



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

Case Reference	: HAV/29UH/LDC/2025/0710
Property	: Flats 1-21 The Chenies, Chancery Lane, Maidstone, Kent, ME15 6EE
Applicant	: The Chenies Estate Management Company Limited
Representative	: Omnicroft Ltd
Respondent	: The Leaseholders
Representative	:
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	: Judge D Gethin Mr M Ayres Ms P Gravell
Date and Type of Hearing	: 27 October 2025 On the papers
Date of Decision	: 31 October 2025

DECISION

Summary of the Decisions of the Tribunal

1. **The Tribunal determines that those parts of the consultation requirements provided for by s.20 of the Landlord and Tenant Act 1985 ("the Act") which have not been complied with are to be dispensed with in relation to replacement of two pumps as part of the foul water pumping station.**
2. **Dispensation is granted on the condition that a copy of this decision shall be served by the Applicant upon all leaseholders at the Property.**
3. **The Tribunal has made no determination on whether the costs of the works are reasonable or payable.**

The Application

1. The Applicant seeks 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 1 September 2025.
2. The Property is described as a:

Block of 21 flats with 4x separate entrances located in Maidstone, Kent and close to the River Len.
3. The Applicant explains that:

The estate has a private, foul water pumping station and both pumps have failed causing neat sewerage to escape from the sump and flow down the rear garden. This had to be cleared because this created not only a health and safety issue, but additionally we had environmental concerns and so it was done on 19th August 2025. It is not possible to repair either pump and both must be replaced. It was crucial that a working pump was installed until both pumps could be replaced to prevent further spillage and this was completed 19th August 2025, but if the second pump is not installed this will cause undue strain on the one pump which will fail within a short space of time.
4. Dispensation is sought as:

We are asking the First Tier Tribunal to dispense with the Consultation process in order for the works to be carried out without the potential delay of 60 days and we are concerned that should the one pump fail again, not only will there be a further health & safety issue but the estate is located fairly closely to the River Len with the potential to contaminate.

5. A sample lease has been provided (“the Lease”). It is understood that other leases in the building are on broadly similar or the same terms.
6. The Applicant has various obligations under the Lease, principally set out in clause 6.1 and paragraph 2 of the Third Schedule, including “*The maintenance and repair of the Common Parts and the rebuilding or replacement any parts that require to be rebuilt or replaced*”. For the avoidance of doubt, Common Parts are defined at clause 1.3.2 to include the Service Conduits which themselves are defined at clause 1.8 to include “*drains soil pipes gas pipes electricity cables and other media for the transmission of utilities and telecommunications within the Building and through the Estate*”. The lessee is required to contribute to the costs and expenses of the Applicant complying with its obligations pursuant to clause 3.2 and the Fourth Schedule.
7. The works fall within the responsibility of the Applicant and may be chargeable as service charges.
8. The Tribunal gave Directions on 5 September 2025 listing the steps to be taken by the parties in preparation for the determination of the dispute, if any. The Tribunal amended the directions by way of further Directions on 25 September 2025 that the Applicant provide written authority appointing the representative by 3 October 2025. That was complied with on 26 September 2025.
9. The Directions directed the provision of the application to the leaseholders and enabled the leaseholders to reply, setting out any objections. The Applicant’s representative by way of an email dated 19 September 2025 stated that it had not received any objections but had received queries from the Lessee of Flat 5 on 29 August 2025. This was received prior to the Tribunal receiving the written authority but we are content for the Applicant to rely upon the email.
10. The queries relate to insurance cover, cause of the water pump failure, inspection regimes and sources of funding that might defray costs. It is suggested that those matters are relevant to the consultation process.
11. There is no further indication of how those matters apply in respect of an application for dispensation, although they may be relevant matters in respect of any service charge demanded in the future to fund the works. In any event, the query is not a reply sent to the Tribunal in accordance with the Directions.
12. The Directions 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. No party has objected to the application being determined on the papers. The matter is therefore determined on the papers in accordance with Rule 31 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

13. 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 lessees through the service charge, or the possible application or effect of the statutory protections afforded to lessees. The Lessees have the right to make a future 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 charge.

The Hearing

14. The matter was determined by way of a paper hearing which took place on 27 October 2025.

Particulars of the Application

15. The Applicant has applied for dispensation from the statutory consultation requirements in respect of replacement of two foul water pumps.
16. The first pump was replaced on an emergency basis when both existing pumps failed, and the Applicant needs to replace the second pump prior to a consultation in order to minimise undue wear on the first replacement pump and thereby risking a repeat of the failure of the foul water pumping station that led to the neat sewerage leaking from the sump. There is said to be a risk to both the health and safety of the residents as well as environmental contamination of the nearby River Len.
17. No costs for the works have been provided, nor are they required to be for the purpose of this application.
18. The only issue for the Tribunal is whether it is reasonable to dispense with the statutory consultation requirements. **This application did not concern the issue of whether any service charge costs will be reasonable or payable.**

19. There is no suggestion of any prejudice arising from the failure to carry out the statutory consultation process

The Law

20. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the related Regulations provide that where the lessor undertakes qualifying works (as in this case) 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.

21. Dispensation is dealt with by s.20ZA of the Act which provides:

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.

22. 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.

23. Lord Neuberger pointed out, at [40], that s.20ZA provides little guidance on how the dispensing jurisdiction is to be exercised, other than that the tribunal must be “*satisfied that it is reasonable to do so*”.

24. He continued, at [41]:

“However, the very fact that s.20ZA(1) is expressed as it is means that it would be inappropriate to interpret it as imposing any fetter on the LVT’s exercise of the jurisdiction beyond what can be gathered from the 1985 Act itself, and any other relevant admissible material. Further, the circumstances in which a s.20ZA(1) application is made could be almost infinitely various, so any principles that can be derived should not be regarded as representing rigid rules.”

25. Having identified the purpose of the consultation provisions as being the protection of tenants from (i) paying for inappropriate works or (ii)

paying more than would be appropriate, Lord Neuberger explained, at [44]-[45], that the issue on which tribunals should focus when determining an application under s.20ZA(1) was “*the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements*”. If “*the extent, quality and cost of the works were in no way affected by the landlord’s failure to comply with the requirements*” dispensation should normally be granted, because, “*in such a case the tenants would be in precisely the position that the legislation intended them to be – ie as if the requirements had been complied with*”.

26. Lord Neuberger considered, at [46]-[47], that it would not be right to focus on the seriousness of the breach of the consultation requirements; the only relevance of the extent of the landlord’s oversight was “*in relation to the prejudice it causes*”. The overarching question was not whether the landlord had acted reasonably but was whether the tribunal was satisfied that it was reasonable to dispense with compliance.
27. In assessing the prejudice to the tenants if dispensation was granted Lord Neuberger explained, at [65], that it was necessary to take account only of the sort of prejudice which s.20 was intended to protect against: “*... the only disadvantage of which they could legitimately complain is one which they would not have suffered if the requirements had been fully complied with, but which they will suffer if an unconditional dispensation were granted.*”
28. Lord Neuberger concluded that dispensation could be granted on conditions. One such condition of dispensation could be to require that the landlord compensate the tenants for any costs they may have incurred in connection with the application under s.20ZA. At [64], Lord Neuberger considered that a landlord seeking dispensation was in a similar position to a party seeking relief from forfeiture, in that they were “*claiming what can be characterised as an indulgence from a tribunal at the expense of another party*”.
29. Summarising his conclusions, at [71], Lord Neuberger said that: “*Insofar as the tenants will suffer relevant prejudice as a result of the landlord’s failure, the LVT should, at least in the absence of some good reason to the contrary, effectively require the landlord to reduce the amount claimed as service charges to compensate the tenants fully for that prejudice. That outcome seems fair on the face of it, as the tenants will be in the same position as if the requirements have been satisfied, and they will not be getting something of a windfall.*”

30. The effect of *Daejan* has been considered by the Court of Appeal in *Aster Communities v Chapman & Others* [2021] EWCA Civ 660, which considered whether the Tribunal was entitled to impose a condition which reflected the relevant prejudice suffered by the lessees in responding to the landlord's application.
31. There have been other Decisions of the higher Courts and Tribunals of assistance in the application of the Supreme Court decision in *Daejan*, but none are relied upon or therefore require specific mention in this Decision.

The Objections

32. 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.
33. Although the Lessee of Flat 5 wrote to the Applicant's representative raising a number of queries, no objection has been sent to the Tribunal.
34. On 19 September 2025 the Applicant's representative wrote to the Tribunal confirming that no objections had been received save for the queries raised by the Lessee of Flat 5 which we do not consider to be matters which apply in respect of an application for dispensation.
35. None of the Lessees have 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.

The Decision

36. Having considered the application and prior to undertaking this determination, the Tribunal is satisfied that a determination on the papers remains appropriate, given that the application remains unchallenged.
37. The reason why dispensation from consultation requirements is said to be required is that one water pump needed to be immediately replaced and that if the second water pump was not also replaced quickly there would be undue strain on the newly replaced pump which would risk a repeat of the failure of the foul water pumping station that gave rise to neat sewerage leaking from the sump. Given the nature of the works and the potential of further damage and disruption to the occupants, as

well as environmental damage to the common parts of the Property as well as nearby Rover Len, the Tribunal is satisfied that the qualifying works were of an urgent nature.

38. There has been no objection to the dispensation of the consultation requirements from any of the Lessees.
39. The Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process.
40. The Tribunal consequently finds that it is reasonable to dispense with all of the formal consultation requirements in respect of the qualifying works to the building as described in this Decision.
41. This Decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying works for the repairs to the water pumps outlined at paragraph 3.
42. 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.
43. In reaching its decision the Tribunal has taken account of the fact that no party has objected to the application. The Lessees have had opportunity to raise any objection, and they have not done so.
44. The Tribunal therefore grants dispensation from the consultation requirements under s.20 of the Landlord and Tenant Act 1985, subject to a condition that a copy of this decision shall be served by the Applicant, or their agent, upon all leaseholders at the Property.

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.
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. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.
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.