



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

Case reference : **HAV/00HQ/LDC/2025/0607**

**Landlord
/Applicant** : **Scafell Securities Limited**

Property : **Pine Grange, Bath Road, Bournemouth,
BH1 2PF**

Representative : **Mr Robert Bowker, Counsel**

**Tenants/
Respondents** : **The Lessees of Pine Grange as set out on
the attached schedule**

Representatives : **Mr Ian Beeching for himself and the
objectors shown on the attached
schedule; the other respondents 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 A Crawford MRICS**

Date of Hearing : **1 September 2025**

Date of Decision : **10 December 2025**

DECISION

Decision

1. Dispensation from the consultation requirements in respect of costs incurred with boiler replacement at Pine Grange is **GRANTED UNCONDITIONALLY**. The relevant invoices are from Azure Plumbing and Heating (UK) Limited dated 8 December 2024 and 23 February 2025 in the respective sums of £100,850.40 and £89,280.00.
2. As announced at the hearing, the two commercial tenants are removed as respondents as they do not have the benefit of section 20 of the Landlord and Tenant Act 1985 (“the Act”) which confers rights solely on residential occupiers. They are shown by strike-through on the attached schedules of respondents and (in one case) objectors.

Reasons

Background

1. Pine Grange is an eight storey block of flats in central Bournemouth constructed in the 1930s. It comprises 97 flats and two office suites. There is surface and underground car parking. The flats and office suites are provided with heating and hot water from communal gas boilers in the basement.
2. The application was for dispensation from full compliance with consultation requirements under section 20 of the Landlord and Tenant Act 1985. Stage 1 notices had been served. The relevant works were replacement of the communal gas boilers.

The hearing

3. Mr Robert Bowker, Counsel, represented the applicant. Mr Beeching represented those objectors shown on the attached schedule of objectors, where notices of representation have been provided (see below). The Tribunal received a hearing bundle of 224 pages together with an applicants’ authorities bundle of 123 pages.

Directions

4. Directions were issued on 1 April 2025. The matter was set down for determination on the papers initially, but a hearing was subsequently directed. Further directions were issued on 27 June 2025. These required a single representative to act for the objectors, provided signed authorities had been given authorising the representative. The further directions included a schedule of objectors.

Procedural matters

5. The following matters arose. The Tribunal pointed out that the protection conferred by section 20 of the Act applied only to residential tenants and not commercial occupiers in mixed use buildings. It therefore directed that the two commercial occupiers should be removed as parties.
6. Although Mr Ian Beeching, a commercial occupier, also acted as spokesperson for the objectors' group, this did not affect his ability to continue acting. However, the further directions and Tribunal rules require a party wishing to be represented to provide a signed notice of representation, or verbal authority at a hearing. At the hearing, such authorities were identified only in relation to Mr Ian Francis and Ms Deborah Foreman. However, the Tribunal has subsequently seen signed authorities from several other leaseholders as listed on the attached schedule. It therefore treats Mr Beeching as having represented all those individuals. Further, it has fully considered the "group statement" on behalf of all objectors (see below).
7. Thirdly Mr Beeching sought to call a witness from the managing agent, House & Co to give evidence at the hearing. No witness from House & Co had served a witness statement. In these circumstances, as House & Co represent the applicant, Mr Beeching should have served a witness summons on the relevant witness in accordance with rule 20 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (see Appendix below), and met the other conditions of rule 20. As this had not been followed the Tribunal refused to allow Mr Beeching to call any such witness.

The Landlords/Applicants' Case

8. The applicant's case was that section 20 notice was served in September 2023 as the boilers required replacement. This followed a failure of one of the four boilers. In September 2024 two further boilers failed. As the lease required the applicant to provide heating and hot water from 1 October 2024, temporary plant was installed. At the time of the application, the applicant was working towards a like for like boiler replacement. The scope of the application was for replacement of the boilers at the site. The replacement boilers had an approximate cost of £200,000. A more expensive option which was to cost £650,000 was considered but rejected as service charge funds were insufficient. The statutory consultation procedure could not be carried out because of the time of year [at which the boilers failed].
9. Mr Bowker's legal submissions may be summarised as follows. He referred to *Daejan Investments Ltd v Benson* [2013] UKSC 14. The Tribunal has to consider relevant prejudice. There is a factual burden on the tenant to identify some relevant prejudice. The Tribunal must reconstruct what would have happened.
10. With reference to *Aster Communities v Chapman and others* [2021] 4 WLR 74, counsel submitted that the issue was whether the tenant would

have acted differently had the consultation requirements been fully met. In *Aster* the FTT had found that the tenant would have commissioned an expert surveyor's report. Consequently, the FTT decided that the respondents had made out a credible case of relevant prejudice namely that the lessees will be asked to pay for inappropriate works. As a condition of granting dispensation the landlord was required to pay the lessee's costs of the investigation.

11. In *Marshall v Northumberland & Durham Property Trust Ltd*, [2022] UKUT 92(LC) it was held that the question of prejudice was central. The FTT needed to assess prejudice caused by the steps which the respondent had failed to take.
12. In *London Borough of Lambeth v Kelly and others* [2022] UKUT 00290(LC), there was a total failure to comply with the section 20 process. Nevertheless, the Upper Tribunal held that there was no evidence of actual prejudice. It was still incumbent upon the respondent to show some type of loss. Unconditional dispensation was granted.
13. *Holding & Management (Solitaire) Ltd v Leaseholders of Sovereign View* [2023] UKUT 174 (LC) concerned the imposition of a waking watch condition following failure to consult for fire alarm works. It was held that conditions must be relevant and appropriate to the relevant prejudice to the leaseholders. There was no legal obligation to consult in relation to the waking watch and that condition was set aside. The Upper Tribunal also set aside a condition requiring the landlord not to seek to recover its legal costs through the service charge. The Upper Tribunal held that it would not be appropriate in circumstances where it was clearly sensible and in everyone's interest to get the fire alarm system installed. Therefore, the application was not a petition for an indulgence but a matter of practical importance for all concerned.
14. In *RM Residential Ltd v Westacre Estates Ltd* [2024] UKUT 56 (LC) which concerned structural disrepair, it was held that urgency was unnecessary in order for the Tribunal to grant dispensation.
15. Mr Bowker submitted that The Tribunal should focus on evidence as to what the lessees would have done had the consultation been fully carried out. This was referenced in the directions of 27 June 2025. There was no evidence of prejudice.
16. With reference to the Pine Grange Group Statement, the absence of the stage 2 notice, or any other notice, or any breach of duty is not evidence of prejudice. The conduct of the managing agents is not evidence of prejudice and due to the timescales involved there was no relevant prejudice.
17. Mr Bowker also referred to the applicant's response to the respondent's group statement. On 5 September 2023 a stage 1 notice was served as confirmed to have been received in meeting minutes dated 15 September 2023 from a leaseholder meeting. On 1 October 2024 House & Son sent a letter to the lessees. This stated that the landlord continued to have issues

with the current boilers and had instructed their replacement on a like for like basis. This would include a manufacturer guarantee of 5 years, and the anticipated lifespan was 15 to 20 years. There would be a need for temporary plant. On 16 October 2024 a further letter was sent updating the lessees. This was followed by further letters on 15 November and 9 December 2024. In August 2024 an estimate of £335,000 was given by Mabey Francis. Azure completed such works for £190,130 including VAT. These Invoices were included in the bundle. The project had been completed at substantially less cost than initially estimated. Further, 13 lessees had sent statements in support of the works. Mr Bowker confirmed that temporary works were not included in the scope of this application.

18. Mr Bowker called Mr Gary Young of Azure Plumbing and Heating (UK) Ltd. He had provided a witness statement verified by statement of truth. His evidence may be summarised as follows. The original boilers were installed in 2001 with an estimated life of 15 to 20 years. The system comprises four very large combination boilers. Six years ago, a boiler failed. There were initial discussions with the landlord's heating design consultants, [Mabey Francis] contemplating complete redesign of the boiler system. However, three working boilers were sufficient in the absence of extreme demand. In late 2022 a second boiler failed. Additional hot water cylinders were installed to mitigate the effect of this.
19. In early summer 2024 the landlord's heating design consultant prepared a system estimated at £650,000. This was considered non-feasible and a redesigned version was considered at a cost £450,000. These alternative systems would require a full re-design of the flue and necessitate working in areas containing asbestos. In August 2020 the third boiler failed. Mr Young's company then established that ACV Boilers could provide replacement boiler parts comprising chassis casing and housings to refurbish the existing plant. These parts would carry a guarantee. A decision was therefore made to immediately order the necessary parts to avoid the risk of a complete breakdown in the heating and hot water system during winter.
20. In cross examination by Mr Beeching, Mr Young said that the temporary hot water cylinders were no longer in use because the boilers were combi boilers. The original specification [£650,000] was not feasible based on information from House & Son. The replacement boiler parts were in kit form. This was the approach adopted by Southampton University when its boilers required replacement. In re-examination Mr Young said that the lifespan was 15 to 20 years, but every boiler is different, and these are commercial boilers operating 365 days a year, 24 hours a day.
21. In conclusion Mr Bowker submitted that there was no evidence from leaseholders, no witness statements, no oral witnesses and a serious gap in evidence. Prejudice could not be inferred. This was not a case in which conditional dispensation should be granted.

The Objectors' case

22. The Objectors' case was set out in a "group statement" dated 27 May 2025, which may be summarised as follows. They opposed the grant of dispensation. They acknowledged that in early September 2023 they received by post the stage 1 notice dated 5 September 2023. This stated that the works to be carried out were "replacement of boilers and installation of water heaters". No further notices were sent under section 20 and therefore House & Son are in breach of their duty as managing agent. The respondents submitted that the managing agent had been disingenuous by disregarding the legal obligations to serve stage 2 notices. They referred to the email of 1 October 2024 sent by Ms Glenda Sampson at House & Co (see above).
23. The objectors had not been aware that there was an issue with the boilers. The email did not make reference to the likely cost of replacement. There was no further information about the lifespan of the replacement boilers. The objectors complained that there had been a gap in information for some 13 months since the managing agent's previous communication. The email implied a degree of panic and that when fired up for the 1st time on 1 October 2024 3 boilers failed, which cannot be correct.
24. The reason given for the application of dispensation being the time of year was not credible. The Group Statement also referred to an email of Mr Jack Butterworth dated 10 April 2025. That referred to the third boiler failing in August 2024 and that the agents therefore had no alternative but to press on straightaway with new replacement boilers, otherwise the building would have been without hot water and central heating during the winter of 2024/2025; accordingly, the second part of the section 20 consultation could not be complied with.
25. Also, the reference to replacement of boilers and installation of water heaters implied that the existing boilers and water heaters would be removed and new equipment the same or similar specification installed. However, the applicant stated that it was working on a new design for more efficient heating and hot water systems and if so, the objectors complained that they had not been informed. The lessees had never been given an opportunity to assess and consider the scheme which involved the higher expenditure of £650,000 to install a more efficient heating and hot water system. The applicant's submission implies that there might have been several designs or different proposals. The leaseholders had not been kept informed and this caused confusion and distrust. Over a period of 13 months prior to the email of 1 October 2024 the managing agents had not mentioned that the approximate cost would be £200,000. There had been poor communication from the managing agents to the lessees. The managing agent had been negligent in their duty towards leaseholders. The applicant by seeking dispensation had attempted to circumvent an Act of Parliament.
26. The replacement cost should be limited to £250 for each contributing leaseholder. Costs in excess of that should be borne by the landlord and managing agent.

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. As referred to above, 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.

Discussion

28. The Tribunal found Mr Young to be a credible witness and accepts his evidence. The Tribunal in general accepts counsel's legal submissions. However, it does not consider that the circumstances set out in *Holding & Management (Solitaire) Limited* which concerned dispensation for a fire alarm system to be directly comparable to boiler replacement. It finds that the applicant here is seeking an indulgence from the Tribunal.

29. It agrees that identifying prejudice suffered from the Objectors is crucial. It finds that had the stage 2 notices and other notices been served, the outcome would have been the same. None of the objectors instructed their own heating engineers to examine and investigate the system or provide evidence of alternative solutions to that proposed by the applicant. The only other specifications considered by any party were for works costing £650,000 and £450,000. These were both considered by the landlord. They were for much larger projects for which funds were not available, certainly for the higher amount¹. Furthermore, in *Daejan v Benson* Lord Nueberger stated

“the [consultation] requirements leave untouched the fact that it is the landlord who decides what works need to be done, when they are to be done, who they are to be done by, and what amount is to be paid for them.” (para 46)

30. The scale of the work is therefore a matter for the landlord not the tenants. The absence of a larger project does not therefore demonstrate prejudice to the Objectors.
31. The Objectors did not call any witness evidence. Therefore, there was no evidence of the Objectors suffering prejudice as a result of the breaches of the consultation requirements.
32. The Tribunal also finds, for the same reasons, that the grant of dispensation should be unconditional.

Conclusion

33. The Tribunal grants dispensation unconditionally.
34. **However, this decision has no bearing on the question of the reasonableness of costs incurred or their payability. The**

¹ The Tribunal did not hear evidence on whether funds for the £450,000 specification were available.

Tribunal makes no findings in this decision in relation to those matters.

10 December 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.

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.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Summoning of witnesses and orders to answer questions or produce documents

20.—(1) On the application of a party or on its own initiative, the Tribunal may—

(a) by summons require any person to attend as a witness at a hearing at the time and place specified in the summons; or

(b) order any person to answer any questions or produce any documents in that person's possession or control which relate to any issue in the proceedings.

(2) A summons under paragraph (1)(a) must—

(a) give the person required to attend not less than 14 days' notice of the hearing or such shorter period as the Tribunal may direct; and

(b) where the person is not a party, make provision for the person's necessary expenses of attendance to be paid, and state who is to pay them.

(3) No person may be compelled to give any evidence or produce any document that the person could not be compelled to give or produce on a trial of an action in a court of law.

(4) A summons or order under this rule must—

(a) state that the person on whom the requirement is imposed may apply to the Tribunal to vary or set aside the summons or order, if they have not had an opportunity to object to it; and

(b) state the consequences of failure to comply with the summons or order.

SCHEDULE OF RESPONDENTS	Case Reference: HAV/00HQ/LDC/2025/0607/LC
Mr I C Beeching	Basement Offices
Mrs P E Hodson	A1
Mr C J W Chalkly-Maber & Mr E P Harvey	A2-A5
Mr P F E Amat	A6
(Executors of) Mrs J Williams	A7
Mr R R Punwani	A8
Mrs S Turkoz	A9
Mr & Mrs Spinks	A9
Mr K Mroczkowski & Mrs J Jankowska	A10
Business Manager SW1 Limited	A11
Ms L Xu	A12
Ms H F Schenker	A14
Mr M Celmer & Ms J Kossova	A15
Mrs A Zinkin	B1
Mr A Marsden	B2
Mr G J Gimpel	B3
Mr S A & Mrs J A Thomson	B4
Bailey Holdings Ltd	B5
Mr N Collins	B6
Mr D B & Miss S M Rawlinson	B7
Mrs A E Caunter	B8
Mr & Mrs JM Hill	B9
Mr M P Jaggar	B10
Mrs J E Landen	B11
Ms L M Nott	B12
Mr & Mrs L D Dwornik	B14
Mr & Mrs A E Flak	B15
Mrs T Toms	C1
Ms L Xu	C2
Somaiya Investments Limited	C3
Ms L Stewart	C4
Mr K Sutherland POA for Mrs J Sutherland	C5
Mr I D Sutherland (Executors of)	C6
Mr M Buckle & Mrs P Bu	C7
Mr I J Saunders	C8
Messrs. J, M & P Daly	C9
Miss L V Llewellyn	C10
Mr D R Long	C11
Mr J A Hill	C12
Mr M J Hyman	C14
Mrs J H Lipsith	C15
Mr & Mrs J M Hill	D1

Ms E Zimina	D2
Mr & Mrs T R Rogers	D3
Mr L D Dwornik & Mr T F Siejka	D4
Mr T F Siejka & Mrs A Siejka	D5
Miss L Strickland	D6
Mr & Mrs R Ryan	D7
Mr & Mrs H B Lipsith	D8
Messrs. S S & A K Karacinski	D9, E3
The Greenheys Company Ltd	D10
Mrs J S Massey	D11
Miss E Holdgate	D12
Mr & Mrs I Connolly	D14
Mr T Sangiveeraj	D15
Mrs R V Jackson	E1
Miss A K Turton	E2
Mrs L Lines	E4
Mrs C J Fall	E5
Mr E P Taylor	E6
New Style Living Ltd	E7
Mr P N J Douch	E8
Mr A Gubbels	E9
Ms M A Loton	E10
Miss S S Arora	E11
Mrs M Ellis	E12
Mr T M Boyce	E14
Mr A J Boyd	E15
Mrs R V Jackson	F1
Mr McRuvie & Ms Thomas	F2
Mr Bozhkov	F3, G3, G4
Mr L D Dwornik & Ms A T Rajska	F4
Mr R G Hancock	F5
LOA Morris Properties Limited	F6
Mr & Mrs A P G Richards	F7
Miss B Cheeseman & Miss F Cole	F8
Mr A J Deeble	F9
Ms P P Battistotti	F10
Mrs J E Landen	F11
Business Manager SW2 Limited	F12
Mr R Wilson & Ms C Wright	F14
Mr P Crompton	F15
Miss M Goring	G1
Mrs J E Landen	G2
Mr Bozhkov & Mrs Stoyanova-Bozhkova	G3
Mr I Francis	G5
Orbis Developments	G6
Mrs E M MacKay	G7
Mr I R Hawkridge	G8
Mrs C J Fall	G9
Mr C G Hooper	G10

Miss D E Foreman	G11
Ms E J Thurston	G12
Mrs L A Connolly	G14
Miss E A Berman	G15
Ms A M Oag	Penthouse
Mrs S A Quarchioni	Garden Flat
Scafell Securities Ltd c/o Harwood Hulton Limited	Garages

Objectors to the Application as of 1st September 2025 represented by Mr Beeching

Flat Name(s) of Lessee(s)

No

B3 Emma Gimple
B10 Miles Jaggar
C10 Lucy Llewellyn
C14 Maurice Hyman
D3 T R Rogers
D11 Jacqueline Massey
E7 Lewis Keating
E14 Thomas Boyce
F3 Bozhidar Todorov Bozhkov
G3 Svetla Ivanova Stoyanova-Bozhkova
G4 Bozhidar Todorov Bozhkov
G5 Ian Francis
G8 Ian Hawridge
G10 Christopher and Gabriela Hooper
G11 Deborah Foreman
Garden — Ian Beeching
Offices

Unrepresented Objector

C4 Lindsay Stewart