



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

Case reference : **CAM/34UE/LDC/2025/0656**

Property : **Various flats, Orient House, Cobden Street, Kettering NN16 8DX**

Applicant : **EMH Housing and Regeneration Limited (trading as EMH Homes)**

Representative : **Paul Whatley of counsel**

Respondent : **Various leaseholders**

Representative : **In person**

Type of application : **Application to dispense with the requirement to consult lessees about major works pursuant to section 20ZA of the Landlord and Tenant Act 1985**

Tribunal : **Judge A. Arul
Judge V. Lloyd
Michael Ayres FRICS**

Date of hearing : **14 January 2026**

Date of decision : **9 February 2026**

DECISION AND REASONS

Decisions of the Tribunal

- (1) The Tribunal grants dispensation from the consultation requirements of section 20 of the Landlord and Tenant Act 1985 in respect of works undertaken for the replacement of the electronic door entry system to the main entrance to the Property undertaken between 23 September 2024 and 13 November 2024.
- (2) In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are payable or reasonable.

REASONS

The Application

1. By an application dated 17 July 2025, the Applicant seeks a determination under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) for the dispensation of all or any of the consultation requirements provided for by section 20 of the Act for 22 flats comprised within the premises known as Orient House, Cobden Street, Kettering NN16 8DX (together “the Property”).
2. On 21 August 2025, the Tribunal gave directions (“the Directions”) requiring (amongst other requirements) the Applicant to serve all the Respondents with the application by 1 September 2025 and the Respondents could then, if they wished to oppose the application, send a reply form and a statement in response by 15 September 2025. The Respondent was to prepare a bundle for use at the hearing by 22 September 2025.
3. The matter was to be determined on paper however, in accordance with the Directions, a request was made for an oral hearing by eight leaseholders.
4. There was some variation, and slippage, in the timetable for exchange of documents, which it is not necessary to repeat at length here. In essence, the Applicant sought, and was granted, permission to file a reply to the Respondents’ statement of opposition by 23 October 2025. Mr Bowers made a procedural objection to this and had also filed supplemental statements (outside of the Directions) dated 21 October 2025 and 23 October 2025. By the time of the hearing each party had had in its or their possession the other party’s documents for nearly three months. The above-mentioned documents all appeared in the bundle. Mr Bowers and Mr Whatley were present for us to hear any further commentary on these documents or their contents. On this basis, we did not consider it proportionate to spend hearing time exploring in detail whether any party had breached the Directions. We considered it to be in the interests of justice and furtherance of the overriding objective that all the

documents contained within the bundle as put before us should be admitted into evidence.

The Hearing

5. The hearing took place remotely using the CVP platform.
6. Paul Whatley of counsel appeared for the Applicant. Aaron Bowers (leaseholder for flat 36), Claire Ingram (leaseholder for flat 47), Lorraine Warburton (leaseholder for flat 27) and Sydney Perrin (leaseholder for flat 30) attended in person as Respondents.
7. The documents before the Tribunal comprised a bundle prepared by the Applicant which ran to 223 pages. This included copies of the application and statements in response from 14 different leaseholders. There were no formal witness statements produced by the parties; however, each had produced a written statement of case and, as noted above, in some cases a reply or supplement statement. These took different forms but were sufficiently detailed to understand each party's position. The Tribunal took the view that it was not necessary to hear witness evidence given the issues and a fair hearing could proceed based on submissions only. We therefore heard submissions from Mr Whatley, Ms Warburton, Ms Ingram, Ms Perrin and Mr Bowers in turn.
8. No inspection of the Property was requested, and the Tribunal did not consider that one was necessary to determine the issues.

The Issues

9. The primary issues to be determined in this case were whether the Applicant should be granted a dispensation under section 20ZA of the Act from the consultation requirements imposed on the landlord by section 20 of the Act.

The Property and the relevant works

10. The Applicant is the registered freehold proprietor of the Property, which is known as Orient House.
11. The Property comprises a former clothing factory, converted into 46 residential flats numbered 1-12 and 14 to 47. Flats 1-12 and 14-25 are let under short term tenancies and flats 26 to 47 are let under long term residential shared ownership leases. We were provided with an example lease and informed that all were in similar form. The precise wording of the leases was not material to the matters in issue and, in the interests of brevity, have not been recited in this decision.
12. The Respondents are the leaseholders of flats 26 to 47 (22 in total). A list of the leaseholders is held on the Tribunal file and appears in the bundle. 14 of these leaseholders submitted formal replies and/or statements in opposition to the application. Eight requested an oral hearing. Four attended the hearing.

13. The electronic door entry system for the main building had malfunctioned. There had been previous malfunctions and repairs however, by May 2024, the electronically operated lock would not engage, meaning that the door was unsecure. It was common ground that these issues were caused by historical water damage.
14. The door entry system was replaced following works which took place between 23 September 2024 and 13 November 2024. The replacement is described by the Applicant. as a ‘near like for like’ system.
15. The cost of the works was £31,868.25 including VAT. The works were carried out by Independent Testing Company Inc. Limited (“ITC”). They were selected from an existing public procurement framework via Efficiency East Midlands (“EEM”). We did not have a copy of the Framework Agreement but we did have a copy of extracts from a direct award dated 1 June 2024, granted for four years with an option to extend. This award related to several items, largely fire protection, but included door entry systems.
16. There were two options for the new door entry system. The first was the CAMEBPT system, which was the one implemented at the above cost per a quotation dated 15 May 2024. The alternative was a Comelit-Pac system which was quoted on 9 July 2024 at £58,929.83 including VAT. We were not provided with a detailed specification for each, however the difference between the systems was not a material matter in issue. The question of whether the CAMEBPT system now installed constitutes an improvement is not relevant to the issue of dispensation but may be relevant in any later challenge to the payability and reasonableness of service charges.

The Law

17. The law applicable in the present case is as follows:
18. The Act (as amended) imposes statutory controls over the amount of service charge that can be charged to long residential leaseholders. If a service charge is a “relevant cost” under section 18, then the costs incurred can only be taken into account in the service charge if they are reasonably incurred or works carried out are of a reasonable standard (section 19).
19. Sections 18 to 23A of the Act comprise provisions intended to protect long residential leaseholders from having to pay excessive, unreasonable, unexplained, or unexpected service charges. Sections 20 and 20ZA provide protection by requiring landlords (and others entitled to levy service charges) to consult with leaseholders before they enter into an agreement for which a service charge will be payable. To comply with consultation requirements a person collecting a service charge must follow procedures set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”) (see section 20ZA(4) of the Act). Those procedures differ depending on

whether public notice of the intended agreement or works are required, in accordance with schedules 1, 2 or 3 therein.

20. Section 20 of the Act imposes an additional control by providing for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from each leaseholder in respect of such works unless the consultation requirements have either been complied with or dispensed with.
21. The Applicant seeks dispensation under section 20ZA of the Act from the consultation requirements imposed on it by section 20 of the Act.
22. Section 20ZA of the Act reads as follows:

“Where an application is made to ... [the First-Tier] Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long-term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”

23. In *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 (hereafter *Daejan*), the Supreme Court considered the proper approach to an application for dispensation under section 20ZA. The Supreme Court concluded that securing compliance with the statutory consultation requirements was not an end in itself. Sections 20 and 20ZA were intended to reinforce, and to give practical effect to the twin purposes of section 19, which were to ensure that leaseholders 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.
24. Lord Neuberger explained, at [44]-[45], that the issue on which the Tribunal should focus when determining an application under section 20ZA(1) was “... *the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements.*” If “... *the extent, quality and cost of the works were in no way affected by the landlord’s failure to comply with the requirements ...*” dispensation should normally be granted, because, “... *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.*”
25. Lord Neuberger considered, at [46]-[47], that it would not be right to focus on the seriousness of the breach of the consultation requirements; the only relevance of the extent of the landlord’s oversight was “... *in relation to the prejudice it causes*”. The overarching question was not whether the landlord had acted reasonably but was whether the Tribunal was satisfied that it was reasonable to dispense with compliance.

26. In assessing the prejudice to the leaseholders if dispensation was granted Lord Neuberger explained, at [65], that it was necessary to take account only of the sort of prejudice which section 20 was intended to protect against: “... *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.*”
27. Lord Neuberger also observed in the *Daejan* case that dispensation could be granted on conditions. One such condition of dispensation could be to require that the landlord compensate the tenants for any costs they may have incurred in connection with the application under section 20ZA. At [64], Lord Neuberger considered that a landlord seeking dispensation was in a similar position to a party seeking relief from forfeiture, in that they were “... *claiming what can be characterised as an indulgence from a tribunal at the expense of another party.*”
28. Summarising his conclusions, at [71], Lord Neuberger said that: “*Insofar as the tenants will suffer relevant prejudice as a result of the landlord’s failure, the [First-Tier Tribunal] 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.*”
29. The following broad guidance can therefore be distilled from the legislation and the *Daejan* case:
 - (i) The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the leaseholders flowing from the landlord’s breach of the consultation requirements.
 - (ii) The nature of the landlord or financial consequence to it of not granting a dispensation are not relevant factors.
 - (iii) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - (iv) The Tribunal has power to grant a dispensation as it thinks fit, provided that any conditions are appropriate.
 - (v) The Tribunal has power to impose a condition that the landlord pays the tenants’ reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord’s application.
 - (vi) The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some “relevant” prejudice that they would or might have suffered is on the leaseholders.

- (vii) The term “relevant” prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard. In other words whether the non-compliance has in that sense caused prejudice to the leaseholders.
 - (viii) The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the leaseholders had suffered prejudice.
 - (ix) Once the leaseholders have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
30. The general approach to be adopted by the Tribunal, following the *Daejan* case, was summarised in paragraph 17 of the judgment of His Honour Judge Stuart Bridge in *Aster Communities v Chapman* [2020] UKUT 0177 (LC) as follows:

“The exercise of the jurisdiction to dispense with the consultation requirements stands or falls on the issue of prejudice. If the tenants fail to establish prejudice, the tribunal must grant dispensation, and in such circumstances dispensation may well be unconditional, although the tribunal may impose a condition that the landlord pay any costs reasonably incurred by the tenants in resisting the application. If the tenants succeed in proving prejudice, the tribunal may refuse dispensation, even on robust conditions, although it is more likely that conditional dispensation will be granted, the conditions being set to compensate the tenants for the prejudice they have suffered.”

31. It is therefore for the landlord to satisfy the Tribunal that it is reasonable to dispense with the consultation requirements; if they do so, it is for the leaseholders to establish that there is some relevant prejudice which they would or might suffer, and for the landlord then to rebut that case.

The parties’ submissions

32. Mr Whatley relied upon the Applicant’s statement of case and reply to the statements of opposition. He reminded us of the narrow considerations under *Daejan*, namely what would have happened had the consultation taken place and whether there was relevant prejudice. He said the question of prejudice is also narrow e.g., financial prejudice, expedition and possibly scope of works. He accepted that the wider disputes about the management of the Property and cause of the water leak which had seemingly damaged the door entry system can be raised in section 19 and section 27A proceedings but were not relevant to the dispensation point. He submitted that the Applicant’s had not shown prejudice, their concerns either did not relate directly to the works or related to the speed with which they were carried out or the cost.

33. Mr Whatley also provided some context to the application and explained his position on the applicability of the Regulations. He said that the Applicant is a quasi-public body, thus regulated by statute and subject to a procurement framework which significantly circumscribes the scope of how it undertakes major works. We were not provided with a copy of the Framework Agreement referred to, which Mr Whatley confirmed was commercially sensitive. He indicated that it does not deal with specific works so would not amount to a qualifying long-term agreement due to lack of specificity. Therefore, he said, schedule 1 of the Regulations does not apply, because public notice was required, so either schedule 2 or 3 of the Regulations was relevant. He submitted that the distinction was not material, whether the ITC contract fell within a qualifying long-term agreement under schedule 2, or works were carried out under a direct award and fell within schedule 3. This is because, in both instances, due to the public procurement framework, the Applicant cannot be required to appoint alternative contractors. This takes a lot of substance away from the test. In those circumstances, the scope of what the leaseholders could have done is extremely limited. The Applicant must have due regard to any observations but there was no influence over the choice of contractor. We were told that there is more than one contractor on a framework – the Applicant chooses which one is most appropriate for them. ITC were awarded a direct contract which covered the door system and repairs requisitions. Mr Whatley could not say whether the Applicant could have obtained another quotation from its pool of contractors, or indeed if a contractor was available. He submitted that, even if that were possible, the leaseholders had no opportunity to put forward alternative contractors (whether schedule 2 or 3 of the Regulations applied).
34. We had the benefit of written statements of opposition from each leaseholder as listed above. We have taken account the contents of those statements.
35. Ms Warburton referred us to her complaint to the housing manager and said that the door systems were not functioning properly or at all since February 2024. There was nothing done at the time and she maintained that there was time to go out to other contractors or at least obtain other quotations. She had experience of a company called Elec Services, which she said are similar to ITC and whom she believed from her personal experience may have been cheaper or at least there might have been a negotiation. There would at least be a benchmark from another company. Ms Warburton was candid with us that, had she been consulted, she would have preferred the best repair at the least cost without sacrificing quality. In other words, not a more expensive repair.
36. Ms Ingram and Ms Perrin concurred with Ms Warburton. They were both equally as candid, saying it would have been nice to be consulted, to look at other quotations and that there was time to do so. Ms Ingram would not necessarily have gone for the cheapest, she might have looked at averages across a range of quotations. Ms Perrin would have gone for the cheapest option. Ms Ingram noted that she was still having some

trouble with her intercom system; we were not pointed to any documents in the bundle or given additional detail concerning this.

37. Mr Bowers also concurred with his co-owners and was candid in saying that, had he been consulted, he would prefer the most cost-effective solution. He was aware technology had moved on and preferred a like for like, correctly installed, system. He helpfully acknowledged that some of the content of his statement of opposition, dealing with alleged lack of repair/poor service standards, did not directly go to the issue of prejudice. However, he did feel that the cause of the damage to the previous door entry system was of relevance. He said that he first notified on 18 March 2023 that there was flooding in a cupboard area housing the electrical installation. This was at least six months prior to the Respondent's position as to when they knew of the flooding. Thus, he said, the issue was foreseeable and landlord created. He said that ITC were instructed to investigate and confirmed flooding had caused the issue. He accepted that there was some urgency once the door entry system failed, but that there was no urgency between September 2023 to 15 May 2024 i.e., when he says the Applicant was aware of issues but failed to deal with them. The prejudice was therefore that the leaseholders are being charged for something which was preventable. He felt that there was mis-apportionment of costs and, in any event, had they been consulted, they could have prepared financially for the significant additional costs. He acknowledged that none of the Respondents had produced quotations showing that the eventual cost charged by ITC was high. He said that the panels are behind a locked door only accessible to the Applicant. Access was only possible once cleared of water around August 2024. The basement is not accessible to residents for use.
38. Mr Whatley replied to a number of these points, which mostly reiterated points he had raised in the statement of case or in his oral submissions. However, his reply on the question of whether the Respondent's could have obtained evidence that ITC's costs were high was that it would have been possible within the context of these proceedings. This might have been an order requiring the Applicant to give access for a quotation or similar directions. He also said that a contractor could be given the works specification and a reasonably competent quantity surveyor could undertake a desktop exercise.

The Tribunal's determination

39. The Tribunal is required to determine the question of dispensation from the consultation requirements of section 20 of the Act. This may be given where the Tribunal is satisfied that it is reasonable to dispense with those requirements. Guidance on how such power may be exercised is provided by the *Daejan* case, as referred to above.
40. It is important to distinguish between the reasonableness of dispensing with the requirements and the reasonableness of the works/agreement.

A determination under section 20ZA is only concerned with whether or not it is reasonable to dispense with the requirements.

41. It was common ground that the door entry system required at least a repair. The quotation from ITC makes clear that the part which needed replacing was obsolete and recommended a full replacement. A speedy repair was required because of the water ingress issues, irrespective of what the original cause of that water ingress might have been. We did not have before us sufficient evidence to determine that issue and it is more relevant to the question of payability and reasonableness of service charges.
42. It was common ground that there was no consultation with leaseholders; they were aware of the system not working but the statutory process was not followed. We accept on the balance of probabilities that problems were brought to the attention of the Applicant and therefore the leaseholders were themselves requesting repair or replacement of the door entry system. We are grateful for the candour of those leaseholders who attended the hearing in saying that, broadly, they would not have opted for the more expensive option for replacement.
43. We did not have sufficient evidence before us as to the coverage of the Framework Agreement nor the extent of contractor relations under it, or full details of the scope of the direct award granted to ITC on 1 June 2024. We accept Mr Whatley's submission that schedule 1 to the Regulations does not apply, given the status of the Applicant as a social housing provider and the need for public notice of the intended long term contract and/or works. We also accept that it makes no practical difference whether schedule 2 or schedule 3 applies because, in both instances, the Applicant would not have been able to appoint a contractor nominated by a leaseholder unless that contractor was also a pre-approved member of EEM. It was not ideal that we did not have further information on this and, in any event, that the Applicant did not consult with leaseholders at least to take a more informed view on costs benchmarking. However, those are matters relevant to payability and reasonableness of the service charges and are not material to the question of dispensation; which focuses on prejudice.
44. We considered the submissions made regarding the extent, if any, to which the leaseholders were prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the Application to comply with the consultation requirements.
45. We were mindful that we should view the leaseholders' arguments in this respect 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 they had been given a proper opportunity to make their points. If the leaseholders could show a credible case for prejudice, we should look to the Applicant to rebut it.

46. The works have been completed, and no complaints have been made about the specification of the new door entry system or the quality of the installation; save for Ms Ingram who says that there are problems with her intercom. We consider that those issues, which we had little detail in any event, are unlikely to go to the reasonableness of the installation and would be dealt with as a repairing issue under the award given to ITC. The Respondents did not assert or provide evidence of lower costs for the new system. We consider that it would have been possible to seek directions from the Tribunal for access for the purposes of a retrospective quotation or for a desktop exercise to be undertaken. We make no criticism of the Respondents for not taking these steps, however it places us in the position where we do not have evidence that the leaseholders have suffered prejudice because consultation may have led to lower costs. We are mindful also that, even if lower quotations were available, it is speculative as to whether the Applicant could have negotiated a better deal with ITC or alternative contractors.
47. We were not satisfied that prejudice has been shown. We do find that there was sufficient time to consult but leaseholders were not prejudiced by the failure. It seems unlikely that the works would not have proceeded, given the failed system and that some leaseholders were complaining; indeed, at least one leaseholder criticised the time scales and contended that the repair or replacement should have been quicker. Further, it seems unlikely that a different more expensive system would have been obtained, given the common view that a cost-effective system would have been preferred. The question of whether the works could have been done cheaper, or negotiated with ITC, is one to do with payability and reasonableness.
48. We find that the Respondents would not have had a choice of contractor, and, even if they had been consulted, there was no evidence before us that an alternative contractor could have been appointed under the Framework Agreement and would have been quicker or cheaper. In any event, nominations or quotations from the leaseholders did not have to be considered. It is too speculative what would have happened. We could find no evidence of financial prejudice, that the works would have been carried out with greater expedition or that they would have been any different in scope.
49. On this basis, we find no prejudice to the leaseholders arising from the Applicant's failure to consult and consider dispensation to be appropriate in principle. We have considered whether any conditions would be appropriate but conclude that there are none of relevance, noting that the works have been completed.
50. The Tribunal therefore grants dispensation from the consultation requirements of section 20 of the Act in respect of the replacement of the electronic door entry system to the main entrance to the Property undertaken between 23 September 2024 and 13 November 2024.

51. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are payable or reasonable. The Respondents remain at liberty to challenge such costs under section 27A of the Act in the future should they wish.
52. The Applicant is reminded of the requirements set out in paragraph 7 of the Directions regarding publication of this decision.

Name: Judge A. Arul

Date: 9 February 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).