



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

Case Reference	:	CAM/33UH/LDC/2025/0663		
Property	:	Block A, The Maltings, 13-23 (Odds) Pirnhow Street, Ditchingham, Norfolk NR35 2SA		
Applicant (Management Company)	:	The Maltings Leasehold Management Company Limited		
Representative (Managing Agent)	:	Trinity Estates Property Management		
Interested Party (Landlord)	:	Radcliffe Investment Properties Limited		
Respondents (Leaseholders)	:	Miss Leigh C Purling		13
		Mr Graham L & Mrs Judith C Purling		15
		Mrs Veronica C Moore		17
		Mr Keith A & Mrs Elaine A Jeffries		21
		Mrs Wendy K Cole		21A
		Ms Katherine C Harber		21B
		Mr James P Arnold &		
		Miss Nevena Juliana Almeida		23
		Mr S Ward & Ms C Blanc		23A
		Mr Joseph KD & Mrs Denise H Jones		25
Type of Application	:	To dispense with the consultation requirements referred to in Section 20 of the Landlord and Tenant Act 1985 pursuant to Section 20ZA		
Tribunal	:	Judge JR Morris		
Date of Application	:	18 August 2025		
Date of Directions	:	15 September 2025		
Date of Hearing	:	4 November 2025		
Date of Decision	:	12 November 2025		

DECISION

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Decision

1. The Tribunal is satisfied that it is reasonable to dispense with compliance with all the consultation requirements of Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) .
2. The Applicant or its Representative shall serve a copy of the Tribunal's decision on dispensation, together with the relevant appeal rights attached, to the Leaseholders.

Reasons

The Application

3. On 29 May 2025 the Applicant's Managing Agent applied for dispensation from the statutory consultation requirements in respect of qualifying works which are to repair a leak from the balcony of flat 21B into flat 17 which occurs each time it rains.
4. Having obtained two quotations, the contractor, Ground Up Property Services Limited was instructed to carry out the works which were completed on or about 22 August 2025. The qualifying works include removal of existing rotting decking and framework, cleaning of membrane, application of primer, application of waterproofing membrane, flood test and installation of new deck frame and boards. The cost is £5,432.40 inclusive of VAT.
5. The work was said to be urgent because:
 - a) Flat 17 suffered further damage each time it rained
 - b) The Applicant was served with an Improvement Notice under section 11 of the Housing Act 2004 requiring the works to be carried out and completed by 22 August 2025.
6. The 11-year-old Property comprises 9 flats and the cost exceeds £250.00 per unit. Therefore, the consultation procedure under section 20 of the Landlord and Tenant Act 1985 is required or an order granting dispensation from the procedure or part of it for the full cost is to be paid through the service charge.
- 7.
8. The Property is part of a larger Development at the former Ditchingham Maltings.

9. Directions were issued on 15 September 2025 which stated that the Application would be determined on or after 27 October 2025 based on written representations and without an inspection, unless either party made a request for an oral hearing. A hearing was requested and set down for 4 November 2025.
10. The Directions required the Applicant's Managing Agent to send by 22 September 2025 to each of the Respondent Leaseholders, by hand delivery or by first class post and by email, if practicable, copies of:
- i. The application form without the list of leaseholders' names and addresses;
 - ii. The Directions;
 - iii. A clear concise description of the relevant works for which dispensation is sought;
 - iv. An estimate of the cost of the relevant works, including any professional fees and VAT;
 - v. Any other evidence relied upon; and
- To file with the tribunal confirming that this had been done and stating the date on which this was done.
11. On 16 September 2025 the Applicant's Managing Agent confirmed that this Direction had been carried out. Copies of the email to the Leaseholders was provided which stated:
- "The works which have been completed were to repair a leak originating from a balcony. The works included removal of the existing rotting decking and framework, cleaning of the membrane, application of primer, application of waterproofing membrane, a flood test and installation of new deck frame and boards. This came to a total cost of £5,432.40, inclusive of VAT.
- We also attach a copy of the 2 quotes obtained at the time, a copy of the invoice following completion of the works, and a copy of the Improvement Notice issued by the Council prompting urgent action.
- Please refer to paragraph 3 of the directions which set out what you may do if you oppose the application."
12. The following Leaseholders objected to the granting of the Application for dispensation as follows:
- | | |
|-----------------------------------|----------|
| Mr S Ward & Ms C Blanc | Flat 23A |
| Mr Joseph KD & Mrs Denise H Jones | Flat 25 |
13. Ms Katherine C Harber of Flat 21B emailed the Applicant's Managing Agent to say that she "understood the urgency of the works and the need to comply with the Section 11 notice form the local council ...and therefore agreed to the proposed dispensation from the full Section 20 consultation process so the repairs can proceed without delay". "However, for transparency and to ensure

best value” she said she “would be grateful if” she could see “the two quotations obtained along with a brief explanation of why the chosen contractor was selected.”

The Law

14. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.
15. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations are summarised in Annex 2 of this Decision and Reasons.
16. Section 20ZA allows a Landlord to seek dispensation from these requirements, as set out in Annex 2 of this Decision and Reasons and this is an Application for such dispensation.
17. The terms “tenants” “lessees” and “leaseholders” are synonymous as are “landlord” and “lessor.”

Hearing

18. A hearing was held on 4 November 2025 attended by Ms Abigail Jolliffe Ms Abbie Lamb, Property Manager, of the Applicant’s Managing Agent representing the Applicant and Mr Steven Ward & Ms Carol Blanc, Leaseholders of Flat 23A and Mr Joseph and Mrs Denise Jones Leaseholders of Flat 25 for the Respondents. Mr Keith Jeffries Leaseholder of Flat 21 attended as an observer.

Applicant’s Case

19. The Applicant provided a bundle to the Tribunal which included:
 - A copy of the Lease,
 - A copy of the Improvement Notice dated 7 July 2025
 - Application to the Tribunal dated 18 August 2025,
 - Tribunal Directions dated 15 September 2025,
 - Applicant’s Representative’s confirmation regarding compliance with Directions dated 16 September 2025,
 - Ground Up Property Services Limited quotation dated 7 August 2025 (the selected contractor) and invoice dated 28 August 2025,
 - Xtra Maintenance Limited quotation dated 30 July 2025,

- Witness Statements from Ms Abbie Lamb, Property Manager, and Mr James Donovan, Regional Manager of the Managing Agent,
- Report from M and C Engineering dated 29 August 2025,
- E mail from PJ Livsey, Developer to the Managing Agent re liability A Statement of Estimates dated 27 March 2025,
- Copies of all quotations,
- Letter dated 17 June 2025 from Applicant's Representative to Leaseholders confirming component parts of works are:
 1. Treatment of Dry Rot
 2. Works to access area and making good
 3. External works to prevent recurrence

These together set out the Applicant's case.

The Lease

20. A copy of a Lease was provided for Flat 11 dated 11 December 2014 between the Original Landlord, (1), the Applicant being the Leasehold Management Company (referred to in the Lease as "the Management Company")(2), The Maltings Estate Management Company Limited (referred to in the Lease as the "Company")(3), and the Leaseholder (4), for a term of 999 years from 1 January 2013. The Leaseholders are members of the Management Company.
21. From the Lease it is apparent that the Block A is one of several buildings on the Development which is within the Estate which are edged blue and green respectively on the Lease plans. Two management companies have been established:
 - a) the Leasehold Management Company (referred to in the Lease as "the Management Company") which is responsible for the maintenance of the retained parts which are all the parts of the buildings that have not been demised and
 - b) the Estate Management Company (referred to in the Lease as "the Company") which is responsible for the communal areas, facilities and services which are such matters as the roads, paths, and open spaces.
22. To pay for the maintenance Tenants covenant to pay a "Service Charge" to the Leasehold Management Company and a "Maintenance Charge" to the Estate Management Company. There is some overlap between the responsibilities of the two Management Companies and this reflected in the description of their obligations and the apportionment of the Service Charge and Maintenance Charge. Under Clause 10.5 if either of the Management Companies fail to perform any of their obligations then the Landlord covenants to perform them.
23. This Application is made by the Leasehold Management Company which has carried out repair work on the exterior of one of the buildings, Block A to remedy a leak from the balcony of flat 21B into flat 17. This repair falls within the Retained Parts which are the responsibility of the Leasehold Management Company and the cost of which is met by the Service Charge.

24. The relevant covenants of the Lease are as follows:

- a) Clause 1 contains the following definitions:
 - 1.8 "The Service Charge": The contributions equal to the Tenant's Proportion of the expenditure described in sub-clause 7.1 and in Part I of the Second Schedule
 - 1.10 "The Tenant's Proportion": Firstly that proportion of the expenditure described in sub-clause 7.1 (a) Part 1 of and in the Second Schedule so far as such expenditure relates to the Estate which square footage of the Property bears to the total square footage of all properties in the Estate from time to time so far as such expenditure relates to the Development which square footage of the Property bears to the total square footage of all properties in the Development from time to time;
- b) Clause 2 contains the following definition
 - 2.12 "the Retained Parts" means those parts of the Development including the Estate and the Service installations apparatus plant machinery and equipment and roads drives paths and forecourt serving the Retained Parts not included nor intended to be included in this demise or a demise of any other part of the Development by a lease in a form similar to this Lease nor included or intended to be included in a transfer of a residential unit on the Development
- c) Clause 3 contains the following definition
- d) "The Property" includes and excludes the features described in Part 1 of the First Schedule demised by this Lease
- e) Clause 7 sets out the Tenant's covenants regarding payment of the Service Charge:

THE TENANT with the intent to bind the Property and any person who may be for the time being the owner of an estate or interest in or the occupier of the Property or any part COVENANTS with the Landlord the Management Company the Company and as a separate covenant with each of the tenants/owners for the time being of the other properties on the Development...

 - 7.1 (a) to pay contributions by way of Service Charge to the Management Company equal to the Tenant's Proportion of the amount which the Management Company may from time to time expend and as may reasonably be required on account of anticipated expenditure on rates services repairs maintenance and insurance being and including expenditure described in Part 1 of the Second Schedule

- f) Clause 8 sets out the Management Company's covenants:
SUBJECT to the Service Charge being paid by the Tenant and to compliance by the Tenant with all covenants and obligations on the Tenant's part to be performed and observed THE MANAGEMENT COMPANY COVENANTS with the Tenant AND FURTHER COVENANTS with the Landlord:
- 8.2 to keep in good and substantial repair reinstate replace renew maintain and decorate the Retained Parts...
- g) Part 1 of the First Schedule describes the "The Flat" referred to in the Lease as the Property. The Property includes
 - (3) the paving slabs wood flooring files or other finishing materials on the floor of the balcony/veranda/terrace are (if any)
 - (4) the linings and surface finish including lath plaster and board of ceilings together with the boards or other surface finish and screed of the floors which divided the Property from another part of the Estate and balconies (if any) but excluding the floor and ceiling joists beams or slabs
- h) The Part 1 of the Second Schedule sets out the Service Charge Expenditure which include:
 - 1. The expenditure described as "the Service Charge Expenditure" means expenditure:
 - (1) in the performance and observance of the covenants obligations and powers on the part of the Management Company and contained in this Lease or with obligations relating to the Development or its occupation and imposed by operation of law

Improvement Notice

- 25. An Improvement Notice under Housing Act 2004 Part 1 Section 11 dated 27 July 2025 was provided. This identified a Category 1 Hazard under the Housing Health and Safety Rating System as follows:

1 – Damp and Mould

Penetrating dampness to walls and ceilings including the light fitting to the rear living room of 17 Pirnhow Street. Ditchingham. Norfolk, NR35 28A from the balcony situated above.

- 26. The works specified to be carried out were as follows:

Arrange for the responsible party to undertake all necessary external works to prevent the ingress of rainwater into the rear living room at 17 Pirnhow Street, Ditchingham, Norfolk, NR35 28A.

Following completion of these works, all resultant internal damage is to be made good.

Upon finalisation of the remedial works, a valid Electrical Installation Condition Report (EICR) for the property at 17 Pirnhow Street, Ditchingham, Norfolk, NR35 28A must be submitted.

Application, Directions & Compliance

27. The Application form, Directions and Compliance are referred to above.

Quotations

28. A copy of the quotation dated 7 August 2025 from Ground Up Property Services Limited was provided, which was the selected contractor, which stated as follows:

Stage 1 - Remove rotten balcony decking and framework (approx. 4m x 1.5m), scrape off failed repairs and clean/dry the membrane ready for repair. Ex VAT £595.00

Stage 2 - Inspect and repair membrane defects and mastic seals; supply and apply primer. Ex Vat £150.00

Stage 3 - Apply two coats of liquid waterproof membrane across the balcony, allowing curing between coats, and return to flood test to confirm watertightness. Ex VAT £1,050.00

Stage 4 - Supply and install new treated softwood deck frame and boards (approx. 6m²). Ex VAT £1,450.00

Item 5 - Generic maintenance - Provisional plant hire - Supply cherry picker or access equipment if required for safe access to balcony (cost for 1-day hire). Ex VAT £550.00

Item 6 - Contingency (20% of total) - Allowance for unforeseen extra costs due to hidden defects or additional repairs (unused contingency will not be charged). Ex VAT £732.00

Sub Total (exc. VAT) £4,527.00

Discount Total £0.00

VAT £905.40

Total (inc. VAT) £5,432.40

29. A copy of the Invoice dated 28 August 2025 was also provided which repeated the quotation in description and amount.

30. A copy of the quotation dated 30 July 2025 from Xtra Maintenance Limited was provided, which was not selected, which stated as follows:

This cost is £12,748.65+Vat for Labour and Materials.

This cost is to:

- Attend site, supplying protection to our working area and transit routes.
- Uplifting the decking and beams, and disposing of these accordingly.
- Cutting out the failed sealant.
- Cleaning, clearing, and drying the balcony area.
- Taping and sealing all defects.
- Priming the balcony.
- Applying 2x coats of Bullet Liquid Membrane. Allowing this to cure.
- Resealing the upstand with new sealant.
- Undertaking flood testing to the balcony, please note that we will need access into flat 17 to see the visual results of the flood test.
- If the repairs have been successful, then we will install a new beam structure, install new wooden decking closely matched with the existing.
- Cleaning and clearing our working area upon completion.

Witness Statements

31. Ms Abbie Lamb of the Applicant's Managing Agent and Property Manager of the Property since 11 July 2025 provided a witness statement. Ms Lamb said she became aware of the leak from the balcony area of Flat 21b into number 17 on 11 July 2025 and was told that the previous Property Manager had attempted to establish responsibility for the repair. This included emailing PJ Livesey, the Developer to investigate whether the leak was caused by a build defect and covered by warranty. The emails indicate that the owner of Flat 17 notified the Developer of the issue in June 2024. Trinity was made aware in April 2025 that the Developer would not be accepting responsibility for the Issue and the warranty had expired. A copy of the emails was provided.
32. Following receipt of the Improvement Notice Ms Lamb said that Xtra Maintenance Limited inspected the balcony on 29 July 2025 and confirmed the source of ingress was due to multiple points of failure on the balcony of Flat 21b and required a complete overhaul. On 30 July 2025, Xtra Maintenance Limited then provided a quote for the required works in the sum of £12,748.65 plus VAT. Two other contractors were approached and quotations were received from Ground Up Property Services Limited of £4,527.00 plus VAT (copy of quotation provided) and Target Maintenance Limited. A copy of Target's quote was provided. This was not considered to be comparable by the Managing agent as the specification of works did not include any replacement flooring. The Managing Agent said that Target's quotation was subsequently revised to include the replacement flooring but was then higher than the Ground Up Property Services Limited quotation.

33. Ms Lamb said that she arranged for the section 20 1st Notice to be issued to Leaseholders on 13 August 2025 and an application for dispensation was submitted on 18 August 2025. Ground Up Property Services Limited was instructed to carry out the works which were completed on 22 August 2025. The Electrical Installation Condition report (EICR) was completed on 27 August 2025.
34. Ms lamb said she updated the owner of Flat 17 regularly. Internal redecorations were booked in with Flat 17 and all internal works were completed through the building's insurance on 26 September 2025.
35. A witness statement was also provided by James Donovan a Regional Manager of the Applicant's Managing Agent. Mr Donovan said that the Applicant is named as Management Company in the leases at the Property and is responsible for providing services to the Property, including maintenance of the Retained Parts (as defined in the leases) which includes all parts of the structure of the Property. He said he became aware of the issue in April 2025 and that the previous Property Manager was liaising with the Developer, PJ Livesey, to establish responsibility for investigating and rectifying the leak. It was understood that the Issue was a build defect and should be the responsibility of the Developer or covered by the warranty. A contractor attended the Property in August 2024 and indicated previous works by the Developer had failed. The Developer said it would not be accepting responsibility and the warranty had expired.
36. Following the service of the Improvement Notice under the Housing Act 2004 Part 1 Section 11 and a review by our internal Legal Team in July 2025 it was confirmed the balcony formed part of the Retained Parts and the responsibility of the Applicant. The external works were completed on 22 August 2025, and the internal works were completed through insurance on 26 September 2025. The contractors which were chosen for the external works was the cheapest quote obtained.

Report M and C Engineering

37. A report was obtained from M and C Engineering regarding the leak which was provided in an email dated 29 August 2024 which stated that the leak is coming in from the GRP roof deck of the balcony above Flat 17. The owner of flat 21B above 17 had a repair carried out when she bought her flat, about 5 years ago, by the Developer. This has now failed. It appears it was simply coated with a paint similar to acrypol or equivalent. (Photographs were provided). It was recommended that the decking is removed and the roof replaced with a system other than GRP.

Developer's Email

38. A copy of the email dated 7 April 2025 from the Developer PJ Livsey was provided which stated that the date of completion of the development was 29 August 2014, the 2-year Defect Liability Period expired on 29 August 2016 and the 8-year Structural Warranty expired on 29 August 2024.
39. The email confirmed that PJ Livesey completed works to an identified defect more than 5 years ago and were satisfied that this matter was resolved. PJ Livesey received an email from Ms Moore of Flat 17 on 13th October 2024 explaining that there had been further ingress, having contacted her Managing Agent in November 2023.
40. It was further understood that a report was commissioned by the Managing Agent, Trinity Estates, and a copy of an email from M&C Engineering dated 29 August 2024 provided a brief, informal overview of their findings. PJ Livesey noted that:
1. The email “alleges” but does not “prove” that the specific repair undertaken more than 5 years previous, has failed.
 2. If decking has not been lifted, P Livesey fail to see how the conclusion stating a previous repair has failed has been reached.
 3. We understand from the owner of Plot 09A (Ms Harber) that Ms Moore reported this matter to her Managing Agent in November 2023
 4. It is not clear what general maintenance prior to November 2023 and during the period Ms Moore began contacting her Managing Agent, for which our homeowners pay not an insignificant service charge, has taken place.
 5. If the balcony is now unsafe to stand on, please provide maintenance records from the period since the development was handed over to the Managing Agent.
41. PJ Livesey therefore did not accept liability and pointed out that that the ongoing maintenance and repair of the building is the responsibility for the Managing Agent to whom homeowners pay their service charge to carry out.

Submissions at the Hearing

42. At the hearing the Managing Agent’s Representatives confirmed the written statements. It was submitted that the work was necessary as shown by the quotations and report of M and C Engineering. It was also submitted to be urgent because of the continuing damage to Flat 21B and 17 and the effect the water ingress was having on Mrs Moore the Leaseholder of Flat 17. It was also urgent to meet the requirements of the Improvement Notice.
43. It was further submitted that the Leaseholders had not shown that they had been prejudiced by the lack of consultation. Although the consultation would have given them an opportunity to nominate other contractors who may have been cheaper, no evidence was adduced to show that the work could have been done by another contractor at a lower cost.

44. It was added that under the Lease the Respondent Leaseholders were liable to pay for the repairs through the Service Charge. This was irrespective of any dispute there might be as to the Developer's liability or any claim that might be made for the repair under the Premier Warranty.

Respondent's Case

Statement of Case

45. The Respondents attending the hearing objected to the Application under section 20ZA for dispensation from the consultation requirements of section 20 of the Landlord and Tenant Act 1985 and provided the following statement.
46. They said that the Section 20ZA application was only made following the issue of a Section 11 Improvement Notice on 7 July 2025 by South Norfolk Council. This followed years of intermittent requests by the Leaseholder of Flat 17 to identify and repair the leak to the balcony above Flat 21B and to repair the internal damage done to her property as a consequence of the leak.
47. It was said that this latest occurrence of ingress and damage to Flat 17 was first reported in November 2023. It was contended that had the Applicant's Managing Agent responded appropriately and in a timely manner to frequent and constant attempts to have the leak investigated and remedied by the occupants of Flats 17 and 21B between November 2023 and mid-June 2025, there would have been time for the consultations with all Respondents to take place.
48. Also, it was said that if there had been early consultation, the costs of the repair would not have escalated, and the damage done to the interior of No. 17 would not have increased to a Category 1 Hazard Risk to the occupant.
49. There were also numerous requests in 2024 to the Managing Agent, representing the Applicant, by the then owner of 21B to rectify the leaking balcony, both to the Applicant and the Developer, JP Livsey. Evidence of the attempts to get the situation rectified by the Leaseholders in the latest 18-month year period was provided in the form of two lists of correspondence, one from the Leaseholder of Flat 17 and the other from the Leaseholder of Flat 21B. Repairs to the balcony at flat 21b were completed in September 2025, almost 2 years after the first report of this particular occurrence of ingress of water to flat no. 17 below.
50. The Respondents said the leak and consequential damage commenced as early as 2014 when the Leaseholder of Flat 17 first took occupation and if the correct action had been taken at that time, the matter could have been dealt with under the guarantee offered by the Developer. At no point has the Applicant's Managing Agent consulted all Leaseholders, and yet there has been ample opportunity. The Tribunal's attention was drawn to the email dated 5 March 2025 in which the Managing Agent stated the issue with the balcony at Flat 21b is a build defect,

and as such costs should not come out of Service Charge Funds, and by implication the costs are not the responsibility of any of the Leaseholders.

51. The emails between the Leaseholder of Flat 17 and the Managing Agent were listed with resume as follows:

13/02/2024: Leaseholder of Flat 17 to the Managing Agent, email reporting blister full of water above her tv, and drip close to ceiling light, whenever it rains, despite the repairs and redecoration to the property in 2019.

21/02/2024: Report of leaking ceiling in flat no. 17 by the Leaseholder with photo evidence

29/02/2024: Leaseholder of Flat 17 emailed the Managing Agent commenting that the water ingress was creating larger damp patches getting closer to electrical fittings.

01/03/2024: Leaseholder of Flat 17 emailed the Managing Agent that leak now resulting in dripping in two locations from balcony above (Flat no. 21b)

01/04/2024: Leaseholder of Flat 17 email to the Managing Agent reporting that the previous month 2 contractors had visited to view the ceiling in the flat and commented it was worse than they had been led to believe. There was no response to her email, despite asking for an update.

07/05/24: Email from the Managing Agent advising Leaseholder of Flat 17 "...that you will need to contact P J Livesey's Insurance for this.

02/06/2024: From Leaseholder of Flat 17 to the Managing Agent, email complaining this ingress event has been going on for 10 months, bucket permanently in place to catch drips, health, and safety hazard regardless of age.

12/08/2024: Leaseholder of Flat 17 reminding the Managing Agent that this period of ingress first reported in November 2023 was still not rectified.

13/08/2024: Leaseholder of Flat 17 reporting stress related ill health due to almost annual reporting of leaks and water ingress to her home, & balcony above her sitting room at flat no. 21b still not correctly repaired.

22/08/2024: Leaseholder of Flat 17 reminding the Managing Agent repairs still not undertaken and absolutely no information from the Managing Agent.

29/08/2024: Email from the Managing Agent to Leaseholder of Flat 17 that there is a report from contractor that the balcony issue is the responsibility, in their opinion, of the developer PJ Livesey, and this had been forwarded to PJ Livesey.

13/10/2024: Email from Leaseholder of Flat 17 to Housing Standards Officer, South Norfolk Council alerting her to the recurrence of the water ingress and the threat to the occupant's health, both mental and

physical, as a result. This gave an informative account of the background to the leak and the salient points are set out below.

04/02/2025: Email to Leaseholder of Flat 17 from the Managing Agent, confirming the issue arises from a build defect, and had been raised with the freeholder to rectify prior to the Managing Agent being contacted by the Housing Standards Officer, South Norfolk Council.

05/03/2025: Email from the Managing Agent to Leaseholder of Flat 17 stating the issue with the balcony leak from Flat 21b is a build defect and has been raised with the freeholder PJ Livesey, confirming 'it would not be right to use Service Charge Funds to pay for something that is a build defect'.

52. The emails between the Leaseholder of Flat 21B and the Managing Agent and the Developer were listed with resume as follows:

04/06/2024: Leaseholder of Flat 21B emailed the Developer PJ Livesey Homes (Eastern) Ltd outlining comments made by a builder who had viewed the affected balcony and concluded it was a build fault.

06/07/2024: Leaseholder of Flat 21B received a response from the developer PJ Livesey asking for details of the plot number, ownership history, and images of the issue on the balcony. Also asked for details from the Leaseholder of the date the issue was first noted and when it was first reported to the Managing Agent, together with a copy of that report.

14/07/2024: Leaseholder of Flat 21B gave plot number, ownership history, could not attach images as damage is hidden under decking, but stated that the builder took photos and occupant indicated these would be available from the Managing Agent as the builder had been commissioned by them.

18/07/2024: Leaseholder of Flat 21B received a further request for information from the developer, asking for details of the property affected by the ingress, which were responded to on 20/07/24

20/07/2024: The occupant of 21b confirmed she had been advised by Leaseholder of Flat 21B that this occasion of reporting of the ingress and damage to Flat 17 had commenced November 2023.

29/08/24: Email from PJ Livesey (Developer) to Leaseholder of Flat 21B requiring again a copy of a report by the builder commissioned by Trinity. The occupant replied the same day stating she had never received the report, that it was held by Trinity. The Property Manager was copied into the emailed response. The Managing Agent was asked to forward the report from the contractor (report created in May 2024)

Mrs Moor's Email Giving Background to the Leak

53. An email from Mrs Moore, the Leaseholder of Flat 17 (at the time of construction known as Plot 8), to the Developer PJ Livsey dated 13 October 2024 provided background to the leak from the balcony of 21B into her Flat.
54. Mrs Moore said she purchased plot 8, The Maltings, 17 Pimhow Street in August 2014, and went on holiday for a month and on her return discovered the lounge walls were damp and covered in black mould. PJ Livesey the builders had told her that the scaffolders whilst dismantling, discarded the scaffolding clips on to the balcony above my living room, cracking the membrane surface, as the decking had yet to be fitted. After the builders had patched up the balcony all was well for a while, then odd wet patches would appear and dry up again.
55. She said that in 2017 water started running down the walls whenever it rained heavily, depending on which way the wind was blowing and was very close to electrical sockets, someone came and patched it up some more before COVID.
56. Mrs Moore said that since COVID the ceiling is dripping when it rains hard, right next to the central light fitting and she now had to place saucepans on the floor to protect her carpet, which is unsafe for myself and guests, as they are trip hazards. There are numerous stains on the ceiling and walls (photographs provided) since the walls were repainted with waterproof paint, water collects behind it making egg sized blisters, which eventually disappear after it stops raining.
57. She said that it has been patched up on a couple of occasions now but water always finds a way through a weak spot. She said that ideally the decking needs to be taken up and the membrane replaced completely, instead of being repatched again.

Submissions at the Hearing

58. From the Respondent's statements of case and documents two main issues were identified.

First, the Respondents were aggrieved that the Managing Agent had not acted upon the leak as soon as it was reported by Mrs Moore in November 2023. The lack of action had:

- a) resulted in more damage to Flat 17 and Mrs Moore's wellbeing than if the Managing Agent had acted promptly;
- b) meant the cost of the remediation had increased because,
 - i) the damage to Flat 17 would have not been as great if the Managing Agent had acted promptly and
 - ii) over the past 18 months building costs had increased with inflation;
- c) reduced the opportunity for a full consultation to take place; and

- d) allowed the opportunity to make a claim against the Developer or Premier Warranty to lapse.
59. In addition the Respondents felt that the Applicant and the Managing Agent had only acted with the urgency that the situation required when Mrs Moore complained to the local authority who issued an Improvement Notice setting a deadline for compliance.
60. Secondly, the Respondents submitted that there had been ample time for the consultation to take place because the ingress of water was reported by the Leaseholder of Flat 17 in late 2023 or early 2024. They were aggrieved because if a full consultation had taken place it would have enabled Leaseholders to nominate contractors and make observations about the works.
61. They said that they had not obtained alternative quotations or considered other ways of doing the work because they had not been asked. They said that by the time they were told about the dispensation application the contractor had been engaged and the work was already under way.
62. When mentioning nomination of contractors and the cost of the works they said that on looking at the quotation and the invoice (which was a mirror image of the quotation) for the work from Ground Up Property Services Limited it states:
Item 5 - Generic maintenance - Provisional plant hire - Supply cherry picker or access equipment if required for safe access to balcony (cost for 1-day hire). Ex VAT £550.00
However, the Respondents said that they had not seen any plant hire or access equipment such as a cherry picker being used as the work was carried out from the balcony. Therefore they considered they had been overcharged £330.00 plus VAT.
63. It was noted that this was not an issue for this tribunal application but would come within the tribunal jurisdiction under section 27A of the landlord and tenant act 1985. The Applicant's Representative said that with an issue of this kind they would seek to resolve it with the Leaseholders without going to the Tribunal. The Tribunal agreed that an application should only be made if an issue cannot be resolved between the landlord and the tenant first of all.

Determination

64. In making its decision the Tribunal had regard to the decision of the Supreme Court in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14. In summary, the Supreme Court noted the following:
- 1) The main question for the Tribunal whether the landlord's breach of the section 20 consultation requirements resulted in the leaseholders suffering real prejudice.
 - 2) The financial consequence to the landlord of not granting a dispensation is not a relevant factor.
 - 3) The nature of the landlord is not a relevant factor.

- 4) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - 5) The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
 - 6) The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/ or legal fees) incurred in connection with the landlord's application under section 20ZA.
 - 7) The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
 - 8) The Supreme Court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
 - 9) The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
 - 10) Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
65. In summary the issue for the Tribunal is how did the lack of consultation prejudice the leaseholder. Examples of prejudice might be where the leaseholders could show the qualifying works were improvements whilst only repairs are permitted under the lease or that the works are in part or whole unnecessary.
66. The Tribunal finds from the Lease in this case that the Applicant is obliged to carry out the qualifying works of repairs to the balcony of Flat 21B and Flat 17 as they affect the "Retained Parts" and that the cost of this work is chargeable to the Leaseholders through the Service Charge.
67. The Tribunal found from:
- M and C Engineering's Report,
 - Xtra Maintenance Limited's findings,
 - Xtra Maintenance Limited and Ground Up Property Services Limited's quotations, and
 - the email correspondence to which the Leaseholders of flats 17 and 21B were party,
- that the work was necessary.
68. The Tribunal also found from the Improvement Notice and the email correspondence between the Leaseholders of flats 17 and 21B on the one part and the Managing Agent and Developer on the other, that the work was urgent. The water ingress was causing increasing damage to Flat 17 which brought discomfort

and took a significant toll on the health and welfare of the Leaseholder, Mrs Moore.

69. The Tribunal then considered the two grievances raised by the Leaseholders.
70. Firstly, the Respondents had said the Managing Agent had not acted upon the leak as soon as it was reported by Mrs Moore in November 2023. The Tribunal agreed the leak should have been investigated and estimates obtained earlier. The Managing Agent should have corresponded with the Developer whilst concurrently instructing the investigation of the leak and cost of remediation. In the event the M and C Engineering Report was produced on 29 August 2024 and sent to the Developer but the investigation and quotations were not obtained until July 2025 when an Improvement Notice had been served.
71. However, the determination as to whether the Leaseholders had been prejudiced, focused on the lack of consultation not on the failure of the Applicant or its Representative, in this case, to remedy the leak sooner than it in fact did. If there was an unreasonable increase in costs caused by additional damage resulting from a failure to act promptly, or if the cost or standard of the work is unreasonable, the Leaseholders can apply to the tribunal under section 27A of the Landlord and Tenant Act 1985 for a determination on the issue, if it cannot be resolved without doing so.
72. Matters raised that were referred to which might be issues raised in a section 27A Application are:
 - The cost of any increased damage due to a failure to act, but it is to be noted that the damage to the flat was remedied by an insurance claim;
 - An increase in cost of materials due to a lack of promptness in instructing a contractor but this will need to be supported by evidence;
 - The failure to claim against the Premier Warranty in time.
73. The Tribunal has no jurisdiction to recompense Mrs Moore for any hardship she has suffered.
74. If the Improvement Notice prompted the Applicant and its Managing Agent to take action then it has done what it is intended to do. This will not have prejudiced the Leaseholders
75. Secondly, the Respondents had said that a full consultation would have enabled Leaseholders to nominate contractors and make observations about the works. In determining whether there is prejudice, the question for the Respondents is what would they have done if the consultation, of which they were deprived, had taken place, in this case, either in 2024 or 2025, and how would it have changed matters. The Respondents replied that they would have investigated whether there were cheaper contractors to carry out the work but were not able to adduce any evidence to show who they would have nominated or provide and how this would have affected the work or its cost.

76. The question for the Tribunal is whether Respondents suffered any prejudice due to the failure to carry out a full or partial consultation procedure under section 20. The Respondents submitted that there had been ample time for the consultation to take place because the ingress of water was reported by the Leaseholder of Flat 17 in late 2023 or early 2024 but were not able to say how having the consultation would have changed the need for the work to be done, its extent or its cost or how the procedure would have expedited the work. It was appreciated that the Respondents saw the instructing of the contractor as a *fait accompli* and did not seek alternative quotations. Nevertheless, such evidence is required if a party considers that work could have been done better, more cheaply or with a better guarantee etc.
77. The Tribunal found that the failure to have a consultation did not cause the Respondents any real prejudice in respect of the work. No evidence was adduced to show that the failure to have a consultation would have affected the requirement for the work under the Lease, its necessity, urgency, extent, or cost.
78. The Tribunal is satisfied that it is reasonable to dispense with compliance with all the consultation requirements of Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) that the Applicant has not carried out with all the Leaseholders.
79. As stated earlier, this is not an application to determine the reasonableness of the works or their cost. If, when the service charge demands in respect of these works are sent out, a leaseholder objects to the reasonableness of the cost or standard of work, and the matter cannot be resolved between the landlord and the tenant, an application can be made by either party to the tribunal under section 27A of the Act.
80. The Applicant shall serve a copy of the Tribunal's decision on dispensation, together with the relevant appeal rights attached, to all Leaseholders.

Judge JR Morris

Annex 1 – Right 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.

Annex 2 – The Law

1. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.
2. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations and are summarised as being in 4 stages as follows:

A Notice of Intention to carry out qualifying works must be served on all the tenants. The Notice must describe the works and give an opportunity for tenants to view the schedule of works to be carried out and invite observations to be made and the nomination of contractors with a time limit for responding of no less than 30 days. (Referred to in the 2003 Regulations as the “relevant period” and defined in Regulation 2.)

Estimates must be obtained from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

A Notice of the Landlord’s Proposals must be served on all tenants to whom an opportunity is given to view the estimates for the works to be carried out. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. (Also referred to as the “relevant period” and defined in Regulation 2.) This is for tenants to check that the works to be carried out are permitted under the Lease, conform to the schedule of works, are appropriately guaranteed, are likely to be best value (not necessarily the cheapest) and so on.

A Notice of Works must be given if the contractor to be employed is **not** a nominated contractor or is not the lowest estimate submitted. The Landlord must

within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract and, where the tenants made observations, to summarise those observations and set out the Landlord's response to them.

3. Section 20ZA allows a Landlord to seek dispensation from these requirements, 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.
 - (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
if it is an agreement of a description prescribed by the regulations, or in any circumstances so prescribed.
 - (4) to (7)...

nFrom the Tribunal's knowledge and experience if the roof/balcony floor membrane required replacing the structural work would have been the same whether it was replaced during 2024 or 2025 and that would not have been changed by the consultationot relevant to this application.