FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00FK/LDC/2024/0615**
Subject Property	**:**	**Friargate Court** **Friargate** **Derby DE1 1HE**
Applicant	**:**	**Longhurst Group Limited**
Representative	**:**	**Susan Wells**
Respondents	**:**	**Leaseholders at Friargate Court**
Type of Application	**:**	**Application under section 20ZA of the Landlord and Tenant Act 1985 for dispensation with the consultation requirements in respect of qualifying works at the subject property**
Tribunal Member	**:**	**Deputy Regional Judge Nigel Gravells**
Date of Decision	**:**	**28 August 2025**

DECISION

Preliminary

1 This is a decision on an application for dispensation with the statutory consultation requirements for qualifying works at the subject property.

2 Section 20 of the Landlord and Tenant Act 1985 ('the 1985 Act') (as amended by the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act')) and Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003 ('the 2003 Regulations') set out the consultation procedure that a landlord must follow in respect of 'qualifying works', defined in section 20ZA(2) of the 1985 Act as 'works on a building or any other premises'.

3 More specifically, Part 2 of Schedule 4 to the 2003 Regulations imposes four stages for consultation. Under stage 1 the landlord must (i) give written notice to the leaseholders of its intention to carry out qualifying works, (ii) invite observations in relation to the proposed works (to which the landlord must have regard) and (iii) invite the leaseholders to nominate a contractor from whom the landlord should seek to obtain an estimate. Under stage 2 the landlord must obtain at least two estimates for the proposed works, including from any contractor nominated by the leaseholders. Under stage 3 the landlord must issue a statement to the leaseholders with two or more estimates and a summary of, and the landlord's response to, the leaseholders' observations. Under stage 4 the landlord must notify the leaseholders of the award of the contract, unless it is awarded to the contractor submitting the lowest tender or to a contractor nominated by the leaseholders.

4 If a landlord fails to comply with the above consultation requirements, there is a statutory maximum sum (£250.00) that any leaseholder has to pay by way of a contribution to the cost of the qualifying works.

5 However, the landlord may apply to the First-tier Tribunal under section 20ZA of the 1985 Act for dispensation with the consultation requirements (including retrospective dispensation). If dispensation is granted, the statutory maximum contribution does not apply.

6 In the present case the landlord replaced the access control system on the communal entrance doors of all 14 blocks at Friargate Court at a total cost of £33,584.32 (inclusive of VAT) but it did so without having complied with the consultation requirements.

7 Since the allocation of those costs under the service charge provisions in the Respondents' leases would result in individual contributions for the 90 leaseholders of approximately £373.00 (and therefore in excess of £250.00), the Applicant, by application dated 31 October 2024, applied under section 20ZA for dispensation with the consultation requirements.

8 The Applicant argued –

(i) that, owing to the age of the access control system, it had become impossible to programme any new fobs (for new leaseholders/ residents or existing leaseholders/residents who had lost their fobs);

(ii) that, if the new fobs could not be programmed, leaseholders/ residents might have faced security risks, such as unauthorised access or difficulty in entering the blocks;

(iii) that immediate action was required to address those risks and that such immediate action would be frustrated by the delays inherent in the statutory consultation procedure.

9 On 21 November 2024 the Tribunal issued Directions in order to ascertain whether any of the Respondent leaseholders opposed the application for dispensation.

10 Although some leaseholders indicated that they opposed the application, they indicated that they were content for the Tribunal to determine the application on the basis of the parties' written representations and without an oral hearing.

Representations of the parties

11 There was an exchange of emails between the Applicant and one of the leaseholders, Rosalind Gail Barton, who opposed the application. Ms Barton's statement of reasons raised seven issues –

(i) she questioned the delays (a) in making the section 20ZA application and (b) in notifying the leaseholders of the works;

(ii) she questioned the need to install a complete new access control system (instead of adding new fobs to the memory of the existing system);

(iii) she suggested that the problem of access for leaseholders/residents who did not have functioning fobs could be addressed by using the existing postal service access;

(iv) she argued that, contrary to the argument of the landlord, there were no safety issues in relation to *exiting* the blocks;

(v) she questioned the costs incurred since no control panels had been replaced;

(vi) she argued that the monies in the reserve fund (which the Applicant indicated would cover the costs of the new system) were monies belonging to the leaseholders;

(vii) she questioned whether the Applicant had obtained quotations for the works.

12 The Applicant responded to those issues as follows –

(i) as to (a), the Applicant was assessing whether an application to the Tribunal would be necessary; and, as to (b), the normal practice of notifying the leaseholders had not been followed;

(ii) although the Applicant had hoped to repair the existing system, owing to the age of that system, the parts were obsolete;

(iii) the postal service access is only available at certain times and to make it available at all times could create a security risk;

(iv) no response;

(v) the new system was able to use some of the existing hardware;

(vi) the reserve fund exists specifically to cover the costs of major works;

(vii) given the perceived urgency, no quotations were obtained.

13 Similar issues were raised in two other emails and the Applicant provided similar responses.

14 In a further email the writer claimed 'some experience' with access control systems and argued that the installation of the new system was unnecessary and that the costs incurred were excessive and unwarranted. The writer indicated that they would like an independent assessment of the work undertaken.

The law

15 Under section 20ZA of the 1985 Act, the Tribunal has jurisdiction to dispense with all or any of the consultation requirements in relation to any qualifying works 'if satisfied that it is reasonable' to dispense with the requirements.

16 The leading authority on dispensation with the statutory consultation requirements is the decision of the Supreme Court in *Daejan Investments Limited v Benson* [2013] UKSC 14 ('*Daejan*'), in particular the principles set out by Lord Neuberger at paragraphs 41-72.

17 At paragraphs 41-46, Lord Neuberger stated –

> [41] … [T]he circumstances in which a section 20ZA(1) application is made could be almost infinitely various, so any principles that can be derived should not be regarded as representing rigid rules.
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> [42] So I turn to consider section 20ZA(1) in its statutory context. It seems clear that sections 19 to 20ZA are directed towards ensuring that tenants of flats are not required (i) to pay for unnecessary services or services which are provided to a defective standard, and (ii) to pay more than they should for services which are necessary and are provided to an acceptable standard. The former purpose is encapsulated in section 19(1)(b) and the latter in section 19(1)(a). The following two sections, namely sections 20 and 20ZA, appear to me to be intended to reinforce, and to give practical effect to, those two purposes. This view is confirmed by the titles to those two sections, which echo the title of section 19.
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> [43] Thus, the obligation to consult the tenants in advance about proposed works goes to the issue of the appropriateness of those works, and the obligations to obtain more than one estimate and to consult about them, go to both the quality and the cost of the proposed works. …
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> [44] Given that the purpose of the requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the [First-tier Tribunal] should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements.
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> …
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> [46] I do not accept the view that a dispensation should be refused … solely because the landlord seriously breached, or departed from, the requirements. That view could only be justified on the grounds that adherence to the requirements was an end in itself, or that the dispensing jurisdiction was a punitive or exemplary exercise. The requirements are a means to an end, not an end in themselves, and the end to which they are directed is the protection of tenants in relation to service charges, to the extent identified above. After all, the 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.

18 At paragraphs 53-64 he stated –

> [53] The respondents contend that, on an application under section 20ZA(1), the [First-tier Tribunal] has to choose between two simple alternatives: it must either dispense with the requirements unconditionally or refuse to dispense with the requirements. …
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> [54] In my view, the [First-tier Tribunal] is not so constrained when exercising its jurisdiction under section 20ZA(1): it has power to grant a dispensation on such terms as it thinks fit – provided, of course, that any such terms are appropriate in their nature and their effect.
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> …
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> [58] … [W]here it is appropriate to do so, it seems clear to me that the [First-tier Tribunal] can impose conditions on the grant of a dispensation under section 20(1)(b). In effect, the [First-tier Tribunal] would be concluding that, applying the approach laid down in section 20ZA(1), it would be 'reasonable' to grant a dispensation, but only if the landlord accepts certain conditions. …
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> [59] I also consider that the [First-tier Tribunal] would have power to impose a condition as to costs – eg that the landlord pays the tenants' reasonable costs incurred in connection with the landlord's application under section 20ZA(1).
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> …
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> [64] … [A] party seeking a dispensation under section 20(1)(b) … is claiming what can be characterised as an indulgence from a Tribunal at the expense of another party. Accordingly, in so far as the other party reasonably incurs costs in considering the claim, and arguing whether it should be granted, and, if so, on what terms, it seems appropriate that the first party should pay those costs as a term of being accorded the indulgence.

19 At paragraph 69 he stated –

> [69] … [I]t is worth remembering that the tenants' complaint will normally be … that they were not given the requisite opportunity to make representations about proposed works to the landlord. Accordingly, it does not appear onerous to suggest that the tenants have an obligation to identify what they would have said, given that their complaint is that they have been deprived of the opportunity to say it. Indeed, in most cases, they will be better off, as, knowing how the works have progressed, they will have the added benefit of wisdom of hindsight to assist them before the [First-tier Tribunal], and they are likely to have their costs of consulting a surveyor and/or solicitor paid by the landlord.

20 And at paragraph 74 he concluded –

> [74] All in all, it appears to me that the conclusions which I have reached, taken together, will result in (i) the power to dispense with the requirements being exercised in a proportionate way consistent with their purpose, and (ii) a fair balance between (a) ensuring that tenants do not receive a windfall because the power is exercised too sparingly and (b) ensuring that landlords are not cavalier, or worse, about adhering to the requirements because the power is exercised too loosely.

21 The recent Upper Tribunal case of *Marshall v Northumberland & Durham Property Trust Ltd* [2022] UKUT 92 (LC) emphasised the need to establish causation. As a first step this requires the Tribunal to identify the landlord's failure before considering whether any prejudice had been caused by the failure to consult.

Discussion

22 It is not disputed that the Applicant failed to comply with the consultation requirement set out in Part 2 of Schedule 4 to the 2003 Regulations. The issue for the Tribunal is whether any material prejudice has been caused by that failure that would not have been caused if the landlord had complied with those requirements.

23 In summary, the leaseholders who oppose the application for dispensation question whether the replacement of the access control system was necessary or whether the existing system could have been repaired. Since at least one leaseholder claimed to have 'some experience' of access control systems, the implication is that, if they had been consulted, they would have sought to persuade the landlord that other less expensive options - that did not involve the replacement of the existing system – would have been appropriate.

24 In response to that argument the Applicant asserts that initially it was not looking at replacement and had hoped to repair the existing system but that 'after doing checks and due diligence' it discovered that, owing to the age of the system and the unavailability of replacement parts, it was not possible to repair the existing system.

25 The Tribunal finds that it is arguable that the failure to consult leaseholders at the appropriate time could have resulted in material prejudice to the leaseholders in so far as they may have been asked to contribute to the costs of unnecessary works.

26 However, neither the Respondent leaseholders nor the Applicant landlord has provided conclusive evidence to persuade the Tribunal of the correctness of their respective positions.

27 In the circumstances, the Tribunal determines that it is appropriate to grant dispensation but subject to conditions.

28 Those conditions are –

(i) that the landlord pays the reasonable costs of a fully qualified competent member of a relevant professional body with sufficient expertise of access control systems (to be selected and instructed by those Respondents who have objected to the application for dispensation) to consider and advise the leaseholders on (a) what would have been the appropriate works to ensure that the access control system was fully operational and (b) the likely overall cost of such works;

(ii) that (a) the costs of the application for dispensation and (b) the costs of the advice obtained in accordance with paragraph 28(i) above are not charged to the leaseholders under the service charge.

29 In the light of the advice obtained in accordance with paragraph 28(i) above. any dispute concerning whether the costs incurred by the Applicant in installing the new access control system were reasonably incurred or reasonable in amount would have to be settled by agreement between the parties or determined following an application under section 27A of the 1985 Act.

Appeal

30 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.

31 The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

32 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(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

33 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

28 August 2025

Professor Nigel P Gravells
Deputy Regional Judge