



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

<b>Case Reference</b>	: HAV/21UG/LDC/2025/0605
<b>Property</b>	: Trafalgar House, 22 Bedford House, Bexhill-on-Sea, East Sussex, TN40 1NJ
<b>Applicant</b>	: Trafalgar House Residents Association Limited
<b>Representative</b>	: Southdown Estates
<b>Respondent</b>	: The Leaseholders
<b>Representative</b>	:
<b>Type of Application</b>	: To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
<b>Tribunal Member</b>	: Regional Surveyor J Coupe FRICS
<b>Date of Decision</b>	: 6 June 2025

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**DECISION**

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## **Summary of the Decision**

**The Applicant is granted retrospective 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 the works required to bring the lift back into good working order. The Tribunal has made no determination on whether the costs of the works are reasonable or payable.**

## **Background**

1. 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 application was received on 14 January 2025.
2. It is said that the Property comprises a purpose-built property comprising of 17 flats (it seems numbered 1 to 18, with no number 13) with one entrance, one lift, and one stairwell.
3. The works are explained to have been lift repairs. It is said: “Following major works to the lift there were a high [sic] number of entrapments due to requiring a new hydraulic power unit. This was not included within the previous works as the lift engineers believed that this would hold out following refurbishment.

To ensure little disruption to residents the order was placed for the part with works starting [sic] on the 13<sup>th</sup> January 2025.”

4. A reason is given for the lack of a consultation process, said to be: “as we needed to arrange the work [sic] imminently so not to cause disturbance to residents [sic] following a 4 week period [sic] whereby [sic] the lift was undergoing refurbishment.”
5. In explaining why dispensation is sought, the Applicant said “The qualifying [sic] works are relating to a lift repair at Trafalgar House. The lift was experiencing a high volume of entrapments which was [sic] affecting the less mobile residents entering and exiting the building.”
6. The Tribunal gave Directions on 8 April 2025 listing the steps to be taken by the parties in preparation for the determination of the dispute, if any. Various dates for compliance were missed by the Applicant and, on 30 April 2025, in response to a case management application by the Applicant, the dates for compliance were extended.
7. One such date, that being 30 May 2025, was that by which the Applicant was to confirm to the Tribunal that no objections to the application had been received. The Applicant failed to comply with this Direction, resulting in the Tribunal, on 3 June 2025, needing to seek such confirmation. In the alternative, the Applicant was advised that

the matter would be referred to a Procedural Judge for a minded to strike out Notice. In response, the Applicant confirmed that no objections had been received.

8. The Directions stated that the Tribunal would determine the application on the papers received unless a party objected in writing to the Tribunal by 6 May 2025. No objections were received.
9. **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**

10. 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.
11. 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.
12. 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.
13. 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.

14. 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).
15. 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.
16. 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.
17. 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.
18. If dispensation is granted, that may be on terms.
19. 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**

20. 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.
21. On 24 May 2025 the Tribunal received a reply form from Flat 9 confirming their agreement to the application. Replies were not received from the remaining flats.
22. Having considered the application and prior to undertaking this determination, I am satisfied that a determination on the papers remains appropriate, given that the application remains unchallenged.
23. The reason why dispensation from consultation requirements is said to be required is due to a failure of the sole lift in the building. Given the nature of the works required and the fact that it related to the welfare of multiple occupants, I am satisfied that the qualifying works were of an urgent nature.

24. There has been no objection to the dispensation of the consultation requirements from any of the Lessees.
25. None of the Lessees have therefore asserted that any prejudice has been caused to them. The Tribunal finds that nothing different would be done or achieved in the event of a full consultation with the Lessees, except for the potential delay and potential problems.
26. The Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process.
27. 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 as described in this Decision.
28. This Decision is confined to determination of the issue of retrospective dispensation from the consultation requirements in respect of undertaking repairs to a malfunctioning lift, as outlined at paragraph 3. The Tribunal has made no determination on whether the costs 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.
29. In reaching my decision I have taken account of the fact that no party has objected to the application. The leaseholders have had opportunity to raise any objection and they have not done so.

## **RIGHTS OF APPEAL**

30. 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](mailto:rpsouthern@justice.gov.uk)
31. 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.
32. 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.
33. 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.