



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

Case reference : **HAV/00ML/LDC/2025/0693**

Property : **Various at Braemore Court, 231
Kingsway, Hove, BN3 4FG**

Applicant : **Braemore Court Investments Limited**

Representative : **Coole Bevis LLP –and Mr Herrod of
counsel**
Various leaseholders;
John Pigott
Peter Ashton
Myra Davidson
Antony Noble

Respondent : **Eileen Harris MBE**
Lilian Hiscutt
Jeffrey Stanford
Sandra Miller
Paul Churchouse

Representative : **None**

Type of application : **To dispense with the requirements to
consult lessees about major works
section 20ZA of the Landlord and
Tenant Act 1985.**

Tribunal members : **R Waterhouse FRICS, N Robinson
FRICS and T Wong.**

Venue : **Havant Justice Centre, Elmleigh Road,
Havant, Portsmouth.**

Date of decision : **31 December 2025**

DECISION

Summary of the Decision

1. 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 respect of major works, being works to resolve the Enforcement Notice issued by East Sussex Fire & Rescue Service of March 2024 to the Property.

The application and the history of the case

2. The Applicant applied by an application received 31 July 2025 for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) from the consultation requirements imposed by Section 20 of the Act in respect of major works of complying with the Enforcement Notice issued by East Sussex Fire & Rescue Service of March 2024 to the Property.

3. The only issue for the Tribunal in this application 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.

4. Some leaseholders made 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 charge under the reference HAV/OOML/LSC/2024/0638/JC.

5. Directions were issued on 18 August 2025 setting a timetable for the exchange of documents for the application for dispensation and directing that the application would be determined alongside the service charge application. The hearing for both applications was subsequently listed to take place on 19 December 2025.

6. The service charge application has now been withdrawn following a successful mediation, the Applicants’ stating, “the landlord has taken steps to mitigate the relevant prejudice suffered by the Applicants and has applied under section 20ZA for dispensation from the FTT.”

7. The 18 August 2025 Directions required the Respondents to complete a reply form by 5 September 2025 to confirm any objections to the application. The Leaseholders of Flats 11,29,30,34,40,41,44,47 and 48 all responded, confirming their objections to the application. On the 8 December 2025 those leaseholders informed the Tribunal of the following:

“I wish to advise the Tribunal that the objecting leaseholders wish to withdraw their objectives to the application issued under section 20ZA of the Landlord and Tenant Act 1985 to dispense with the consultation requirements about major works.”

8. The remaining leaseholders either responded with no objection or did not respond, those leaseholders who did not respond are assumed to have no objection to the application.

The Law

9. 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.

10. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation “if satisfied that it is reasonable to dispense with the requirements”.

11. 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.

12. 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”.

13. 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).

14. 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.”

15. 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.

16. 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.

17. If dispensation is granted, that may be on terms. That is to say that dispensation is granted but only if the landlord accepts- and fulfils appropriate conditions. Specific reference was made to costs incurred by the lessees, including legal advice about the application made.

18. 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.

19. More generally, the Tribunal considers that the case authorities demonstrate that the Tribunal has a very wide discretion to, if it considers it appropriate, impose whatever terms and conditions are required to meet the justice of the particular case- in Daejan it was said “on such terms as it thinks fit- provided, of course, that any such terms are appropriate in their nature and their effect”.

Hearing

20. Mr Herrod of counsel, acting for the Applicant Braemore Court Investments Limited attended the hearing. No Respondents attended.

21. Mr Herrod outline the application and the history of the case including the recent withdrawal of the linked Application by the Respondents concerning the actual costs of the works under section 27A Landlord and Tenant Act 1985. Additionally, Mr Herrod asserted that the recent withdrawal of objections to the section 20ZA Application (HAV/OOML/LDC/2025/0693/JC) should be interrupted by the Tribunal as evidence of no prejudice to the leaseholders by the absence of consultation. The Tribunal is grateful to Mr Herrod for his submissions.

Consideration

22. The property is said to comprise a purpose-built block of 48 flats. The tenants of the flats are all shareholders in the Respondent.

23. The Applicant explained that:

“An enforcement notice was served upon the Respondent by East Sussex Fire & Rescue Service in March 2024. The works have been completed, and the East Sussex Fire and Rescue Service have now confirmed that the enforcement notice is withdrawn.”

24. A sample lease was provided with the Application, that of Flat 4 and Car Space 10 Braemore Court. The Tribunal understands that the leases of the other properties are in the same or substantively the same terms. In the absence of any indication that the terms of any other of the leases differ in any material manner, the Tribunal has considered the Lease.

25. The sample lease has various obligations under the Lease, to pay service charge to the landlord including for maintaining the building.

26. The works appear, on the facts provided and without detailed consideration, to fall within the responsibility of the Applicant and may be chargeable as service charges.

27. With the withdrawal of the objection from various leaseholders, there are no assertions of prejudice having been caused to them in the absence of consultation.

28. The Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process.

29. The Tribunal consequently finds that it is reasonable to dispense with all of the formal consultation requirements in respect of the major works to the building.

30. This decision is confined to determination of the issue of dispensation from the major works in complying with the East Sussex Fire & Rescue Service of March 2024. The Tribunal has made no determination on whether the costs incurred are reasonable and whether service charges are payable in any given sum or at all, this was the subject of a separate application.

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 by email at 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.