FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	HAV/00HE/LDC/2025/0610/JC
Properties	**:**	Various properties across Cornwall of Coastline Housing Limited
Applicant	**:**	Coastline Housing Limited
Respondents	**:**	The Leaseholders of the Properties
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(s)	**:**	Tribunal Judge H Lumby Ms T Wong
Date of Hearing	**:**	22 July 2025
Date of Decision	**:**	26 August 2025

DECISION

Decision of the Tribunal

(1) The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (Section 20ZA of the same Act) in relation to new utility contracts for the Properties.

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the Respondents as lessees through any service charge.

(3) The Tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in favour of the Respondents that none of the costs incurred by the Applicant in connection with these proceedings can be charged direct to the Respondents as an administration charge under the Respondents' leases.

The background to the application

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (the "1985 Act") from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act. This retrospective application was received on 27 January 2025.

2. The Properties comprise various properties owned by the Applicant, comprising a variety of different types of buildings, units and tenures. A schedule of the Properties was provided with the application.

3. The Applicant is the landlord of the Properties and the Respondents comprise its leaseholders (including shared ownership leaseholders).

4. The application relates to retendering of energy supplies to communal areas. The existing contracts needed retendering in 2024 and the Applicant received advice that July was the best time to carry out the retendering exercise. There was only a short gap for acceptance after the receipt of tenders and this was insufficient to hold a valid consultation pursuant to the 1985 Act and The Service Charges (Consultation Requirements) (England) Regulations 2003. The Applicant therefore took the view that it was better to proceed without a consultation so as to lock in the lower prices tendered. Two year contracts were awarded to EDF Energy and SSE as lowest bidders. It is accepted that these comprised qualifying long term agreements for the purposes of the 1985 Act.

5. Two objections were received to the application in this case, these being from Mr Timothy Brown and Ms Minnie Reed.

6. The Tribunal did not inspect the Properties as it considered the documentation and information before it enabled the Tribunal to proceed with this determination.

Hearing

7. The hearing took place online, using the Tribunal's CVP system. Mr Mark England and Ms Kirsty Skinner appeared for the Applicant. Mr Brown and Ms Reed did not attend. The Tribunal were satisfied that they were aware of the hearing and chose to proceed in their absence.

8. The Tribunal had been provided with a bundle comprising 270 pages. The contents of all these documents were noted.

The issues

9. 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 in this decision made no determination on whether the costs are payable or reasonable, it is open to any of the Respondents to apply to the Tribunal pursuant to section 27A of the 1985 Act if they have objections on that basis.

The Applicant's case

10. The Applicant contends that it is reasonable for the Tribunal to grant an unconditional dispensation. Their argument is set out in their application; they contend that any consultation would prevent the best prices being obtained and so it was in the Respondents' interest to proceed without a consultation.

11. The Tribunal asked the Applicant at the hearing about the objections received (these are set out below). They argued that Mr Brown's objections were not relevant to the contract in question. Ms Reed's concern was acknowledged but the Applicant argued that a fair process was followed and that the result was rates at the lowest level available to them. They argued that they had to move quickly to take advantage of the best rates.

12. The Applicant acknowledged that their communications with leaseholders could be improved.

The Respondents' objections

13. Mr Brown's objection related to the provision of services generally; he felt that some were not provided and others were of poor quality.

14. Ms Reed felt that not consulting set a dangerous precedent.

Law

15. Section 20 of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act") and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to enter into a qualifying long term agreement to consult the leaseholders in a specified form. Qualifying long term agreement is defined in section 20ZA of the 1985 Act as an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

16. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by an application such as this one before the Tribunal, pursuant to section 20ZA of the 1985 Act. Essentially the Tribunal must be satisfied that it is reasonable to do so.

17. In circumstances where there should have been a consultation but there has not been and no dispensation has been granted, the effect is not to void the appointment but to limit the amount recoverable by the landlord in respect of charges under that contract to £100 per unit in the relevant property.

18. The Applicant seeks dispensation under section 20ZA of the 1985 Act from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act.

19. Section 20ZA relates to consultation requirements and provides as follows:

> *"(1) 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.*
>
> *(2) In section 20 and this section—*
> *"qualifying works" means works on a building or any other premises, and "qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.*
> *....*
> *(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.*
> *(5) Regulations under subsection (4) may in particular include provision requiring the landlord—*

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
(b) to obtain estimates for proposed works or agreements,
(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

Findings

20. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14, by a majority decision (3-2), the Supreme Court considered the dispensation provisions and set out guidelines as to how they should be applied.

21. The Supreme Court came to the following conclusions:

a. The correct legal test on an application to the Tribunal for dispensation is: "Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord's failure to comply with the requirements?"

b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.

c. In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord's failure to comply.

d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.

e. The factual burden of identifying some "relevant prejudice" is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

f. The onus is on the leaseholders to establish:

i. what steps they would have taken had the breach not happened and

ii in what way their rights under (b) above have been prejudiced as a consequence

22. Accordingly, the Tribunal had to consider whether there was any "relevant prejudice" that may have arisen out of the conduct of the Applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.

Consideration

23. Having read the evidence and submissions from the Applicant and having considered all of the documents and grounds for making the application provided by the Applicant, the Tribunal determines the dispensation issues as follows.

24. It is accepted that no consultation has been carried out by the Applicant. Applying *Daejan*, the test for it was whether the Respondents suffered any relevant prejudice, and if so, what relevant prejudice, as a result of that failure by the landlord.

25. The Properties comprise a large number of units and objections were only raised from two of those units. Although a large proportion had not objected, the Tribunal needs to consider whether any leaseholders suffered any relevant prejudice such that it would not be reasonable to grant the requested dispensation.

26. In doing so, it needed to focus on whether the leaseholders were prejudiced by paying for inappropriate works or paying an inappropriate amount as a result of the landlord's failure to consult.

27. The Applicant believed that it was necessary to retender its utilities contracts as the existing contracts would expire later that year. Without a new contract there would be no power provision to the Properties and this was the correct time to retender, as any delay would lead to higher prices being payable. In doing so, it acted on the advice of its specialist consultant. In addition, it needed to agree the offered prices quickly, which would not be possible if a full consultation was carried out. On the evidence before it, the Tribunal agrees with the Applicant's conclusions.

28. The Tribunal considered each of the objections received in turn, to ascertain whether any relevant prejudice could be identified. In doing this, the Tribunal considered both the written evidence and the submissions made at the hearing. It also remained cognisant that the burden of proof to show that they have suffered relevant prejudice lies with the Respondents.

29. We began with Mr Brown. He has concerns about the quality of service provision by the Applicant. It is open to him to bring an application in relation to any specific concerns pursuant to section 27A of the 1985 Act. However, his objection does not set out any prejudice he suffered as a result of the Applicant's failure to consult on the new utility contracts.

Accordingly, the Tribunal concluded that Mr Brown had not suffered any relevant prejudice.

30. The Tribunal then turned to Ms Reed's objections. She was concerned that a dangerous precedent would be set if dispensation was granted. However, there is no concept of precedent in section 20ZA applications, each is considered on its own merits and any affected leaseholder can object. The fact that dispensation was (or indeed, was not) granted in the past would not affect future applications for dispensation. Ms Reed has not identified any prejudice she will suffer if dispensation is granted. Accordingly, the Tribunal concluded that Ms Reed had not suffered any relevant prejudice.

31. The Tribunal is therefore of the view that it could not find any relevant prejudice to any of the leaseholders of the Properties by the granting of dispensation relating to the entry into the new utility contracts.

32. As a result, the Tribunal believes that it is reasonable to allow dispensation in relation to the subject matter of the application.

33. The Tribunal considered whether it was appropriate to impose any conditions in relation to such dispensation. None had been requested by any of the parties. There were none that the Tribunal considered appropriate. It therefore determines that no conditions should be added to any dispensation.

34. Accordingly, the Tribunal grants the Applicant's application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 in relation to the new utility contracts for the Properties.

35. The Applicant shall place a copy of the Tribunal's decision on dispensation together with an explanation of the leaseholders' appeal rights on its website (if any) within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on its home page. It should also be posted in a prominent position in the communal areas. In this way, leaseholders who have not returned the reply form may view the Tribunal's eventual decision on dispensation and their appeal rights.

Costs

36. The Respondents had not applied for cost orders under section 20C of the Landlord and Tenant Act 1985 ("Section 20C") and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("Paragraph 5A"). The Tribunal nonetheless invited submissions on the issue. The Applicant stated that it did not intend to recover the costs of the application from the Respondents in any event and that it was happy for this to be formalised through appropriate Tribunal orders.

37. The relevant part of Section 20C reads as follows:-

(1) "A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before … the First-tier Tribunal … are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant…".

38. The relevant part of Paragraph 5A reads as follows:-

"A tenant of a dwelling in England may apply to the relevant … tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs"

39. A Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the Applicant in connection with these proceedings cannot be added to the service charge of the Respondents or other parties who have been joined. A Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the Applicant in connection with these proceedings cannot be charged direct to the Respondents as an administration charge under their respective Leases.

40. In this case, the proceedings have only been brought because the Applicant has not undertaken a consultation process. They would not have been otherwise required. The Tribunal does not consider it equitable for a party to be charged for the costs of proceedings necessitated by the other party's decision not to carry out a consultation. In addition, the Applicant will not suffer any prejudice from the making of such orders as it has stated it does not intend to recover its costs from the Respondents in any event. The Tribunal therefore determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act. The Tribunal accordingly makes an order in favour of the Respondents that none of the costs incurred by the Applicant in connection with these proceedings can be added to the service charge.

41. For the same reasons as stated above in relation to the Section 20C cost application, the Respondents should not have to pay any of the Applicant's costs in bringing the application. The tribunal therefore makes an order in favour of the Respondents that none of the costs incurred by the Applicant in connection with these proceedings can be charged direct to the Respondents as an administration charge under their leases.

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

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.