



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

Case reference : **HAV/00HQ/LDC/2025/0761**

Property : **Pine Mansions, Vale Road,
Bournemouth, Dorset, BH1 3TD**

Applicant : **Freehold Management (Traders)
Limited**

Representative : **Together Property Management**

Respondent : **(i) Adam Smithson and (ii) The
Respondents**

Representative : **None**

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

Tribunal members : **R Waterhouse FRICS
C Davies FRICS**

Venue : **Havant Justice Centre ,Elmleigh Road,
Havant PO9 2AL on papers**

Date of decision : **16 April 2026**

DECISION

Summary of the Decision

1. The Applicant is granted unconditional 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 respect of major works, being the lift refurbishment and “all associated works”. For clarification this comprises the works initially envisaged by the Together Property Management AND the works recommended following investigation by Mr Broom in their report.

The application and the history of the case

2. The Applicant Freehold Management (Traders) Limited was represented by Together Property Management.

3. The parties shortly before the hearing agreed that the matter should be determined on the papers.

4. The Applicant applied by an application dated 21 November 2025 for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) from the consultation requirements imposed by Section 20 of the Act in respect of lift refurbishment and “all associated works” to Pine Mansions.

5. The Tribunal provided Directions on 26 January 2026, and provided that the matter would be determined on the papers without hearing unless a party objected within 7 days.

6. On the 12 February 2026, the Applicant submitted a case management application seeking to extend the ground of dispensation to include additional works undertaken to the lift.

7. On the 12 February 2026, Mr Adam Smithson of Flat 1, objected to the Applicant’s application to vary the application and the matter being determined without oral hearing.

8. The Tribunal having regard to the Tribunal’s overriding objective to deal with matters fairly and justly, including in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and resources of the parties and of the Tribunal granted the case management application to include additional works .

9. The Tribunal directed 2 March 2026, that the Applicant's application and case management application shall stand as the Applicants case. Further that the Respondents shall send to the Tribunal by 18 March 2026, any further statement setting out why they oppose the Application.

10. The Directions provided that the Applicant shall be responsible for preparing the Bundle of relevant documents that shall reach the Tribunal by 25 March 2026.

11. The hearing itself was scheduled for 3 hours and to start at 2:00pm on the 16 April 2026 at the Tribunal's offices, this was later converted to a determination on the parties following agreement of the parties

12. The papers before the Tribunal were; Applicant's bundle of 187 pages.

The Determination

Factual Background

13. The Applicants were made aware in September 2024 following a lift service, that the lift required urgent modernisation due to non-compliance with current regulations and standards.

14. Four companies; Excel Lifts, Dorset Lifts, Total Lifts and Kone were approached to quote. The latter two did not quote.

15. The Applicant's on 21 November 2025 served Notice to the leaseholders detailing the proposed modernisation works to the lift. The Notice followed reports and recommendations from multiple engineers confirming that the lift is non-compliant and does not meet EN81-80 regulations.

16. Following the service of Notices, discussions with leaseholders occurred, during which queries were raised regarding the proposed works. Mr Adam Smithson, a leaseholder, arranged for his own engineer Mr Broom, to attend and carry out an independent inspection.

17. Mr Broom identified in their report [104-108/187] additional urgent works, that were said to be required to make the lift compliant with LOLER regulations.

18. The additional corrective work included; excessive floor levelling at the second-floor landing during upward travel, further testing recommended, Additional observations noted within the report include; suspension ropes (1/2 inch diameter) of unknown installation date, recorded as worn, with CWC of 220mm and absence of an autodial system. [104-105/187]

19. The Applicant asked the contractor appointed for the initial works, to quote for the additional items identified in Mr Broom's report. The contractor appointed for the previous work, then quoted for the additional work. This quote was circulated and notification was given to the Respondents that the remainder of the section 20 consultation process was to be not carried out but that a section 20 dispensation was to be made to the First-tier Tribunal to expediate matters.

20. No objections were received at this point, and the contractor Excel Lifts was given the approval to proceed with the quoted works and these have been completed.

The Law

21. 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.

22. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation “if satisfied that it is reasonable to dispense with the requirements”.

23. 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.

24. 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”.

25. 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).

26. 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.”

27. 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.

28. 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.

29. If dispensation is granted, that may be on terms. That is to say that dispensation is granted but only if the landlord accepts- and fulfils appropriate conditions. Specific reference was made to costs incurred by the lessees, including legal advice about the application made.

30. 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.

31. More generally, the Tribunal considers that the case authorities demonstrate that the Tribunal has a very wide discretion to, if it considers it appropriate, impose whatever terms and conditions are required to meet the justice of the particular case- in Daejan it was said “on such terms as it thinks fit- provided, of course, that any such terms are appropriate in their nature and their effect”.

Submissions and Consideration

32. The property from the evidence comprises a block of flats of at least four storeys built in the 1930s, visually from photographs [57/186] the lift appears to date from the date of construction of the building.

The Applicant:

33. The Applicant submission included a “Applicants Response to the leaseholder statement of objections”.

34. At the time of the quote for the LOLE defects identified, the section 20 process that had been underway for the earlier set of identified works, and was said to be completed.

35. The Applicant submitted that undertaking a new section 20 process would have caused delay and the LOLE recommendations were urgent.

36. Within the revised works was a proposal to reduce the capacity of the lift from 4 to 3 persons in order to comply with recommendations of the lift engineer. The Applicant states that this approach was taken in order to minimise the disruption and in order to get the lift up and running as quickly as possible.

The Respondent:

37. The Respondent in their “Respondent’s Statement Opposing Application for Dispensation” opposes the application for dispensation. [159-164/186]

38. The Respondent stated that the Notice of Intention dated October 2024 described the proposed works as lift refurbishment and associated works, with specification primarily relating to controller replacement and refurbishment – related compliance works.

The Notice did not identify:

Replacement of suspension ropes
Type B gearbox examination
Supplementary testing under SAFed guidance
Installation of autodial system
Excessive floor levelling remediation
Reduction of lift passenger capacity

39. The Respondent says the leaseholders were invited to nominate contractors and tenders were obtained based on the original refurbishment scope.

40. The Respondent states that a LOLER inspection was carried out on 19 December 2024 with the report issued on 2 January 2025.

The report identified;

Worn suspension ropes
Excessive backlash requiring further investigation
Floor levelling issues
Absence of autodial
Recommendation for supplementary safely testing

41. The Respondent alleges specific prejudice [163/186] which comprises;

- Scope
- Procurement Strategy
- Staging
- Contractor selection
- Capacity implications.

42. The Respondent later submitting, [164/186] , “the prejudice in this case therefore arises, not from opposing necessary safety works, but from the absence of meaningful consultation once the materially expanded scope became known.”

Discussion and Decision

43. The test to be determined is; in the absence of a section 20 consultation have the Respondents suffered real prejudice.

44. The Tribunal finds the process of diagnosing the scope of the works to be reasonable. albeit comprises two separate experts, supported by appropriate professionals. Similarly, the consideration of the options and the determination of a solution.

45. The Tribunal also finds that works recommended to lifts can reasonably be considered urgent. The tribunal does not find prejudice has been experienced in terms of scope, procurement strategy, staging or contract selection.

46. Turning to the issue of capacity. The process undertaken had the aim of repairing and making safe the lift. From the submissions this was carried out

but despite this the lift still exhibited issues with floor levelling. The contractor recommended that the capacity should be reduced 4 to 3 persons to rectify the situation. The tribunal finds that the processes undertaking investigation, scoping procurement staging and contract selection did not cause prejudice. These were reasonable, despite this the outcome did not result in being able to maintain the original capacity. No prejudice occurred by reason of not undertaking the section 20 process, the endeavours of the engineers were reasonable, and the outcome would have occurred with or without the section 20 process.

47. 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 in respect to the works detailed in the application and set out in paragraph 1 of the decision.

48. This decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the major works outlined above. **The Tribunal has made no determination on whether the costs incurred are reasonable and whether service charges are payable in any given sum or at all. If a Lessee wishes to challenge the reasonableness of those costs and or the payable service charges, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.**

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 to the First-tier Tribunal at the Regional office which has been dealing with the case by email at 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.