



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

Case Reference : **CAM/22UH/LDC/2025/0637**

HMCTS : **Paper**

Property : **Flats 100-103, Darby Drive, Waltham Abbey
EN9 1EX**

**Applicant
Representative
(Managing Agent)** : **Daniel Robinson & Sons Limited
Warwick Estates**

Respondents : **All Leaseholders of Dwellings at the Property**

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 : **20 May 2025**
Date of Directions : **13 June 2025**
Date of Decision : **31 July 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) that the Applicant has not carried out.

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 25 April 2025 the Applicant applied for dispensation from the statutory consultation requirements in respect of qualifying works which are to redecorate water-stained ceilings and walls and lay new carpet due to water damage to the previous carpet in Flat 101 resulting from water ingress from a roof leak at the Property.
4. The Property is a development of 4 purpose built residential flats over commercial premises. The building is of brick under a flat roof.
5. Directions were issued on 13 June 2025 which stated that the Application would be determined on or after 25 July 2025 based on written representations and without an inspection, unless either party made a request by 4 July 2025 for an oral hearing. No request was received.
6. The Tribunal initially queried the works with the Applicant to say that although the Tribunal cannot advise, under normal lease provisions, such costs would not be recoverable through the service charge and the Applicant may wish to take their own independent legal advice. The Applicant confirmed they wished to proceed with the dispensation application, so directions were given as requested, but these proceedings will not decide whether any service charge is payable for the relevant works and the parties may wish to take independent legal advice on whether any service charge for the relevant works would be payable under the terms of the Lease.
7. The Directions required the Applicant's Representative to send by 23 June 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; andTo file with the Tribunal confirming that this had been done and stating the date on which this was done.

8. On 23 June 2025 the Applicant confirmed that this Direction had been carried out.
9. If the Respondent Leaseholders wished to oppose the Application the Directions required them to do so via an attached reply form by 4 July 2025. On 3 July 2025 Mr Vishal Kholi and Ms Risha Gandecha, Leaseholders of 100 Derby Drive, objected to the dispensation and provided a statement of case which is set out below. No other objections or representations were received from the Respondent Leaseholders.

The Law

10. 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.
11. 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.
12. 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.
13. The terms “tenants” “lessees” and “leaseholders” are synonymous as are “landlord” and “lessor.”

Submissions & Evidence

Applicant’s Case

14. The Applicant provided a bundle to the Tribunal which included:
 - A copy of the Lease, the covenants of which are understood to be common to all the Leases,
 - Application to the Tribunal,
 - Tribunal Directions and the Applicant’s confirmation regarding compliance with Directions,
 - Quotations.These together set out the Applicant’s case.

Lease

15. The Lease provided was between the original Landlord and the original Leaseholder (assignments of both Lease and reversion having since taken place) for a term of 125 years from 1 January 2006. The relevant covenants of the Lease are as follows:
- a) Clause 1
“Service Charge” means the reasonable expenditure properly incurred by the Landlord in providing the services for the tenants of the Flats hereinafter set out and as more particularly defined or referred to in the Fourth Schedule
 - b) Clause 7
The Landlord covenants
7.4 To observe and perform the covenants set out in the Fourth Schedule
 - c) Clause 9
9.1 The expression Service Charge shall include all reasonable expenses properly incurred by the Landlord of and incidental to:
 - 9.1.1 Observing and performing the provisions of the Fourth Schedule
 - d) Clause 13.2
The Tenant covenants with the Landlord and as separate covenants severally with the tenants of the other Flats on the Estate to pay on demand...the following amounts:
On the Service Charge Payments dates such sum as is demanded on account of the Service Charge
 - e) The Second Schedule
The Main Structures
The exterior walls foundations roofs ...and the internal load bearing walls of all Flats and the floor joists beams and girders but excluding therefrom those parts of the interior Buildings which consist of separate Flats
 - f) The Third Schedule
Part 1 The Premises
Each Flat shall comprise the tiling and floor coverings ...plaster on the ceilings and walls
 - g) The Fourth Schedule
Service Charge covenants by the Landlord
4.1 To keep the Main Structures properly supported

- 4.2 To keep the Main Structures and the Common Parts properly repaired renewed reconstructed maintained decorated and cleansed

Application Form

16. The Applicant stated that the qualifying works for which the dispensation application is being made is for remediation of damage to the inside of Flat 101 caused by water ingress from a tear in the fabric of the roof covering. The Applicant said that although the leak occurred in the Autumn of 2022, it was not identified for several months because there were problems in gaining access to Flat 100 to investigate where the leak was coming from. Once the source of the leak was identified the roof works were then carried out in March 2023.
17. An insurance claim for these works was rejected on the grounds of: "Damage [i.e. the tear to the roof fabric which caused the leak] to the property caused by or consisting of gradual deterioration or wear and tear."
18. The leak also affected Flat 101 but the Applicant was not aware of this until very late in 2022 because the letting agents of the Flat failed to inspect the inside regularly. Due to this lack of information an insurance claim for damage to Flat 101 was not made until the Summer of 2023, which was also rejected because the insurers were not notified of the leak within 30 days.
19. Therefore, all the works required are to be funded by the service charge.
20. The Applicant said that the Application for Dispensation was being made because the work on Flat 101 had to be carried out urgently without consultation due to the conditions within the Flat being poor.

Tribunal Directions

21. The Directions were complied with as stated above.

Quotations

22. The Applicant provided a quotation dated 28 March 2025 for replacing the water damaged carpet from Lockwood Flooring and Maintenance
To supply and fit:
New grey carpet to living and dining area
Replace water damaged underlay
Replace grippers
Vinyl flooring to kitchen, incorporating chrome dividing bar between kitchen and living/dining area.
Price also includes: Removal of waste and door bars throughout
Total Price £1,800.00

23. The Applicant provided a quotation dated 28 March 2025 from D B Spurdens Decorators and Plasterers
Works to be carried out to water damaged kitchen and dining room:
Sheet over kitchen worktops and units to protect.
Sheet over floor to protect.
Take down coving where necessary and dispose.
Take down and dispose of water damaged ceiling where necessary
Supply and instal new fire safety plaster boarding.
Plaster over new boarding.
Overhaul sections of walls clean all mould.
Paint stained sections of ceilings with damp sealant only where necessary.
Paint stained sections of walls with damp sealant only where necessary.
Fill and sand down and prepare ceilings and walls only where necessary.
Paint ceilings with 2x coats of white emulsion paint only where necessary.
Paint walls with 2x coats of white emulsion paint only where necessary.
Total Price £3,600.00
24. There being 4 Flats the total cost of £5,400.00 results in the unit charge being more than £250.00. Therefore, the consultation procedure under section 20 of the Landlord and Tenant Act 1985 was required or dispensation granted for the full cost to be met by the service charge.

Respondent's Case

25. Mr Vishal Kholi and Ms Risha Gandecha, Leaseholders of 100 objected to the granting of dispensation for the work to Flat 101. Mr Vishal Kholi provided a statement of case as follows:
1. Initial Leak Report and Insurance Obligation
26. Mr Kohli said that the water leak was first reported to the Managing Agent in August 2020. According to the insurance policy governing the flat, this incident should have been reported to the insurer at that time. He said it is the Managing Agent's responsibility to understand the terms of the building's insurance policy and to ensure timely compliance with its requirements. He said as leaseholders, they rely on the Managing Agent to act competently and promptly in such matters. He said he had previously asked for clarification from the Managing Agent about increased insurance costs, but these requests were ignored or went unanswered.
2. Delay in Inspection and Repairs
27. He said that despite being informed of the leak in August 2020, the Managing Agent failed to act promptly and an inspection of the roof did not take place until December 2022 which was over two years later.

28. When access was requested for the inspection, Mr Kholi said that they promptly informed the tenants occupying the Flat of the date, and they provided access as instructed. He said that it was not until March 2023 that they were told roof works would begin on 3rd April 2023 which was six months after the initial inspection. The Managing Agent attributed the delay to their decision to address a pigeon issue at the same time, rather than prioritising the essential roof repair work.

3. Inadequate Remedial Works

29. Mr Kholi said that contractors were instructed by the Managing Agent to remediate the damage in the Flat, number 100, caused by the leak. However, the work was of such poor quality that they had it redone at their own expense.
30. Mr Kholi attached to the statement email chains with the Managing Agent as evidence of the timeline of events and he and his partner's attempts to follow up the matter.
31. A resumé of these is as follows:

The leak was reported to the Managing Agent in August 2020 and the leak had caused damage to their flat, Flat 100. A contractor was engaged to repair the roof and it was mentioned that a building insurance claim might be made. Mr Kholi and Ms Gandecha were asked to obtain 2 quotations for redecorating the damage to their flat with a view to an insurance claim being made for redecoration.

On 15 September 2020 Mr Kholi and Ms Gandecha reported the leak had returned and was still present on 3 November 2020.

On 2 November 2022 Mr Kholi and Ms Gandecha reported that some redecoration work had been carried out in their flat by a contractor engaged by the Managing Agents but it was unsatisfactory. It appeared the leak had not stopped.

On 14 November 2022 the Managing Agent said that the roof would be repaired at the same time as the pigeon spikes. In addition, a quotation for £560.00 had been obtained by the Managing Agent for further redecoration work to Flat 100.

On 29 December 2022, following several emails to arrange access to Flat 100 to view the area from which the leak was coming, the roofing contractors attended on 29 December 2022. A quotation for the roof repair was received in March 2023 and the work was due to commence in April.

32. It was submitted that the Dispensation Application should be rejected due to the Managing Agent's failure to act with reasonable care, diligence, and competence in managing the property.

Findings

33. The Tribunal finds from the Lease that the Applicant is obliged to maintain the roof of the Property and that this cost is chargeable to the Leaseholders through the Service Charge.
34. The Tribunal also found that damage caused to Flats because of the roof covering failing, which according to the insurance company, was due to fair wear and tear, would be part of the roof remediation works and chargeable to the Service Charge.
35. The Tribunal considered each of the objections raised by Mr Kholi in the statement of case he provided.

1. Initial Leak Report and Insurance Obligation

36. The Tribunal found that the time between the reporting of the leak in 2022 and the eventual repair in 2023 was protracted. However, this is not a reason to refuse to grant dispensation for work related to the leak, namely redecorating and recarpeting Flat 101. The work was necessary.
37. The reason for the insurance company's refusal to accept the claim for repairing the roof to remedy the leak was that the damage to the roof was due to fair wear and tear. It was not because they were not informed of the leak promptly.
38. The reason for the insurance company's refusal to accept the claim for redecorating and recarpeting Flat 101 was because the damage was not reported promptly. This is not a reason for refusing dispensation from the consultation procedure.
39. However, the Tribunal found that the failure to have the work carried out under an insurance claim and the apparent failure of the Leaseholder of Flat 101 to report the damage to that flat to the Managing Agent may make it unreasonable to attribute all the cost of that work to the Service Charge. Whether for these reasons it is unreasonable to attribute the cost to the Service Charge is a matter for determination in respect of an application under section 27A of the Landlord and Tenant Act 1985; not an application for dispensation.

2. Delay in Inspection and Repairs

40. As stated above, the Tribunal found that the time between the reporting of the leak in 2022 and the eventual investigation and repair in 2023 was protracted but this is not a reason to refuse to grant dispensation to the consultation procedure for work related to the leak, namely redecorating and recarpeting Flat 101. The work was necessary.

41. Whether the work was made unreasonably more expensive by delays in identifying and repairing the leak or by the Leaseholder of Flat 101 failing to report the damage to that flat promptly, is a matter for determination in respect of an application under section 27A of the Landlord and Tenant Act 1985 not an application for dispensation from the consultation procedure.

3. Inadequate Remedial Works

42. If the Leaseholders consider the cost of the redecoration to Flat 100 to be unreasonable because it was not of a reasonable standard it is a matter for determination in respect of an application under section 27A of the Landlord and Tenant Act 1985 not an application for dispensation.
43. The Tribunal found that the redecorating and recarpeting of Flat 101 is related to the roof leak, the cost of which is chargeable to the Service Charge. The cost of this work is above the threshold of £250.00 per unit which requires the Landlord to undertake the consultation procedure under section 20 of the Landlord and Tenant Act 1985 and in respect of which the Landlord seeks dispensation.
44. The Tribunal found that the Leaseholders have, in the course of the application procedure for dispensation had the opportunity to show whether they have suffered any relevant prejudice by the failure to carry out the consultation procedure. Although the Tribunal has found that Mr Kholi and Ms Gandecha have not shown that they have suffered relevant prejudice by the failure to carry out the consultation procedure, nevertheless, they have raised some important issues regarding the reasonableness of the cost of the works to the Service Charge. If these issues cannot be resolved between the Applicant and the Leaseholder then an application under section 27A of the Landlord and Tenant Act 1985 may be made for a determination of the reasonableness of the cost and standard of the works.

Determination

45. 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.
46. 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.
 47. The Leaseholders should note that 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, any Leaseholder objects to the cost or the reasonableness of the work or the way it was undertaken, an application can be made to this Tribunal under section 27A of the Act. A landlord can also seek a determination as to the reasonableness of the cost of the work.
 48. 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)... not relevant to this application.