FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LDC/2025/0652**
Property	**:**	**25-27 Old Queen Street, London, SW1H 9JA**
Applicant	**:**	**Queens Annes Gate Limited**
Representative	**:**	**Miss Fisher (Counsel)**
Respondents	**:**	**(1) Leaseholders of 25-27 Old Queen Street** **(2) Ms J Liang** **(3) Mr and Mrs Kingston**
Representative	**:**	**Mr Kingston**
Type of application	**:**	**Application for the dispensation of consultation requirements pursuant to S. 20ZA of the Landlord and Tenant Act 1985**
Tribunal	**:**	**Judge Tueje** **Mr K. Ridgeway MRICS**
Venue	**:**	**10 Alfred Place, London, WC1E 7LR**
Date of hearing	**:**	**23rd January 2026**
Date of decision	**:**	**13th April 2026**

DECISION

In this determination, statutory references relate to the Landlord and Tenant Act 1985 unless otherwise stated.

Decision of the Tribunal

(1) The Tribunal grants conditional dispensation pursuant to s.20ZA in respect of the lift replacement works (the "Works"). The Works were

carried out by Ambassador Lift Company Limited, and cost £67,164.00 including VAT, where applicable.

(2) Dispensation is granted subject to a condition that the cost of the works recoverable from the Respondents, being the leaseholders of 25-27 Old Queen Street, London, SW1H 9JA, is limited to £22,164.12 of the total cost.

(3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 in favour of the Second and Third Respondents.

The Procedural Background

1. The application under section 20ZA, is dated 10th February 2025, and seeks dispensation from the consultation requirements in respect of the Works required at 25-27 Old Queen Street, London, SW1H 9JA (the "Premises").

2. The application form stated the Applicant considers the case was suitable for determination on the papers.

3. Following receipt of the application, the Tribunal made a directions order dated 20th February 2025, stating the application would be determined in accordance with the Supreme Court's decision in Daejan Investments Limited v Benson [2013] 1 W.L.R. 854.

4. In some cases the Tribunal directs an applicant to serve the application and directions on the respondents. However, in this case, paragraph 1 of the directions order stated the Tribunal would serve a copy of the application and the directions order on each respondent. Paragraph 2 of the order provided that any leaseholder who objected to the Application to provide their response by 20th March 2025. By paragraph 5 of the order the application was to be determined on the papers in the week commencing 14th April 2025, although paragraph 6 provided that any party who wanted a hearing to determine the application was required to notify the Tribunal by 3rd April 2025

5. In the event, the Tribunal did not serve the application or the directions order on the respondents, consequently the respondents were unaware of the application, and therefore did not object or request a hearing.

6. In a determination dated 15th April 2025, the Tribunal granted unconditional dispensation in respect of the Works. On receipt of the determination Ms Liang and Mr and Mrs Kingston, appealed against the decision on the grounds that they had received no prior notice of the dispensation application.

7. On 6th May 2025 the Tribunal set-aside its determination and issued directions, including requiring the applicant to send a copy of the application, and the order of 6th May 2025, to leaseholders. It also made provision for any leaseholder who opposes the application to respond to

the application by 3rd June 2025, and any party requiring a hearing to determine the application to notify the Tribunal by 30th June 2025.

8. Ms Liang and Mr and Mrs Kingston objected to the application, and requested it be determined at a hearing.

9. The application was therefore listed for a final hearing on 22nd September 2025. At that hearing the applicant requested an adjournment in order to submit witness statements and to rely on an expert report. Despite the respondents' objections, the Tribunal adjourned the hearing to 23rd January 2026, giving the Applicant permission to rely on an expert's report, and the Respondents permission to rely on their own collective report.

10. On 21st January 2026 the applicant submitted a revised copy of the bundle to be relied on at the final hearing. It was a 170-page hearing bundle, which included the following documents:

    10.1 The application form.
    10.2 The applicant's statement of case
    10.3 A witness statement from Ben Jarvis, a Senior Property Manager employed by Town and City Management Limited, the applicant's managing agent.
    10.4 Amongst the documents exhibited to Mr Jarvis' witness statement was a letter dated 15th October 2025 from Mr Bardawil, the managing director of Ambassador Lift Company Limited ("ALC").
    10.5 The respondent's statement of case prepared by Mr and Mrs Kingston
    10.6 Mr and Mrs Kingston's response to the applicant's new documents
    10.7 A witness statement from Ms Liang.
    10.8 It also contained a sample lease and various reports and other documents relied on by the parties which are referred to below.

11. At the hearing on 23rd January 2026 Miss Fisher represented the Applicant, and Mr Kingston represented the Respondents.

12. At the hearing the Tribunal was provided with a skeleton argument dated 22nd January 2026 prepared on behalf of the Applicants by Miss Fisher.

13. The Tribunal heard oral evidence from the following witnesses on behalf of the Applicant:
    13.1 Mr Jenkins (the Applicant's managing agent); and
    13.2 Mr Bardawill (Managing Director of ALC).

14. Miss Fisher clarified that Mr Bardawil's evidence was not being relied on as expert evidence.

15. The Tribunal also heard oral evidence from the following witnesses on behalf of the Respondents:

15.1 Ms J Liang (a leaseholder); and
15.2 Mr Kingston (a leaseholder).

16. After hearing the oral evidence and closing submissions, it became apparent that the Applicant placed significant reliance on the availability to the Respondents of a section 27A application to support its position that granting dispensation would not result in any material prejudice. decision may be relevant to the issues in this case. Therefore, at the end of the hearing the Tribunal also considered that submissions were required on the decision in Aster Communities v Chapman, and gave directions. After the hearing, the Tribunal also considered representations from the parties regarding remedy may be useful.

17. Therefore the Tribunal issued the following directions:

1. The Tribunal directs the parties shall provide written submissions addressing the following matters:

1.1 The case of Aster Communities v Chapman, namely, the relevance, if any, of the Respondents still having available to them a challenge to the reasonableness of the cost of the qualifying works.

1.2 The remedies available in this case, namely:
(a) granting unconditional dispensation;
(b) granting conditional dispensation, for example, subject to payment of costs or financial compensation; or
(c) refusing dispensation.

1.3 The parties should address what conditions would be appropriate if the Tribunal were to grant conditional dispensation.

18. It was not intended that representations on remedy be confined only to how remedy is dealt with in Aster. Although there is particular focus on Aster in the representations from the parties, their representations also refer to the decision in Daejan.

19. The applicant's submissions, prepared by Miss Fisher, are dated 28th January 2026. The respondent's submissions, prepared by Mr Kingston, are dated 2nd March 2026.

The Background

20. The Property is a purpose built block constructed in the 1960s, comprising self-contained flats arranged over 9 storeys: the ground floor to fifth floor have one flat on each level. There is a split-level penthouse flat on the sixth, seventh and eighth floor occupied by a director of the Applicant company. Therefore, the lift in the Premises services 7 floors, namely the ground through to sixth floor.

21. The lift was refurbished in 1997, and modernised in 2005.

22. On 24th February 2012 Bureau Veritas prepared a report of the Thorough Examination and Inspection of the lift pursuant to regulation 9 of the Lifting operations and Lifting Equipment Regulations 1998. The report is signed by Mr Morse, Engineer Surveyor, and Mr Carmichael, Chief Engineer.

23. In section A of the report, for recording defects which are or could become dangerous to persons, the remedial actions, and the dates by which these are to be remedied, "None" is recorded. Section B, lists 12 defects, and observations are recorded in Section C of the report.

24. On 3rd July 2012 the Rendall Rittner Hammond, Applicant's former manging agents, served a notice of intention on leaseholders in respect of replacing the lift. In response to this notice, the leaseholder of the ground floor flat requested a copy of the regulation 9 report, and the managing agents sent a copy of the Bureau Veritas' 24th February 2012 report.

25. On 10th September 2012 the managing agents wrote to leaseholders with its response to observations received, and provide details of two estimates received. The first was from ALC for £41,500 plus VAT, the second was from Trojan Lifts for £47,500 plus VAT. The cheaper estimate was selected.

26. On 3rd October 2012 the ground floor leaseholder wrote to the managing agent pointing out that the Bureau Veritas February 2012 report did not indicate replacement of the lift was required.

27. The applicant did not pursue replacing the lift at that time.

28. On 22nd April 2014 Bureau Veritas prepared a further regulation 9 report is signed by Mr Carmichael, Chief Engineer.

29. In section A of the report, for recording defects which are or could become dangerous to persons, the remedial actions, and the dates by which these are to be remedied, the following is recorded:

    The car doors anti nudging device is inoperative and there is no other door open facility installed. This should be reinstated before 29/04/2024. The emergency telephone and audible alarm systems in the car are inoperative and should be reinstated before 06/05/2014.

30. Section B, listed 13 other defects, and observations are recorded in Section C.

31. Town & City subsequently took over management of the building, and on 9th July 2018 it sent an amended section 20 notice of intention to carry out qualifying works. It stated that after discussion with ALC, it advised

consideration should be given to replace the lift, and an independent report would be obtained in due course.

32. A report dated 14th November 2018, prepared by Mr Bello Ieng MSOE MBES of Independent Safety Evaluation, states the lift was in an unsatisfactory condition, identified defects which required attention, and recommended the works required.

33. Although we have been provided with ALC's lift service agreement in respect of the Premises dated 1st July 2017 and 17th July 2023, which contain identical terms, his oral evidence Mr Bardawil confirmed that his company had serviced the lift throughout this period.

34. Under the lift service agreements, ALC is required to inspect the lift 12 times per annum and report observations and recommendations. When Mr Bardwill was asked why none of the reports had been disclosed, he stated that reports were fed back verbally.

35. Aside from routine maintenance visits, we have been provided with call-out reports relating to the lift on 28th May 2021, 7th February 2022, 19th May 2022 (a routine maintenance visit, but additional works were identified), 11th July 2022 (two call outs: at 1pm and 6.15pm), 22nd November 2022, 13th February 2023, 2nd June 2023, 20th June 2023, 12th October 2023, 15th October 2023 and 16th January 2024.

36. Following the above-mentioned visit on 7th February 2022, ALC recommended that safety edges are installed to the car door. This recommendation was repeated following the inspection on 19th May 2022. During cross examination, it was put to Mr Jarvis that works recommended by ALC were not carried out, with the 7th February 2022 being cited as an example. Although this pre-dated Mr Jarvis' involvement with the property, he stated that the recommendations were not carried out because leaseholders objected. However, the Respondents' position is that they objected to replacement of the lift, but not to repairs, and their position is supported by the contemporaneous documents.

37. On 24th January 2024 Town & City raised a works order for ALC to remove the existing lift, at a cost of £3,500 plus VAT, said to be in accordance with a previous quotation. There is an ALC invoice dated 29th January 2024 for partial payment of £20,790 for the manufacture and installation of a passenger lift, stating no VAT is payable. There is a further invoice dated 17th April 2024 for £20,790 (no VAT payable) being a further instalment towards the manufacture and installation of a passenger lift. An invoice for £4,200 including VAT for the removal of the old lift is dated 7th August 2024. Finally, an invoice dated 30th January 2025 for £21,384, including VAT. The total amount invoiced is £67,164.00.

38. On 24th May 2024 (i.e. after the decision to replace the lift had been initiated) Bureau Veritas prepared a Regulation 9 report, which is signed

by Mr Clement, Engineer Surveyor, who confirms he thoroughly examined the lift on 24th May 2024.

39. In section A of the report, for recording defects which are or could become dangerous to persons, the remedial actions, and the dates by which these are to be remedied, "None" is recorded.

40. Section B, lists the following defects:

The lift machine room is dirty and should be cleaned.
The missing lift machine room lighting units should be renewed.
The movement of the lift car within its guide rails should be reduced.
The loose fifth-floor landing door kicking roller should be secured.
The lift way is dirty and should be cleaned.
The missing lift car toe guard/apron should be renewed.
The gearbox oil leak should be sealed, waste oil cleaned, and the gearbox oil replenished.
The gaps between the landing doors and architraves on various floors should be reduced to between 6–10 mm.
The adrift lift machine room electrical consumer unit faceplate should be refitted.
The missing basement floor lift way fascia panel should be renewed.

41. Section C of the report listed the following observations:

Install lift machine room emergency lighting.
Provide a landing safety barrier for maintenance and inspection personnel.
Install lift way lighting.
Upgrade the safety gear to an overspeed-governor-operated type.
Fit a full-height safety-edge light curtain to the lift car door.
Install a lift car interior door-open push button.
Ensure the lift car top test/inspection control switch is closed and shrouded.
Install a lockable mains isolator.
Install a pit access ladder to provide safe access to the pit area.
Guard the traction sheave, ropes, rope-diverting pulleys, and machine flywheel with a guard that still allows safe maintenance access.
Display an "Electric Shock Treatment" notice in the machine room.
Display emergency hand-winding instructions in the machine room.
Fit guide rail lubricating oil collection trays at the base of the guide rails in the pit.
Paint the counterweight hazard yellow.
Display a prescribed-type danger notice on the lift machine room door.
Refurbish the entire installation.

42. It can be seen the observations range from fitting a variety of notices to refurbish the entire installation.

43. ALC prepared a job sheet and invoice dated 7th August 2024 confirming the old lift had been removed on 1st August 2024.

44. On 21st August 2024 Ms Liang e-mailed Town and Country referring to the removal of the lift, and querying whether the cost of works relating to the lift would be retrospectively charged to leaseholders. Her unchallenged evidence is that she received no reply.

45. The applicant's statement of case also states:

> *As there are elderly resident in the building that rely on the lift due to mobility issues the lift replacement was urgent and the works completed and being paid for by the Applicant, Queen Annes Gate Limited.*
>
> …
>
> *… we would like to point out that the lift which was replaced was a very old lift and some all the parts which were required to repair it are obsolete.*

46. The explanation that the works were urgent due to the mobility issues of residents is repeated in the application form. Although, the Respondents point out, there was no lift between August 2024 when the original lift was removed, and January 2025 when the replacement lift was installed.

The Applicant's Case

47. Mr Jarvis' began working at Town & City in February 2025. He therefore had no personal knowledge of the previous lift, and confirmed in cross examination that he is not a lift engineer.

48. Nonetheless, in both his written and oral evidence, he opined about the functioning life of lifts, and that spending (an unspecified sum) on the lift would have been *"throwing good money after bad",* and that the lift required replacement.

49. When asked why leaseholders had not been sent a copy of the 2024 quotation, he explained that because that was before he started working for Town & City, he didn't know.

50. His witness statement continued:

> *The above coupled with the 2018 findings, in my view, only lead us to 1 logical conclusion which is to wholly replace the lift, with a further proactive plan in place to collect sufficient reserve funds (should the least allow) over the next 15 to 20 years to cover future lift overhauls and the eventual next programme of replacement.*

51. He robustly defended this position during cross examination when he was challenged that the Bureau Veritas reports stated it was repair and

refurbishment that was required. He responded that this was semantics, and repeatedly stated the authors would have been affected by confirmation bias.

52. Mr Jarvis was unable to explain why there were no contemporaneous reports in the bundle recommending replacement rather than repair or refurbishment of the list, stating he had not prepared the bundle.

53. Exhibited to Mr Jarvis' witness statement was a letter from Mr Bardawil dated 15th October 2025, which reads:

I write to you in regard to the lift installed at 25 Old Queen Street, London SW1H 9JA, which was manufactured and installed in 1960.

We were asked to look at this lift for servicing and reliability. Upon inspection, we found most parts were the original ones installed which makes the[m] hard to source if they need replacement. Although a minor modernization was undertaken 20 years ago, many parts were badly worn.

We recommend this lift for replacement due to many safety features not meeting today's standard requirement under the Health and Safety Lift Regulations.[1]

The lift reliability was becoming more erratic and causing more and more breakdowns to be attended to.

The following items were in dire need of replacement;

Lester control system - Many parts were worn and obsolete
Main Drive Unit and Gearbox - Showing signs of backlash
Main Safety Gear Unit - Non-bi[o]directional which is a requirement under today's lift regulations
Guides and Guide Brackets - becoming extremely loose in fragile walls
Top Wheelhouse and Bearings - Showing considerable amount of wear.

In general, due to the condition of the aged lift, we as a company advised that this be replaced or we would have no other option but to take out of service and decommission the lift.

54. In his oral evidence Mr Bardawil confirmed that he was the person who carried out the inspection referred to in his letter. He could not recall the exact date of the inspection. When asked for an approximate date, he said it would have been early last year. Miss Fisher did not ask Mr Bardawil to clarify which year he was referring to, but sought to argue during closing submissions, it was likely he meant early 2024. However, as explained to Miss Fisher, it would only be appropriate to

[1] This is understood to be a reference to the Lifting operations and Lifting Equipment Regulations 1998.

take Mr Bardawil at his word, given that he wasn't asked to clarify his response. Taking this evidence at face value, it would mean he inspected the original lift in early 2025, which would be impossible because it had been replaced by then.

55. When asked about his view that the lift should be replaced compared to the lift engineers Mr Bello and Mr Clements, who recommended repair/refurbishment, he questioned their expertise. When asked about his own credentials, he stated that he has worked for over 50 years in lifts and had inspected the old lift on numerous occasions, so was very familiar with its condition. He also said it was the worst lift he had ever seen, that it was beyond economic repair, although he was unable to provide the cost of the repairs. He states he would have submitted a quotation to the Applicant.

56. Mr Bardawil was asked about the absence of contemporaneous documentation showing the lift required replacement, such as the engineer reports his firm were required to prepared in accordance with the Lift Service Agreement. He responded that verbal reports were made to his office, followed by a written report, and he said there would have been insurance reports, and the lift was inspected every six months.

57. Miss Fisher argued that in accordance with Daejan, the test when considering an application for dispensation solely requires focusing on whether there is relevant prejudice arising from failure to consult. She stressed that the test is not whether the works were necessary, nor must the work satisfy a cost benefit analysis of whether there should have been refurbishment rather than replacement. She submitted the final decision regarding how to deal with the lift is for the landlord to make. She further argues that references to any other conduct is only relevant if it can be argued it has caused some relevant prejudice.

58. Daejan attempts to strike a fair balance between the tenants not receiving a windfall if dispensation is only granted sparingly, and ensuring landlords do not adopt a cavalier approach to carrying out consultation regarding qualifying works if the power is exercised too loosely.

59. The Respondents refer to three aspects of prejudice, namely being deprived of the opportunity to challenge the need to replace the lift, of obtaining their own expert evidence to report whether replacing the lift was required, and the opportunity to assert that any works the lift required were due to the Applicant's inadequate maintenance. The burden is on the Respondent's to establish relevant prejudice, but none of three aspects they rely on amount to relevant prejudice.

60. In any event, Miss Fisher argues that the timeline allowed the Respondents sufficient time to obtain their own report if they had wanted to. Mrs Liang made enquiries regarding removal of the lift, so she could have obtained her own report at that time. Although the lift

had been removed, an expert could have prepared a report based on the relevant records.

61. Even if the Respondents had consulted an expert regarding whether there was a need to replace the lift, and putting aside that necessity is not the test, the landlord still holds the ultimate power to replace the lift. Section 20 requires a landlord to consult with tenants, it does not require the landlord to adopt the tenant's position. Therefore, even with consultation, the outcome would have been the same.

62. The Applicant also submits that ALC has been engaged to maintain the lift since 2017, has been very involved with the maintenance upkeep and repair of the previous lift. Therefore the Applicant was entitled to rely on ALC's advice that a replacement was required, which it stated was required due to urgent and safety critical reasons; continuing to use the lift was unsafe, it would have to be decommissioned. The issue before the Tribunal is whether the Respondents have suffered any relevant prejudice, which the Applicant argues, they have not.

63. Although there was no expert report that replacement was required, Mr Bardawil criticises the Bureau Veritas 2024 report, and those criticism are relevant to the weight the Tribunal should attach to the report.

64. The lift was over 60 years old and the Tribunal has heard unequivocal oral evidence from Mr Bardawil that the lift was no longer viable nor could it be safely refurbished. The Tribunal should accept his evidence, which was credible.

65. As to alleged neglect, there are records showing maintenance has been carried out, and those arguments would be relevant to any application that may be made under section 27A, rather than this application.

66. If dispensation is refused, the Respondents will receive a windfall. They will have received a new lift, they will have been spared the maintenance burden of the old lift, at no cost to them. Taking into account that they have not demonstrated financial prejudice, refusing the application cannot be justified.

67. Therefore, the Applicant's primary submission was that unconditional dispensation should be granted. Alternatively, in accordance with Aster, dispensation conditional on the Applicant paying the Respondent's costs of obtaining expert evidence.

The Respondents' Case

68. Mrs Liang's evidence was that the Applicant's previous attempts to replace the lift were previously rejected, yet in August 2024, the lift was removed without any prior notice to leaseholders, who were left without a lift for several months, causing considerable inconvenience. She disagreed that there was a need to replace the old lift, which she

said worked fine, and the new lift was slower and had less character compared to the wood panelling in the old lift.

69. Mrs Liang evidently distrusted the Applicant's motivation behind proceeding with the lift replacement without consultation. She referred to the Applicant's past unsuccessful attempts to replace the lift, and stated if there had been consultation on this occasion, she would have obtained an expert report to determine whether replacing the lift was required.

70. Mr Kingston's evidence was in a similar vein, including regarding the prejudice he contends the leaseholders have suffered. He states dispensing with consultation would deprive leaseholders of the opportunity to challenge the need to replace the lift, of obtaining their own expert evidence to report whether replacing the lift was required, and the opportunity to assert that any works the lift required were due to the Applicant's inadequate maintenance. He also pointed out that in the past when the Applicant had initiated consultation in an attempt to replace the lift, leaseholder objections had resulted in that proposal being abandoned.

71. In his closing submissions Mr Kingston relied on his statement of case and the response to the applicant's new documents (see paragraph 10.6 above).

72. He pointed out that nowhere in the bundle, including the new documents the Applicant relied on, for which the last hearing had been adjourned, was there any contemporaneous document supporting the need to replace the lift.

73. The reports prepared on behalf of the Applicant by Mr Dello and Mr Clements, who could be described as experts, was that the lift required refurbishment.

74. Despite which, the Applicant replaced the lift, without any consultation, and in doing so has caused the prejudice to the Respondents, which can be summarised as follows:

    74.1 The loss of opportunity to make representations regarding refurbishment instead of replacement;

    74.2 The loss of opportunity to consult an expert regarding the Applicant's proposal; and

    74.3 The loss of opportunity to show that the works resulted from the Applicants' neglect.

75. Mr Kingston urged the Tribunal to refuse the application.

The Legal Framework

76. So far as is relevant, section 20 states:

Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsections (6) or (7) (or both) unless the consultation have been either-

Complied with in relation to the works or agreement, or
Except in the case of works to which section 20D applies, dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

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 payment of service charges) to relevant costs incurred on carrying out the works under the agreement.

This section applies to qualifying works if relevant costs incurred or on carrying out the works exceed an appropriate amount.

77. Section 20ZA(1) continues:

Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

78. In ***Daejan Investments Limited v Benson and others [2013] UKSC 14*** the Supreme Court provided the following guidance when dealing with section 20ZA applications for dispensation of the statutory consultation requirements:

The correct approach to prejudice to the tenants

65. Where a landlord has failed to comply with the requirements, there may often be a dispute as to whether, and if so to what extent, the tenants would relevantly suffer if an unconditional dispensation was accorded. (I add the word "relevantly", because the tenants can always contend that they will suffer a disadvantage if a dispensation is accorded; however, as explained above, the only disadvantage of which they could legitimately complain is one which they would not have suffered if the requirements had been fully complied with, but which they will suffer if an unconditional dispensation were granted.)

66. It was suggested by Mr Rainey and Mr Fieldsend that the determination of such a question would often involve a very difficult exercise (or "an invidious exercise in speculation" as Gross LJ [2011] 1 WLR 2330 , para 73 put it in the Court of Appeal) and would frequently be unfair on the tenants. It may occasionally involve a difficult exercise, but the fact that an assessment is difficult has never been regarded as a

valid reason for the court refusing to carry it out (although in some cases disproportionality may be a good reason for such a refusal). While each case must, inevitably, be decided on its particular facts, I do not think that many cases should give rise to great difficulties.

67. As to the contention that my conclusion would place an unfair burden on tenants where the LVT is considering prejudice, it is true that, while the legal burden of proof would be, and would remain throughout, on the landlord, the factual burden of identifying some relevant prejudice that they would or might have suffered would be on the tenants. However, given that the landlord will have failed to comply with the requirements, the landlord can scarcely complain if the LVT views the tenants' arguments sympathetically, for instance by resolving in their favour any doubts as to whether the works would have cost less (or, for instance, that some of the works would not have been carried out or would have been carried out in a different way), if the tenants had been given a proper opportunity to make their points. As Lord Sumption JSC said during the argument, if the tenants show that, because of the landlord's non-compliance with the requirements, they were unable to make a reasonable point which, if adopted, would have been likely to have reduced the costs of the works or to have resulted in some other advantage, the LVT would be likely to proceed on the assumption that the point would have been accepted by the landlord. Further, the more egregious the landlord's failure, the more readily an LVT would be likely to accept that the tenants had suffered prejudice.

68. The LVT should be sympathetic to the tenants not merely because the landlord is in default of its statutory duty to the tenants, and the LVT is deciding whether to grant the landlord a dispensation. Such an approach is also justified because the LVT is having to undertake the exercise of reconstructing what would have happened, and it is because of the landlord's failure to comply with its duty to the tenants that it is having to do so. For the same reasons, the LVT should not be too ready to deprive the tenants of the costs of investigating relevant prejudice, or seeking to establish that they would suffer such prejudice. This does not mean that LVT should uncritically accept any suggested prejudice, however far-fetched, or that the tenants and their advisers should have carte blanche as to recovering their costs of investigating, or seeking to establish, prejudice. But, once the tenants have shown a credible case for prejudice, the LVT should look to the landlord to rebut it. And, save where the expenditure is self-evidently unreasonable, it would be for the landlord to show that any costs incurred by the tenants were unreasonably incurred before it could avoid being required to repay as a term of dispensing with the requirements.

69. Apart from the fact that the LVT should be sympathetic to any points they may raise, it is worth remembering that the tenants' complaint will normally be, as in this case, that they were not given the requisite opportunity to make representations about proposed works to the landlord. Accordingly, it does not appear onerous to suggest that

the tenants have an obligation to identify what they would have said, given that their complaint is that they have been deprived of the opportunity to say it. Indeed, in most cases, they will be better off, as, knowing how the works have progressed, they will have the added benefit of wisdom of hindsight to assist them before the LVT, and they are likely to have their costs of consulting a surveyor and/or solicitor paid by the landlord.

Overview of the analysis so far

70. Before turning to the disposition of this appeal, it is worth considering the effect of the conclusions I have reached so far.

71. If a landlord fails to comply with the requirements in connection with qualifying works, then it must get a dispensation under section 20(1)(b) if it is to recover service charges in respect of those works in a sum greater than the statutory minimum. In so far as the tenants will suffer relevant prejudice as a result of the landlord's failure, the LVT should, at least in the absence of some good reason to the contrary, effectively require the landlord to reduce the amount claimed as service charges to compensate the tenants fully for that prejudice. That outcome seems fair on the face of it, as the tenants will be in the same position as if the requirements have been satisfied, and they will not be getting something of a windfall.

72. On the approach adopted by the courts below, as the Upper Tribunal said at the very end of its judgment, [2010] 2 P & CR 116, para 62, requiring the landlord to limit the recoverable service charge to the statutory minimum in a case such as this "may be thought disproportionately damaging to the landlord, and disproportionately advantageous to the lessees". That criticism could not, it seems to me, be fairly made of the conclusion I have reached.

73. However, drilling a little deeper, if matters rested there, the simple conclusion described in para 71 could be too favourable to the landlord. It might fairly be said that it would enable a landlord to buy its way out of having failed to comply with the requirements. However, that concern is, I believe, answered by the significant disadvantages which a landlord would face if it fails to comply with the requirements. I have in mind that the landlord would have (i) to pay its own costs of making and pursuing an application to the LVT for a section 20(1)(b) dispensation, (ii) to pay the tenants' reasonable costs in connection of investigating and challenging that application, (iii) to accord the tenants a reduction to compensate fully for any relevant prejudice, knowing that the LVT will adopt a sympathetic (albeit not unrealistically sympathetic) attitude to the tenants on that issue.

79. The Daejan case was followed by the Court of Appeal's decision in Aster Communities v Chapman [2021] H.L.R 38, which stated:

44. I agree. The consultation for which the 2003 Regulations provide

is a group process in which a landlord must supply every tenant with notice of their intention to carry out works and a para.(b) statement including, among other things, a summary of observations made by other tenants. More than that, a landlord seeks dispensation against tenants generally. If all tenants suffer prejudice because a defect in the consultation process meant that one of their number did not persuade the landlord to limit the scope or cost of works in some respect, I cannot see why the FTT should be unable to make dispensation conditional on every tenant being compensated. The reduction in the scope or cost of works would have accrued to the benefit of each of them, and so, if dispensation is to be granted against them all, the totality of the prejudice should be addressed.

45. That is not to say that the positions of individual tenants will be irrelevant. Thus, there could be no question of all tenants in a block having their service charges cut by the same figure if they shared the relevant service charges in differing proportions. If, say, one tenant bore 10% of service charges and another just 5%, a reduction in recoverable service charges should benefit the two tenants in the ratio 2:1, in line with the order which the Supreme Court made in Daejan (see [15] above). Likewise, supposing that in the present case the FTT had found that a failure to consult correctly had resulted in higher service charges for, say, Saxon Court, but not for any other block, it would have been appropriate to impose a condition limiting the service charges for only Saxon Court.

The Tribunal's Approach

80. We have reached our decision after considering the oral and written evidence, including documents referred to in that evidence, and taking into account our assessment of the evidence.

81. This determination does not refer to every matter raised by the parties, or every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised or documents not specifically mentioned were disregarded. If a point or document was referred to in the evidence or submissions that was relevant to a specific issue, it was considered by the Tribunal.

The Tribunal's Decision

82. The Tribunal grants dispensation from the consultation requirements pursuant to section 20ZA of the Landlord and Tenant Act 1985 in respect of the lift replacement works.

83. Dispensation is granted subject to the condition that the amount recoverable through the service charge in respect of the Works is limited to £22,164.12 in total.

The Tribunal's Reasons

84. In determining the Applicant's application for dispensation, the Tribunal has applied the principles set out by the Supreme Court in Daejan Investments Ltd v Benson and has focused on whether, and to what extent, the Respondents have suffered relevant prejudice as a result of the Applicant's failure to comply with the statutory consultation requirements.

85. The Tribunal is satisfied that the Respondents have established a credible case of relevant prejudice. In particular, the failure to consult deprived the Respondents of the opportunity to make representations as to whether replacement of the lift was required at that time, as opposed to repair or refurbishment, and to thereby seek to persuade the Applicant to limit the scope and cost of the works. That prejudice must be assessed against the evidential background.

86. The contemporaneous documentary evidence prior to the decision to replace the lift does not demonstrate that replacement was required as opposed to repair or refurbishment. The Bureau Veritas Regulation 9 reports did not recommend replacement, and earlier consultation in 2012 had resulted in proposals to replace the lift being abandoned in similar circumstances, following leaseholder objections. The Tribunal has therefore concluded that, had consultation taken place in accordance with the statutory requirements, there was a real prospect that the Respondents might have persuaded the Applicant to refurbish rather than replace the lift as they had successfully done in the past. Consequently, the failure to consult leaseholders before replacing the lift means they have lost that opportunity.

87. We also reject the Applicant's position that no or little weight should be attached to the Bureau Veritas reports, which were independent reports, prepared pursuant to the 1998 Regulations by suitably qualified engineers. Weighed against the absence of any contemporaneous evidence from the Applicant, we have had regard to the fact that the Bureau Veritas reports do not recommend replacement.

88. The Tribunal accepts that it is not its role, on an application under section 20ZA, to determine whether the works were necessary or whether replacement was preferable to repair. However, where the failure to consult has deprived leaseholders of the opportunity to influence the scope or cost of the works, the Tribunal is required to address that prejudice when determining whether to grant dispensation and, if so, on what terms.

89. The Tribunal has considered whether prejudice could appropriately be addressed by requiring the Applicant to fund the cost of expert evidence for the Respondents. In light of the evidence, including the Respondents' position that the lift has already been replaced and that retrospective expert evidence would be of limited practical value, the Tribunal is satisfied that such a condition would not meaningfully compensate for the prejudice suffered.

90. This case is different to Aster where the balconies had not been replaced, making it practicable to obtain expert evidence regarding the scope of the qualifying works, and where the leaseholders obtained and paid for a report to support their position.

91. The Tribunal has therefore concluded that the appropriate and proportionate means of addressing the prejudice is to limit the amount of service charge costs recoverable by the Applicant. This approach is consistent with the guidance in Daejan and Aster, which recognise that limiting recoverable costs may be an appropriate condition where leaseholders have lost the opportunity to influence the scope or cost of works.

92. In determining the appropriate cap, the Tribunal has had regard to the absence of any contemporaneous documentation whatsoever, that supports replacing the lift. We find it surprising that the Applicant would embark on the Works without such documentation, but none has been provided for this hearing.

93. The only document recommending replacement is the letter dated 15th October 2025 from Mr Bardawil, the director of the company that replaced the lift. But that is not relied on as expert evidence. Mr Bardawil's evidence was that he had provided contemporaneous reports to the Applicant, but no explanation has been provided as to why these have not been disclosed. Further, Mr Bardawil's evidence as to when his inspection of the lift on which the report was based took place, was not helpful. He cannot have inspected the lift in early 2025 as he claimed, because the lift was removed in August 2024.

94. Such independent documentary evidence that is available from 2024 recommends repair/refurbishment, not replacement.

95. Although the Applicant maintains repair/ refurbishment was uneconomic, it has provided no documentary evidence regarding these. Added to which, none of the Applicant's witnesses were able to provide oral evidence regarding these costs.

96. We are left in the position foreseen by the Supreme Court in Daejan of " *… having to undertake the exercise of reconstructing what would have happened, and it is because of the landlord's failure to comply with its duty to the tenants …"*

97. Taking that evidence into account, and doing the best we can on the material before us, the Tribunal considers that limiting recoverable costs to £22,164.12 appropriately reflects the level of expenditure which might reasonably have been incurred had proper consultation taken place, while avoiding both a windfall to the Respondents and disproportionate detriment to the Applicant.

98. We have taken into account a number of factors when deciding on the appropriate cap. Firstly, the Applicant states dispensation should be

granted because it was advised it was uneconomical to repair the lift. Secondly, what would have been the outcome if the Applicant had consulted the Respondents in accordance with section 20. Thirdly, irrespective of points 1 and 2, the Respondents have not had to pay for refurbishment/repair of an ageing lift but instead have a new lift, which in the short to medium term should have lower maintenance and repair costs compared to the old lift.

99. Regarding point 1 above, there is no contemporaneous evidence recommending replacement of the lift nor setting out the cost of the. Works, and Mr Bardawil's oral evidence regarding when he inspected the lift is unsatisfactory. As to point 2, history indicates that where the Applicant has consulted the Respondents regarding replacement, but Regulation 9 reports recommend repair/refurbishment, the Respondents have dissuaded the Applicant from pursuing replacement. A related point is that if there had been consultation and the Respondents obtained their own report, this could have identified whether any failure to properly maintain the lift had contributed to its condition. Having found the Respondent's have established relevant prejudice on these points, they should be factored into any conditions or compensation. However, the final point operates to the Respondents' benefit.

100. In the circumstances, we consider it is appropriate: "*… to accord the tenants a reduction to compensate fully for any relevant prejudice, knowing that the LVT will adopt a sympathetic (albeit not unrealistically sympathetic) attitude to the tenants on that issue.*"

101. The condition imposed therefore properly compensates the Respondents for the relevant prejudice arising from points 1 and 2 above, while allowing the Applicant to recover a proportion of the costs of the works, applying a discount which we consider represents appropriate compensation for the relevant prejudice that we find the Respondents have established. The Tribunal is satisfied that this achieves a fair balance between the parties and is consistent with the statutory purpose of section 20ZA.

Costs

102. Having heard from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charges payable by the Second and Third Respondents (no other respondent has expressly authorised such an application bring made on their behalf). We have taken into account that the application was made because the Applicant failed to comply with the statutory consultation requirements, we have also found that this failure has resulted in relevant prejudice. In the circumstances, we make the order as requested.

Name: Judge Tueje **Date:** 13th April 2026

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).