FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	HAV/29UL/LDC/2024/0626
Property	:	1 – 59 Court Place, Castle Hill Avenue, Folkestone, Kent, CT20 2QZ
Applicant	:	Home Group Limited
Representative	:	Ms S Taylor-Waller of counsel instructed by Devonshires Solicitors LLP
Respondents	:	The Leaseholders of the Property
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(s)	:	Tribunal Judge H Lumby Mr D Cotterell FRICS Ms T Wong
Date of Hearing	:	17 June 2025
Date of Decision	:	23 June 2025

DECISION

Decision of the Tribunal

(1) The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (Section 20ZA of the same Act) in relation to lift works at the Property.

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the Respondents as lessees through any service charge.

(3) The Tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in favour of the Respondents that none of the costs incurred by the Applicant in connection with these proceedings can be charged direct to the Respondents as an administration charge under the Respondents' leases.

The background to the application

1. The Applicant seeks 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. This retrospective application was received on 8 November 2024.

2. The Property is a residential building block made up of around 59 flats over six levels. It is operated as a leasehold retirement scheme with an on-site resident warden.

3. The Applicant is the landlord of the Property and the Respondents comprise its leaseholders.

4. The application relates to works to one of the two lifts in the Property. The works were completed in October 2020 following a consultation pursuant to section 20 of the 1985 with the Respondents which was finalised in June 2019. There was a delay between the end of the consultation process and the works commencing due to Covid-19.

5. The Applicant served all the requisite notices required by the 1985 Act and The Service Charges (Consultation Requirements) (England) Regulations 2003. The Applicant served the Respondents with (i) its Notice of Intention on 1 June 2018, (ii) its Statement of Estimates on 11 December 2018 and (iii) its notice of reasons for awarding contract to carry out works on 17 June 2019.

6. One of the Respondents is Rebecca Gadsden. Her parents occupy the flat she owns. Her mother, Mrs Margaret Gadsden, brought a claim to the

Tribunal pursuant to section 27A of the 1985 Act in relation to the recoverability by the landlord of the cost of the lift works.

7. The Tribunal's decision can be found under reference CHI/29UL/LSC/2023/007. It found that the consultation requirements of section 20 of 1985 Act had not been complied with in relation to the works. As a result, it determined that the recoverable service charge in respect of the lift works was limited to £250 per flat unless and until dispensation from compliance with the consultation requirements of the 1985 Act has been granted. The application in these proceedings is for that dispensation.

8. The specific failure in the consultation process identified by the Tribunal was in respect of the provision of the estimates of the cost of the works. These estimates were not provided to leaseholders but instead made available for inspection at the Applicant's offices in Harrow. The Tribunal determined that this was not a reasonable location. It also found that the consultation process had been complied with in all other respects so this was the only failure.

9. The Tribunal also considered the reasonableness and payability of the amounts demanded in the event that dispensation was granted. An amount of £65,341 had been levied in respect of the works. It found that these costs have been reasonably incurred and would be payable if dispensation is granted. It also found that the costs incurred for the professional fees of Robin Primrose Partnership (the lift consultant employed by the Applicant) were also reasonably incurred and would be payable if dispensation is granted. In reaching its decision, it rejected alternative quotes provided by Mrs Gadsden and noted that an error regarding the rams being incorrect was not charged to the leaseholders.

10. Seven responses were received to the application in this case. Three did not object to the grant of dispensation and four opposed it. Those objecting comprised Jane Woolford, Mrs Gadsden in conjunction with Ms Gadsden, Fay Meek and Timothy Grover. Ms Meek had also opposed the proceedings being determined on the papers; as a result, the Tribunal required a hearing to take place.

11. The Tribunal did not inspect the Property as it considered the documentation and information before it enabled the Tribunal to proceed with this determination.

Hearing

12. The hearing took place online, using the Tribunal's CVP system. Ms Taylor-Waller appeared for the Applicant; three employees of the Applicant also attended as observers. Ms Meek, Mr Grover, Mrs Gadsden and Ms Gadsden appeared for the Respondents. Ms Woolford was unable to attend.

13. The Tribunal had been provided with a bundle comprising 174 pages and an additional bundle with a further 20 pages. Ms Taylor-Waller provided a skeleton argument together with a 79 page authorities bundle. Ms Woolford had applied for an additional email and attachment to be made available to the Tribunal; the Applicant did not object and its disclosure was agreed. Mr Grover referred during the hearing to an email he had sent to the Tribunal on 22 April 2025; this was identified and circulated to the Tribunal and the participants. The contents of all these documents were noted.

14. At the commencement of the hearing, the Tribunal informed the parties that Mr Cotterell (the professional member of the Tribunal's panel) had previously worked with both the Applicants and its solicitors. The Tribunal did not consider this amounted to a conflict but wanted the parties to be aware. No objections were received and Mr Cotterell continued to participate in the hearing and in the panel's deliberations

15. The hearing heard from Ms Taylor-Waller, Ms Meek, Mr Grover, Mrs Gadsden and Ms Gadsden (on behalf of her mother). Ms Meek had to leave early but had a full opportunity to present her case before her departure.

The issues

16. This decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying long-term agreement. The Tribunal has in this decision made no determination on whether the costs are payable or reasonable, this having already been established by the Tribunal.

The Applicant's case

17. The Applicant contends that it is reasonable for the Tribunal to grant an unconditional dispensation. They referred to two cases, first the tests set out in the case of *Daejan Investments Limited v Benson* [2013] UKSC 14 (this is analysed later in this decision) and secondly the case of *London Borough of Lambeth v Kelly, Woodman & Danvers-Russell* [2022] UKUT 00290 (LC) UTLC [61/AB]; in the latter case, the Upper Tribunal held that dispensation would be granted when there was no relevant prejudice even in circumstances where there had been a total failure to comply the consultation requirements of section 20 of the 1985 Act. They also relied on the earlier decision in relation to this Property, on the basis that no challenge had been made to the Tribunal's decision.

18. They argued that none of the objections show any relevant prejudice by not being provided with the estimates. The Tribunal had already found that the costs of the works were reasonable and would otherwise be recoverable. As a result, unconditional dispensation should be granted.

The Respondents' objections

19. Ms Meek felt she was prejudiced by not being able to inspect the estimates. She could not say in what way she was prejudiced as she had not seen the estimates. However, her opinion was that the lift had not needed repairing and highlighted faults with the doors that had occurred after the completion of the works. She acknowledged that she had not requested copies of the estimates.

20. Mr Grover also considered that the extent of the works was unnecessary and that the lift with proper servicing was capable of continued use. He revealed at the hearing that he had experience in the lift industry, although had not provided evidence of this. He argued that the lift consultant (Mr Primrose) had a conflict of interest, referring to endorsements by him on the chosen solution's website. His contention was that this was the wrong solution because it was based on a closed protocol system and so necessitated further works to the other lift. He therefore argued that the Applicant had not acted with sufficient due diligence and care in relying on the advice of Robin Primrose, thereby placing an unnecessary financial burden on the Respondents.

21. Ms Woolford was unable to attend the hearing but the Tribunal reviewed the objections she had made prior to the hearing. She felt unable to respond in the time provided by the Tribunal but did not seek a postponement of the hearing. She believed that the estimates should have been made available to leaseholders in the Property or by being emailed to them. She has provided an email from 17 December 2018 asking to view these and raising various queries. The Applicant replied on 7 January 2019 inviting Ms Woolford to inspect the estimates at the Applicant's offices and responding to the queries. Ms Woolford does not identify any prejudice she suffered from not being able to inspect the estimates.

22. Mrs Gadsden argued that the legal process had not been followed, which she argued had her threefold impact on her. First, by not being able to see the estimates, she could not challenge these. It was her belief that, by being able to see these, she would have had had a better understanding of the proposed works and so could have entered into a constructive dialogue. This caused the second impact; the stress of challenging the costs and process had caused her to suffer from a degenerative illness (the condition was identified but further evidence of the linkage was not provided). Finally, her challenges had led to a toxic atmosphere in the Property, with her husband suffering physical abuse and she enduring verbal abuse. She contends that all of this could have been avoided if the estimates were provided.

23. Mrs Gadsden confirmed that she accepted the Tribunal's decision that the costs were reasonable, although had queries about various elements, referring to the cost of the rams; these queries were aired at the section 27A Tribunal hearing. She said that she had not received a letter from the Applicant dated 7 June 2019 but noted the similarity between this

letter and one subsequently sent by Mr Primrose. She accepted that she received the three letters required by a section 20 consultation but did not receive the underlying documentation until the contractor for the works had been appointed.

Law

24. Section 20 of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act") and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.

25. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by an application such as this one before the Tribunal. Essentially the Tribunal must be satisfied that it is reasonable to do so.

26. The Applicant seeks dispensation under section 20ZA of the 1985 Act from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act.

27. Section 20ZA relates to consultation requirements and provides as follows:

> *"(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.*
>
> *(2) In section 20 and this section—*
> *"qualifying works" means works on a building or any other premises, and "qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.*
> *....*
> *(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.*
> *(5) Regulations under subsection (4) may in particular include provision requiring the landlord—*
> *(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,*
> *(b) to obtain estimates for proposed works or agreements,*

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

Findings

28. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14, by a majority decision (3-2), the Supreme Court considered the dispensation provisions and set out guidelines as to how they should be applied.

29. The Supreme Court came to the following conclusions:

a. The correct legal test on an application to the Tribunal for dispensation is: "Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord's failure to comply with the requirements?"

b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.

c. In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord's failure to comply.

d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.

e. The factual burden of identifying some "relevant prejudice" is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

f. The onus is on the leaseholders to establish:

i. what steps they would have taken had the breach not happened and

ii in what way their rights under (b) above have been prejudiced as a consequence

30. Accordingly, the Tribunal had to consider whether there was any "relevant prejudice" that may have arisen out of the conduct of the Applicant and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.

Consideration

31. Having read the evidence and submissions from the Applicant and having considered all of the documents and grounds for making the application provided by the Applicant, the Tribunal determines the dispensation issues as follows.

32. The Tribunal has previously established that the only failure in relation to the consultation process was not making the estimates available for inspection in a reasonable location. Applying *Daejan*, the test for it was whether the flat owners suffered any relevant prejudice, and if so, what relevant prejudice, as a result of that failure by the landlord.

33. The Property contains around 59 flats and objections were only raised from four of those flats. Although a large proportion had not objected, the Tribunal needs to consider whether any leaseholders suffered any relevant prejudice such that it would not be reasonable to grant the requested dispensation.

34. In doing so, it needed to focus on whether the leaseholders were prejudiced by paying for inappropriate works or paying an inappropriate amount as a result of the landlord's failure to make the estimates available for inspection at a reasonable location.

35. The Tribunal has already determined that the works were proper and the costs were reasonable; its consideration of relevant prejudice had to be considered in that context.

36. The Applicant believed that the lift works were necessary, not only because of the age of the lifts but also because maintaining a lift service in a building with many elderly residents was important. On the evidence before it and in light of the Tribunal's previous decision, the Tribunal agrees with the Applicant's conclusions.

37. The Tribunal considered each of the objections received in turn, to ascertain whether any relevant prejudice could be identified. In doing this, the Tribunal considered both the written evidence and the submissions made at the hearing. It also remained cognisant that the burden of proof to show that they have suffered relevant prejudice lies with the Respondents.

38. We began with Ms Meek. She feels strongly that the inspection process for the estimates was flawed, a position endorsed by the previous Tribunal decision. However, she had not discharged the evidential burden that she suffered relevant prejudice as a result. In particular, she had not shown what would have been different had she been able to inspect the estimates; it is noted that she had not requested copies of these. Her comments that the works were unnecessary were noted but this had been addressed by the previous decision. As a result, the

Tribunal concluded that Ms Meek had not suffered any relevant prejudice.

39. The Tribunal then turned to Mr Grover's objections. He had similarly argued that the works were not necessary, contending that Mr Primrose had put forward an improper solution and the Applicant had not been sufficiently careful in appointing him and relying on his recommendations. He argued that the prejudice suffered was the financial burden suffered by the leaseholders as a result. The Tribunal acknowledged the strength of his arguments. However, it did not consider that this prejudice arose as a result of the failure to make the estimates reasonably available. Mr Grover's arguments focused on the proposed design solution rather than the estimates received. It had already been established by the previous Tribunal decision that the works were reasonable and the Applicant was entitled to rely on the advice of Mr Primrose; it was not for the Tribunal to reconsider whether the proposed system was suitable or whether the Applicant was entitled to rely on Mr Primrose's advice. Accordingly, the Tribunal concluded that Mr Grover had not suffered relevant prejudice as a result of the failure to makes the estimates reasonably available.

40. Ms Woolford, like Ms Meek, focused on the failure to make the estimates reasonably available. The Tribunal noted that she had requested these and the Applicant had insisted on inspection at their offices rather than more helpful alternatives. It is hoped that the Applicant has learned that this approach is not sufficient. However, Ms Woolford does not identify any prejudice she suffered from not being able to inspect the estimates. This means that she has not discharged the evidential burden to demonstrate relevant prejudice. As a result, the Tribunal concluded that Ms Woolford had not suffered any relevant prejudice.

41. The Tribunal finally considered the objections from Mrs Gadsden. She argued that the failure to provide the estimates meant that a reasonable dialogue with the Applicant was not possible, causing a toxic atmosphere in the Property and also causing her stress, leading to her illness. The Tribunal had sympathy with Mrs Gadsden's illness but could not identify any evidential link between this and the Applicant's failure to provide the estimates. In addition, it finds that the Applicant had sought to respond to Mrs Gadsden's queries and does not consider that the outcome would have been any different had the estimates been provided. The Tribunal has already determined that the Applicant was entitled to carry out the works and that the costs were reasonable; Mrs Gadsden questioned the costs of the rams but this was discussed at the previous hearing and their cost was excluded from the amounts to be recovered from leaseholders. As a result, whilst acknowledging that she has suffered stress from challenging the process, the Tribunal determines that Mrs Gadsden has not suffered relevant prejudice as a result of the Applicant's failure to provide the estimates.

42. The Tribunal is therefore of the view that it could not find any relevant prejudice to any of the leaseholders of the Property by the granting of dispensation relating to the lift works in the Property.

43. As a result, the Tribunal believes that it is reasonable to allow dispensation in relation to the subject matter of the application.

44. The Tribunal considered whether it was appropriate to impose any conditions in relation to such dispensation. None had been requested by any of the parties. There were none that the Tribunal considered appropriate. It therefore determines that no conditions should be added to any dispensation.

45. Accordingly, the Tribunal grants the Applicant's application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 in relation to lift works in the Property.

46. The Applicant shall place a copy of the Tribunal's decision on dispensation together with an explanation of the leaseholders' appeal rights on its website (if any) within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on its home page. It should also be posted in a prominent position in the communal areas. In this way, leaseholders who have not returned the reply form may view the Tribunal's eventual decision on dispensation and their appeal rights.

Costs

47. The Respondents had not applied for cost orders under section 20C of the Landlord and Tenant Act 1985 ("Section 20C") and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("Paragraph 5A"). The Tribunal nonetheless invited submissions on the issue. The Applicant stated that it did not intend to recover the costs of the application from the Respondents in any event. The Respondents stated that they did not realise that they needed to apply; the Tribunal treated this as an application under Section 20C and Paragraph 9A.

48. The relevant part of Section 20C reads as follows:-

> (1) "A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before … the First-tier Tribunal … are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant…".

49. The relevant part of Paragraph 5A reads as follows:-

> "A tenant of a dwelling in England may apply to the relevant … tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs"

50. A Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the Applicant in connection with these proceedings cannot be added to the service charge of the Respondents or other parties who have been joined. A Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the Applicant in connection with these proceedings cannot be charged direct to the Respondents as an administration charge under their respective Leases.

51. In this case, the proceedings have only been brought because shortcomings were found in the Applicant's consultation process. They would not have been otherwise required. The Tribunal does not consider it equitable for a party to be charged for the costs of proceedings necessitated by the other party's shortcomings. In addition, the Applicant will not suffer any prejudice from the making of such orders as it has stated it does not intend to recover its costs from the Respondents in any event. The Tribunal therefore determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act. The Tribunal accordingly makes an order in favour of the Respondents that none of the costs incurred by the Applicant in connection with these proceedings can be added to the service charge.

52. For the same reasons as stated above in relation to the Section 20C cost application, the Respondents should not have to pay any of the Applicant's costs in bringing the application. The tribunal therefore makes an order in favour of the Respondents that none of the costs incurred by the Applicant in connection with these proceedings can be charged direct to the Respondents as an administration charge under the Leases.

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 by email to 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.