



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

Case Reference	:	HAV/21UC/LDC/2025/0687
Property	:	Pashley Court, Pashley Road, Eastbourne, BN20 8DX
Applicant	:	Pashley Court (Eastbourne) Limited
Representative	:	Jake Ashdown, Southdown Estates Limited
Respondent	:	The Leaseholders
Representative	:	
Type of Application	:	To dispense with the requirement to consult lessees under s.20 of the Landlord and Tenant Act 1985
Tribunal Member(s)	:	Judge D Gethin
Type and Venue of Hearing	:	On the papers – 17 December 2025
Date of Decision	:	17 December 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 water ingress to Flat 9, Pashley Court.**
- 2. The Tribunal has made no determination on whether the costs of the works are reasonable or payable.**

The Application

3. 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 22 July 2025.
4. The Property is described in the application as:

Purpose built block of flats comprising of 9 Flats. This is concrete frame construction with masonry [sic] cavity walls to the best of our knowledge.

5. The Applicant described the works as:

These works relate to water ingress issues into the top flat (9) which has been experienced [sic] following the recent downpours of rain and has been found running down the electrics internally. There is concern that this will lead to further[sic] water ingress if not dealt with as well as further[sic] damage.

6. The Applicant explains in the application that emergency repair works are required to Flat 9, Pashley Court and explains that:

It has been reported that water ingress has been experienced on Sunday (20th July 2025) during the evening to which was picked up on Monday (21st July 2025). A contractor has since been to site and evaluated the situation providing their estimate for the works. The price received today (22nd July 2025) is over the Section 20 Limit and due to the urgent nature of these works and to prevent a health and safety concern within the building we wish to dispense on the consultation

and proceed with the works noting the funds held are sufficient to cover the cost.

As of the 22nd July 2025 no Section 20 Consultation has been started.

7. The lease of Flat 1, Pashley Court has been provided (“the Lease”). It is understood that other leases in the building are on broadly similar or the same terms.
8. The Applicant has various obligations under the Lease, principally set out in Clause 3 of the Fifth Schedule, including that the Applicant “*shall maintain and keep the [Property]... in good and substantial repair and condition...*”. The lessee is required to “*pay to the Lessor a [proportionate amount] of all costs charges and expenses incurred by the Lessor in the performance of his obligations under the Fifth Schedule...*” pursuant to Clause 14 of Part I of the Fourth Schedule.
9. The works fall within the responsibility of the Applicant and may be chargeable as service charges.
10. The Tribunal gave Directions on 26 November 2025 listing the steps to be taken by the parties in preparation for the determination of the dispute, if any.
11. 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.
12. 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 for lessees including the Building Safety Act 2022. The Lessees 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 Hearing

13. The matter was determined by way of a paper hearing which took place on 17 December 2025.

Particulars of the Application

14. The Applicant has applied for dispensation from the statutory consultation requirements in relation to water ingress to Flat 9, Pashley Court.
15. The specification of the works which have been carried out has not been provided. There is said to be a risk of further water ingress if not dealt with as well as further damage.
16. 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.**
17. No notice was received from any of the Respondents opposing the application. There is no suggestion of any prejudice arising from the failure to carry out the statutory consultation process

The Law

18. 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.
19. 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.

20. 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.
21. 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*”.
22. 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.”

23. 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*”.
24. 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.
25. 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.”

26. 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*”.
27. 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.*”
28. 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.
29. 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

30. 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.
31. No objections were sent to the Tribunal and on 3 December 2025 Mr Ashdown, Property Manager at Southdown Estates Ltd acting on behalf of the Applicant, wrote to the Tribunal also confirming that no objections had been received.
32. 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

33. 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.
34. The reason why dispensation from consultation requirements is said to be required is that further downpours of rain would result in further water ingress to Flat 9, Pashley Court if not dealt with as well as further damage. Given the nature of the works and the potential of further damage and disruption to the occupants, the Tribunal is satisfied that the qualifying works were of an urgent nature.
35. There has been no objection to the dispensation of the consultation requirements from any of the Lessees.
36. The Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process.
37. 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.
38. 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 Property outlined at paragraph 7 of this Decision.
39. 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.
40. In reaching my decision I have taken account of the fact that no party has objected to the application. The Lessees have had the opportunity to raise any objection, and they have not done so.
41. The Tribunal has sent a copy of this Decision to all Respondent Lessees.

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.