



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

<b>Case Reference</b>	: CHI/ 29UQ/LDC/2022/0104
<b>Property</b>	: Rose Hill House, Clarence Road, Tunbridge Wells, Kent. TN4 8AU
<b>Applicant</b>	: Clarence House (Tunbridge Wells) Management Ltd
<b>Representative</b>	: Alexandre Boyes
<b>Respondent</b>	: Mr J Relfe (Flat 1) Mr K Eslami (Flat 2) Mr P Gibson & Ms M Dobinson (Flat 3) Ms P Pearson (Flat 4) Mr C McDowell (Flat 5) Mr R Reynolds (Flat 6) Ms K Green & Mr M Wilson (Flat 7) Ms A Woolley (Flat 8) Mr B Andradi (Flat 9)
<b>Representative</b>	:
<b>Type of Application</b>	: To dispense with the requirement to consult lessees about major works: section 20ZA of the Landlord and Tenant Act 1985
<b>Tribunal Member(s)</b>	: Judge J Dobson
<b>Date of Decision</b>	: 23rd December 2022

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**DECISION**

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## **Summary of the Decision**

1. **The Applicant is granted 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 respect of major works, being works to the roof of the Property to prevent ongoing leaks. The Tribunal has made no determination on whether the costs of the works are reasonable or payable.**

## **The application and the history of the case**

2. The Applicant applied by application dated 28th November 2022 for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) from the consultation requirements imposed by Section 20 of the Act.
3. The Tribunal gave Directions on 1st December 2022, explaining that the only issue for the Tribunal is whether, or not, it is reasonable to dispense with the statutory consultation requirements and is not the question of whether any service charge costs are reasonable or payable. The Directions Order listed the steps to be taken by the parties in preparation for the determination of the dispute, if any.
4. The Directions further stated that Tribunal would determine the application on the papers received unless a party objected in writing to the Tribunal within 7 days of the date of receipt of the directions. None did. The period was reduced from the usual in light of the stated urgency of the works (see below). Having considered the application further and prior to undertaking this determination, the Tribunal is satisfied that a determination on the papers remains appropriate.
5. This the Decision made on that basis and following a paper determination.

## **The Law**

6. 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.
7. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation “if satisfied that it is reasonable to dispense with the requirements”.

8. 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.
9. 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”.
10. 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).
11. 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.”
12. 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.
13. 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.
14. If dispensation is granted, that may be on terms.
15. 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**

16. It is said in the application that the Property comprises a converted building of 9 flats. No other information is provided as to the nature of the Property or any aspects of it of relevance.
17. The Applicant explains the position in the application and as set out in the Directions. In particular it is stated that the repair work is

(presumably now was) due to commence in early December 2022 and that “Section 20 consultation has not been started as we wished to act quickly to avoid delays and ensure the property is watertight.”

18. The Applicant requested that the application for dispensation should be dealt with as a matter of urgency due to severe leaks in the top floor flats and stated that due to the severity, contractors had been instructed to complete the work with immediate effect in order to avoid further damage.
19. The works in question are roofing works, although there is no detail provided as to the nature of those works or any ancillary works or costs.
20. The Lease of Apartment 8 in Clarence House has been provided with the application (“the Lease”). The Tribunal understands that the leases of the other Flats are in the same or substantively the same terms. In the absence of any indication that the terms of any other of the leases differ in any material manner, the Tribunal has considered the Lease.
21. The Lease is tri-partite. The Applicant is the management company of the Property pursuant to the Lease. The Applicant has various obligations under the Lease, pursuant to covenants set out in the Tenth Schedule, which the Applicant agrees to observe in clause 5. of the Lease. The “Maintained Property” to which the Applicant’s covenants apply includes “the main structural parts of the Building including the roof foundations and external parts”. The obligations in respect of the “Maintained Property” includes repairs. The Sixth Schedule identifies relevant costs as “Maintenance Expenses” for which service charges are payable as apportion in the Seventh Schedule.
22. There has been no response from any of the Lessees opposing the application.
23. 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.
24. The Tribunal considers the information provided about the Property and, in particular, about the nature of the works required is barely adequate. That creates some concern as to the extent to which the Respondents are fully aware, although the Tribunal does not know to what extent there have been other communications between the parties.
25. In any event, the Tribunal is entitled to expect to receive better information and the Applicant and its representative should note that in the event that any further similar application may be made. A subsequent application which gives a similar level of information about the Property and, in particular, the works is liable to be refused, objections or no.

26. However, the Tribunal finds on the evidence available that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process and is prepared to accept the information on this occasion.
27. 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.
28. This Decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying long-term agreement. 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.

## **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](mailto: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.