FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AU/LDC/2025/0897**
Property	**:**	**63 Highbury New Park London N5 2ET**
Applicant	**:**	**Theoberry Limited**
Representative	**:**	**Natalie Chopra**
Respondent	**:**	**The Leaseholders**
Representative	**:**	**N/A**
Type of application	**:**	**Dispensation from consultation requirements**
Tribunal members	**:**	**Judge H Carr** **Ms Jennifer Rodricks**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of determination	**:**	**8th January 2026**

DECISION

Decision of the tribunal

The Tribunal determines to exercise its discretion to dispense with the consultation requirements contained in Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003.

The application

1. On 27th September 2025 Natalie Chopra, on behalf of the Applicant, issued an application for dispensation from the statutory consultation requirements in respect of water ingress to the building.

2. The property is a Grade 2 listed building built in 1856 comprising four self-contained residential flats over the four storeys of the building.

The Determination

3. Directions in this application were made on 31st October 2025. The directions indicated that the matter would be heard on the papers based on written representations received. However, the directions also indicated that any party may make a request to the tribunal that a hearing be held. No such request was made and therefore this determination is made based on the written representations received.

The Evidence

1. The evidence before the Tribunal indicates as follows:

    (i) The Applicant seeks dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 for the following reasons:

        (a) The balustrade and brickwork on the garden-facing top floors of the building was worn and cracked and was letting rainwater into the building causing extensive damage and distress.

        (b) The Applicant obtained a report from ADI Leak Detection which found evidence of water damage to the wall and ceiling around the lounge window and found a range of defects to the balcony which was allowing water to ingress. The report recommended resealing the balcony walls and pillars, resealing the soil sack pipe entering the balcony wall and redoing the pointing and brickwork externally around the affected window and at the bottom of the affected window.

        (c) The application to the tribunal to dispense with the consultation requirements is urgent because the perished and damaged brickwork has resulted in water penetration to the ground floor flat. The penetrating dampness has

caused damage to the ceiling and wall plasterwork and without remediation the damage will get worse.

(d) All leaseholders were informed of the need for the works

(e) The application for dispensation is because of the urgency of the works and the danger posed to life and property of a non-functioning fire alarm system.

(ii) James Daughtrey of the second floor flat provided a response to the application. His objections can be summarised as follows:

(a) The Applicant provided an incorrect address for service and served the application at the wrong address according the Civil Procedural Rules 6.8

(b) The other joint owner of the property, his wife, has not been named as a Respondent to the proceedings.

(c) The application is not urgent as the Applicant has carried out the remediation works

(d) The Applicant has incorrectly referred to the ongoing dispute between themselves and the leaseholders of the Second Floor Flat and suggests that those leaseholders would resist any s.20 consultation procedure. He denies that this is correct and says that this demonstrates that the application has been brought on a false premise.

(e) Mr Daughtrey also says that he understands the need for the works to take place but considers that the proper s.20 process should have been followed.

(iii) The Applicant responds as follows:

(a) The directions dated 31 October 2025 required the landlord to provide the directions to the leaseholders by email, hand delivery or first class post. The directions were emailed to all leaseholders on 7 November 2025. As is clear from the emails attached to Mr Daughtrey's response, he received the directions on 7 November 2025. His postal correspondence address is therefore irrelevant.

(b) The directions required any objections to be sent to the landlord and tribunal by 28 November 2025. This objection was sent on 4 December 2025, which clearly does not allow sufficient time for the landlord to prepare a full response by 5 December 2025.

(c) The application remains urgent for the certainty of all parties involved. There is no obligation on a landlord to hold off doing remediation works until a section 20 application has been decided – this would in fact be impractical and simply allow more building damage to result.

(d) The landlord has continued to keep the leaseholders informed of the progress of works. A leak detection contractor was commissioned and attended on 4 November, with the quote provided to leaseholders, as various contractors had been unable to determine the source of water ingress by trial and error methods.

(e) The leak detection report was provided to leaseholders on 9 November. On the basis of the report, the landlord identified a contractor and provided the estimate to the leaseholders on 30 November, and again asked the leaseholders for their recommendations (the leaseholders were also asked for recommendations by way of email on 26 September 2025).

(f) The bulk of Mr Daughtrey's objection relates to a different ongoing dispute.

The Law

2. The Tribunal is being asked to exercise its discretion under s.20ZA of the Act. The wording of s.20ZA is significant. Subs (1) 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 agreements, the tribunal may make the determination **if satisfied that it is reasonable to dispense with the requirements'** (emphasis added).

The tribunal's decision

3. The tribunal determines to grant the application.

Reasons for the tribunal's decision

4. The Supreme Court decision of *Daejan Investments Limited v Benson* [2013] UKSC 14 sets out the principles upon which the Tribunal should exercise its discretion to dispense with the consultation requirements. It made clear that the correct approach of the Tribunal is to consider whether any prejudice to the leaseholders in terms of inappropriate works being carried out or paying more than would be appropriate for the works. Only if relevant prejudice will be suffered by leaseholders should applications be refused. Relevant prejudice means financial prejudice.

5. The tribunal determines that the works proposed and carried out were urgent and necessary. Failure to carry out the works would have resulted in further costs and further distress. The works are as prescribed by an expert report.

6. The legislation allows for a retrospective application to cure any potential defects in the statutory consultation process.

7. The CPR does not apply to the Tribunal's procedures and the Applicant complied with the requirements of the Tribunal.

8. All the leaseholders are the Respondents to the application and this decision makes this clear.

9. No evidence of any relevant prejudice to the leaseholders has been provided. Indeed Mr Daughtrey accepts that the works were necessary.

10. **Mr Daughtrey suggests that the application should be determined at the same time as his application for a**

determination under s.27A of the Landlord and Tenant Act 1985. The tribunal sees no need to delay its determination.

11. **All parties should note that this determination does not concern the issue of whether any service charge costs will be reasonable or indeed payable. The Respondent is able, if it appears to him to be appropriate, to make an application under s.27A of the Landlord and Tenant Act 1985 as to reasonableness and payability which can be joined, if the Tribunal so determines, with the extant s.27A application.**

Name: Judge H Carr **Date:** 8th January 2026

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
  (a) the person by whom it is payable,
  (b) the person to whom it is payable,
  (c) the amount which is payable,
  (d) the date at or by which it is payable, and
  (e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
  (a) has been agreed or admitted by the tenant,
  (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  (c) has been the subject of determination by a court, or
  (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).

(1)