



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

Case reference : **MAN/00CJ/LDC/2025/0653**

Property : **Browning Court, Fenham Chase, Newcastle-Upon-Tyne,
Tyne & Wear, NE4 9DR**

Applicant : **McCarthy & Stone Retirement Lifestyles Limited**

Representative : **McCarthy & Stone Management Services Limited**

Respondents : **The residential long leaseholders**

Type of Application : **Landlord & Tenant Act 1985 - Section 20ZA**

Tribunal Members : **Mr J Platt FRICS, FTPI
Mr N Foster FRICS
Dr T Gledhill FRICS**

Date of Paper Determination : **27 January 2026**

DECISION

DECISION

1. Pursuant to section 20ZA of the Landlord and Tenant Act 1985 the tribunal makes a determination to dispense with the requirement to consult with the Respondents on the lift remedial works undertaken on 5 October 2024.

REASONS

The Application

2. The application (the Application') was made on 17 July 2025 by McCarthy & Stone Management Services Limited on behalf of McCarthy & Stone Retirement Lifestyles Limited ('the Applicant'). It seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('the Act') in relation to the statutory consultation requirements prescribed by section 20.
3. Dispensation is sought for lift remedial works carried out at Browning Court, Fenham Chase, Newcastle-Upon-Tyne, Tyne & Wear, NE4 9DR ('the Property') on 5 October 2024. The Property is a purpose built block of 36 flats comprising of one and two bedroom apartments in an age-restricted community for the over Sixties. The Applicant is the freehold proprietor of the Property and the Respondents are the long leasehold tenants of the flats.
4. A sample lease evidences that the tenants' obligations include the payment of a variable service charge towards costs of services incurred by the Landlord. The Landlord obligations include "maintain repair ... the passages staircases landings lifts entrances and all other parts of the Building enjoyed or used by the Tenant in accordance with the terms hereof in common with all or any of the other tenants or occupiers of the Building".
5. Directions were issued on 31 October 2025. The Applicant submitted a bundle of papers including a statement of case and supporting documents. The Applicant seeks dispensation based on its evidence that:

The Applicant applies for dispensation for lift remedial works carried out on 05/10/2024 at the Property. There is only one lift at Browning Court to serve 36 apartments and it was intermittently jolting while users were in it and the lift level was uneven. The lift was deemed unsafe for use and the remedial works were deemed urgent. Residents rely on the lift for access to the upper floors of the Property as many are unable to safely use the stairs.

6. The Applicants' further evidence is that it:

On 2nd October 2024 an N1 Notice of Intention was issued highlighting that it was the intention of the Applicant to remediate the lift back to full functionality. After service of the N1 the lift condition deteriorated and was switched off. It was decided to initiate a repair before the N1 notice period had expired. Homeowners were kept updated of this development and fully supported it.

Recognising the need for this fault to be rectified urgently, and that the contractor had already a Qualifying long agreement, we instructed Orona to continue with the works at a cost of £9654.17 + VAT.

On 5th December 2024, homeowners were issued with a letter advising that zero observations had been received back in relation to the N1 and confirming that due to the decided urgency of the works, the contractor had been instructed and completed the works on 5th October 2024. The letter clarified that therefore a full consultation process was not completed and that the Applicant would be applying for a dispensation.

The development's House Manager kept homeowners informed verbally of the progress of the lift remedial works through conversations and coffee mornings. The coffee morning held on 1st April 2025 went over the circumstances of the work again and advised we would be applying for dispensation. Notes were taken and displayed on the noticeboard.

7. The Tribunal, therefore, understands that the works have already been undertaken and the Applicant, in effect, seeks retrospective dispensation.
8. None of the Respondents submitted a statement to the tribunal opposing the Application and the Applicant has confirmed that none of the Respondents has submitted any objections to the Application directly to itself.
9. The Applicant indicated that it would be content with a determination on the papers. The tribunal considered this to be appropriate because none of the Respondents opposed the Application, neither party had requested a hearing and because there was sufficient information before the tribunal to reach a decision. In view of the matters in issue, it was unnecessary to conduct an inspection of the Property.

The Law

10. Extracts from sections 20 and 20ZA of the Act are reproduced in Schedule 1. Section 20ZA subsection (1) provides that the tribunal may make a determination to dispense with consultation requirements 'if satisfied that it is reasonable to dispense with the requirements'.
11. The tribunal considers the leading case on dispensation to be the Supreme Court decision in *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 ('*Daejan*'). In *Daejan*, Lord Neuberger stated that in deciding pursuant to section 20ZA whether it is reasonable to dispense with consultation requirements, a tribunal should consider whether any relevant prejudice would be suffered by the leaseholders. Lord Neuberger stated that whilst the legal burden of proof rests throughout on the landlord, the factual burden of identifying some relevant prejudice that they would or might have suffered rested on the tenants. Lord Neuberger went on to hold that a tribunal is permitted to grant dispensation on terms, including compensating leaseholders for any prejudice suffered by requiring a landlord to reduce the amount claimed as service charge, and including an order for costs.

Findings of fact and Reasons for decision

12. None of the Respondents have submitted a statement of case opposing the Application. There is no evidence before the tribunal that any of the Respondents consider themselves to be prejudiced in any way by the absence of a section 20 consultation exercise.
13. The Applicant engaged with the Respondents on its proposals to undertake the Works.
14. The tribunal finds that there is no relevant prejudice identified by any Respondent, suffered as a consequence of the Applicant proceeding with the Works without first carrying out the section 20 consultation.

15. The Respondents have made no representation as to any condition the tribunal might impose in granting dispensation, and there is no evidence of any cost being incurred by the Respondents that should appropriately be met by the Applicant.
16. In these circumstances, the tribunal considers it reasonable to dispense with consultation requirements unconditionally. Accordingly, the tribunal makes a determination, under section 20ZA of the Act, to dispense with the requirement to consult with the Respondents under section 20 in relation to the Works.
17. The tribunal expresses no view as to whether any costs associated with the Works are reasonable in amount, whether the Works were necessary or of a reasonable standard or whether the costs intended to be recovered by way of service charge are contractually payable under the leases or within the meaning of 'relevant costs reasonably incurred' in sections 19 and 27A of the Act. No such applications are currently before this Tribunal and the Tribunal's decision does not include or imply any determination of such matters.

Schedule 1

Extracts from legislation

Landlord and Tenant Act 1985

Section 20

(Subsections (1) and (2):)

(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) a 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 under the agreement.

Section 20ZA

(Subsection (1))

(1) Where an application is made to a 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.