FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	**:**	**HAV/00MR/LDC/2026/0061 & HAV/00MR/LSC/2025/0781**
Property	**:**	**28 Merton Road, Southsea, Hants, PO5 2AQ**
Applicants (in 2025/0781) Respondents (in 2026/0061)	**:**	**Dragos Marina (Flat 2)** **Anne Garley (Flat 4)** **Malcolm Chamberlain (Flat 5)** **Frances Thompson (Flat 6)**
Representative	**:**	**Malcolm Chamberlain**
Respondent (in 2025/0781) Applicant (in 2026/0061)	**:**	**Maxiwood Ltd**
Representative	**:**	**Coole Bevis LLP, Solicitors.**
Type of Application (2025/0781)	**:**	**Determination of liability to pay and reasonableness of service charges Section 27A Landlord and Tenant Act 1985**
Type of Application (2026/0061)		**To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Mr D Cotterell FRICS Regional Surveyor Coupe** **Mr D Jagger FRICS**
Date of Hearing	**:**	**11 August 2026**
Date of Decision	**:**	**2 October 2026**

DECISION

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Decision of the Tribunal: Summary

1. **In respect of HAV/00MR/LDC/2026/0061 the Tribunal is satisfied that it is reasonable in the circumstances for consultation regarding the subject works to the Property's chimney to be dispensed with on this application subject to conditions.**

2. **In respect of HAV/00MR/LSC/2025/0781 the Tribunal determines that the cost of the chimney works is otherwise reasonable and its cost of £5,250.00 was reasonably incurred and payable as service charge under the terms of the lease.**

3. **The Tribunal refuses to make an order under section 20C of the Landlord & Tenant Act 1985 and Paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002**

4. **The Tribunal's reasons are set out below.**

The Application

5. The application (2025/0781) seeks determination of liability to pay and/or reasonableness of service charges under s.27A of the Landlord & Tenant Act 1985 in relation to 28 Merton Road, Southsea, Portsmouth, Hampshire, PO5 2AQ. (the Property). The parallel application (2026/0061) seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of that Act.

6. The first application was dated and received by the Tribunal on the 30 September 2025 the Applicants ("the Leaseholders") challenge service charges levied in the 2023/24 service charge year. That application relates primarily to works at the property described as "*additional chimney works*". The Leaseholders set out a number of matters of complaint, of which only some fall within the jurisdiction of the Tribunal to decide under this application, which are:

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a. Reasonableness of "*General Repairs*" expenditure on that single project;

b. Failure to issue notice under s.20 of the Landlord & Tenant Act 1985

7. The second application (2026/0061) was dated and received by the Tribunal on the 8 April 2026. The Applicant ("Maxiwood") seeks retrospective dispensation from the requirements of s.20ZA of the Landlord and Tenant Act 1985, accepting that it did not follow the statutory consultation requirements preliminary to incurring expenditure.

8. By Directions given on the 4 March, the 17 April 2026 and subsequently on 19 June 2026 following a case management hearing, the issues for which the applicant seeks determination were identified by Tribunal Judge Dobson on 19 June 2026 as:

a. Should the Applicant be granted dispensation from the statutory consultation requirements in relation to the additional chimney works and if so, should dispensation be subject to any conditions?

b. If dispensation is granted, were the costs of the additional chimney works reasonably incurred?

9. The applications were heard in combination, on the 11 Augst 2026 at Havant Justice Centre, Elmleigh Road, Havant. The parties provided, and the Tribunal read and considered, a main bundle of 415 pages and additional documents (not being within the bundle) including 16 pages of correspondence, a skeleton argument for Maxiwood and a bundle of authorities. Refences in square brackets [ ] are to electronic page numbers in the main bundle.

10. Maxiwood's case was supported by

a. a detailed statement of case [137-142],

b. a copy of a typical lease at the Property [145-190],

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c. correspondence [192-219]

d. Witness statements from

i. Dahlia Brotherton [220-221],

ii. Mike Percival FRICS [222-224].

11. The Leaseholders' case was supported by

a. A position statement [333]

b. An introductory "*Respondents' Evidence Index*" setting out particulars of alleged relevant prejudice, [234-251]

c. A "*statement of relevant prejudice*" [252-257]

d. A "*respondents' position regarding the reasonable sum payable if dispensation is refused or granted*" [258-259]

e. An application under Section 20c, Landlord & Tenant Act 1985 & Paragraph 5a, Schedule 11, Commonhold & Leasehold Reform Act 2002.

f. Witness statements from:

i. A M Garley [264]

ii. D Marina [267]

iii. F Thompson [271]

iv. M Chamberlain [274]

g. Supplemental Submissions,

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Background & Issues

12. The Leaseholders' application describes the Property as a " *Very large detached house converted into 6 x two-bedroom flats over two floors. At the front of the property is a car parking space for flat 1, a front wall with a gate at the boundary with the pavement, an enclosed refused bin area, a pathway leading to the main communal front entrance door to the property. There is a lobby inside the front door leading to a hallway off of which are the private entrance doors to flats 1 and 2 At the end of the hallway is a set of stairs leading to the first floor landing where the private entrance doors to flats 4; 5 and 6 lead off. To the right at the front is a pathway that leads to the private front door entrance to flat 3. To the left of the building is a private driveway leading to the back of the property where there are designated private parking spaces, designated private cycle stores and two gardens for flats 1 and 3. Building is brick built with a tiled roof*".

Maxiwood's Case

13. Maxiwood's application seeking retrospective consent describes the subject works as works "to a chimney stack (taking down chimney breast to lower level, re-building and point chimney, fitting air bricks and capping off chimney) following a tenant's report in September 2023 of chimney listing and expressing safety concerns, requesting that remedial works be undertaken urgently".

14. Their application for dispensation from the consultation requirements under s.20 Landlord and Tenant Act 1985 is combined with submissions that in the matter of the Leaseholders' application the costs of the chimney works were reasonably incurred. They say that the Leaseholders' lease terms require the landlord to maintain the structure of the building and to recover costs through the service charge. The chimney works involved lowering chimney stacks, rebuilding and pointing brickwork, fitting air bricks, capping chimneys and providing scaffolding access. The total cost of these works was stated to be £5,250.

15. Maxiwood accepts that the works constituted "qualifying works" under Section 20 and also that the statutory consultation requirements were not complied with but submit that that the failure to consult did not cause any relevant prejudice to the leaseholders. They add that a Notice of Intention for major works was sent out in March 2022, but those

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proposed works did not include the chimney repairs. In August 2022, Mike Percival MRICS inspected one of the chimney stacks following concerns raised by the leaseholder of Flat 2. In September 2022 he had advised that the chimney was outside the scope of the planned front elevation works and would require separate access arrangements. He also reportedly expressed the view that the chimney's lean was unlikely to result in collapse in the short term.

16. They added that in March 2023, estimates were issued for front elevation works, again excluding the chimney repairs and said that any delay was the result of difficulty obtaining contractors after the Covid-19 pandemic, with several contractors declining to tender; the position changed in late September 2023 when the leaseholder of Flat 2 again (also Flat 5) reported the condition of the chimney following an aerial contractor's inspection and described it as a "*critical safety issue*", threatening legal action if no response was made. Maxiwood said that on the same day, they instructed Harper Stone, their managing agents, to arrange scaffolding although it became clear that the contractor already engaged for the front elevation works could not undertake the chimney works until Spring 2024, prompting a recommendation that an alternative local contractor be appointed to carry out the repairs instead.

17. Maxiwood submits that the chimney works became urgent due to the safety concerns that had been raised. They say that they informed Leaseholders of the need for the works and the likely costs and that they were invited to waive formal consultation requirements to avoid the expense of a Tribunal application. Leaseholders of Flats 2 and 5 made written observations, which Harper Stone says were considered and answered.

18. Maxiwood's argument (citing Daejan Investments Ltd v Benson [2013] UKSC 14 & [2013] UKSC 54) is that the issue is whether leaseholders suffered "relevant prejudice" as a result of the lack of consultation. They contend that relevant prejudice is essentially financial prejudice, namely whether consultation would likely have led to different works being undertaken or significantly lower costs being incurred. They submit that the Tribunal should not use the dispensation process to punish the landlord for other aspects of its conduct and that that dispensation should be granted because the works were necessary, fell within the landlord's repairing obligations, were urgently required, and

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were carried out at a time when contractor availability was limited. They add that Leaseholders were informed of the issue, were able to make representations, and have produced no evidence that a formal consultation process would have led to a materially different outcome or lower costs.

19. In relation to the reasonableness of the expenditure, Maxiwood argues that the relevant test is whether the landlord acted reasonably when making decisions at the time the works were required. They say that faced with what they perceived to be an urgent safety issue, they acted reasonably in instructing the works and that the resulting costs were within expected market costs.

20. They also address the matter of costs orders and while acknowledging that the lease does not permit recovery of legal costs through the service charge they say it may allow recovery as an administration charge.

The Leaseholders' Case

21. The Leaseholders challenge the payability and reasonableness of service charges demanded for the year 2023/24. They assert that the annual accounts issued by Harper-Stone Ltd, acting for freeholder Maxiwood, showed significant unexplained expenditure increases. The amount for "general repairs" exceeded the budget by £4,426 (402%), largely due to chimney repairs. Leaseholders argue this work should have been subject to a Section 20 consultation, rather than being included as an overspend within the audited accounts.

22. They dispute the classification of the chimney repairs as "*emergency works*" arguing that the issue had been known to Harper Stone since June 2022, more than 16 months before any action was taken. Concerns about the visibly leaning chimneys were raised repeatedly through emails, discussions with Harper Stone representatives, and a surveyor's visit in 2022 and that despite requests, the surveyor's report was never provided, and Leaseholders were only informed that the chimneys were considered safe. They add that Harper Stone initially indicated that the chimney repairs would be included within planned Section 20 major works for the front elevation, but the repairs never appeared in that programme.

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23. In September 2023, photographs of the chimneys from roof level were obtained while a contractor was investigating an unrelated aerial issue. The images revealed severe deterioration, including missing lead flashing and mortar. After these photographs were sent to Harper Stone, scaffolding was erected and repairs commenced within a week. The leaseholders contend that the works should have been subject to a Section 20 consultation process, as Harper Stone had long been aware of the problem and had ample opportunity to follow the required procedure. They argue that describing the works as an emergency or an overspend is inappropriate and reflects inadequate management of a known issue.

The Lease

24. The bundle included a copy of the lease of Flat 5 of 28 Merton Road, that is, the Tribunal understands, in a similar form to all other leases at the block. It is dated 14 December 2005 and grants a term of 125 years from 1 September 2005.

25. The Tenant covenants various matters described in clauses 3 and 4, including at subclause 4(4) to "*Pay by way of further or additional rent the Interim Charge and the Service Charge at the times and in the manner provided in the Fourth Schedule hereto*". In turn, the Fourth Schedule provides that "*Total Expenditure means the aggregate of the expenditure incurred … by the Lessor … in carrying out its obligations under Clause 5 … and any other costs and expenses reasonably and properly incurred in connection with the Property…"*

26. The freeholder's repairing covenants are set out in clause 5 of the lease which states: "*… to maintain and keep in good and substantial repair and condition (i) the structure of the Property*."

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The Evidence

27. The parties submitted written evidence and statements of case as mentioned above, and at the hearing the Tribunal heard evidence and submissions from Mr Chamberlain and Mr Marina for the Leaseholders and, represented by Mr Gifford of counsel, Maxiwood's witnesses Ms Brotherton and Mr Percival also gave evidence.

28. Ms Brotherton, an employee of Maxiwood, confirmed in her statement the details set out in Maxiwood's statement of case.

29. Mr Percival, a surveyor and head of building surveying at Geometri Consultants Limited, said in his statement [222-224] that he acted as a surveyor for the landlord through its managing agent, Harper Stone. He referred to an email sent on 6 September 2022 following an inspection of a rear chimney stack serving the property. At that time, he identified that the chimney stack was leaning approximately 50mm, exceeding the tolerance suggested by BRE guidance. While he recommended remedial works, including reducing the chimney's height and capping it, he specifically noted that the stack was unlikely to collapse in the near future.

30. He mentioned renewed concerns raised in September 2023 by the occupier of Flat 2. After reviewing photographs, he considered that the condition may have deteriorated, potentially due to storms, and noted evidence of failed rendering and poor brickwork pointing. He advised that a scaffold tower should be erected as soon as possible to permit a full inspection and necessary repairs.

31. He explained that efforts were made to engage the contractor already appointed for larger front elevation works, but that contractor could not attend until Spring 2024. In view of difficulties in obtaining alternative contractors and the urgency of the situation, he recommended that Harper Stone appoint a local contractor immediately and provided a specification for the works on 9 October 2023.

32. He said that it was his opinion that the landlord acted reasonably in undertaking the chimney repairs without completing the full statutory consultation process. He considered there to be an immediate safety concern requiring prompt action and that the overall cost of the repairs and scaffolding would likely have been similar even if formal consultation had taken place, as separate access equipment would have

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been required in any event. He therefore considered that both the decision to proceed urgently and the resulting costs to have been reasonable in the circumstances.

33. For the leaseholders, 4 witness statements were provided. From Ms Garley (Flat 4) [264], the Tribunal was told that she has suffered prejudice as a result of the landlord's failure to undertake the statutory Section 20 consultation process saying that leaseholders were first informed around 2017 of a programme of major external works however, no specific reference was made to chimney reduction. She said that it was reasonable to expect that any professional inspection of the building's exterior would have identified significant chimney issues at that stage.

34. Although leaseholders were asked to contribute towards major works on more than one occasion, she said, those projects were delayed and the building's condition continued to deteriorate. She said that she was concerned both about the condition of the chimneys and the delays, but that Harper Stone had told her that the landlord wanted to wait until all major works contributions had been collected before proceeding with wider works.

35. She said that the leaseholders had not been properly consulted and were denied access to the sort of information usually provided; she said that she also found it difficult to obtain clear explanations regarding costs and considered that communications from Harper Stone were not transparent. In her view, the leaseholders lost the opportunity to scrutinise the works and protect their interests, resulting in prejudice, and she objects to dispensation being granted without conditions.

36. In her statement [271-274] Ms Thompson (Flat 6) said that she suffered prejudice because leaseholders were not given a proper opportunity to review or comment upon the proposed works before decisions were made and the expenses incurred. She said that leaseholders were not provided with sufficient information and that she had understood the chimney works were to form part of the wider programme of major works already subject to a Section 20 consultation process but that leaseholders were denied the normal opportunities to participate in decision-making : had consultation happened, she would have been able to examine the information and comment on it. She said that leaseholders were deprived of meaningful participation and suffered genuine prejudice as a result.

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37. Mr Marina, who gave his evidence in person was also cross examined on his statement [267-270]. In that he said he was not given adequate information about the proposed chimney works before decisions were made and costs incurred. He said that leaseholders were originally told that the chimney works would form part of the wider s. 20 consultation for major works at the property, but this did not happen and that no satisfactory explanation was provided.

38. He said that leaseholders later received inconsistent explanations from Harper Stone as to why consultation had not taken place. At different times they were told the costs represented an overspend that did not require consultation or that the works fell below the statutory threshold. He said that the absence of consultation deprived leaseholders of the opportunity to consider the matter and possibly to explore whether the chimney works could have been integrated with the wider major works programme or financed differently.

39. Mr Chamberlain who also gave his evidence in person, had provided a witness statement [274-280] exhibiting various items of correspondence, as well as a number of other documents: a "*prejudice matrix*", a "*statement of relevant prejudice*", and a document making submissions on the "*reasonable sum payable*".

40. In his statement, Mr Chamberlain outlined a chronology of the matter. He said that concerns about the rear chimney stack were first raised in June 2022. He mentions the September 2022 inspection and further inspection in November 2022. He says that that these events demonstrated both the landlord and managing agent, Harper Stone, had detailed knowledge of the chimney's condition well before the works were undertaken and said that Harper Stone had subsequently indicated that the chimney works would be included within the ongoing major works project, reinforcing an expectation that they would form part of the existing consultation process.

41. He mentioned a letter from Harper Stone requesting that leaseholders waive their consultation rights which he and other leaseholders declined to do. He said that that the application for dispensation was made after leaseholders challenged the recoverability of the costs, and that this demonstrated that the landlord understood the consultation requirements but chose not to comply with them.

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42. He also related difficulty in obtaining information much of that requested was never provided thereby denying the leaseholders a chance to properly scrutinise costs or assess reasonableness. He mentioned problems with the project as executed including incomplete lead flashing works, the engagement of an additional contractor, further scaffolding costs, and an instance where scaffolding was erected in the wrong location. He said that the prejudice suffered by leaseholders extended beyond the loss of a procedural right and included lost opportunity to scrutinise the project.

The Legal Principles

43. With regard to retrospective consent, Section 20 of the Landlord and Tenant Act 1985 ("the Act") and the related Regulations provide that where the lessor intends to undertake major works with a cost of more than £250 per lease in any one service charge year 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.

44. 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*".

45. 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. 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".

46. 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

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sympathetic to the lessee(s). 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.*"

47. 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. 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.

48. If dispensation is granted, that may be on terms. 14. The effect of Daejan has been considered by the Upper Tribunal in Aster Communities v Kerry Chapman and Others [2020] UKUT 177 (LC), although that decision primarily dealt with the imposition of conditions when granting dispensation and that the ability of lessees to challenge the reasonableness of service charges claimed was not an answer to an argument of prejudice arising from a failure to consult.

49. With regard to the reasonableness of service charges, the law requires that service charges must be reasonably incurred and are payable only where works are carried out to a reasonable standard. For that purpose, s.18 of the Landlord & Tenant Act 1985 defines the concept of "service charge" and "relevant costs":

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

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(2) The relevant costs are the costs or estimate costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with matters for which the service charge is payable."

As to the limitation of service charges and their reasonableness it goes on to say at section 19:

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Analysis

50. The Tribunal thanks the parties and their representatives for their comprehensive and helpful submissions.

51. With regard to the matter of dispensation, Maxiwood's case relies firstly on the sequence of events: crucially that Mr Percival's initial inspection did not consider the chimney works to be, at that time, urgent – but that they became so.; secondly that the Leaseholders have not suffered any relevant prejudice as a consequence of the normal consultation process taking place. On that point, their argument is that relevant prejudice is essentially financial prejudice, namely whether consultation would likely have led to different works being undertaken or significantly lower costs being incurred – and in this case, they would not.

52. The Leaseholders' claim is that the need for the work was or should have been obvious from an early stage and at least at the time of Mr Percival's inspection, and that the loss of opportunity to scrutinise the proposals denied the chance to participate and influence the process.

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53. The Tribunal finds that on a balance of the evidence before it and taking account of all the matters raised, that it prefers the evidence provide by Maxiwood, and in particular that of Mr Percival in describing the change in circumstances of the chimney's deterioration and the response to the matter as a consequence. The Tribunal is therefore satisfied that the Leaseholders have not been prejudiced by the admitted failure to conduct the consultation process in advance.

54. With regard to the reasonableness of the cost of works, the Tribunal finds that the amount of £5250 has not been challenged by alternative quotations or by any convincing argument of lower cost and accordingly, and applying its knowledge as an expert tribunal, is satisfied that the sum is reasonable and was reasonably incurred.

Decision

55. In consideration of the above, and the matters challenged in the applications, the Tribunal determines that:

    a. In respect of HAV/00MR/LDC/2026/0061 the Tribunal is satisfied that it is reasonable in the circumstances for consultation regarding the subject works to the Property's chimney to be to be dispensed with on this application subject to the condition mentioned below.

    b. In respect of HAV/00MR/LSC/2025/0781 the Tribunal determines that the cost of the chimney works is otherwise reasonable and its cost of £5,250.00 was reasonably incurred and payable as service charge under the terms of the lease.

56. The Tribunal directs that the Applicant or their agent send a copy of this decision to all the leaseholders so that they are aware of the same

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Applications under section 20C of the Landlord & Tenant Act 1985 & Paragraph 5A, Schedule 11 to the Commonhold & Leasehold Reform Act 2002.

57. In the application form and at the hearing, the Applicant applied for an order under section 20C of the Landlord and Tenant Act 1985 Act. Such an order may restrict costs incurred by the landlord in these proceedings being levied in the service charge payable by the tenant (or any other leaseholder who signs up to the section 20C application). Additionally, an application was made under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. Such an application may reduce or extinguish the tenant's liability to pay an administration charge under the terms of their lease.

58. The most significant issue for the Tribunal to determine in these applications was whether dispensation under s.20ZA of the Landlord & Tenant Act 1985 should be granted and whether the costs involved were reasonable.

59. Having heard the submissions from the parties and taking account of the Tribunal's view that Maxiwood has succeeded on the 2 matters in issue, the Tribunal does not consider it just or fair to make orders under section 20C of the 1985 Act and paragraph 5A schedule 11 of the Commonhold and Leasehold Reform Act 2002 and therefore declines to do so.

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.

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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).

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