



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

Case Reference	:	CHI/00MR/LDC/2023/0038
Property	:	Brunel Court, Nutfield Place, Portsmouth, PO1 4JB
Applicant	:	Housing 21
Representative	:	
Respondent	:	The Leaseholders
Representative	:	
Type of Application	:	To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
Tribunal member	:	D Banfield FRICS, Regional Surveyor
Date of Decision	:	6 July 2023

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the replacement of the emergency call system

In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

The Applicant is required to send a copy of this decision to the lessees.

Background

1. The Applicant seeks 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. The application was received on 24 March 2023.
2. The property is described as:

“Extra Care building consisting of 1 beds and 2 beds rented and shared ownership. Care staff onsite 24hrs a day 7 days a week 52 weeks of the year.”
3. The Applicant explains that due to the increasing unreliability of the emergency call systems a replacement is desired.
4. No consultation has been carried out to date and if dispensation is granted letters will be distributed to all leaseholders with all associated costs.
5. It is confirmed that the works will start no sooner than 30 days after the receipt of the letter.
6. The Applicant explains the reasons why dispensation is sought:

“The chosen Appello Smart Living Solutions system is currently the only fully digital emergency call system available that uses secure encryption to authenticate and encrypt both data and speech. There is a limited number of other digital systems that offer general functionality comparable to the old analogue systems but have limited health and safety features in comparison to the Appello system.

Many telecare and fire alarm calls are still delivered using devices that transmit across the analogue UK telecommunications infrastructure. However, as with television services, the infrastructure is changing from analogue to digital. As a result, Internet Protocol will become the default communications method, meaning analogue telecare systems will soon no longer work. BT have already announced they will not be offering analogue services after 2020, with the total switch off concluding in 2025. In addition to analogue systems becoming obsolete, legacy systems are becoming increasingly unreliable.

Housing 21 have recognised the safety and reliability issues created for residents because of this transition and since 2016 have taken a proactive stance to ensure that our systems are digital ready. We also wanted to ensure that the investment delivered suitable, fit for purpose systems that overcame existing legacy health and safety issues that affects emergency call systems. We therefore explored the market to ascertain what systems were available to achieve these requirements.

Although there are a few systems that provide a digital service onsite, no other provider supports a fully encrypted digital onsite and offsite pathway. All aspects of the Appello connectivity are digital using Voice Over IP (VOIP) and the British Standard BS8521-2 which is the

BS for signalling alarm calls to the monitoring centre over digital networks. Other systems use elements of analogue to digital conversion technology to get alarm calls successfully delivered to monitoring centres but do not provide the safety enhancements seen in the Appello system.

A crucial requirement is ensuring the system is capable of handling simultaneous calls. Traditional analogue systems will only allow 1 call to be made at any one time with any subsequent calls forming a queue. In addition if a fire alarm is activated traditional equipment may delay the fire call being received by the monitoring centre. Hybrid digital systems will allow 2 simultaneous calls, whereas the Appello system will allow unlimited calls raised and handled concurrently from any site. This is of particular importance on our Extra Care sites where up to 10,000 calls per month can be made from any one site. Having this capability is a significant enhancement in supporting the safety of residents.

Other relevant advancements provided by the Appello include

- 3 second connection speed to the monitoring centre
- Application for functionality on personal devices
- Flat to flat video calling
- Wi-Fi provision enabling customers to access the internet in their home.
- Bluetooth provision enabling accessories to be added to help with simple tasks like answering the door from their chair.
- An application to allow residents to use the system on a tablet from the comfort of their chair, whilst the main system is still mounted on the wall and permanently powered as the British Standards mandate.

To interconnect all the properties into a central system and achieve the same functionality, service and assurance to all of our residents, would not be possible with a hybrid of two separate systems onsite.

At this stage of delivering the digital upgrade with Appello, we are unable to tender a directly comparable system as Appello are the only supplier a digital solution with the desired functionality.”

7. The Tribunal made Directions on 19 April 2023 setting out a timetable for the disposal. The Tribunal required the Applicant to send them to the parties together with a form for the Leaseholders to indicate to the Tribunal whether they agreed with or opposed the application and whether they requested an oral hearing. If the Leaseholders agreed with the application or failed to return the form they would be removed as a Respondent although they would remain bound by the Tribunal’s Decision. The Applicant was required to confirm to the tribunal that the Directions had been served and that no objections had been received.
8. On 25 April 2023 the Applicant confirmed that service had been carried out and on 19 May 2023 that no objections had been received.

9. No requests for an oral hearing were made and the matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal's Procedural Rules.
10. Before making this determination, the papers received were examined to determine whether the issues remained capable of determination without an oral hearing and it was decided that they were, given that the application remained unchallenged.

The Law

11. The relevant section of the Act reads as follows:

S.20 ZA Consultation requirements:

Where an application is made to a Leasehold Valuation 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.

12. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson*. In summary the Supreme Court noted the following.
 - a. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
 - b. The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
 - c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
 - e. 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 under section 20ZA (1).
 - f. 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 tenants.

- g. The court considered that “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 tenant.
- h. The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

- 13. The Applicant’s case is set out in paragraphs 2 to 6 above.

Determination

- 14. Dispensation from the consultation requirements of S.20 of the Act 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 leading case of Daejan v Benson referred to above.
- 15. No objections have been received. No prejudice has been identified by the Lessees and as such the Tribunal is prepared to grant dispensation requested.
- 16. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the replacement of the emergency call system
- 17. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
- 18. The Applicant is required to send a copy of this decision to the lessees.

D Banfield FRICS
6 July 2023

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 by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
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.