



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

Case Reference : **BIR/31UE/LDC/2022/0013**

Property : **331 Station Road, Bagworth, Coalville,
Leicestershire, LE67 1BL**

Applicant : **Estates and Management**

Representative : **Premier Estates Limited (Wendy Walker)**

Respondent : **The leaseholders of 331 Station Road
Bagworth**

Representative : **None**

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 : **Tribunal Judge P. J. Ellis
Tribunal Member Mr V Ward FRICS.**

Date of Hearing : **13 September 2022**

Date of Decision : **26 September 2022**

DECISION

The Tribunal is satisfied it is reasonable to dispense with the consultation requirements on the Applicant in respect of qualifying works namely the cost of investigations to ascertain the cause of faults with automatic opening vents and any consequential works that may be recommended.

Background

1. By an application received by the Tribunal on 16 May 2022, the Applicant freeholder urgently sought dispensation from all or some of the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (“the Act”).
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. 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. The only issue for the Tribunal to determine under this application is whether it is reasonable to dispense with the statutory consultation requirements.
4. This application does not concern the issue of whether any service charge costs will be reasonable or payable.
5. The justification for the application provided by the Applicant is as follows:

Two of the four automatic opening vents (AOVs) are out of order and require further investigations to ascertain the exact cause of the fault. Initial quotes for the required works were obtained and following consultation, works were instructed, however the works did not resolve the issue and further investigations are required. The costs for further investigations will exceed the

section 20 threshold, as will any additional works that may be recommended. The AOVs are essential to the safety of the building/residents should a fire occur within as they are linked to the smoke detection devices and will automatically open to allow smoke to escape.

6. The Tribunal first issued Directions in respect of this matter on 23 June 2022. However, following the Tribunal chasing compliance with those Directions, the Applicant stated that they had not received them due to the illness of a staff member and requested the Tribunal reissue them with an extended timetable.
7. Further Directions were issued on 19 July 2022 which provided a revised timetable for disposing of the matter including for it to be determined on the papers. Neither side requested an oral hearing. Accordingly, the matter was considered without the attendance of the parties and without an inspection. The Respondents do not oppose the application.

The Property and the Leases

8. As the Tribunal did not inspect the subject Property the description is taken from the unopposed statement of Wendy Walker the Applicant's Senior Estates Manager. The Tribunal has examined the leases submitted with the application to verify and confirm the Applicant's obligations referred to in Ms Walker's Statement.
9. The property consists of six individual apartments located on the first floor with a commercial unit on the ground floor. A car park is also present on the grounds. The apartments located within the property are subject to long residential leases on substantially similar terms. The applicant is entitled to demand service charges under the terms of the lease at clause 3.1 and Schedule Four Part B clause 6.

The Reason for the Application

10. According to the statement of Ms Walker the Applicant discovered that the existing AOV control board required replacement and further works were required to install an additional panel to include networking of the AOV, testing and commissioning. The high level AOV wiring also required replacing due to lack of functionality. The Applicant has completed works to the panels, but further investigation is required to resolve the fault. It has instructed further works necessary (£2,952 inc VAT) and a date for the work was awaited at the date of the Application.
11. As there are only six apartments, the Applicant anticipated the cost of the works would exceed the threshold for consultation. On 1 February 2022 it issued a Notice of Intention in respect of the works in accordance with s20 of the Act. Whilst tendering for the works it became apparent that the system was inoperable and required urgent action to ensure operability. This application was issued on 16 May 2022 and an instruction to Q Technical was issued to ensure the safety of occupiers.
12. The Applicant asserts the works were required as a matter of urgency to ensure the safety of occupiers from the risk of fire due to the inoperability of the AOV system. It has engaged with the leaseholders and remains willing to answer any questions leaseholders may have. It submits the leaseholders will suffer no prejudice if this application is granted. In any event the costs of the works are open to challenge if the leaseholders regard them unreasonable.

Discussion and Decision

13. There is no objection to these applications by the Respondents. No issues have been raised regarding the terms of the lease and the respective obligations it imposes upon the parties. However, the Tribunal must be satisfied under s20ZA that it is reasonable to dispense with consultation requirements.
14. In considering this matter the Tribunal has had regard to the decision of the Supreme Court in *Daejan Investments Ltd v Benson and others* [2013] UKSC

14 (“*Daejan*”) and the guidance to the Tribunal that in considering dispensation requests, it should focus on whether tenants are prejudiced by the lack of the consultation requirements of section 20.

15. In this case the Tribunal is satisfied the Applicant has acted reasonably by instructing Q Technical to undertake the necessary works to ensure the safety of leaseholders from the risk of fire and that it was reasonable to instruct further investigation work to complete the repair of the system. There is no complaint that the work is not necessary. The leaseholders are not prevented from challenging the reasonableness of any service charges arising from the relevant work.

16. In the circumstances the Tribunal is satisfied that it is reasonable for it to unconditionally dispense with the consultation requirements in respect of necessary works to ensure operability of the AOV and further necessary work relating to actuators.

Appeal

17. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

Tribunal Judge PJ Ellis.