



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

Case Reference: BIR/00CN/LDC/2026/0023

Property : Lorne Court, 6 School Road, Moseley, West Midlands, B13 9ET

Applicant: McCarthy & Stone Retirement Lifestyles Limited

Representative: McCarthy & Stone Management Services

Respondents: The leaseholders of Lorne Court – see Schedule One

Type of Application: An application under section 20ZA of the Landlord and Tenant Act 1985 for dispensation of the consultation requirements in respect of qualifying works

Tribunal Member: Tribunal Judge Anthony Verduyn; Tribunal Valuer Member, Mr Andrew Churchill BSc MRICS

Date of Decision: 25^h September 2026

DECISION

1. The Applicant Freeholder applied to the Tribunal on 17th March 2026 and seeks dispensation from all or some of the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (**“the Act”**).

RELEVANT LAW

2. Section 20 of the Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the procedures landlords must follow which are particularised, collectively, in the Service Charges (Consultation Requirements) (England) Regulations 2003. In their parts relevant to this matter, there is a statutory

maximum that a lessee has to pay by way of a contribution to “qualifying works” (defined under section 20ZA (2) as works to a building or any other premises) unless the consultation requirements have been met. Under the Regulations, section 20 applies to qualifying works which result in a service charge contribution by an individual tenant in excess of £250.00.

3. In considering this matter, the Tribunal has regard to the decision of the Supreme Court in Daejan Investments Ltd v Benson and others [2013] UKSC 14; [2013] 1 WLR 854 and the guidance to the Tribunal that in considering dispensation requests, it should focus on whether tenants (i.e. the Respondent leaseholders in this matter) are prejudiced by the lack of section 20 consultation.
4. Further, in Daejan Investments Ltd v Benson it was made clear that where the tribunal was considering prejudice, the legal burden of proof was on the landlord, but the factual burden of identifying some relevant prejudice fell on the tenants. The approach is explained at [40]-[45]:

“[40] Section 20ZA(1) gives little specific guidance as to how [the Tribunal] is to exercise its jurisdiction “to dispense with all or any of the [Requirements]” in a particular case. The only express stipulation is that [the Tribunal] must be “satisfied that it is reasonable” to do so ...

[42] ... I turn to consider section 20ZA(1) in its statutory context. It seems clear that sections 19 to 20ZA are directed towards ensuring that tenants of flats are not required (i) to pay for unnecessary services or services which are provided to a defective standard, and (ii) to pay more than they should for services which are necessary and are provided to an acceptable standard. The former purpose is encapsulated in section 19(1)(b) and the latter in section 19(1)(a). The following two sections, namely sections 20 and 20ZA appear to me to be intended to reinforce, and to give practical effect to, those two purposes. This view is confirmed by the titles to those two sections, which echo the title of section 19.

[43] Thus, the obligation to consult the tenants in advance about proposed works goes to the issue of the appropriateness of those works, and the obligations to obtain more than one estimate and to consult about them go to both the quality and the cost of the proposed works ...

[44] ... it seems to me that the issue on which [the Tribunal] should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements.

[45] Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the Requirements, 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.”

THE ISSUE

5. The only issue for the Tribunal to determine under this application is whether or not it is reasonable to dispense with the statutory consultation requirements for qualifying works. This application does not concern the issue of whether any service charge costs will be reasonable or payable.

THE APPLICANT'S APPLICATION

6. Lorne Court is a purpose-built block of 39 flats comprising one- and two-bedroom apartments, accommodating an age-restricted community for the over sixties. The residential units are subject to long leases in similar terms, and subject to service charge liabilities. In this case, the qualifying works were remediation of the Automatically Opening Vents ("AOV") smoke control system. The system is required to operate reliably and to comply with applicable fire safety standards, including BS 7346-8:2013 (Components for smoke control systems. Code of practice for planning, design, installation, commissioning and maintenance).
7. The course of events is set out in the Applicant Landlord's unchallenged Statement of Case with supporting documents. A routine maintenance report dated 11 September 2024 identified serious and comprehensive failures. The Statement of Case at 2.2 states:

"The maintenance report confirmed that the system was not satisfactory and failed all major safety checks. Specifically, the cause and effect functionality was not working, the backup power supply was non-functional, fault monitoring was inoperative, and the standby batteries were beyond their serviceable life. The engineer further confirmed that the existing BTR control panel had failed and that the system was non-compliant with complete failure of the AOV system, including battery failure, non functional control panel, and non-compliance with BS 7346-8:2013."

It appears that this had been anticipated, as a quote for replacement had been obtained on 4 September 2024 at a cost of £19,614 (inclusive of VAT).

8. Further, the Statement of Case at 2.4 states:

"SE Controls [the company that quoted in September 2024] subsequently confirmed, by email dated 9 December 2024, that the power supply units within the old panels were no longer manufactured or compliant, and that the only viable solution was full replacement with new, certified multizone smoke control panels. It was further confirmed that the existing system could not maintain battery charge during a power outage and that, in the event of a fire, the AOVs would not open."

9. In the intervening period some of the statutory consultation process was undertaken, with "Notice of Intention" issued to leaseholders on 30 October 2024 and any observations due by 2 December 2024. Only one resident responded, Mr Kevin Elders of apartment 40, but in general terms about the cost of the "backup

system”, querying the obligations of the landlord and complaining at previous unresponsiveness.

10. A meeting was arranged with leaseholders for 11 December 2024 and 20 attended. Urgency and risks were outlined by the landlord’s representatives. The required works were then actioned.
11. A remedial works report, detailing the works then completed, was received on 17 January 2025. It showed, the Applicant states, that the AOV system failure created an urgent and serious danger to life, requiring immediate action. The Applicant is the "responsible person" for the purposes of the Regulatory Reform (Fire Safety) Order 2005 and is accordingly under a continuing statutory duty to take general fire precautions to ensure the safety of residents. Once the complete failure of the AOV system was identified, the Applicant took the view it could not lawfully allow the system to remain non-functional while statutory consultation was completed.
12. A certificate of 13 March 2025 confirmed the system was fully restored to compliance with required standards at the cost quoted on 4 September 2024.
13. A further meeting with leaseholders was held on 11 February 2026, with 12 attendees, and the Operations Manager and House Manager. The intention to apply for dispensation was set out.
14. Application for dispensation was made on 17 March 2026. The Statement of Case at 6.1 states:

“The decision to proceed without full consultation was not taken lightly. It was driven by the urgent need to protect the building and its residents from further damage and risk. MSMS acted in good faith, prioritising safety and minimising disruption, while maintaining open lines of communication with homeowners throughout.”
15. The Tribunal issued directions to the Applicant to provide leaseholders with the Application and supporting documents (running to 52 pages) by 21st May 2026, and this was confirmed done a week before the deadline. The Respondent leaseholders had to 11th June 2026 to respond and none did so.

DISCUSSION AND DECISION

16. If dispensation is not granted then a statutory limit of £250 per flat would apply, and the sum of £9,750 would be recoverable. With full dispensation the figures would be £19,614, so £502.92 per unit.
17. There are and were, however, no objections received by the Tribunal from leaseholders, nor any obvious prejudice to them from the information available; for example, arising from the invoice. The leaseholders appear to accept that the work was needed and was urgent; or at least there was nothing to be achieved by objecting then or now. Absent any established prejudice to leaseholders, the

Applicant contends that it is appropriate to dispense with consultation, applying section 20ZA.

18. The Tribunal notes the Supreme Court's decision in Daejan Investments Ltd v Benson and Others, as detailed above, and accepts that absent any identifiable prejudice, then dispensation should follow. It has clearly been necessary to carry out works to the AOV system, and to do so with urgency, given the requirements to ensure fire safety in a building of this sort. Delay could risk serious injury from smoke inhalation or even risk lives. The Applicant had an important statutory duty to fulfil. It is noted also that the process was begun and a meeting held. There is no evidence of prejudice being suffered by the leaseholders. The Tribunal therefore agrees to grant dispensation unconditionally. It is noted that the dispensation does not affect the leaseholders' ability to challenge the service charges under Section 27A of the Act, as to whether any service charge costs will be reasonable or payable.

Tribunal Judge Anthony Verduyn

25th September 2026