



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

**Case reference** : LON/00AJ/LDC/2024/0616

**Property** : 39 – 97 (odd) East Acton Lane, London  
W3 7HD

**Applicant** : Ealing Council

**Representative** : Marco Pelazza, Home Ownership  
Services Manager

**Respondent** : Leaseholders of 6 flats at the Property,  
whose details appear on the schedule  
annexed to the application

**Representative** : n/a

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

**Tribunal members** : Judge Mark Jones

**Venue** : 10 Alfred Place, London WC1E 7LR

**Date of decision** : 12 February 2025

---

**DECISION**

---

**Summary of the Decision**

- 1. The Applicant is granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act in respect of lift repair works within the Property between August 2024 and January 2025.**
- 2. The Tribunal does not impose any conditions on the grant of dispensation.**

- 3. The Tribunal has made no determination as to whether costs of the works are reasonable or payable.**

### **The Application**

4. The Applicant local authority applied by application dated 9 October 2024 for dispensation under Section 20ZA of the 1985 Act from the consultation requirements imposed by Section 20 of the 1985 Act, in respect of works undertaken at the Property which commenced in August 2024, comprising a series of repairs to the lift serving the Property.
5. The property is described as a purpose-built local authority block containing 30 flats, including 6 bedsits and 24 1-bedroom flats, arranged over 6 floors.
6. The Application is predicated on the basis of the works in issue being urgently required, where the Property contains 6 floors served by (just) one lift, which had ceased to function. The Property is occupied in some cases by elderly resident and people with mobility issues. Access to and from the flats without use of the lift was difficult, and deliveries also would not deliver to the upper floors without an operational lift.
7. The cost of the repairs exceeded the £250 threshold in S.20 of the 1985 Act, being an estimated £57,397.00 in total, translating to an estimated £2,187.91 for each Respondent leaseholder. The Applicant contends that it is not reasonable to delay works pending full statutory consultation.

### **Paper Determination**

8. In its application the Applicant stated that it would be content with a paper determination if the Tribunal considered it appropriate. By its directions made on 4 December 2024 the Tribunal allocated the case to the paper track (i.e. without giving directions for an oral hearing), but directed that any party had the right to request an oral hearing.
9. No requests for an oral hearing were made, and the matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal's Procedural Rules.
10. Before making this determination, the papers received including the Applicant's hearing bundle comprising some 348 pages were considered, to ascertain whether the issues remained capable of determination without an oral hearing and it was decided that they were, in particular given the absence of any formal representations from any Respondent.

11. Whilst the Tribunal makes it clear that it has read the bundle, the Tribunal does not refer to every one of the documents in detail in this Decision, it being impractical and unnecessary to do so. Where the Tribunal does not refer to specific documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left them out of account.

## **The Law**

12. The relevant section of the 1985 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 issues arising on such applications were examined in detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson* [2013] UKSC 14. In summary the Supreme Court noted the following:
  - a. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord’s breach of the consultation requirements.
  - b. The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
  - c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
  - d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
  - e. The Tribunal has power to impose a condition that the landlord pays the tenants’ reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord’s application under section 20ZA (1).
  - f. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some “relevant” prejudice that they would or might have suffered is on the tenants.

- g. The court considered that “relevant” prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
- h. The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

### **Evidence**

- 14. The Applicant’s case is summarised in paragraphs 4 to 7, above. It was augmented by a helpful witness statement dated 24 January 2025 from Mr Marco Pelazza, Home Ownership Services Manager in the employment of the Applicant. This confirmed that emergency remedial works were required to the lift in the Property following repeated failures to operate in August and then on 10 and 19 September 2024.
- 15. What may be summarised as comparatively minor, patch repairs were effected in August and after the 10 September malfunction by the Applicant’s retained contractor, Jackson Lift Services Limited, but after the failure on 19 September attempted repairs failed and the lift was deemed beyond simple repair. Given the height of the building, the age and vulnerabilities of residents living there, and the lead-in and manufacturing time for lift components, the Applicant deemed the works an emergency and raised an order on 8 October 2024 for Jackson Lift Services to replace the controller and carry out necessary associated works as identified in Jackson’s quote exhibited to Mr Pelazza’s statement as ‘EAL007’.
- 16. Jackson took delivery of the lift components on 18 November 2014 and commenced works on site, which were completed on 3 January 2025.
- 15. Consultation with leaseholders has been partial, owing to the urgency of the repair works. The Applicant wrote to residents in the Property on 4 October 2024 to advise of the problems with the lift and its attempts to solve them. It then sent the Respondents s.20 consultation notices informing them of the emergency works and their anticipated cost on 10 October 2024. This communication advised the Respondents that the Applicant was unable to comply with the statutory consultation requirements due to the emergency nature of the works, and advised them of this application.

16. Mr and Mrs Larquier of 77 East Acton Lane responded to the Applicant's notice, on 2 November 2024. Having considered the contents of their response, the Tribunal considers it to be a complaint as to the clarity of invoices provided by the Applicant, as opposed to any challenge to the necessity of the works themselves. The Tribunal notes that Mrs Sheikh, a Homeownership Officer for the Applicant replied appropriately to Mr and Mrs Larquier on 14 November 2024, offering explanation and a point of contact for any subsequent enquiries.
17. The Applicant is now in the process of adhering to the statutory consultation requirements in respect of a more comprehensive, non-emergency lift refurbishment.
18. Following the Tribunal's directions given on 4 December 2024, the Tribunal is satisfied that the application, a copy of the directions and the witness statement was sent to all Respondents on 9-10 December 2024, and further that copies of those documents were displayed in the Property.
19. No Respondent provided a formal response to the application.

### **Determination**

20. Dispensation from the consultation requirements of S.20 of the 1985 Act may be given where the Tribunal is satisfied that it is reasonable to dispense with those requirements. Guidance on how such power may be exercised is provided by the leading case of *Daejan v Benson*, referred to above.
21. It is clear to the Tribunal that the works in question were required to rectify an emergency, given the height of the Property and the demographics of its residents. Delaying the works in order to comply with the full consultation requirement would have been seriously detrimental to the residents of the Property, exacerbating their difficulties in accessing their homes.
22. Where there was failure to comply with the statutory regime, the issue is simply whether by not being consulted the Respondents have suffered prejudice.
23. In the circumstances of this case the Tribunal finds nothing on the evidence to establish that the Respondents would suffer prejudice by the grant of dispensation from the statutory consultation procedure.
24. Accordingly, the Tribunal is satisfied that it is appropriate to dispense with the consultation requirements for the works in issue.
25. **The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act**

**1985 in respect of works of lift repair within the Property, which concluded on or about 3 January 2025.**

24. **The grant of dispensation is unconditional.**
25. **In granting dispensation, the Tribunal makes no determination as to whether any service charges are reasonable or payable. This determination does not affect the right of the Respondents to challenge the costs or standard of work if they so wish.**
26. **In accordance with paragraph 8 of the directions dated 04 December 2024, it is the Applicant's responsibility to serve a copy of the Tribunal's decision on all Respondent leaseholders to the application.**

**Name:** Judge Mark Jones

**Date:** 12 February 2025

### **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).