FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**HAV/00MW/LAC/2025/0604** **HAV/00MW/LDC/2025/0756**
Property	**:**	**48A High Street, Newport, Isle of Wight, PO30 1SE**
Applicant	**:**	**Solent Property Investment Ltd**
Representative	**:**	**None**
Respondent	**:**	**Finematch Ltd**
Representative	**:**	**Sharon Kuszer**
Type of application	**:**	**Determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985 And subsequent section 20ZA application made by Finematch Ltd**
Tribunal members	**:**	**Chair R Waterhouse FRICS** **C Davies FRICS** **T Wong**
Venue	**:**	**Havant Justice Centre, Elmleigh Road , Havant, Portsmouth PO9 2AL**
Date of hearing/ decision	**:**	**29 October 2025 / reconvene on papers 23 February 2026/decision 5 March 2026.**

DECISION

Decisions of the tribunal

(1) The tribunal determines that dispensation under section 20ZA will be granted in respect of the "works".

(2) The tribunal determines that the following total sum is payable in respect of the "works" £5298.00, part of which may have been paid.

(3) The tribunal does make an order under section 20C of the Landlord and Tenant Act 1985 nor the Commonhold and Leasehold Reform Act 2002 Paragraph 5A of Schedule 11 that the costs of these proceedings cannot be passed to the leaseholder either by way of service charge or by way of an administrative charge.

Background

1. The Applicant made an application for determination of liability to pay a service charge which was received on 3 December 2024. The amount said to be in contention was £5097.68.

2. The application relates to costs of qualifying works undertaken at the property, for which the Applicant asserts, no section 20 Landlord and Tenant Act 1985 consultation was undertaken. The challenge also includes fines totalling £1000.00 which relate to "trespass onto a roof" of the property in question. These it was understood at the hearing were not being pursued by the Respondent and had been withdrawn. The tribunal therefore does not make any findings on this matter.

3. The Applicant further seeks orders pursuant to Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

4. Directions were issued on 3 April 2025 listing the application for a case management and dispute resolution hearing on 6 June 2025.

5. At the case management and dispute resolution hearing of 6 June 2025, the Respondent confirmed to the tribunal that she had not undertaken the major works consultation properly but whilst she wished to apply for dispensation from the process, she had not as at the date of the hearing done so. Further directions were issued on 6 June 2025.

6. The Respondent also confirmed that the amount they wished to recover is found within their statement at [109] it states;

   Two thirds of the bill for £3072 (exhibit 6) £2048

Two thirds of the surveyor's bill (exhibit 15) £675

Two/thirds of repair work demanded by council £4200 being £2800

The total is £5298.

7. The Applicant asserted that she had not been provided with any quotes or schedule of works. She stated that certain of the works related to a flat roof and further asserted that this roof belonged to an adjacent property, not theirs. She understood that the local council had become involved with certain works undertaken at the property, but she did not know what had been done.

Chronology

8. The tribunal from the parties' submissions sets out a chronology of the events

Date	Event
22 April 2022	Leaseholder notified the Freeholder that urgent works were required to the render on the front elevation. A contractor's quote was supplied and a request for section 20 consultation made [5]
n/k	Council issued an enforcement notice requiring action on front elevation [5]
12 September 2024	Freeholder informed leaseholder that works to flat roof would commence following day at a cost of £12500 [5]
17 September 2024	Freeholder issued invoice for "works allegedly completed" for the flat roof. [5] Invoice £2547.99 [7] this includes £500" trespass", so net is £2047.99 [84]
19 September 2024	Scaffolding was erected to front elevation according to applicant's submission "without notice" [5]
13 October 2024	Invoices 2 received for roof works included £7 late payment fee £2,561.99
28 October 2024	Payment made by leaseholder for window painting under separate arrangement with contractor direct £2500
31 October 2024	Invoice 3 received £4647.73 this appears made up on original cost for flat roof of £2047.99 plus £2599.74 ("two thirds of costs of repair demanded by the council" [92]
3 November 2024	Invoice 4 received £5097.68 including "2/3 surveyors fee" This is a combination of £ 2047.99 for the flat roof, £2599.74 "2/3 council work – rendering) and two thirds of the surveyor's fee £449.95 [96]
28 April 2025	[101] Invoice 5 received £5298.00 - this is made up of "contribution to roof repair lower figure £3072 two thirds proportion £2048.00

	Contribution to surveyor's bill £675.00 two thirds proportion £450.00 Contribution to repair works demanded by council £4200 £2800.00 total £5298.00

9.

Service charge demand -

Date	Amount	Remarks
17 September 2024	**£1547.99**	**Invoice 1 [7]**
13 October 2024	**£2561.99**	**Invoice 2 [8]**
31 October 2024	**£4647.73**	**Invoice 3 [8]**
3 November 2024	**£5097.68**	**Invoice 4 [8]**
28 April 2025	**£5298.00**	**Invoice 5 [8]**

Discussion and analysis

What was the cost of the works?

10. There are various Invoices in the Bundle for various amounts. However, the Respondent in the hearing stated that the amount that was being sought in respect of the works was shown in the Bundle at [109] namely £5298.00. The Respondent stated that in the hearing the amount sought from the leaseholders was £5048.00. This the tribunal understood is after partial payment. The tribunal is concerned with the total amount for the works, whether partial payment has been made or not is not of the tribunal's concern. The tribunal finds that the amount sought for the works was £5298.00.

11. This figure is made up from

Two thirds of the bill for £3072 (exhibit 6) is £2048 invoices at [240 & 270]

Two thirds of the surveyor's bill (exhibit 15) £675 is £450 invoice at [238]

Two/thirds of repair work demanded by council £4200 is £2800 invoice at [240] invoice at [272]

The total of the costs being £7947.00 the leaseholders share at two thirds being £5298. [109]

What were the "works"?

12. The parties agreed that the "works" comprised; scaffolding of the roadside elevation, repair of the render on that elevation and painting. At the rear the works comprised removal of pigeon netting and supporting post from a flat roof and applying sealant to the surface of the flat roof.

13. The works also included the painting of the windows. The painting of the windows was organised and carried out by the Applicant's contractors. The Applicant's contractor made use of the scaffolding. The cost of the painting did not form part of the "works".

Who has responsibility to repair and of what under the lease?

14. The Applicant [61] submits an email dated 29 October 2024 where Caroline Read asserts that the flat roof, the subject of the works, does not form part of 48 High street."

15. The Land Registry plan for the freehold title is found at [113]. This shows a plan at 1:1250 scale of the freehold, the site is edged in red and a building in blue.

16. The Land Registry plan for the leasehold interest first and second floors of 48 High Street is shown as a building edged in red.

17. This title shows, a 250-year lease from 24 June 2019, and the lease is affixed. The lease describes "The Premises" as "the first and second floors of the Building and known as 48 High Street".

18. The lease also defines "The proportion as "two thirds" ".

19. The lease defines "The Building" as "The *Building at and known as 48 High Street, Newport, Isle of Wight PO30 1SE registered at HM Land Registry under Title Numbers IW84287."*

20. The lease plan [127] shows an area edged in red that is on the ground floor that is the stair access to the upper floors, on the first floor plan the area edged in red relates to the building fronting the road, the second-floor plan likewise.

21. The first schedule [128] describes the extent of the demised premises.

22. The sixth schedule, [141] describes *"items falling within the Service Charge "*.

"2. The cleaning lighting repair renewal decoration carpeting and maintenance of the Common Parts and all service conduits now or hereafter to be laid in the Building (other than those exclusively serving any individual flat therein)."

"5 The engagement of the services of surveyors or agents to manage the Building and its curtilage and to collect the rents and to carry out such other duties as may from time to time reasonably be assigned to them by the landlord."

"12 The provision and supply of such other services for the benefit of the Tenant or the other tenants of the Building and the carrying out of such other repairs and improvements works and additions and the defraying of such other costs (including the modernisation or replacement of plant and machinery) as the Landlord shall reasonably consider appropriate or otherwise desirable in the general interests of the tenants or any of them." [143]

23. The Applicant contends that their property the leasehold first and second floor with ground floor access is known as 48a, and so not covered by the lease definition of 48 High street. The Respondent disagrees and says the term "48" covers the whole building.

24. The tribunal considered the issue. It is usual for a building, to be divided into a number of flats. For example, number 13 could be divided into say 4 flats. Each flat is known as a different postal address be it, 13a, 13b, 13c or 13d. The building in general use of English is still number 13 even if the postal addresses differ. The tribunal finds it is so here that although the postal address may be 48A, and the extent of the demise is the first and second floors with ground floor access, the lease is clear that the responsibility for payment of repairs relates to "The Building" which in this case is called 48. The single storey extension which is not part of the demise of number 48A nonetheless forms part of the building. The proportion set as two thirds. The tribunal determines that works carried out as described are proper works for the landlord to carry out under the lease.

Is the quality of the works undertaken reasonable?

25. The Applicant expressed concern that the building is a Listed Building and that the works had been carried out in furtherance of a Notice by the local planning authority.

26. The Applicant was also concerned that the works were carried out with very little notice and therefore no ability to be involved in the specification of the works, materials used or manner of the work.

27. Sharon Kuszer, the Respondent, submitted , in her Statement of Truth [108] she had retained the services of Keith Lumley a surveyor to oversee and in her words "to ensure that the works to the roof were done correctly and the works required by the council were carried out to the council's satisfaction."

28. Exhibit 3 is a letter dated 30 August 2023 from the Council which noted the proposed breach "untidy state/condition of listed building" and included an attachment entitled; "Works Required to Improve the External Appearance of the Building" , this set out in detail the works required in some detail.

29. Exhibit 10 shows the Respondent's surveyor liaising with the Respondent's contractor and sharing the Council's letter advising of the nature of the work and how they expect it to be carried out.

30. Exhibit 14 shows an email from the Mary Mitchell of Isle of Wight Council to the Respondent's surveyor Keith Lumley , dated 8 November 2024 which states " For your information , following a site visit on 6 November 2024, it was evident that the requirements outlined in the s215 Notice have now been complied with."

Where the cost of the works reasonable?

31. The Applicant provided the Respondent with a quote dated 5 February 2024 which showed a quotation of £6610.00 plus vat for the following works;

- Scaffolding access including local authority permits for a 4-week period only
- Vegetation removal
- Entire surfaces sprayed with anti-fungicide
- Gutters and down pipes cleaned ready for black paint where components are metal
- Stabilising solution as found necessary
- Three coats of Dulux weather shield smooth brilliant white to prepared render surfaces
- Window frames and sashes externally only prepared for painting with minor filling as found necessary
- One undercoat and coat gloss in white to windows and frames
- Fascia boards painted one undercoat plus one gloss with gutters & brackets left in situ
- Scaffolding 4 weeks.

32. The tribunal notes that this estimate above includes work for the windows. The work to the windows was done by the Applicants at their direct cost. Also that the quotation excludes the cost of the flat roof works. With these departures from what was actually done and charged

to the leaseholders , the tribunal gives some weight to the quotation but less than if it had been fully on all fours with the work actually done.

33. The tribunal notes from the invoices exhibited the total cost of the works was £ 7947.00 which gives a two thirds apportionment to the leaseholder of £5298.00.

34. The tribunal finds given the extent and nature of the works the cost of £7947.00 is reasonable.

What is the Applicant leaseholders share?

35. The lease defines the leaseholder's proportion as two thirds. The tribunal finds this to be the correct interpretation of the lease and in application to the total building cost of £7947.00 it is £ 5298.00.

Interest payment

36. The Applicant's note in their application the inclusion of interest payments on their service charge. The Respondent in their Statement of Truth [109] states they wish to claim for interest and provides a rate per day. The Respondent do not set out the calculation for their claim for unpaid service charge, and it does not appear within the figure that they sought for the "works". In the absence of any supporting submission the tribunal finds this is not payable.

Adjournment

37. During the closing submission the Respondent Landlord made an oral application for section 20ZA dispensation for the works in the absence of a section 20 consultation process. The tribunal having finished taking evidence on the substantive part of the hearing namely section 27A adjourned pending written submissions on this point and issued directions providing for the exchange of submission on the section 20ZA point and indicated that this subsequent issue would be determined on the papers and the determination would be issued with the determination from the substantive hearing.

Submissions in relation to the section 20 ZA application made by the Respondent.

38. In furtherance of Directions dated 10 December 2025 issued to the parties, the Applicant provided a Bundle of 160 pages

39. The bundle contained the freeholder's application and the leaseholder's response.

40. The tribunal has considered the contents of the Bundle carefully.

41. The leaseholder's position was that the application for dispensation lacked evidence of necessity, urgency, or fair process and introduces contradictions and unsupported claims.

42. The freeholder's position [13/160] is that the works were necessary and there is evidence of the works being undertaken and completed.

The Law

43. Section 20 of the Landlord and Tenant Act 1985 ("the Act") and the related Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the tribunal. An application may be made retrospectively.

44. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the tribunal may make a determination granting such dispensation "if satisfied that it is reasonable to dispense with the requirements".

45. The appropriate approach to be taken by the tribunal in the exercise of its discretion was considered by the Supreme Court in the case of Daejan Investment Limited v Benson et al [2013] UKSC 14.

46. The leading judgment of Lord Neuberger explained that a tribunal should focus on the question of whether the lessee will be or had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were "a means to an end, not an end in themselves".

47. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The tribunal should be sympathetic to the lessee(s).

48. Where the extent, quality and cost of the works were in no way affected by the lessor's failure to comply, Lord Neuberger said as follows: "I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be- i.e. as if the requirements had been complied with."

49. The "main, indeed normally, the sole question", as described by Lord Neuberger, for the tribunal to determine is therefore whether, or not, the lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.

50. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.

51. If dispensation is granted, that may be on terms. That is to say that dispensation is granted but only if the landlord accepts- and fulfils appropriate conditions. Specific reference was made to costs incurred by the lessees, including legal advice about the application made.

52. There have been subsequent decisions of the higher courts and tribunals of assistance in the application of the decision in Daejan but none are relied upon or therefore require specific mention in this Decision.

53. More generally, the tribunal considers that the case authorities demonstrate that the tribunal has a very wide discretion to, if it considers it appropriate, impose whatever terms and conditions are required to meet the justice of the particular case- in Daejan it was said "on such terms as it thinks fit- provided, of course, that any such terms are appropriate in their nature and their effect".

54. The tribunal finds that the Respondent leaeholder will not suffer any prejudice by the failure of the Applicant to follow the full consultation process.

55. The tribunal consequently finds that it is reasonable to dispense with all of the formal consultation requirements in respect of the major works to the building in respect to the works detailed in the application and set out in paragraph 1 of the decision.

Application for an Order under the Landlord and Tenant Act 20C and Commonhold and Leasehold Reform Act paragraph 5A of Schedule 11.

56. The process in terms of identifying the relevant material for the proceedings has not been straight forward, combined with the late submission by the landlord of a section 20ZA application has caused the process to be lengthened. The tribunal therefore makes an order under these two provisions preventing the landlord from demanding costs of these proceedings either by service charge or by administrative charge.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).