FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	HAV/21UG/LDC/2026/0005
Property	:	8-12 St Leonard's Road, Bexhill-on-Sea, East Sussex, TN40 1HN
Applicant	:	Mildmay Properties Limited
Representative	:	Oakfield Property Management
Respondent	:	Domaines Du Chateau Limited (1) The Residential leaseholders (2)
Representative	:	Godfrey John & Partners (1)
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	:	Mr I R Perry FRICS
Date of Decision	:	22nd April 2026

DECISION

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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 repairs to drainage pipe and associated works to make good. 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 3 February 2025.

3. Following a request from the Tribunal to clarify the identity of the parties, the Applicant states,

   "…..Oakfield is the appointed managing agent for the Freeholder Vivian Whiteman and so our responsibilities extend to only the commercial lease and the residential head lease. In turn, Godfrey John & Partners are the appointed managing agents for the head residential leaseholder Domaines Du Chateau Limited and so they are responsible for management of the residential sub leases that exist for St Margarets Court.2

4. The Property is described as:

   "8-12 ST LEONARDS ROAD IS A CONVERTED PROEPRTY [sic], INLCUDING[sic] 1 COMMERICAL UNIT - THE FACTORY SHOP AND 13 APARTMENTS ABOVE - ST MARGARETS COURT."

5. The Applicant explains that:

   "THERE IS AN ACTIVE LEAK WITHIN THE COMMERICAL UNIT THAT EXCEEDS OVER THE LEGAL THRESHOLD FOR THE PROPERTY. INVESTIGATED WATER LEAK IN COMMERICAL UNIT, LEAK IS COMING FROM BASE OF CAST IRON DRAIN PIPE WITHIN THE UNIT. AFTER INSPECTION, THERE IS A HOLE ON THE BENT[sic] OF SOIL PIPE WHICH NEEDS TO BE REPLACED. WORKS NEEDED TO DIG UP CONCRETE FLOOR FROM BASE OF PIPE GOING TO MANHOLE. SECTION OF PIPE NEEDS TO BE RENEWED AND MADE GOOD. ADDITIONALLY, THIS PIPE TAKES WATER AWAY FROM FLAT ROOF TO REAR OF BUILDING.

   STATUTORY CONSULTATION HAS NOT BEEN CARRIED OUT."

6. The Tribunal gave Directions on 6th February 2026 listing the steps to be taken by the parties in preparation for the determination of the dispute, if any.

7. The Directions included the following:

"Representatives

Written authority from the Applicant and Respondent appointing representatives to act on their behalf in these proceedings must be sent to the Tribunal by 16 February 2026.

If an Applicant or Respondent appoints a representative during the course of the proceedings, written authority from that Applicant or Respondent appointing the representative to act on their behalf to the Tribunal must be sent within 14 days of the appointment.

Unless and until an authority is supplied the Tribunal and the parties will correspond directly with the Applicant or Respondent and not with any representative. Any correspondence received from a representative will not be considered, actioned or replied to unless and until authority is provided."

That is particularly significant in this particular case in respect of the Applicant. The Tribunal needs to know that a representative which has submitted an application said to be on behalf of another is involving the party in proceedings in which they wish to be involved. Otherwise, there is nothing which the Tribunal ought to determine.

It is significant on a wider level in that representation can only be provided by those who are professionally authorised to conduct litigation, or in the particular instance of this Tribunal also where another representative holds a written authority and that is provided. The conduct of litigation without authorisation is strictly the commission of a criminal offence.

It is now over 1 month after the date on which the written authority was required to be provided to the Tribunal. None has been received.

Whilst it is not for the Tribunal to need to do so, the Tribunal has gone so far as to remind the Applicant's purported representative of the need for the provision of an authority by email 2nd March 2026, which also identified that the Respondent's representative has provided an authority. A response was received from the purported representative dated 6th March 2026, the relevant part of which reads as follows:

"I wanted to follow up with you to advise that I am yet to receive authorisation from our client to proceed with the dispensation application on their behalf.

I am working alongside them to obtain this, and will be able to provide this to you early next week.

I hope this is okay and I apologise for the delays."

It will immediately be identified that the email makes it clear that the purported representative has no authority to issue the proceedings and has done so in spite of that and that what was at the time to be "early next week" is now over a week ago.

It is less than clear that the purported representative understands the importance of being properly authorised both in this specific case and

generally. As a professional practice dealing with property, if the representative seeks to conduct proceedings and does not understand, that is troubling to say the least.

It could hardly be complained about if against that background the proceedings were simply now dismissed. The giving of time for the provision of an authority not provided at the outset was arguably an indulgence in itself and the reminder even more so. The lack of response to that arguably merits no further opportunity being given.

However, by a fine balance I give one final and short opportunity for there to be a suitable authority provided. If it is not, there is no reason to give any other chances, and the only appropriate course is for the proceedings to end without further delay.

These Directions shall be sent to the Applicant given that there is currently no representative. As a one- off, a copy may be sent to the purported representative but no other correspondence with the purported representative will be entertained until such time as any suitable authority has been received."

8. Further Directions were issued by the Tribunal on 18th March 2026 that unless the Applicant's purported representative provided written authority to the Tribunal and the Respondent from the Applicant for it to issue and conduct these proceedings by 25th March 2026 the proceedings would be automatically struck out.

9. On 20th March 2026 Oakfield Property Management ("Oakfield") provided an email from Mr Vivian Wineman on behalf of Mildmay Properties Limited ("Mildmay") stating that Oakfield are authorised to proceed with this application on behalf of Mildmay.

10. On 25th February 2026 ("Oakfield") had written to the Tribunal to confirm they had received no objections to the application.

11. 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

12. 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.

13. 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.

14. 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.

15. 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.

16. 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).

17. 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."

18. The main, indeed normally, 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.

19. 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.

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

21. 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

22. The Directions attached a reply form for the Respondents to complete to confirm whether they agreed with the application or not and if opposed, to provide a statement setting out why they oppose.

23. No replies were received by the Tribunal.

24. On 25th February 2026 ("Oakfield") had written to the Tribunal to confirm they had received no objections to the application.

25. Having considered the application and prior to undertaking this determination, I am satisfied that a determination on the papers remains appropriate, given that the application remains unchallenged.

26. The reason why dispensation from consultation requirements is said to be required is that a leak had occurred from a drainage pipe within the property which needed to be exposed and repaired and associated works to repair around the leak were necessary. I am satisfied that the qualifying works were of an urgent nature.

27. There has been no objection to the dispensation of the consultation requirements from any of the Lessees.

28. None of the Lessees have therefore asserted that any prejudice has been caused to them. 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 potential problems.

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

30. 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 as described in this Decision.

31. This Decision is confined to determination of the issue of dispensation from the consultation requirements in respect of repairs to and as a result of the leaking drainage pipe as outlined at paragraph 5. 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.

32. In reaching my decision I have taken account of the fact that no party has objected to the application. The Leaseholders have had the opportunity to raise any objection, and they have not done so.

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

RIGHTS OF APPEAL

34. 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

35. 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.

36. 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.

37. 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.