



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

Case Reference : HAV/21UF/LDC/2026/0070

Property : Valencay, West Quay, Newhaven,
East Sussex, BN9 9GF

Applicant : Cape Community (Valencay & Versailles)
Freehold Limited

Representative : Wishtower Limited

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 Member : Regional Surveyor J Coupe FRICS
Mr E Shaylor MCIEH

Date of Decision : 15 June 2026

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 relation to exterior high-level terrace/parapet roof repairs to prevent water ingress into flats 15 and 19 Valencay. The Tribunal has made no determination on whether the costs of the works are reasonable or payable.**

Background

2. 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 1985 Act”). The application was received on 24 April 2026.
3. The Property is described as a purpose-built block of residential flats, comprising twenty, two and three bedroom flats. The property is said to have been constructed in 2007/2008.
4. The Applicant seeks dispensation from the consultation requirements of the 1985 Act on the grounds of urgency. The Applicant states that immediate works are required to a high-level terrace/parapet roof to prevent further water ingress into Flats 15 and 19 Valencay. The Applicant explains that works must commence immediately in order to mitigate ongoing damage to the two flats.
5. The Applicant explained that due to the urgent nature of the remedial works there is insufficient time to carry out a full statutory consultation. To do so, would risk delaying matters, resulting in increased damage to the two flats affected.
6. The Applicant stated that all leaseholders within Valencay have been advised of the proposed works, the associated estimated costs and reasons why the works are considered urgent.
7. The Applicant stated that a copy of the Tribunal application would be provided to all leaseholders.
8. The Tribunal gave Directions on 30 April 2026, listing the steps to be taken by the parties in preparation for the determination of the dispute, if any.
9. The Directions stated that Tribunal would determine the application on the papers received unless a party objected in writing to the Tribunal within 14 days of the date of receipt of the Directions. No party has objected to the application being determined on the papers.
- 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. Responses were received from Gillian McNamara (Flat 19 Valencay) and Martin McNamara (Flat 20 Valencay). Both responses expressed support for the application. No objections were received.
22. On 19 May 2026, the Applicant's representative confirmed to the Tribunal that no objections to the application had been received.
23. Having carefully considered the application and information submitted, and prior to undertaking this determination, the Tribunal satisfied itself that a determination on the papers remained appropriate, particularly given that the application is unchallenged.
24. The Tribunal is satisfied that the Applicant has established sufficient grounds for the grant of dispensation. The evidence demonstrates that urgent remedial works are required to address a serious defect affecting a critical element of the building's infrastructure. The Tribunal accepts that delaying those works in order to complete the statutory consultation process would expose residents to an avoidable risk. The qualifying works are plainly both necessary and urgent.
25. The Applicant has demonstrated a willingness to engage in informal consultation with the leaseholders and has provided all lessees with a copy of the Tribunal application.

26. The Tribunal makes no findings as to whether the costs incurred are reasonable.
27. In reaching our decision, the Tribunal is satisfied that none of the leaseholders have objected to the application and nor has any individual lessee asserted that any prejudice has been caused to them by the failure to consult. The Tribunal is satisfied that a full consultation would not have produced a different outcome, other than causing delay and potential risk to residents.
28. Accordingly, the Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process.

DECISION

29. Accordingly, in light of the urgent nature of the works and the practical impossibility of completing full statutory consultation without exposing residents to avoidable risk, plus the lack of any prejudice to the Respondents, the Tribunal is satisfied that it is reasonable to grant dispensation from the consultation requirements under Section 20 of the 1985 Act, in respect of those repairs described at paragraph 4 above.
30. The Tribunal has not made a determination on whether the costs of the works 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 our decision, the Tribunal has taken account of the fact that the Respondents have not objected to the application. The Respondents had an opportunity to raise any objections and did not do so.

RIGHTS OF APPEAL

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

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.

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.

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.