FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LDC/2026/0146**
Property	**:**	**31-33 Monmouth Road, Notting Hill, London W2 4UT**
Applicant	**:**	**31-33 Monmouth Road RTM Company Limited**
Representative	**:**	**Adriana Zutautaite from Warwick Estates Property Management**
Respondents	**:**	**(1) Jaclyn Hughes** **(2) Neal Brown** **(3) Monmouth Road Housing Co-operative Limited (freeholder)** **(4) Victoria Aspinall**
Representative	**:**	**In person**
Type of Application	**:**	**To dispense with the requirement to consult lessees about major works under section 20ZA of the Landlord and Tenant Act 1985**
Tribunal	**:**	**Tribunal Judge Mohabir** **Mr R Waterhouse FRICS**
Date of Decision	**:**	**5 November 2026**

DECISION

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1. Unless stated otherwise, the page references in square brackets in this decision are to the pages in the hearing bundle comprised of 146 pages.

2. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the Act") for *retrospective* dispensation with the consultation requirements in respect of gutter works on the right side of the property following water ingress into 33a Monmouth Road, which is the basement flat. The First Respondent is the lessee of this flat.

3. The property is described as being a building comprised of four residential flats over three stories and a basement. The Applicant is the Right to Manage company responsible for the repair and maintenance of the non-demised parts of the property and the Respondents are the long leaseholders of the flats.

4. It is the Applicant's case that the remedial gutter works were required as a matter of urgency in order to prevent the water ingress being caused to 33a Monmouth Road. It is contended that water leaking from the gutter was entering the flat under the front door and this resulted in the floorboards in the lounge and kitchen to warp and lift. The works began on 13 April 2026. The estimated cost of the works is £2,784.

5. The Applicant also contends that the decision not to carry out statutory consultation was reached following discussions between the managing agent, Warwick Estates Management Limited (("Warwick Estates"), a director of the Applicant company and Jaclyn Hughes who is the lessee of 33a Monmouth Road.

6. By an application dated 7 May 2026, the Applicant applied seeking retrospective dispensation for the remedial gutter works carried out.

7. On 24 July 2026, the Tribunal made directions. The Applicant was directed to serve the Respondents with a copy of the application, which was done. The Respondents were directed to respond to the application stating whether they objected to it in any way by 14 August 2026.

8. Save for Mr Neal Brown, the leaseholder of 33b Monmouth Road, none of the other Respondents have objected to the application.

Relevant Law

9. This is set out in the Appendix annexed hereto.

Decision

10. The remote CVP hearing took place on 23 September 2026. The Applicant was represented by Miss Adriana Zutautaite from Warwick Estates. Mr Brown appeared in person. Mr Critchley from the Third Respondent freehold company also attended. Although it did not file and serve any evidence, he confirmed that it adopted the objections made by Mr Brown in his statement of case. Miss Aspinall also attended as an observer.

11. The Tribunal first heard the submissions made by Mr Brown about his objections to the application. These are set out in more detail in his statement of case [105].

12. He did not pursue the submission that the application should be stayed because the Applicant was subject to a strike off at Companies House.

13. He submitted that there was no agreement between the Applicant and the Respondents to dispense with the consultation requirements under section 20 ZA in the Act. This was accepted by Miss Zutautaite, for the Applicant.

14. Mr Brown submitted that the gutter works were not a genuine emergency and also questioned the scope of the works that was carried out. He argued that he has lived at the property for approximately 50 years and the roof and gutters regularly become blocked by the build up of moss, which could have been removed by routine maintenance or by the use of a less expensive method of removal such as a ground-based vacuum suction system with telescopic inspection equipment. It was unnecessary to erect scaffolding to do this, which increased the cost significantly.

15. In support of this Mr Brown provided photographic evidence of the condition of the gutter before the remedial work was caried out [79].

16. He further argued that the first complaint made by the lessee of the basement flat of water ingress was on 17 February 2026, but the remedial work was commenced 4 months later. He submitted that there was sufficient time for the Applicant to carry out statutory consultation.

17. Furthermore, Mr Brown argued that the front door of the basement flat has no rain deflector or weather bar and no rain protective canopy above it. There is also a substantial gap at the lower part of the door through which water can enter when it rains, irrespective of any guttering drip problem occurring [81]. He submitted, therefore, there was no evidence that any water leaking from the gutter was the cause of any water ingress to the flat.

18. In conclusion, Mr Brown submitted that the application should be dismissed.

19. Miss Zutautaite, for the Applicant, submitted that the remedial gutter work was urgent because of the severe water ingress to Flat A, the basement flat. She argued that the water ingress was occurring underneath the front door of the flat. She said that there was video evidence of this, however, this evidence was not provided to the Tribunal. This water ingress was in turn has caused the floorboards in the lounge and kitchen in the flat to warp and lift. In answer to the Tribunal's question, she admitted that no investigation had been carried out to establish the cause of the water ingress into the flat.

20. The relevant test to the applied in an application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no real prejudice in this way.

21. The issue before the Tribunal was whether dispensation should be granted in relation to the requirement to carry out the remedial work at the property. The Tribunal is not concerned in this application about the actual cost that has been incurred.

22. In the Tribunal's judgement, for an application of this kind to succeed, the evidential burden on the Applicant is twofold. Firstly, the Applicant must establish that it had or has a good reason for not carrying out statutory consultation. Secondly, if so, the test in ***Daejan*** must be satisfied. In other words, the burden of proof is on the Applicant on relation to these matters.

23. The first issue here is whether the gutter was in disrepair and the repairs were urgent as the Applicant contended.

24. The Tribunal found that the gutter was not in disrepair and did no need replacing. The Applicant conceded that no survey of the gutter was undertaken before the repair work had commenced to demonstrate that it was in disrepair and required replacing in part. It seems that the decision to replace part of the gutter was taken as a result of discussions between Warwick Estates, a director of the Applicant and the lessee of the basement flat.

25. The only and best evidence of the condition of the gutter before the Tribunal was the photographic evidence provided by Mr Brown. This was not disputed by the Applicant. The photographs [79/146] show a section of roof and a section of gutter. There are three photographs. The first shows a section of gutter parallel with the scaffolding. Thus is a U-shaped gutter, there is some moss and Plane tree seeds. The quantity is unlikely to cause a material reduction in the quality of the gutter. The second photograph shows the corner of the guttering there is the same debris but still not sufficient volume to cause material reduction in effectiveness. The third photograph contains a greater quantity. There is no visible evidence of the gutter sagging or not having an appropriate "run" for draining. A reasonable outcome for a contractor faced with this would be to merely clean the guttering.

26. Even if the Tribunal is wrong about this, the Applicant provided no evidence that any water leaking from the gutter was causing the water ingress under the front door of the basement flat and which in turn caused floorboards to warp.

27. The photographic evidence provided by Mr Brown [74] shows a section of door cill. He confirmed by Mr Brown that this related to the basement flat. It would appear the white rectangular sections of flooring are quite worn. From the right-hand picture, it appears that the door sill the part of the door external to the threshold has sand and cement slope to it. A properly installed cill should have a gap between it and the exterior ground. This prevents rain from hitting the concrete and splashing up and the entering the door. In extreme weather gutters may overflow, if this was the concern then square guttering of greater volume could be installed. The Tribunal heard that the replaced guttering was the same shape as the previous one. So, it appears that addressing volume of rain was not a consideration.

28. The Tribunal, therefore, concluded that the Applicant has not been able to establish a good reason for failing to consult with the leaseholders prior to commencing the repair work as it was not urgent and was causing water damage to the basement flat.

29. It also follows that the Tribunal can infer that the scope of the repair work and the costs incurred by the Applicant did financially prejudice the Respondents.

30. Accordingly, the application is dismissed.

31. Tribunal also makes an order under section 20C in the Act preventing the Applicant from recovering any costs it may have incurred in making this application through the service charge account on the basis that it is just and equitable to do so.

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 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 20ZA

(1) 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.