



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

Case Reference	:	HAV/21UD/LDC/2025/0712
Property	:	19 Cornwallis Terrace Hastings East Sussex TN34 1EB
Applicant	:	W Maguire Properties
Representative	:	None
Respondent	:	Amanda Senior (19a) Alan Hewitt (19b)
Representative	:	None
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	:	Mr I R Perry FRICS
Date of Decision	:	17 th December 2025

DECISION

Summary of the Decision

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 relation to urgently take down an existing severely damaged & unstable brick wall abutting the main wall to the rear of 19 Cornwallis Terrace, causing potential damp inside the property. Remove Buddleia tree and roots, reinstate wall on completion of works. The Tribunal has made no determination on whether the costs of the works are reasonable or payable.

Background

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 made on 29th October 2025.
2. The property is described in the application as an End of Terrace block of two flats: Lower Maisonette comprising two bedrooms & Upper Maisonette comprising three bedrooms. Approximate age 100 years.
3. The named Respondents each occupy one of the two flats in the property.
4. The Applicant explains that:

The leaseholders had been notified by the railway contractors of impending works to the rear boundary fence. They in turn informed the contractors of our details as we had a storage shed located there. We acknowledged this & thanked them for passing on our details. Once on site we discovered a damaged & unstable wall abutting the main wall of 19 Cornwallis Terrace. We attended on 26/8/25 to carry out unforeseen repairs to the wall & on 27/8/25 we emailed the leaseholders of 19a & 19b Cornwallis Terrace to provide them with a report, pictures, and an estimate of costs, together with an explanation as to why it was necessary to carry out the works urgently. We also stated that the final cost will be confirmed on completion but will not be more than estimate.

And states that:-

It was necessary for us to carry out urgent works to our wall as we had a very small window in which to do so. These works only became apparent once the railway contractors commenced removal of the existing concrete fencing. We were unaware of impending works to the concrete fence at the rear of Cornwallis Terrace until we received an email from the railway contractors shortly before they were due to commence. It was only when we attended site to move our shed that we discovered the precarious wall abutting the main wall of 19 Cornwallis Terrace that had been damaged by a Buddleia tree.

We had very little time to consult with the leaseholders prior to commencing with the emergency works to the damaged wall as the railway contractors were on a tight schedule and kindly halted their progress to allow us to complete our work. It would have been impossible to access our wall once the railway contractors had reinstated the new GRP fence. This would have eventually caused severe damp inside the property.

The leaseholders are aware that we are applying for dispensation, and any recharges will not apply until next year.

5. The Tribunal issued Directions on 18th November 2025.
6. The Tribunal was provided with a copy of an unsigned lease for 19b Elmleigh Road. In the sixth schedule this details the responsibilities of Lessor “Subject to the payment by the Lessee of the rent and the Maintenance Charge to maintain repair and redecorate and to renew and replace as and when necessary the Property”.
7. The model lease sets out the Lessee’s responsibility “To pay to the Lessor the Maintenance Charge being Fifty Per Centum (50%) of the expenses which the Lessor shall in relation to the Property reasonably and properly incur in the Maintenance Year and which are authorised by the Eighth Schedule hereto (including the provision for future expenditure therein mentioned) the amount of the Maintenance Charge to be certified by the Lessor’s managing agent or accountant acting as an expert and not as an arbitrator as soon as conveniently possible after the expiration of the Maintenance Year.
8. The Directions sent to the Respondent’s required them to reply to the Tribunal by 1st December 2025 if they wished to object to the Application.
9. No such objection was received and the Applicant confirmed on 2nd December 2025 that he had not received any objection.
10. **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.**

The Law

11. 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.

12. The relevant section of the Act 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.

13. 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.
14. 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.
15. 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).
16. 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.

17. 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.

18. 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.
19. If dispensation is granted, that may be on terms.
20. 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

21. 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.
22. No replies were received by the Tribunal.
23. 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.
24. The reason why dispensation from consultation requirements is said to be required is that repairs were necessary to a damaged and unstable wall. In the absence of any objection from the Respondents the Tribunal is satisfied that the works were necessary and urgent.
25. There has been no objection to the dispensation of the consultation requirements from any of the Lessees.
26. 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 delay and potential problems.
27. The Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process.
28. The Tribunal consequently finds that it is reasonable to dispense with all the formal consultation requirements in respect of the major works to the building as described in this Decision.
29. This Decision is confined to determination of the issue of dispensation from the consultation requirements in respect of demolition and rebuilding of boundary wall as outlined in the Application.
30. 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.

31. In reaching this decision the Tribunal has 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.
32. As a condition of dispensation, the Applicant is required to send a copy of this decision to all leaseholders in the property.

RIGHTS OF APPEAL

33. 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
31. 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.
32. 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.
33. 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.