



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

<b>Case Reference</b>	: HAV/00ML/LDC/2025/0714
<b>Properties</b>	: Martello Lofts, 315 Portland Road, Hove, BN2 5SE
<b>Applicant</b>	: RC Developments (Martello) Limited
<b>Respondents</b>	: The Leaseholders of the Properties
<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 Members</b>	: Regional Surveyor J Coupe FRICS Mr J Reichel MRICS
<b>Date of Hearing</b>	: 4 November 2025
<b>Date of Decision</b>	: 5 November 2025

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**DECISION**

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## **Decision of the Tribunal**

- i. 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 the following works:
  - (1) Install further fire stopping where required in communal hallways and voids to ensure compartmentalisation complies with fire regulations;
  - (2) Remove existing timber balcony flooring and replace with a suitable fire-resistant material or install a suitable fire-resistant material to the underside of all balconies to create an upward fire stop.

## **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. The application was received on 3 September 2025.
2. The Property is a converted four storey office building originally built around 2000, and converted into twenty eight residential units in around 2015/2016. The flats provide a mixture of one and two-bedroom accommodation.
3. The Applicant is the landlord of the Property and the Respondents comprise its leaseholders.
4. The application relates to qualifying works required to comply with a Fire Enforcement Notice (“the Fire Safety Notice”) dated 23 October 2024 and issued by East Sussex Fire and Rescue Service (“the Fire Authority”). Compliance with the Fire Safety Notice was initially required by 23 April 2025, later extended to 23 October 2025, and subsequently extended to 23 January 2026.
5. Twenty five of the twenty eight leaseholders (“the Respondents”) objected to the application. The Respondents were represented by Coole Bevis LLP. Following discussions between the parties, the Respondents withdrew all objections to the application for dispensation on 24 October 2025.
6. The Tribunal did not inspect the Property as it considered the documentation and information before it sufficient to proceed with this determination.

7. **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 works, 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**

### **Hearing**

8. The hearing took place online, using the Tribunal's CVP system. Mr David Martin, Director of the Applicant appeared. He was accompanied by Mr Joseph Miller, employee and Operations Director. None of the Respondent leaseholders attended, nor were they represented.
9. The Tribunal were satisfied that the Respondents were aware of the hearing and had chosen not to attend. Having regard to the overriding objective of the Tribunal to deal with matters fairly, justly and in a proportionate manner, the Tribunal decided to proceed in their absence.
10. The Tribunal had been provided with a bundle comprising 261 pages. The contents of all these documents were noted.

### **The issues**

11. This decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying works. 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**

12. On behalf of the Applicant, Mr Martin stated that the Applicant no longer sought dispensation for the third set of works included in the application, such being to: "Remove timber battens currently behind the existing fireproof cladding to the exterior elevations".
13. Consequently, the Tribunal was asked to consider dispensation in relation to two sets of works:
  - i. Install further fire stopping where required in communal hallways and voids to ensure compartmentalisation complies with fire regulations ("compartmentalisation works");

- ii. Remove existing timber balcony flooring and replace with a suitable fire-resistant material or install a suitable fire-resistant material to the underside of all balconies to create an upward fire stop (“balcony works”).
- 14. For the assistance of the Tribunal Mr Martin provided a summary of the recent history of the building. He explained that the initial Fire Risk Assessment was found to be inadequate, necessitating the commissioning of a second Assessment. The subsequent report identified multiple areas requiring remedial works, several of which have since been addressed either at the Applicant’s expense or through the service charge. However, the building remains subject to a waking watch, which continues to incur considerable cost.
- 15. On 23 October 2024 the Fire Authority served on the Applicant the Fire Safety Notice referred to in paragraph 4 above.
- 16. On 22 August 2025 and in response to the Fire Safety Notice in force with effect from 23 October 2024, the Applicant served a Notice of Intention of Proposed Works pursuant to Section 20, Landlord and Tenant Act 1985, on each leaseholder. The Section 20 Notice included the two sets of work – balconies and compartmentalisation – for which dispensation is sought, and a third set of works in relation to the removal of timber battens which was subsequently withdrawn from the dispensation application.
- 17. Mr Martin explained that two quotations for the proposed balcony works were obtained. Venter Building Services Ltd provided a quotation of £16,632.00, dated 23 September 2025, and Marben Construction submitted a quotation of £26,118.00, dated 18 August 2025. The contract was subsequently awarded to Venter Building Services Ltd who completed the works at a final cost of £17,712.00 The Applicant seeks retrospective dispensation in this regard. Copies of the quotations were provided in the bundle.
- 18. Mr Martin stated that two quotations for the proposed compartmentalisation works have been obtained, in the sums of £61,525.00 and £65,278.00 respectively. Mr Martin was unable to confirm whether these quotations were inclusive of VAT. Mr Martin further explained that discussions were ongoing with the contractors in regard to the scope of the works and the possibility of reducing the proposed sums. While the quotations had not yet been communicated to the Respondents, it was the Applicant’s intention to do so in due course.
- 19. In regard to reference in the bundle to roofing works, Mr Martin explained that works to construct additional flats on the roof of the building had commenced pre-COVID lockdown but that the contractor involved had subsequently entered administration. Due to challenging economic conditions, the Applicant mothballed the project while seeking to amend the planning permission and to submit an

application to the Development Fund. Planning permission for six additional flats was subsequently granted.

20. The Applicant submits that it is reasonable for the Tribunal to grant unconditional retrospective dispensation for the balcony works. The works were considered urgent, undertaken in compliance with the Fire Safety Notice, and two competitive quotations were obtained. The Applicant proceeded with the lower of the two quotations. It is further contended that the Respondents have suffered no prejudice as a result of the failure to consult.
21. The Applicant further submits that unconditional dispensation should be granted in relation to the proposed compartmentalisation works. These works are also considered urgent and form part of the remedial measures required under the Fire Safety Notice, which mandates compliance by 23 January 2026. Two quotations have been obtained, and the Applicant intends negotiating improved terms. The works are also intended to facilitate the cessation of the waking watch, thereby reducing ongoing costs. The Applicant stated that the Respondents have not demonstrated any prejudice arising from the absence of consultation.

### **The Respondents' objections**

22. There were no objections from the Respondents for the Tribunal to consider, as all objections had been withdrawn prior to the hearing.

### **Law**

23. 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.
24. 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.*

25. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14, the Supreme Court considered the dispensation provisions and set out guidelines as to how they should be applied.
26. 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
27. 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**

28. Having considered the written evidence and submissions, heard oral representations from the Applicant, and reviewed all documentation and grounds advanced in support of the application, the Tribunal determines the issues of dispensation as follows.
29. The Tribunal finds that only partial consultation has been carried out by the Applicant, namely the serving of a Notice of Intention on each leaseholder on 22 August 2025. Applying the test set down in *Daejan*, the Tribunal must consider whether the Respondents suffered any relevant prejudice, and if so, what relevant prejudice, as a result of the Applicant’s failure to complete the consultation process.
30. The Tribunal accepts that both the completed balcony works and the proposed compartmentalisation works are necessary and of an urgent nature. While the Applicant acknowledges that delays have occurred, it remains subject to a compliance deadline of 23 January 2026 under the Fire Safety Notice, albeit that this deadline has already been extended on two occasions.
31. While a majority of the Respondents initially opposed the application for dispensation and instructed legal representation in the matter, those objections were subsequently withdrawn. Accordingly, the Tribunal finds that the Respondents have neither asserted nor demonstrated that any prejudice has been caused to them.
32. The Tribunal finds that, with the exception of the Applicant acting in a more timely manner, nothing different would, in all likelihood, be done or achieved in the event of a full consultation with the leaseholders, except for potentially further delay, and additional costs incurred through the waking watch.
33. The Tribunal is therefore of the view that it could not find any relevant prejudice to any of the leaseholders of the Property by the granting of dispensation relating to the completed balcony works and proposed compartmentalisation works described in the preceding paragraphs.

34. The Tribunal consequently finds that it is reasonable to dispense with the formal consultation requirements in respect of the major works to the Property as described in this decision.
35. This decision is confined to determination of the issue of dispensation from the consultation requirements described. 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.
36. 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 the dispensation.
37. 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 works described.
38. The Applicant shall send a copy of the Tribunal's decision to each leaseholder and shall display a copy in a prominent location within the Property for a minimum of twenty eight days.

### **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](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.