



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference	: HAV/00HH/LDC/2026/0053
Property	: Marble Court, Parkfield Road, Torquay, Devon, TQ1 4DX
Applicant	: Marble Court Business Park TQ Ltd
Representative	: Larchfield Asset Management Limited
Respondents	: The residential leaseholders
Objecting Respondents	: Natalie Dodge – Flat 4 Christopher Cairns – Flat 8 Adrian Tagg & Lehua Laio – Flats 3 and 10
Representative	: None
Type of Application	: To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
Tribunal members	: District Judge Pain, sitting as a Judge of the First-tier Tribunal (Property Chamber) Judge J Dobson Mr B Bourne MRICS
Date of Hearing	: 9 July 2026
Date of Decision	: 17 August 2026

DECISION

Summary of the Decision

1. **The Tribunal grants the Applicant's application for dispensation from the statutory consultation requirements in respect of the proposed qualifying works, pursuant to section 20ZA of the Landlord and Tenant Act 1985 ('the 1985 Act'), subject to the following conditions:**
 - (a) **the Applicant shall pay the costs (in a sum of up to £3,000, inclusive of VAT) of a report of a chartered building surveyor, instructed by the Respondents, to investigate the problem of water ingress at the Property and to assess whether the proposed works are likely to be a necessary and effective remedy for the same and, if not, what alternative solutions should be adopted; and**
 - (b) **the Applicant shall pay the Respondents' costs incurred in relation to obtaining advice about of the application for dispensation, to be the subject of a summary assessment by the Tribunal if not agreed by the parties.**
2. **The Tribunal orders that the Applicant's costs of the application shall not be recoverable against the Respondents whether as part of any service charge, or any administration charge, that might otherwise be recoverable, pursuant to section 20C of the 1985 Act and paragraph 5A of schedule 11 of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act').**
3. **The Tribunal makes no order for the re-imbursement of the Applicant's fees pursuant to rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.**

The parties and property

4. The Applicant, Marble Court Business Park TQ Ltd, is the landlord of the subject property, Marble Court, Parkfield Road, Torquay, Devon, TQ1 4DX ('the Property').
5. The Property consists of a row of twelve terrace leasehold houses with entrances on Park Hill Road ('the residential units') and eight double level commercial units with access off Lymington Road ('the commercial units') constructed around 2007. The Property has been constructed on a sloping site, with the residential units located further up the hillside than the commercial units; the patio areas at the rear of the residential units are situated above the commercial units.
6. The opposing Respondents are each leasehold owners of one or more of the twelve residential units.

The application and procedural background

7. The application, dated 26 March 2026, seeks a determination dispensing with the statutory consultation requirements set out in section 20 of the Landlord and Tenant Act 1985 ('the 1985 Act'), pursuant to section 20ZA of the 1985 Act, in respect of qualifying works that have not already been carried out.
8. Directions were given by the Tribunal on 18 May 2026, and 4 June 2026.
9. The Directions given on 18 May 2026 directed that the Applicant's application should stand as the Applicant's case and required the Applicant to send a copy of the application and the directions made to the Respondent leaseholders by 24 April 2026. The Respondent leaseholders were given until 5 May 2026 to confirm whether they opposed the application and, if so, to send to the Tribunal and to the Applicant a statement setting out why they opposed the application together with evidence of what they may have done differently if the Applicant were to comply with the statutory consultation requirements and copies of any documents relied on. The Applicant was directed to reply by way of statement and any additional documents by 12 May 2026.
10. Those Directions anticipated that the application would be determined without a hearing but noted that the suitability of such a determination would be reviewed on receipt of the Respondent's replies.
11. On 30 April 2026, the Applicant made an application to extend the time for the Respondents to reply to the application by 7 days. While this was an obligation of the Respondents, the extension was sought on the basis that some Respondents had informed the Applicant that the directions required to be served on the Respondents by the Applicant had not in fact been received. No order appears to have been made in respect of this application.
12. The Directions given on 4 June 2026 noted that replies, together with statements and supporting documents, had been received from Ms Dodge, the leaseholder of Flat 4, Ms Cairns, the leaseholder of Flat 8, and from Mr Tagg (on behalf of himself and Ms Liao, as leaseholders of Flats 3 and 10) (together, 'the opposing Respondents'). The directions also noted that no reply had been received from the Applicant as previously directed.
13. Those Directions also noted that the parties had agreed to a determination of the application without a hearing; however, the Tribunal, considering the overriding objective, determined that a hearing would be necessary. That hearing was directed to take place remotely by video on 9 July 2026, with a time estimate of 3 hours.
14. The Directions also extended the time for the Applicant to send its replies to the opposing Respondents' objections to 12 June 2026 and directed

the Applicant to send an electronic bundle to the Tribunal and to the opposing Respondents by 26 June 2026.

15. The Applicant having failed to file its reply by that extended deadline, the opposing Respondents each made applications to strike out the application on account of that failure. Mr Tagg's application was dated 14 June 2026 whereas Ms Dodge and Mr Cairns applications were both dated 16 June 2026. Each of those applications were in broadly similar terms. None of those applications has been considered and determined by the Tribunal prior to the hearing on 9 July 2026.
16. The Applicant sent its reply and other documents on 26 June 2026, as an attachment to an email of the same date that invited the Tribunal to admit the reply notwithstanding that it was late.
17. On 1 July 2026, the Tribunal wrote to the Applicant's representative noting that the Applicant had not complied with the Directions of 4 June 2026 that required the Applicant to send a hearing bundle to the Tribunal by 26 June 2026. Although noting the warning set out in those Directions ('if the hearing bundle is not sent to the Tribunal by [26 June 2026], the Application will be struck out without further notice') the letter stated that: 'If you still wish to proceed with the application, a hearing bundle must be filed by 12pm on 2 July 2026, in the absence of which the application will be struck out without further notice.'
18. The Applicant sent an electronic copy of the bundle to the Tribunal at 9.47am on 2 July 2026.
19. Mr Tagg made an application a few days before the hearing date to be permitted to attend in person. That application was refused by and for reasons given in Directions dated 8 July 2026.

Attendances at the hearing on 9 July 2026

20. The hearing on 9 July 2026 was conducted remotely via video proceedings.
21. Although Larchfield Asset Management Limited is recorded as the representative of the Applicant, the Applicant was not represented by anyone from, or instructed by, that company at the hearing on 9 July 2026. Instead, Mr Clements and Mr Bickham, both directors of the Applicant, attended to represent the Applicant.
22. Mr Cairns, leasehold owner of Flat 8, and Mr Tagg, joint leasehold owner with his wife, Ms Liao, of Flats 3 and 10, both attended the hearing remotely.
23. Ms Dodge, leasehold owner of Flat 4, did not attend the hearing, having emailed the Tribunal on 8 July 2026 to state that she was unable to attend, and inviting the Tribunal to proceed based on the written evidence and submissions previously sent by her to the Tribunal.

Documents available at the hearing

24. As noted, the Applicant filed a hearing bundle on 2 July 2026. That bundle contains, among other documents, the Applicant's application, the statements and other documents filed by the Respondents, and the Applicant's reply, sent to the Tribunal on 26 June 2026. The bundle also contains the other applications referred to above.
25. The hearing bundle contains 227 pages. Whilst the Tribunal makes it clear that it has read the bundle, the Tribunal does not refer to all the documents in detail in this Decision, it being impractical and unnecessary to do so. Where the Tribunal does not refer to pages or documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left them out of account. Insofar as the Tribunal does refer to specific pages from the bundle, the Tribunal does so by numbers in square brackets [], and with reference to PDF bundle page-numbering.
26. This Decision seeks to focus on the key issues. The omission to therefore refer to or make findings about every statement or document mentioned is not a tacit acknowledgement of the accuracy or truth of statements made or documents received.

Preliminary matters

The scope of the Applicant's application

27. In its application, the Applicant identified the qualifying works in the following terms:

Works are required to the patio terrace areas to the houses which form the roofing areas to the commercial units. The works are to include lifting the patio and terrace areas to access the roof covering and to prime, apply liquid plastic system, top coat and waterproofing to the existing roof covering as well as [sic.] to re-dress up-stands, skirting, downturns and pipes and outlets to ensure all areas are sealed and waterproofed to stop the water ingress into the commercial units.

26. The application also set out its contention that consultation had taken place in respect of those works during 2025 but noted that although on account service charge demands had been issued, insufficient funds had been received to allow those proposed works to be undertaken. The application further set out that, in those circumstances, dispensation from all or any of the consultation requirements was now sought, and the application was urgent, as:

Due to bad weather, [Commercial] Units 1 and 2 have suffered extensive damage internally. Ceilings have had to be removed to make the areas safe, both Units are unable to operate fully from the building due to health and safety reasons including unsafe areas and build ups of mould.

28. At the beginning of the hearing on 9 July 2026 the Tribunal sought to clarify the scope of the Applicant's application. The Applicant, represented at the hearing by Mr Bickham and Mr Clements, directors of the Applicant, clarified that the Applicant was seeking dispensation in respect of part of the works that it contends had been the subject of consultation in 2025, namely that part of the earlier proposed works that related to water ingress into commercial units 1 and 2, affecting the patio areas of residential units 1, 2 and 3 only. The Applicant did not contend that completing the earlier proposed works in stages would increase the costs overall; the costs of the more limited works were expected to be a proportionate share of the original costs, reflecting the fact that only commercial units 1 and 2 were to be protected by the more limited works.
29. Although the Applicant contends that the consultation carried out in 2025 satisfied the statutory consultation requirements in respect of the earlier proposed works, it considers that it is required to re-consult (or obtain dispensation) in respect of the more limited works now proposed.
30. The Tribunal noted that the application does not seek dispensation in respect of the earlier proposed works, but rather the more limited works referred to above. Accordingly, none of the parties had directed their submissions or evidence to the question of whether the statutory requirements were met. In the circumstances, the Tribunal decided that it could not determine that issue in these proceedings and that it should hear the Applicant's application for dispensation as brought and on the basis that statutory consultation may be needed in respect of the more limited works now proposed.

The Respondents' applications to strike out

31. As noted above, each of the opposing Respondents made an application to strike out the Applicant's application. Each of those applications invited the Tribunal to strike out the application pursuant to rule 9.3 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (as amended) ('the Tribunal Rules'). The opposing Respondents relied on the Applicant's failure to serve the Directions on the Respondents as directed as well as the Applicant's failure to send its reply and other documents by the originally directed date (of 12 May 2026) and the extended deadline (of 12 June 2026). Each of the opposing Respondents noted that they had not (by the date of their applications) received the Applicant's reply and that, as such, they were not able to prepare properly for the hearing on 9 July 2026, undermining the fairness of proceedings.
32. On being invited to address his application to strike out, Mr Tagg stated that, while maintaining a number of criticisms of the Applicant's conduct of the litigation, he no longer wished to pursue that application and wished the hearing to proceed. Mr Cairns, in contrast, maintained his application.

33. Having heard the submissions of Mr Cairns and the Applicant, the Tribunal determined that it should not strike out the Applicant's application or any part of it.
34. Both sets of directions given by the Tribunal contain standard provisions relating to the time for service of documents set out in those directions:

Only evidence and documents exchanged between the parties in accordance with the timetable below shall be included within the bundle.

Parties are reminded the Tribunal will only consider those documents provided in accordance with these directions. A failure to provide documents may be taken into account by the Tribunal.

At the hearing the Tribunal will only consider evidence previously exchanged. If a party wishes to rely upon oral evidence at the hearing, they must provide a written statement in accordance with the Directions set out below.

However, neither set of directions provided that the proceedings or any part of them would be automatically struck out if the Applicant did not send its reply by the date specified or that such a failure to do so could lead to the application being struck out. Accordingly, the Tribunal does not consider that either rule 9(1) or rule 9(3)(a) of the Tribunal Rules, that require or allow the Tribunal to strike out the proceedings or part of them, respectively, apply in this case.

35. In addition, the Tribunal was not satisfied that it should exercise the power set out in rule 9(3)(b) of the Tribunal Rules, namely:

The Tribunal may strike out the whole or a part of the proceedings or case if...
(b) the Applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly.

While a failure to comply with a direction (or a series of directions) might constitute a failure to co-operate with the Tribunal, the Tribunal is not satisfied that the Applicant's failure to file its reply until 26 June 2026 has led to circumstances where the proceedings cannot be dealt with fairly and justly. As identified in each of the sets of Directions, the issues in the application are relatively narrow: whether it is reasonable to dispense with the statutory consultation requirements in respect of the proposed qualifying works and, in particular, whether the Respondents would suffer any prejudice as a result; and whether any conditions should be attached to the grant of dispensation. The Respondents have had sight of the Applicant's reply and supporting documents for 8 working days before the hearing and none of the Respondents have contended that any other steps would have been taken or other material relied on if the reply had been filed as directed. As such, the Tribunal was satisfied that the hearing can be conducted fairly and justly.

The Applicant's oral application to rely on its reply

36. As noted above, the Tribunal Directions provide that a document that has not been sent in accordance with the directions will not be considered by the Tribunal.
37. At the hearing, the Applicant applied orally for the Tribunal to permission to rely upon the reply sent on 26 July 2026.
38. Rule 8(1) of the Tribunal Rules provides that a failure to comply with a direction does not of itself render the proceedings or any step taken in the proceedings void. Rule 8(2) of the Tribunal Rules further provides that, where a party has failed to comply with a direction, the Tribunal may take such action as it considers just, including waiving the requirement.
39. The Tribunal considers that, for the reasons set out at paragraph [35] above, that it should permit the Applicant to rely on its reply and supporting documents in these proceedings. While a failure to send documents as directed is a serious and significant failure and the Applicant has not provided a good reason for that failure, the Tribunal considers, looking at all the circumstances, that it would not be proportionate to prevent the Applicant from relying on its reply.
40. Accordingly, the hearing proceeded based on the documents contained within the hearing bundle, including the Applicant's reply.

The hearing on the substantive application

41. The hearing of the Applicant's substantive application proceeded by hearing evidence of Mr Bickham, who confirmed the contents of the application and of the reply, and from Mr Cairns and Mr Tagg. Each were asked questions by the other parties and/or by the Tribunal itself.
42. The Tribunal also heard oral submissions of Mr Bickham, on behalf of the Applicant, and from Mr Cairns and Mr Tagg.
43. While each of these parties sought to provide their recollection and understanding of the issues material to this application, it was clear that each party's evidence was clearly focused on the objective that they sought to achieve – either a grant of dispensation or a refusal of it. In the case of Mr Cairns, his written evidence dealt with a long history of problems at the Property, and he struggled to focus on the more limited issues before the Tribunal.

The law

44. Section 20 of the Landlord and Tenant Act 1985 ('the 1985 Act') and the related statutory 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.

45. Section 20ZA of the 1985 Act provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may grant such dispensation, “if satisfied that it is reasonable to dispense with the requirements.” Such an application may be made either retrospectively (that is, after the works have been carried out) or prospectively (that is, before the works have been carried out).
46. 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.
47. The leading judgment of Lord Neuberger explained that statutory consultation was, “a means to an end, not an end in itself,” and gives practical effect to the objectives (reflected in section 19 of the 1985 Act, dealing with whether service charges are payable) of ensuring that a leaseholder does not (a) pay more than they should for services that were necessary and provided to an acceptable standard, or (b) pay for services that were either unnecessary or not provided to an acceptable standard.
48. Lord Neuberger noted that where the extent, quality and cost of the works were in no way affected by the landlord’s failure to comply with the consultation requirements:

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.

Accordingly, Lord Neuberger noted that, when considering an application for dispensation, the “main, indeed normally, the sole question,” for the Tribunal is the extent, if any, to which a leaseholder will be, or had been, caused relevant prejudice by a failure of the landlord to undertake the statutory consultation.

49. The legal burden of establishing that it is reasonable to dispense with the consultation requirements is on the landlord. However, the factual burden of demonstrating some relevant prejudice that the leaseholder would or might have suffered rests on the leaseholder. The leaseholder must identify what would have been said if they were able to engage in a consultation process; but the Tribunal should be sympathetic to the leaseholders in this assessment. And if a credible case for having been prejudiced is shown, the landlord must then rebut it and prove that such prejudice was not or would not be suffered.
50. The question is one of the reasonableness of dispensing with the process of consultation provided for in the 1985 Act, not one of the reasonableness of the charges of works arising or which have arisen.

51. *Daejan* also decided that, if dispensation is granted, it may be granted on terms. That is to say that dispensation is granted but only if the landlord accepts – and fulfils - appropriate conditions. Specific reference was made in that case to costs incurred by the leaseholders, including the costs of obtaining legal advice about the application made.
52. However, subsequent cases have considered a range of other conditions that might be imposed. For example, in *Aster Communities v Chapman* [2021] EWCA Civ 660, the Court of Appeal upheld the imposition of a condition that the landlord pay the reasonable costs of an expert to consider and advise the leaseholders as to the necessity of the proposed works (in particular, whether it was necessary to replace all of the asphalt on balconies).
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 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.”

The issues

54. The issues raised by the application are, as noted, relatively narrow:
 - (1) Can the Applicant show that the Respondents would not suffer any prejudice because of a failure to carry out the statutory consultation in respect of those works?
 - (2) Is it reasonable to dispense with the statutory consultation requirements in respect of the proposed qualifying works?
 - (3) If dispensation should be granted, should it be subject to any conditions? If so, what conditions.

Determination

Issue 1: Prejudice to the Respondents

55. The Respondents’ opposition to the application is not restricted to concerns arising out of the more limited works proposed by the Applicant to commercial units 1 and 2, affecting residential units 1, 2 and 3. Their opposition is rooted in the originally planned works, involving work intended to protect all of the commercial units from water ingress. The estimates for the wider works were £119,344.00 and £146,891.20 [70], sums which have been sought from the leaseholders on account [81], and [98], including by the issuing of claims in the County Court. As a proportionate share of the wider works, the more limited works are likely to cost a quarter of those sums.
56. It is also clear that both the originally proposed works and the more limited works will cause significant disruption to the residential

leaseholders' use of any external space above the commercial units, including removal of any wooden decking or tiles currently in place, application of a new liquid waterproofing system, and related works.

57. The Respondents' opposition is also grounded in a clear lack of trust between the opposing Respondents and the Applicant freeholder. And while the freehold ownership has changed a number of times since construction of the Property in 2007, Mr Cairns, in particular, sets out his account of historic failings by the landlord both in terms of the defective construction of the Property by the original developer and the failures to address those or other maintenance issues adequately over time.
58. The Respondents also challenge whether it is correct to charge the residential leaseholders for works carried out for the benefit of the commercial leaseholders below their patios. Alternatively, the Respondents contend that the costs of remedial works should have been covered either by resort to the NHBC scheme, in respect of any construction defects, or the landlord's policy of insurance. As each of these points goes to whether any service charges levied are recoverable under section 19 of the 1985 Act, and the leaseholders remain able to challenge the same on application made pursuant to section 27A of the 1985 Act, these issues are not relevant to the question of whether a failure to consult is likely to have caused prejudice to the Respondents.
59. The Respondents also contend that carrying out the more limited works is not urgent and that there is therefore no reason why the statutory consultation cannot be carried out before any works commence. In part, this position is based on the Respondents' contention that the problem of water ingress into the commercial units has been a longstanding issue that has not been adequately addressed in that period.
60. However, the Applicant's reply appends a series of photographs of commercial units 1 and 2 that show the internal effects of substantial water ingress. In its reply, the Applicant states that the owner of commercial unit 1 has experienced significant disruption because of the condition of that unit, preventing the use of a training room at a loss of approximately £2,500 per month; and the owner of commercial unit 2 is said to have agreed to a reduction in rent of £250 per month to reflect the ongoing issues. And in his oral evidence, Mr Bickham, when asked by Mr Tagg why the landlord now wanted to save "a couple of weeks" to allow proper consultation to take place, stated that, "if we don't put the wheels in motion, we will be at Christmas," and in a position where commercial units 1 and 2 cannot trade.
61. On the evidence presented, the Tribunal is satisfied, on the balance of probabilities, that the Applicant has shown that the more limited works that are the subject of this application are urgent.
62. More pertinently, the Respondents contend that the Applicant has not carried out sufficient work to identify the causes of the water ingress or

to show that the proposed work (of which the more limited work forms one part) are the correct method of addressing that problem. Mr Cairns stated in his oral evidence that he considered any damp within the commercial units had been caused by problems with the original construction of the Property. He said that damp problems were not limited to those under the patio areas but also existed under the residential units themselves. He also noted that the residential properties faced a wooded area, and that the road between that wood and the front of the residential units often became flooded.

63. The Applicant relies on an inspection carried out by Mr Tony German, MRICS, of Croft Surveyors, back in February 2022, that also refers to an “original inspection” carried out in January 2021 [102-104]. He noted water ingress within commercial unit 2, and a similar issue relating to commercial unit 3. He also noted that:

The water ingress is manifesting itself in an area around the rainwater chute which penetrates through the parapet wall, although unfortunately, we cannot view this from roof level, as the balcony of house 3 is completely covered with paving slabs, having a mortar pointing between, and the balcony of house 4 is completely covered in timber decking.

We are aware that there was a defect found with the rainwater outlet chute on the side of the balcony to House 1, where the felt roof covering did not penetrate through the wall, being left with screed within the wall section, and whilst this outlet between units 2 and 3 does seemingly have a lead chute installed, without exploratory works, we cannot confirm that it is correctly detailed or properly sealed between the lead and the felt covering of the roof.

The coping stones in this area to the head of the balcony wall are loose and it can be seen that they are not installed over a damp-proof course, plus there are also some differential movement cracks that have occurred between the parapet along the front wall and that being the party wall, and rainwater could penetrate down in these corners of the balconies.

If the roofing felt is adequately dressed into the walls and all the joints are tightly sealed, this crack should not cause a major problem, although we cannot confirm the quality of the roof covering, either under the timber decking of house 4 or under the paving slabs of house 3, without intrusive exploratory works being carried out. For example, if the roof upstand has pulled out where the crack had occurred, rainwater running down the crack would bypass the roofing membrane and penetrate down onto the concrete roof slabs, before leaking through the joints in the slab.

Without exploratory work, we cannot state the precise cause for the water ingress, although it is likely water is penetrating down through the cracks in the parapet walls, and finding its way in either by bypassing the roof membrane, or around the gutter outlet shoot if not adequately sealed.

Similar to what happened on the balcony of house 2 therefore, the slabs do need to be lifted around this area for further investigation to be undertaken. Sections of the decking to House 4 will also need to be lifted adjacent the separating wall on the balcony.

64. In answer to questions posed by Mr Cairns, Mr Bickham stated that he believed there had been a diagnosis of the problem. He said that the area of the commercial units below the patio areas of the residential units had been covered with a waterproof membrane but that the render had blown behind the membrane, drainage channels had become blocked, and some of the residential owners had raised the floor level or fixed something through the membrane itself. All of this had led, he said, to the need for the waterproof membrane to be replaced.
65. In cross-examination by Mr Tagg, Mr Bickham acknowledged that the Applicant had not obtained a further surveyor's report thereafter showing that the roof covering to the patio should be replaced as is now proposed. He said that the Applicant had relied on its own expertise and that of roofing contractors. Both contractors had suggested a liquid membrane solution and had identified *Triflex* as a solution that would provide a guarantee. He said that to carry out another survey would incur more cost and disruption to the residential leaseholders, whose patios would have to be lifted for any such investigation to take place. He said that the works were the most cost-effective solution and would cause the least disruption to everyone.
66. In response to questions from the Tribunal, Mr Bickham stated that, if the leaseholders had pushed for further surveys as part of any consultation he would have "fought the case" for them not being required. It would, he said, be hard to believe that the leaseholders would not have agreed, given the disruption that further investigations would involve.
67. As previously noted, issues of whether any sums demanded in respect of the now proposed qualifying works are payable by the leaseholders and whether those sums are reasonably incurred and/or reasonable in amount are matters for a future application made pursuant to section 27A of the 1985 Act. The loss of an opportunity to make those points during a consultation does not of itself amount to prejudice.
68. However, the Tribunal is satisfied on the evidence in this case that the opposing Respondents have made out a credible case of relevant prejudice in that the absence of statutory consultation has reduced the opportunity for the Respondents to obtain expert evidence showing that some alternative works (whether less expensive or more effective) should be carried out in place of the proposed works. For the reasons set out in the Upper Tribunal decision in *Aster* ([2020] UKUT 177 (LC) at [62] and [63]) it is unrealistic to require leaseholders to discharge the factual burden by instructing an expert to conduct a survey and comment on the necessity of the proposed works as part of the Applicant's application for dispensation.
69. The Tribunal is also not satisfied that the Applicant has rebutted such prejudice. The Applicant's reliance on the Croft report of 2022, including as it does repeated references to the need for further investigation, and the Applicant's reliance on its own expertise and the advice of bidding

contractors engaged to advise thereafter is insufficient for that purpose. Neither or those sources provide independent support for the need to carry out the works as proposed.

Issues 2 and 3: Is it reasonable to dispense with statutory consultation? Should any dispensation be on terms? If so, what terms?

70. The Respondents invite the Tribunal to dismiss the Applicant's application, requiring them to undertake statutory consultation in respect of the proposed qualifying works. The Applicants argue that the Tribunal should grant the application.
71. As noted above, *Daejan* establishes that the Tribunal can impose conditions on the grant of any dispensation under section 20(1)(b) of the 1985 Act: "In effect, [the Tribunal] would be concluding that, applying the approach laid down in section 20ZA(1), it would be reasonable to grant dispensation, but only if the landlord accepts certain conditions." And, as the decision of the Court of Appeal in *Aster Communities* (at [50]) noted, Lord Neuberger in *Daejan* (at [54]) referred to the power to grant dispensation "on such terms as [the Tribunal] thinks fit – provided, of course, that any such terms are appropriate in their nature and effect."
72. The Tribunal determines that it is reasonable to grant dispensation from the statutory consultation requirements in respect of the more limited qualified works, but only on conditions.
73. First, for the reasons approved by the Court of Appeal in *Aster Communities* (at [50]), the Applicant is required as a condition of dispensation, to pay an amount of fees incurred in the event of the Respondent's instruction of a chartered building surveyor to investigate the problem of water ingress at the property and to assess whether the proposed works are a necessary and effective remedy for the same and, if not, what alternative solutions should be adopted. The Tribunal has no specific information as to likely cost and accepts that the cost to the Respondents may be greater. However, the Tribunal has applied its experience in determining a likely cost of a report in relation to the works now proposed by the Applicant and a reasonable sum for the Applicant to pay.
74. Secondly, the Applicant is required as a further condition of the dispensation to pay the Respondent's costs incurred in relation to advice about the application for dispensation. Those will be the subject of an assessment by the Tribunal if not agreed by the parties. In that event, the Respondents will need to request directions from the Tribunal as to the steps required to facilitate that assessment.
75. The Tribunal determines that compliance with those conditions by the Applicant will meet the prejudice otherwise caused to the Respondents by the grant of dispensation.

Decision

76. The Tribunal grants the Applicant dispensation from consultation as requested, subject to compliance with the conditions set out above.

Costs and Fees

77. At the conclusion of the hearing, the Tribunal invited the parties' submissions as to whether the Tribunal should make any orders in respect of any fees paid, pursuant to r. 13(2) of the Tribunal Rules, or any orders in respect of the costs of these proceedings pursuant to section 20C of the 1985 and/or paragraph 5A of schedule 11 of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act').
78. Mr Bickham, on behalf of the Applicant, stated that it does not seek an order for the payment of any fees paid but does consider that its costs of these proceedings should be recovered as part of the service charge. It was, Mr Bickham said, only fair that the problem should be shared in that way.
79. The Respondents invited the Tribunal to make orders preventing the Applicant from recovering the costs under the service charge or by way of any administration charge. They did not think that the costs should be borne by the leaseholders: there had been no proper consultation; and if the Applicant had engaged with the leaseholders in the first instance, the parties would not have incurred any costs.
80. The Tribunal notes that its powers to make any orders pursuant to section 20C of the 1985 Act (which deals with service charges) and/or paragraph 5A of schedule 11 to the 2002 Act (which deals with administration charges) are wide and unfettered, but that it must have regard to what is just and equitable in all the circumstances. The Tribunal also notes that any orders it makes can only affect the opposing Respondents in this case, leaving the contractual position in respect of other leaseholders unaffected.
81. As noted above, in the absence of compliance with, or dispensation from, the statutory consultation requirements, a landlord can only recover a maximum of £250 from each leaseholder in respect of qualifying works. Here, the Applicant has chosen to seek dispensation from the Tribunal before any works have started. Given the Tribunal's findings in respect of the relative urgency of the more limited works that are the subject of this application, we do not consider that the Applicant should be criticised for doing so.
82. The opposing Respondents have each chosen to contest the Applicant's application. This has resulted in directions being given for a contested oral hearing.
83. The Tribunal has decided to grant dispensation, but in doing so the Applicant is granted an indulgence and further the Tribunal to does so

on terms. The Tribunal was satisfied that the Respondents had made out a credible case on prejudice and that conditions should be attached to any dispensation that addressed that prejudice. As such, the Applicant has succeeded in obtaining dispensation but not unconditionally; it has been required, to address the prejudice identified and raised by the Respondents.

84. In the circumstances, the Tribunal determines that it should and does make orders pursuant to section 20C and paragraph 5A of schedule 11 to the 2002 Act that the Applicant landlord be prevented from recovering the costs of this application from the opposing Respondents via the service charge or by way of any administration charge.
85. The Tribunal further considers, for the same reasons that the Applicant must pay the fees incurred for its application and so makes no order for any part to be re-imbursed by the opposing Respondents.

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 by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
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.