



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

<b>Case Reference</b>	: HAV/21UC/LDC/2024/0628
<b>Property</b>	: Berkeley Court, 1-9 Wilmington Square, Eastbourne, East Sussex, BN21 4DX
<b>Applicant</b>	: Berkeley Court Limited
<b>Representative</b>	:
<b>Respondent</b>	: The Leaseholders
<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</b>	: Regional Surveyor J Coupe
<b>Date of Decision</b>	: 15 May 2025

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**DECISION**

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**Summary of the Decision**

**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 entering a two-year long-term contract for the supply of gas. The Tribunal has made no determination on whether the costs of the works are reasonable or payable.**

## **Background**

1. 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 14 November 2024.

2. The Property is described in the application as:

*This is a purpose built privately owned block of 57 flats. Leaseholders have a share of the freehold. Mainly 2 bedroom flats, 1 x 4 bed roomed flat and a small number of x3 bed roomed flats.*

3. The Applicant explains that:

*Berkeley Court Ltd seeks dispensation of all the consultation requirements for the long term agreement for a gas contract for 2 years. Berkeley Court Ltd has a communal gas heating and hot water system and has to supply heating and hot water to leaseholders. Berkeley Court Ltd is a registered heat supplier and has to buy (sic) gas commercially and charge leaseholders for their usage in their flats and the communal areas. The situation of heat suppliers having to buy gas commercially and supply (sic) to domestic users with gas which they have no control over is known amongst heat suppliers. Many of our leaseholders live alone and are on fixed incomes.*

*Leaseholders have been subjected to high gas prices due to the volatility of prices and the energy market which a number of energy companies ceased trading in the last 4 years. (our total gas bill for 2023 was approx. £76,000) Due to our gas contract ending 9<sup>th</sup> January yearly means that we are usually negotiating gas prices in the autumn when prices are higher. Therefore a gas contract was arranged in advance in July in order to save leaseholders money and enable them to budget for the next 2 years.*

*Berkeley Court Ltd uses a broker to obtain the best price but due to energy contracts only allow 24 to 48 hours to agree a contract, there is not time to carry out the S20 process which takes approx. 3 months. The current cost of gas for 2024 is 7.08p per kwh (approx £34,000 for the year). The new gas contract for 2 years is at 4.71p per kwh which gives leaseholders a considerable saving and the total gas bill for the building is estimates (sic) at £23,695, a saving of over £10,000 on this year.*

4. The Tribunal gave Directions on 27 February 2025 listing the steps to be taken by the parties in preparation for the determination of the dispute, if any.
5. The Directions stated that Tribunal would determine the application on the papers received unless a party objected in writing to the Tribunal within 14 days of the date of receipt of the Directions. No party has objected to the application being determined on the papers.
6. **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 contract, 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**

7. The relevant section of the Landlord and Tenant Act 1985 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.
8. An application may be made retrospectively.
9. 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.
10. 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 of 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.
11. 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 lessees.

12. Where the extent, quality and cost of the works, or long-term contract, 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."*

13. 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 consultation prior to the major works or long-term contract being entered into, and whether dispensation in respect of that should be granted.
14. 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.
15. If dispensation is granted, that may be on terms.
16. 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**

17. 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. No replies were received.
18. The Applicant confirmed by email on 7 April 2025 that they have not received any objections to the application.
19. 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.
20. The Applicant seeks retrospective dispensation from consultation requirements to enter into a two-year contract for the supply of gas. They explain that the building has a communal gas heating and hot water system serving all lessees. By securing a long-term contract, the Applicants were able to obtain more favourable terms compared to shorter contracts. They engage a broker to identify the best price, but

the terms are only held for a maximum of 48 hours, which does not allow sufficient time for consultation.

21. There has been no objection to the dispensation of the consultation requirements from any of the Lessees.
22. 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.
23. The Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process.
24. The Tribunal consequently finds that it is reasonable to dispense with all of the formal consultation requirements in respect of entering into the long-term contract as described in this Decision.
25. 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.
26. In reaching my decision I have taken account of the fact that no party has objected to the application. The leaseholders have had opportunity to raise any objection and they have not done so.

## **RIGHTS OF APPEAL**

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)

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.

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.

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.