FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	HAV/00HE/LDC/2025/0700
Property	**:**	32 High Street, Falmouth, Cornwall, TR11 2AD
Applicant/Landlord	**:**	Mr George Fairhurst
Representative	**:**	None
Respondent/Tenant	**:**	Dana Young Limited
Representative	**:**	Dana Young
Type of Application	**:**	To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
Tribunal Member	**:**	I R Perry FRICS
Date of Decision	**:**	9th March 2026

DECISION

Summary of the Decision

1. **The Applicant is granted retrospective dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act in relation to investigation and repair works to rear of building which were urgently needed. The Tribunal has made no determination on whether the costs of the works are reasonable or payable.**

Background

2. The Applicant seeks retrospective dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the Landlord by Section 20 of the 1985 Act. The application was received on 7th August 2025.

3. The property is described as:-

> "The property is a 3 story [sic] terraced building built on the site of maritime warehousing. It is largely timber construction and probably 150 years old.
> It is built on a steep incline sloping down the street and sloping at the rear down to an old maritime quay and to the sea. Its position is in close proximity with all the other buildings around.
> There is a shop occupying the ground floor and basement accessible from the street with a fire exit to the rear.
> There is a flat that occupies the top two floors currently occupied by 3 lodgers. Access to the flat is only at the rear down a communal partly covered passage."

4. The Respondent has stated that she :-

> "can find no historic reference to it being built on the site of maritime warehousing" or that it there is any evidence of it being a converted warehouse. She said that she believes that "it was constructed as a shop and
> accommodation in around 1862 when the High Street was widened. The street at the font does slope from left to right (as you look at the front) but the
> land at the rear of the building (where the work was carried out) is level. It does not slope down to a maritime quay (or from side to side) and is retained
> by a wall that is approximately 30 to 40 ft high."

5. The Applicant has attached further pages to the Application which set out in detail the works that have taken place, the consultation that has been carried out and a further detailed explanation as to why dispensation is sought. He has also attached photographs, correspondence received from the landlord of the adjacent property, correspondence from the Respondent and copies of two invoices that were sent to the Respondent.

6. Following receipt of the Application the Tribunal issued Directions on 13 November 2025 confirming that it would determine the application

on paper without a hearing unless either party objected within 14 days and which invited a response to the application from the Respondent.

7. The Respondent objected to the Application for dispensation and sent the Tribunal and the Applicant her response dated 27 November 2025 in accordance with paragraph 17 of the Tribunal's Directions, and set out her case as the leaseholder. Subsequently on 1 December 2025 the Respondent sent the Tribunal an amended submission.

8. On 8 January 2026 the Respondent sent an email to the Tribunal stating that she had not received a response from the Applicant and enquired if the Tribunal had received a response which had not been copied to her. Later, on the same day, the Respondent sent a second email to the Tribunal with "supplemental submissions".

9. On 9 January 2026 the Tribunal confirmed to the Respondent that it had not received a reply from the Applicant and informed her that if she wished to make further submissions after the deadline set out in its Directions, she would need to complete a case management application. (That information is contained in the Statement on Tribunal Rules and Procedure and Guidance on PDF bundles which was sent to the parties with the Directions).

10. On 14th January 2026 the Tribunal issued further Directions which included :-

> 18. "As previously directed the only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements.
>
> 19. This application is not about the proposed costs of the works, and whether they are recoverable from the leaseholders as service charges or the possible application or effect of the Building Safety Act 2022.
>
> 20. The leaseholder has the right to make a separate application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 to determine the reasonableness of the costs, and the contribution payable through the service charges.
>
> 21. The Tribunal will review this application and the submissions received and if it decides that it remains suitable for determination on the papers it will make a determination as soon as possible after the 26 January 2026."

Submissions

11. The Applicant describes the works that comprise his application:-

> "These works were carried out Friday 24th January 2025 to Wednesday 26th of March, at the rear of 32 and 33 high street Falmouth. I received an email from the Lady who has the record shop (Mandy Kemp) at 32 on January 21st saying there was damage to the building next door at 33 High Street.
>
> Kemp..... (sic) "They had a collapse of a part of the back wall of their property and now have builders in to repair. Part of the issue is a rotten wooden post which she says is on their side of the boundary, but they would

like to investigate under the wooden cladding next to it on our side to be sure that is sound underneath.

As the builders are there right now with scaffolding up etc I said they should go ahead and remove a bit so they can assess.

There was a meeting on site 24th January. Present were Nick Chinn from Marnick Builders. 2 Marnick Labourers. Tracy Deighton, Landlord of 33 High Street. Myself, Landlord of 32 High Street. Nick Chinn (Builder). informed us that after investigation the lower parts of the party wall, he discovered considerable rot in the timbers that formed the internal corner of the adjoining buildings. Expressly a 4x4 inch compression post. It was to be seen rotten and swinging completely detached. Chinn (Builder). suggested that the concrete cladding was removed on 32 and 33 from the bottom up until sound material was discovered. There was a small tower scaffolding present and 4 concrete cladding boards had already been removed. Chin indicated that there was rot at this level, so they would need full Scaffolding to investigate further on up the building. The small scaffolding set was removed and a full height scaffolding was ordered to go ahead. Chinn (Builder). said that they would work up the building replacing what was needed. This would almost certainly include battens, new membrane and new Stirling board.

The work did it transpires lead all the way up 3 stories to the gutter. Which was found to be the source of the water ingress. All the Stirling board on the damp side of the wall was replaced. As was the battening and the Tyvec semi permeable membrane. The compression post was replaced from top to bottom of 3 floors. The Concrete cladding was refitted and replaced where it had broken whilst being removed.

The building next door was then re rendered from top to bottom on the wall adjacent to 32. This now formed a seal between the two buildings that had not existed before. It was correctly overlapped to form a proper watertight seal.

The building was then painted with two coats of exterior paint from top to bottom.

This work was completed at the end of march."

12. A first invoice issued by the Applicant dated 10th April 2025 totals £5,625.90 and a second invoice sent 10th April 2025 totals £1,608.

13. The Applicant describes "consultation that has been carried out" which includes telephone conversations with Mark Neeter, the partner of Dana Young, and his own involvement on site

14. The Applicant seeks dispensation because:-

"I am seeking dispensation from the landlord and tenant act 1985 Section 20. The tenant is objecting to there not being at least two contractors who put in estimates of what the costs would be, and a 30 day period of consultation. I am claiming that it was an emergency repair, so needed to be dealt with immediately. Local builders were on site and already working on fixing the collapse of the outside plasterwork.

The rear of 33 and 32 back onto a semi covered walk way. There are cooks and staff who are constantly using this passage to move restaurant waste, and food deliveries happen in this constricted place frequently during the morning. This back alley is also the only pedestrian access to 4 residential flats over 32 and 33.

The alley is also the only ground level fire escape for all the flats and the record shop and the restaurant.

By the time I was made aware of the plaster collapse, the landlord of 33 had instructed Marnick Builders to investigate the damage. The nature of the repair was explained to Mark Neeter by me on our initial meeting on site.

This is when Mark told me that he was not liable for any of the costs because it said so in the lease.

He subsequently realised that this was not the case.

My Solicitor had informed me that this was not the case on February 21st. I am claiming that I informed the tenant of the situation as it began and that there was adequate consultation. Also that it was impossible to adequately estimate the costs at that early stage as the builder (Nick Chinn) informed me and Dana Young independently. I was informed by Dana that they were in regular contact with the builder. This was confirmed by the builder.

If the tenant was not in agreement to the contractor doing the job then the original consultation on 31st of January would have been the time to raise their objections. It should also be noted that at no time during any of the works did either Dana Young or Mark Neeter come to site to investigate progress. Other than the original site meeting with Mark but not Dana at the end of January.

As the Freeholder for the building I believe it was my responsibility to identify the necessary action to be taken to preserve the structure of the building. But mostly It was my responsibility to maintain the safety and wellbeing of the residents and public and that their everyday health and safety was given the highest priority and consideration. The building is old and as with all the converted warehouses in the street was never made for residential occupation, and as a result has been converted. Some of the original parts have been preserved as it is a conservation area. But there are still some elements of original plastering and rendering. In this case a large overhanging unsupported section (see photo) became detached and fell off into the passage. I was told by the cooks in the restaurant that the detached section would have caused significant injury had it struck any one of them. They use the passageway as a place to smoke.

This small access passage provides an entry and emergency exit to three flats that are all occupied. It also provides emergency access to a busy restaurant. as well as access for all the deliveries to the restaurant. It also provides the basement fire escape to the Record/bookshop and coffee shop on the lower two floors of 32 High street.

> It is also my responsibility, I believe to present the tenants with the pragmatic choices that are available to us and get what work done as is necessary. I believe I have done that, and I have paid in full for those works. I also believe that I am being tripped up by a Tennant that has discovered at this late stage that there is a technicality that may allow her to pay less than stipulated in the Lease that they have signed.
>
> At the time it seemed in order to get the job done quickly, multiple quotations for the job were not a practical option and as a result consultation requirements of multiple quotes were not available."

15. The Applicant provided the Tribunal with photographs of the building works and a note from Tracy Deighton, a director of the company that owns 33 High Street, who suggests that the cost of the works were mitigated as far as possible because:-

> "1. There was already a contractor on site.
>
> 2. If you had employed a different contractor then the existing scaffold would have come down, and you would have had to pay for new scaffold to be re-erected without sharing the cost, thus increasing the final bill.
>
> 3. It was an emergency/health and safety situation given that a large lump of render had fallen into the alley. Therefore it was crucial to carry out the repair as quickly as possible to make sure the buildings were stable."

16. The Respondent wrote to the Applicant on 6th August 2025 in which she questions whether she is responsible for the costs of repairs to the building. A further undated letter she wrote includes a payment of £250 towards the cost of the works on the basis that there had been no consultation in respect of the work that had been carried out.

17. The Directions stated that the Tribunal would determine the application on the papers received unless a party objected in writing to the Tribunal within 14 days of the date of receipt of the Directions. No party has objected to the application being determined on the papers.

18. The Respondent forwarded her submission to the Tribunal on 27th November 2025 in which she seeks a refusal of dispensation under s20ZA or, if granted, strict protective conditions to include full disclosure of all material facts, independent expert review of works at landlord's expense, removal of costs if wrongly attributed to No 32 and for the landlord to pay Respondents reasonable costs.

19. On 1st December 2025 the Respondent sent the Tribunal an amended submission.

20. On 8th January 2026 the Respondent sent an email to the Tribunal with "supplemental submissions". On 9th January 2026 the Tribunal responded to the effect that is she wished to make further submissions after the deadline set out in the Directions then she would need to make a case management application.

21. In her witness statement the Respondent averts that none of the works were urgent and that she has been severely prejudiced by not being able to have the building inspected, receive expert advice on the condition of the building at the outset, commission a structural engineer, understand or review what works were required, involve building control, draw up a specification for the work, seek tenders and have the job signed off by building control which she contends is her legal right.

22. The Respondent contends that there is no evidence that the work carried out at No 32 was urgent and that by not receiving advanced notice she has been severely prejudiced.

23. The Respondent continues

> "There is no suggestion that Marnick Builders have acted in anyway improperly. They were engaged by the freeholder of No 33 to work on that building and in the process uncovered rot in a corner post between No 32 and No 33 and some defects in the wall of No 32 which were not evident before they started work. As a result I request that the tribunal confirm that the cost of replacing the structural post between 33 and No 32 and any associated works to No. 32 are not recoverable from me and are not qualifying works. These works arose solely because the owner of No. 33, instructed her builder to remove render from No. 33 following structural failure in her building – unrelated to No 32, during which the shared post and adjoining structure of No 32 were exposed. The damage was discovered only because of those unilateral works. I believe under common law principles the party who opens up or disturbs shared structure, or neighbouring structures, without a Party Wall Agreement in place must make good any defects at their own expense (even if those defects were pre-existing but hidden). This work was not part of planned maintenance for the benefit of No 32, and therefore does not fall within the service charge provisions of my lease. Accordingly, I don't believe that any of the costs relating to the post or the works on No 32 by Marnick are properly chargeable to me. See sheet G for detail.
>
> Of the works for which dispensation is being sought the following are clearly routine and (although not clear from his invoice see Exhibit D) were carried out by the freeholder of No 32 (the Applicant) after building work was completed by Marnick Builders sometime late in March 2025. These works include: painting the back of the building, drain repairs (on shared drains which are not my responsibility), gutter cleaning and repair, maintenance of the roof, work on the rear retaining wall and work to the walls and floor of the access passageway behind No 32.
>
> As already indicated, during the time Marnick Builders were working on No 33 they also removed weatherboarding from No 32 and carried out work on board that was said to be rotten. This was not urgent work and I have no independent evidence as to the extent of the damage. Unfortunately, because no Section 20 notices were served I did not have the opportunity to have this inspected independently.
>
> There has also been a claim that a compression post was replaced between No 32 and No 33. I have seen no evidence that this post was rotten and no information as to whether it was definitely part of a party wall between No 32 and No 33 or if it was part of No 33. Again I have suffered prejudice by not being informed of these works (even if the Tribunal does not exclude them).

> I note that the Applicant waited until all work was completed before sending me any invoices. Whether intentional or not this meant that I continued to be ignorant of the work taking place. Given the Applicant's instance on payment within 14 days it does seem strange to me that he waited April 10 to ask me to +pay Marnick Builders' invoices dated February 26 and March 25. The effect of this meant that I didn't receive anything that would alert me to work taking place until all of the works were complete."

24. The Respondent also sets out a timeline of the issues and a detailed response to the relevant points from the Applicants submission. As part of this she states that her husband Mark Neeta could not have met the Applicant on the date stated as he was at home unwell at the time.

25. **The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This application is not about the proposed costs of the works, and whether they are recoverable from the leaseholders as service charges or the possible application or effect of the Building Safety Act 2022. The leaseholders have the right to make a separate application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 to determine the reasonableness of the costs, and the contribution payable through the service charges.**

The Law

26. 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.

27. The relevant section of the Act reads as follows:

> S.20 ZA Consultation requirements:
> 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.

28. 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.

29. 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.

30. 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).

31. 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.

32. 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.

33. 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.

34. If dispensation is granted, that may be on terms.

35. 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.

Consideration

36. Having considered the application and prior to undertaking this determination, the Tribunal is satisfied that a determination on the papers remains appropriate.

37. The reason why dispensation from consultation requirements is said to be required is that part of a wall at the rear of an adjoining building had collapsed due to rot in a timber support/compression post. Investigation as to the cause and extent of the rot was necessary, builders were already on site as was a scaffold tower. It transpired that the rot extended up three floors and the compression post was replaced over 3 floors. Additional works were then necessary to make good.

38. The Tribunal is satisfied that the works were of a sufficiently urgent nature to proceed without any formal consultation with the Lessees.

39. The Tribunal notes that the Applicant attempted to keep the Lessees informed although that communication was not a formal consultation as required by legislation.

40. The Tribunal finds that nothing different would be done or achieved in the event of a full consultation with the Lessees, except for the potential delay and the possibility of more serious problems.

41. The Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process.

42. The Tribunal consequently finds that it is reasonable to dispense with all of the formal consultation requirements in respect of the repair works to the building as described in this Decision.

43. This Decision is confined to determination of the issue of dispensation from the consultation requirements in respect of investigation and repair works to rear of building which were urgently needed. The Tribunal has made no determination on whether the costs are payable or reasonable. If a Lessee wishes to challenge the payability or reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.

44. As a condition of dispensation, the Applicant is required to send a copy of this decision to all leaseholders.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.