirral, CH41 2TQ
Applicant	:	RG Reversions 2014 Limited
Applicant's Representative	:	JB Leitch Solicitors
Respondents	:	The Residential Long Leaseholders (see Annex)
Type of Application	:	Landlord & Tenant Act 1985 – s 20ZA
Tribunal Members		Judge Richard Dobson Mason LLB Mr Huw Thomas FRICS
Date and Venue of the Hearing		Determined on the papers without a hearing
Date of Decision	:	7 August 2025

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DECISION

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- (1) The Tribunal unconditionally grants the Applicant's application for dispensation under s 20ZA Landlord and Tenant Act 1985 from the consultation requirements contained in s 20 thereof, in relation to the fire safety and related works carried out by the Applicant to the property at Apartments 1-12, 140-142 Whetstone Lane, Wirral, CH41 2TQ.

## REASONS

### Background

1. The Application relates to Apartments 1-12, 140-142 Whetstone Lane, Wirral, CH41 2TQ (*"the Property"*).
2. The Property was not inspected by the Tribunal, but the Applicant describes it as previously being two separate single dwellings converted into 12 self-contained flats in the early 1980's consisting of four storeys with entry into the Property at lower ground / basement level.
3. The Applicant is RG Reversions 2014 Limited who brings the application (*"the Application"*). The Applicant is represented by JB Leitch Solicitors.
4. Inspired Property Management Limited (*"Inspired"*) are the Applicant's appointed managing agent.
5. 140 WL RTM Company Limited (*"the RTM Company"*) acquired the right to manage the Property on 21 August 2022.
6. The Respondents are the long leaseholders of the 12 residential apartments (*"the Apartments"*) within the Property.

## The application

7. On 24 April 2024, the Applicant made the Application under s 20ZA Landlord and Tenant Act 1985 (*“the Act”*) to dispense with the consultation requirements of s 20 of the Act, as set out in The Service Charges (Consultation Requirements) (England) Regulations 2003 (*“the Consultation Requirements”*).
8. The Application seeks retrospective dispensation in respect of the following works (insofar as they have been undertaken by the Applicant) (*“the Works”*): -
  - a. Those set out in an Improvement Notice dated 4 August 2021 from Wirral Council (*“the Improvement Notice”*)
  - b. External repairs and remedial work to the Property including but not limited to masonry work, roof repairs, skylight window replacement, water goods repairs, window repairs, patio door repairs / replacement, access and egress repairs / modifications, and external security lighting.
  - c. Those set out in the Specification of Works produced by Charles Garth Chartered Surveyors and Property Consultants dated November 2021.

## Directions

9. Directions were made by a Legal Officer on 23 April 2025 (*“the Directions”*) requiring sequential filing and service of the parties’ statements of case and evidence in support.

## The hearing

10. The Application was determined on the papers on 7 August 2025. Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 permits a

case to be dealt with in this manner provided that the parties consent to, or do not oppose it within the requisite timescale.

11. The Applicant, in the Application, requested a paper determination, which was ordered by paragraph 7 of the Directions.
12. The parties were notified, by paragraph 3 of the Directions, that unless any party informed the Tribunal within 42 days from the date of the Directions that they required an oral hearing, the matter would be resolved by way of written representations. The Directions were issued to the Applicant on 25 April 2025, which were served on the Respondents by the Applicant (along with its statement of case and evidence) on 13 May 2025. No objections / requests for an oral hearing were received from the parties within the 42-day timescale.

#### The Applicant's case

13. The Applicant filed and served a statement of case dated 13 May 2025 in support of the Application setting out, in summary, the following: -
  - a. A fire occurred at the Property on 22 June 2021 (as a result of which there were no casualties) which led to a subsequent inspection by Wirral Council on 29 June 2021 and 9 July 2021.
  - b. Cardinus Risk Management Ltd were instructed by the Applicant to produce a fire risk assessment dated 30 July 2021 which concluded that the consequences for life safety in the event of fire at the Property would be moderate harm, meaning that an outbreak of fire could foreseeably result in injury (including serious injury) of one or more occupants, but it was unlikely to involve multiple fatalities.
  - c. The Applicant then received the Improvement Notice requiring works to be carried out to the Property to bring it up to a reasonable standard. The

deficiencies stated in Schedule 1 of the Improvement Notice included, *inter alia*, the following: -

- i) The fire detection system was not operational.
- ii) The emergency lighting system failed.
- iii) None of the doors leading into the fire escape route that are required to be fire resistant to an FD30S standard (fire and smoke resistant for 30 minutes) were compliant.
- iv) The communal lighting to the hallways, staircases and landings was not in full working order.
- v) There was no handrail to a set of steps at the rear of the Property accessible from the communal garden.
- vi) The security lighting to the perimeter of the Property was not in full working condition.
- vii) There was no guarding between a change in level at the rear of the Property.
- viii) The timber patio doors to an apartment were rotten and could not be locked securely.
- ix) There was evidence of penetrating damp to the ceilings of the communal parts and external walls.
- x) A timber windowsill was rotten, and the window of an apartment was not properly fitted.
- xi) Lead flashing on the rear external parts of the Property appeared to have lifted in sections.

- xii) There was vegetation growth to pointing and brickwork to the external envelope of the Property at various locations.
  - xiii) To the rear elevation of the Property the flues to the boilers were not sealed. There were openings clearly visible in the brickwork.
- d. Schedule 2 of the Improvement Notice set out a list of remedial works and required them to be commenced by 3 September 2021 and completed within 4 calendar months, save for the automated fire detection system which was required to be installed within 14 days of that date.
- e. Following receipt of the Improvement Notice, the Applicant obtained a Type 4 Fire Risk Assessment from Fire Risk Consultants dated 1 November 2021 which conclude the overall category of fire risk was high.
- f. On 21 October 2021, Inspired sent a Notice to Permit Entry to all leaseholders also providing details of the Improvement Notice, and a further letter was sent on 12 November 2021.
- g. The Applicant carried out part of the Works, including but not limited to: -
- i. Localised compartmentation works.
  - ii. Emergency lighting repairs / replacement.
  - iii. External lighting.
  - iv. Electrical repairs (relocation of 100amp switch to allow fire doors to close).
  - v. Guarding to the rear from garden to basement (lightwell).
  - vi. Thumb turn lock to rear.

- vii. Grounds / external purge.
- h. The Works, as carried out by the Applicant, were necessary and urgent, were required by virtue of the Improvement Notice, and related to remedying health and safety risks.
- i. The Applicant has engaged with the leaseholders and believes it has complied with the Consultation Requirements as far as possible, considering the above circumstances.
- j. As a result of the above, there was no prejudice to the leaseholders, and it is therefore reasonable to dispense with the Consultation Requirements.

#### The Respondents' case

14. The Tribunal received responses to the Application from the following Respondents:

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- a. Annette Jennings (the leaseholder of Flats 2 and 12).
- b. Kathy Bor, on behalf of her mother, Glen Bor (the leaseholder of Flats 3 and 7).
- c. Mehmet Gokcedag, director of AGMG Assets Ltd (the leaseholder of Flats 1, 4 and 9).
- d. Faria Khan and Shahab Khan (the leaseholder of Flats 5 and 8).
- e. Rabiya Fayaz (the leaseholder of Flat 11).
- f. Shahid Amin, on behalf of DSF Properties Ltd (the leaseholder of Flat 6).

15. In summary, the Respondents, *inter alia*, submitted that they have been caused prejudice by the following: -
- a. There was a lack of ability to be involved in the usual consultation process, which would include commenting on the scope and nature of the works and the proposed cost and quotations of the same.
  - b. They would not have purchased the flat(s) or would have sought a reduced price if they had been aware of the Applicant recovering costs of ‘unconsented’ works.
  - c. The Works create an unfair financial burden on them.
  - d. The Works have already been completed, hence there can be no urgency, the Improvement Notice being some 4 years old. Indeed, they were undertaken over a period of 3 years.
  - e. Some of the works to the external façade and internal fire safety measures were carried out by the RTM Company, not the Applicant (and paid for by the leaseholders) after which the Improvement Notice was revoked on 3 April 2025.
  - f. Many leaseholders from 2021 have sold their properties and so it is difficult to trace them to trace any related communication.
  - g. Consultation should have been carried out because of the ‘high amount of money involved’.
  - h. Wirral Council and the local Fire Department were not ‘rushing’ and were monitoring progress by the RTM Company. The Applicant could have engaged with them but chose not to.

- i. The invoices for the part of the Works undertaken by the Applicant are 'outrageous'. Indeed, the costs incurred are 'disproportionate' to the work involved.
- j. The Application has been brought with the intention of the Applicant 'trying to profit' from it.
- k. The timing of the Application, shortly after the Works had been completed and the Improvement Notice had been revoked, is notable.
- l. The Applicant was 'passive / non-active' during the period in which the RTM Company carried out its part of the Works.
- m. The Applicant has submitted 'inconsistent claim amounts' in order to 'financially exploit' the Respondents.

#### Issues

- 16. The issue to be decided is whether it is reasonable to dispense with the Consultation Requirements and, if so, whether any conditions should be imposed.

#### The law

- 17. The Works are "qualifying works" for the purposes of s 20ZA(2) of the Act and therefore the Consultation Requirements are engaged.
- 18. A failure to adhere to the Consultation Requirements limits each qualifying tenant's contribution to the costs of the Works to £250 per service charge year unless dispensation is granted by the Tribunal.
- 19. S 20ZA(1) of the Act provides: -

*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.*

20. In *Daejan Investments Ltd v Benson* [2013] UKSC 14 (“*Daejan*”), the Supreme Court considered the proper approach to an application for dispensation under s.20ZA, noting that: -

- a. The purpose of the Consultation Requirements is to ensure that tenants are protected from paying for inappropriate works or paying more than would be appropriate for them.
- b. On that basis, the Tribunal should focus on the extent to which tenants were relevantly prejudiced in either respect by the failure of the landlord to comply with the Consultation Requirements.
- c. The Tribunal has the power to grant dispensation on such terms as it thinks fit, provided that such terms are appropriate in their nature and effect, including in relation to the recoverability cost of the works and / or the parties’ costs incurred in connection with the application for dispensation.
- d. However, where the extent, quality and cost of the works were unaffected by the landlord’s failure to comply with the Consultation Requirements, unconditional dispensation should normally be granted.
- e. The only disadvantage of which a tenant may legitimately complain is one which they would not have suffered if the Consultation Requirements had been fully complied with but which they would suffer if unconditional dispensation were granted.

- f. Although the legal burden of proof would be, and would remain, on the landlord, the factual burden of identifying some relevant prejudice that they would or might have suffered would be on the tenants.
- g. Given that the landlord will have failed to comply with Consultation Requirements, and the Tribunal is having to undertake the exercise of reconstructing what would have happened, it may view the tenant's arguments sympathetically, for instance resolving in their favour any doubts as to whether the works would have costs less, or that some of the works would not have been carried out or would have been carried out in a different way. The more egregious the landlord's failure, the more readily the Tribunal would be likely to accept that tenants had suffered prejudice.
- h. The tenants' complaint will normally be that they have not had the opportunity to make representations about the works. Accordingly, the tenants have an obligation to identify what they would have said.
- i. Once the tenants have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
- j. Save where the expenditure is self-evidently unreasonable, it would be for the landlord to show that any costs of investigating relevant prejudice incurred by the tenants were unreasonably incurred before it could avoid being required to repay them as a term of dispensation being granted.

## Determination

- 21. The only issue for the Tribunal to consider under s 20ZA is whether it is reasonable to dispense with the consultation requirements.

22. As set out above, the purpose of the Consultation Requirements is to ensure that tenants are protected from paying for inappropriate works or paying more than would be appropriate for them.
23. The Tribunal must consider therefore whether the Respondents were 'relevantly prejudiced' by the failure to consult, and bear in mind the considerations set out above in Daejan.
24. Whilst the Respondents have submitted repeatedly that they were prejudiced, the Tribunal finds that such prejudice is not made out.
25. By the very nature of the Application, the Respondents have not been able to comment on or be involved in the usual consultation process and make representations regarding it. However, they have failed to identify what they would have said if consulted so that the Tribunal could determine what impact this might have had.
26. Similarly, the Respondents have failed to satisfy the Tribunal, by their failure to provide evidence on the point, that the extent, quality and scope of the works were affected by the Applicant's failure to consult.
27. The Respondents comments on the invoices provided by the Applicant and the 'sums claimed' are not challenged by way of alternative quotations or pricing. In any event, whether dispensation is granted does not affect the Respondents' ability to challenge the cost of the Works, as appropriate.
28. Much of the Respondents' submissions focus on the contention that the Works were not urgent. Whilst the Tribunal accepts that they were undertaken over a period of time, the fact that they were motivated as a consequence of a fire that had occurred at the Property, which resulted in an Improvement Notice being issued, cannot be overstated. Indeed, the subsequent reports obtained by the Applicant concluded that there still persisted at the Property, after the fire, a fire risk which could result in moderate harm. Further, the Respondents accept that the Works were overseen

by Wirral Council and the local Fire Department who were willing to allow the Works to be undertaken over a period of time on the basis that they were being progressed. Manifestly, the Applicant undertaking part of the Works during its management of the Property must have been integral in that progress. Notwithstanding, if the Tribunal was satisfied that the Works were not urgent, it does not follow that the Respondents were 'relevantly prejudiced' by them being undertaken without following the Consultation Requirements.

29. The Tribunal accepts that the Applicant only carried out some of the Works and, therefore, it stands to reason that it would have been passive in relation to those parts of the Works which were completed during the management of the Property by the RTM Company.
30. The Tribunal also notes that some of the Respondents were not owners of their respective flats at the time of the Applicant carrying out the Works and so they would not likely have had the opportunity to take part in any consultation process anyway. Thus, in that situation, it would be illogical for the Tribunal to conclude that they had been prejudiced by the failure to consult.
31. Finally, the Tribunal rejects as baseless the Respondents' contention that the Application has been brought in an effort to 'profiteer' from the process. Indeed, there is no evidence put forward by the Respondents to support that contention, particularly where third parties appear to have been engaged to carry out the parts of the Works completed by the Applicant. Again, this contention very much misses the point that the cost of the Works may be challenged, if appropriate, by the Respondents, notwithstanding that dispensation might be granted.
32. In the circumstances, the Tribunal finds that no 'relevant prejudice' occasioned by the Applicant's failure to comply with the Consultation Requirements has been shown, and no evidence that the extent, quality and cost of the works were affected by that failure has been satisfactorily adduced.

33. In view of the above, the Tribunal is satisfied that it is reasonable to grant the Application without any conditions.
  
34. The Tribunal repeats that this determination does not affect the Respondents' right to apply to the Tribunal to determine the payability of the cost of the Works under the terms of the lease, or the reasonableness of the Works in terms of quality or amount, pursuant to s 27A of the Act.

Judge Richard M. Dobson-Mason

7 August 2025

## ANNEX A

### List of Respondents

1	Flat 1, 140-142 Whetstone Lane, Birkenhead	AGMG Assets Ltd
2	Flat 2, 140-142 Whetstone Lane, Birkenhead	Annette Dorothy Jennings
3	Flat 3, 140-142 Whetstone Lane, Birkenhead	Ms G Bor
4	Flat 4, 140-142 Whetstone Lane, Birkenhead	AGMG Assets Ltd
5	Flat 5, 140-142 Whetstone Lane, Birkenhead	Faria Amara Naveed Khan
6	Flat 6, 140-142 Whetstone Lane, Birkenhead	Mohammad Hanif
7	Flat 7 140-142 Whetstone Lane, Birkenhead	Ms G Bor
8	Flat 8, 140-142 Whetstone Lane, Birkenhead	Faria Amara Naveed Khan
9	Flat 9, 140-142 Whetstone Lane, Birkenhead	AGMG Assets Ltd
10	Flat 10, 140-142 Whetstone Lane, Birkenhead	Mr F & Mrs O Saka

11	Flat 11, 140-142 Whetstone Lane, Birkenhead	Rabiya Fayyaz
12	Flat 12, 140-142 Whetstone Lane, Birkenhead	Annette Dorothy Jennings