

		FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)	
Case Reference	:	MAN/00CB/LDC/2025/0669	
Property	:	1 Downham Road South, Heswall, Wirral, CH60 5SG	
Applicant	:	Berkson (Cheshire) Limited	
Applicant's Representative	:	Harrowells Solicitors	
Respondent	:	Ms N Dunne	
Type of Application	:	Landlord & Tenant Act 1985 – s 20ZA	
Tribunal Members		Judge Richard Dobson Mason LLB Mr William Reynolds	
Type and Venue of the Hearing		Determined on the papers without a hearing	
Date of Decision	:	26 February 2026	

DECISION

- (1) **The Tribunal unconditionally grants the Applicant’s application for dispensation under s 20ZA Landlord and Tenant Act 1985 from the consultation requirements contained in s 20 thereof, in relation to cleanup and bird proofing works to the Property at 1 Downham Road South, Heswall, Wirral, CH60 5SG.**

REASONS

Background

1. The Application relates to 1 Downham Road South, Heswall, Wirral, CH60 5SG (*“the Property”*).
2. The Property was not inspected by the Tribunal. The Applicant describes it as spanning two addresses – 178/180 Telegraph Road and 1 Downham Road South. The ground floor units are reported to be retail and joined internally as one unit, where the upper floors are residential, with one flat located above 178/180 Telegraph Road and two flats located above 1 Downham Road South.
3. The Applicant is Berkson (Cheshire) Limited who brings the application (*“the Application”*). The Applicant is represented by Harrowells Solicitors. The Application relates solely to the residential flats at the Property.

4. The Respondent is the long leaseholder of Flat 1; Flat 2 and Flat 3 are owned by the Applicant and rented out pursuant to Assured Shorthold Tenancies.

The application

5. On 3 September 2025, the Applicant made the Application under s 20ZA Landlord and Tenant Act 1985 (*“the Act”*) to dispense with the consultation requirements of s 20 of the Act, as set out in The Service Charges (Consultation Requirements) (England) Regulations 2003 (*“the Consultation Requirements”*).
6. The Application seeks retrospective dispensation in respect of cleanup and bird proofing works to the Property due to a bird infestation (*“the Works”*).

Directions

7. Directions were made by a Legal Officer on 12 December 2025 (*“the Directions”*) requiring sequential disclosure of documents, quotes or estimates relating to the Works by the Applicant to the Respondent, and sequential filing and service of the parties’ statements of case and evidence in support, and any reply.

The hearing

8. The Application was determined on the papers on 26 February 2026. Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 permits a case to be dealt with in this manner provided that the parties consent to, or do not oppose it within the requisite timescale.
9. The Applicant, in the Application, requested a paper determination. Paragraph 7 of the Directions identified that there was to be no inspection of the Property unless the Tribunal considers one is necessary at a later date.

10. The parties were notified, by paragraph 6 of the Directions, that unless any party informed the Tribunal within 42 days from the date of the Directions that they required an oral hearing, the matter would be resolved by way of written representations. No objections / requests for an oral hearing were received from the parties within that timescale.

The Applicant's case

11. The Applicant filed and served an undated statement of case in support of the Application setting out, in summary, the following: -
 - a. On 26 February 2025, the Respondent emailed the Applicant's management company, explaining, *inter alia*, that there was a bird "infestation in the common parts of the address. There are pigeons nesting in the area. The stairs, communal area and balcony, are covered in pigeon faeces. This needs immediate control and removal of the faeces due to the serious threat of disease...most urgent due to the serious threat to human health".
 - b. There followed an exchange of emails between the management company and the Respondent regarding the above, leading to the Applicant obtaining a quote for cleanup, with other remedial and preventative work to be carried out after the nesting season had ended.
 - c. The Respondent was provided with an opportunity to obtain quotes for the work, at her request, but informed the Applicant by email dated 15 May 2025 that she was "in the process of selling [her] flat and [she was] not prepared to incur further costs at this time. Information as to these costs should be provided to the proposed purchaser".
 - d. The Property was inspected by the Applicant's director on 27 August 2025, and a decision was made to immediately instruct the Works to be carried out. A purchase order was raised on 27 August 2025, and the Works were carried out

between 1 and 3 September 2025 at a cost of £5,940.00 (including VAT). Attached to the purchase order is a list of “Reasons for urgency of works” which explain that there were health risks caused by the situation including infection, allergy, parasites and physical hazards.

- e. The Works were therefore urgent and necessary due to health and safety issues, as accepted by the Respondent in the 26 February 2025 email.
- f. The Respondent does not oppose the Application, but requests that it is conditional, which is not addressed in the Applicant’s Statement of Case.

The Respondents’ case

12. The Tribunal received a “Witness Statement” from the Respondent dated 24 September 2025 in which she submits, in summary, the following: -

- a. She accepts that the Works were required.
- b. The management company offered a short-term cleanup solution initially, due to the nesting season preventing further works, which was a waste of expenditure and would not resolve the problem.
- c. The Works were not carried out until September 2025, seven months after her 26 February 2025 email.
- d. Given the above, the urgency of the Works was due to avoidable delay on the part of the management company.
- e. She was not provided with the opportunity to comment on the scope of work.
- f. The Applicant did not obtain two or three competitive quotations for the Works, which, if obtained, could have been scrutinized by her. Therefore, she cannot be satisfied that they were procured at a reasonable cost.

- g. She proposes that permission should be granted, subject to the following conditions: -
 - i. Full disclosure of costs, including a breakdown of the works involved, invoices, management and supervision fees, and evidence of payment.
 - ii. A reservation of her right to challenge the reasonableness of the relevant charges pursuant to s 19 Landlord and Tenant Act 1985.
 - iii. Any interim cleanup costs should not be recoverable through the service charge.
 - iv. All quotations, tenders, or procurement records relating to the Works should be provided within 28 days of the Tribunal's decision.

The Applicant's reply

- 13. Due to the timing of the Respondent's "Witness Statement", the Applicant's statement of case addresses the points raised by the Respondent, summarily, as follows: -
 - a. Due to the nesting issue, the Applicant set out to address the issue in two stages, 1) cleanup, and 2) remedial and preventative works.
 - b. The Works were delayed by the Respondent's own delay in providing alternative quotations, which she ultimately decided against providing and told the Applicant that she no longer wished to be involved in the process as she was selling her flat.
 - c. The Applicant, by its managing agent, engaged with the Respondent about the Works up until that point.

- d. By the time the director of the Applicant inspected the Property, the works were deemed urgent and a decision to have them carried out promptly was made, such decision being reasonable and sensible in the circumstances.

Issues

14. The issue to be decided is whether it is reasonable to dispense with the Consultation Requirements and, if so, whether any conditions should be imposed.

The law

15. The Works are “qualifying works” for the purposes of s 20ZA(2) of the Act and therefore the Consultation Requirements are engaged.
16. A failure to adhere to the Consultation Requirements limits each qualifying tenant’s contribution to the costs of the Works to £250 per service charge year unless dispensation is granted by the Tribunal.
17. S 20ZA(1) of the Act provides: -

Where an application is made to the appropriate 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.

18. In *Daejan Investments Ltd v Benson* [2013] UKSC 14 (“*Daejan*”), the Supreme Court considered the proper approach to an application for dispensation under s.20ZA, noting that: -

- a. The purpose of the Consultation Requirements is to ensure that tenants are protected from paying for inappropriate works or paying more than would be appropriate for them.
- b. On that basis, the Tribunal should focus on the extent to which tenants were relevantly prejudiced in either respect by the failure of the landlord to comply with the Consultation Requirements.
- c. The Tribunal has the power to grant dispensation on such terms as it thinks fit, provided that such terms are appropriate in their nature and effect, including in relation to the recoverability cost of the works and / or the parties' costs incurred in connection with the application for dispensation.
- d. However, where the extent, quality and cost of the works were unaffected by the landlord's failure to comply with the Consultation Requirements, unconditional dispensation should normally be granted.
- e. The only disadvantage of which a tenant may legitimately complain is one which they would not have suffered if the Consultation Requirements had been fully complied with but which they would suffer if unconditional dispensation were granted.
- f. Although the legal burden of proof would be, and would remain, on the landlord, the factual burden of identifying some relevant prejudice that they would or might have suffered would be on the tenants.
- g. Given that the landlord will have failed to comply with Consultation Requirements, and the Tribunal is having to undertake the exercise of reconstructing what would have happened, it may view the tenant's arguments sympathetically, for instance resolving in their favour any doubts as to whether the works would have costs less, or that some of the works would not have been carried out or would have been carried out in a different way. The more

egregious the landlord's failure, the more readily the Tribunal would be likely to accept that tenants had suffered prejudice.

- h. The tenants' complaint will normally be that they have not had the opportunity to make representations about the works. Accordingly, the tenants have an obligation to identify what they would have said.
- i. Once the tenants have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
- j. Save where the expenditure is self-evidently unreasonable, it would be for the landlord to show that any costs of investigating relevant prejudice incurred by the tenants were unreasonably incurred before it could avoid being required to repay them as a term of dispensation being granted.

Determination

- 19. The only issue for the Tribunal to consider under s 20ZA is whether it is reasonable to dispense with the consultation requirements.
- 20. As set out above, the purpose of the Consultation Requirements is to ensure that tenants are protected from paying for inappropriate works or paying more than would be appropriate for them.
- 21. The Tribunal must consider therefore whether the Respondent was 'relevantly prejudiced' by the failure to consult, and bear in mind the considerations set out above in Daejan.
- 22. The Tribunal is satisfied that the Works were necessary and urgent, which is admitted by the Respondent, particularly given the related health and safety issues.

23. Although some delay occurred in the period between February and September 2025, and some of this arose from the Respondent requesting the opportunity to but ultimately declining to obtain her own quotations, the Tribunal also recognises that the nesting season constrained the Applicant's ability to implement preventative netting earlier. The Tribunal is not persuaded that any earlier action would have substantially altered either the works ultimately required or their likely cost.
24. While the Respondent asserts that she was denied an opportunity to comment on scope or quotations, the Tribunal notes that from 16 May 2025 she expressly asked the Applicant not to correspond with her and indicated she did not wish to be involved in the process due to an impending sale. This significantly limits the weight that can be placed on any alleged prejudice, as from that date she intentionally removed herself from participating in any consultation process.
25. Although the Applicant did not (as above) obtain competitive quotations, the Tribunal accepts that the nature of the Works — involving immediate health and safety risks from biohazardous pigeon fouling — meant that delaying the Works to allow a full tendering process would have prolonged an unacceptable risk to the occupiers.
26. Upon service of the Applicant's Statement of Case, the Respondent had the opportunity to scrutinise the scope and cost of the Works but failed to provide any evidence that she had done so or to provide any alternative quotations or scope of works. Consequently, The Tribunal has no evidence before it that the absence of competitive tendering caused any increase in cost or otherwise prejudiced the Respondent.
27. Accordingly, the Tribunal finds that dispensation should be given, which is also accepted by the Respondent.
28. However, the Respondent requests that conditions be imposed on the same. As to the proposed conditions, the Tribunal is satisfied that full cost and work-scope disclosure has already been provided through the Directions process, and the

Respondent's statutory rights under ss 19 & 27A Landlord and Tenant Act 1985 remain unaffected by this decision. The application before the Tribunal relates to the works carried out and does not extend to any interim cleaning costs which, if they were undertaken and required consultation, would need to be the subject of this application or a further application. They would also be unaffected by the Respondent's statutory rights under ss 19 & 27A Landlord and Tenant Act 1985. In these circumstances, the Tribunal concludes that imposing the suggested conditions is not justified and would serve no practical purpose

29. Based on the above, the Tribunal does not find any of the conditions requested by the Respondent to be appropriate or necessary.
30. In conclusion, the Tribunal finds that no 'relevant prejudice' occasioned by the Applicant's failure to comply with the Consultation Requirements has been shown, and no evidence that the extent, quality and cost of the works were affected by that failure has been satisfactorily adduced.
31. In view of the above, the Tribunal is satisfied that it is reasonable to grant the Application without any conditions.
32. This determination does not affect the Respondent's right to apply to the Tribunal to determine the payability of the cost of the Works under the terms of the lease, or the reasonableness of the Works in terms of quality or amount, pursuant to s 27A of the Act.

Judge Richard M. Dobson-Mason

26 February 2026