



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

**Case Reference** : BIR/00CU/LDC/2023/0009

**HMCTS** : Paper

**Property** : Knaves Court High Street Brownhills WS8 6DJ

**Applicant** : Housing 21

**Respondents** : Leaseholders of the 15 shared ownership properties at Knaves Court High Street Brownhills WS8 6DJ

**Type of Application** : An Application under section 20ZA of the Landlord and Tenant Act 1985 for dispensation of specified Section 20 consultation requirements

**Tribunal Member** : Nicholas Wint FRICS (Chair)

**Date of Decision** : 17 August 2023

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**DECISION**

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## **Introduction**

- 1 The Landlord (“the Applicant”) applied to the First-tier Tribunal (Property Chamber) (FTT) in an application for an order to dispense with certain consultation requirements provided for by section 20 of the Landlord & Tenant Act 1985 (“the Act”), as amended by the Commonhold and Leasehold Reform Act 2002. In short, this section together with the Service Charges (Consultation Requirements) (England) Regulations 2003 (‘the Regulations’) requires a landlord to consult with lessees before placing a contract to undertake any ‘qualifying works’ that would cost each tenant more than £250.00. The Regulations set out a timetable for the consultation and identify the procedures to be followed during the consultation.
- 2 However, the Act envisages that there may be occasions where for various reasons a landlord may be unable to consult, for example in cases of emergency, and there is provision in section 20ZA of the Act for a landlord to apply to the Tribunal for ‘dispensation’ to override all or some of the consultation requirements. An application may be made before or after works are carried out.
- 3 In this case, the Applicant has applied for dispensation from all or some of the consultation requirements in respect of acknowledged ‘qualifying works’ so that repair works can be carried out to the Property following a fire. Therefore, the only issue for the Tribunal to determine under this application is whether it is reasonable to dispense with the consultation requirements.
- 4 The Applicant is seeking dispensation to install a new fully digital emergency call system to replace the existing analogue system.
- 5 By way of Directions dated 22 June 2023 the Applicant was instructed to write, by no later than 3 July 2023, to each of the Tenant’s copies of the application form and the Tribunals Directions and to display a copy of the application and Directions in a prominent position in the common parts of the property and confirm to the Tribunal that this has been done. The Directions also required the Tenants who wish to object to the application to do so no later than 24 July 2023 and complete the attached Reply Form and send it to the Tribunal and send to the Landlord a statement in response to the application together with any evidence upon which they wish to rely.
- 6 Neither party requested a hearing and nor did either submit any further submissions as provided by the Directions. The Tribunal also proceeded without an inspection being requested or required.
- 7 In light of the above, the Tribunal has determined the application based on the documentation submitted by the Applicant and without an inspection of the Property.

## **The Lease**

- 8 The Applicant provided the Tribunal with a copy of a lease made between Housing 21 (Exempt Charity) as Landlord and Lily Waldron as Tenant dated 15 April 2011 in respect of 16 Knaves Court High Street Brownhills WS8 6DJ.

- 9 It is understood and accepted by the Tribunal that this lease is identical to the other Respondents leases.
- 10 It is for a term of 125 years (less 10 days) from and including 22 October 2022 paying the Specified Rent as defined in the lease.

- 11 Clause 3.22 of the lease - Leaseholder's Covenants - provides for the leaseholder to:

'... repay to the Landlord all costs charges and expenses incurred by it in repairing renewing and reinstating any part of the Building (except the Premises) or any part of the Common Parts so far as such repair renewal or reinstatement shall have been necessitated or contributed to by any act neglect or default of the Leaseholder'.

- 12 The Common Parts is described under Schedule 9 - Defined Terms - as:

'... those parts of the Building (whether or not within the structure of the Building) to be used in common by any of the Leaseholder, other tenants and occupiers of the Building, the Landlord and those properly authorized or permitted by them to do so and 'Common Parts' includes (where applicable but without limitation) the atrium and entrance hall, corridors, lobbies, staircases, lavatories, access ways, passages, lifts, escalators, turntables, courtyards, external pavements and footpaths, the car parking spaces (on a first come first served basis) disabled parking spaces (if any) and its ramp, the bin area, cycle store service and loading areas, service road or driveway, gardens and Landscaped Areas which shall include the area the subject Licence Agreement and any other such facilities or amenities, but excluding any such parts as may be within the Premises'.

- 13 The Landlord's Covenants are set out in clause 5 and 5.3 - Repair, Redecorate Renew Structure - provides:

'Subject to Clause 5.5 and to payment of the Specified Rent and Service Charge the Landlord shall maintain repair redecorate renew and ... improve:

5.3.1 The load bearing framework and all other structural parts of the Building, the roof, foundations, joists and external walls of the Building and Service Media and machinery and plant within ... the Premise and all parts of the Building which are not the responsibility of the Leaseholder ... provided always that the Landlord shall redecorate as necessary the outside doors of the Premises

5.3.2 The Service Media, cisterns and tanks and other gas, electrical, drainage, ventilation, and water apparatus and machinery in under and upon the Building (except such as serve exclusively an individual flat in the Building and except such as belong to any utility supply authority or company) and

5.3.3 The Common Parts'

- 14 Clause 5.6 - Landlord's Services - also provides that the Landlord will (subject to the payment of the Service Charge) provide the following services:

- a) Employ a non-resident court manager for the general supervision of the Estate
- b) Arrange for the answering of emergency calls

- c) The Communal Facilities
  - d) Any additional or sundry costs in connection with the employment of the court manager for the Estate
- 15 Clause 7 - Service Charge Provisions – provide:
- ‘The Leaseholder covenants with the Landlord to pay the Service Charge during the Term by equal payments in advance ... in the same manner as the Specified Rent payable under this lease’.
- 16 The Lessee’s proportion of the Service Charge Expenses is 1/60th of the Service Charge payable in respect of the Common Parts and Communal Facilities and which shall include a proportionate part of the costs and expenses incurred in connection with the court manager together with actual costs incurred by the Landlord in carrying out its repair and maintenance obligations in respect of the Premises.
- 17 Accordingly, the Tribunal finds that the lease provides that the cost of replacing the emergency call system falls within the Service Charge Expenses and that each Respondent is responsible for the cost, as a relevant cost, which is to be paid through the service charge.
- 18 The consultation provisions in section 20 of the Act and the Regulations would, therefore, apply if the total cost of the new emergency call system exceeds the £250.00 threshold per leaseholder.

### **Relevant Law**

- 19 Section 20 of the Act, as amended, and the Regulations provide for the consultation procedures that landlords must normally follow in respect of ‘qualifying works’ (defined in section 20ZA(2) of the Act as ‘work to a building or any other premises’) where such ‘qualifying works’ result in a service charge contribution by an individual lessee in excess of £250.00.
- 20 Provision for dispensation in respect of some or all such consultation requirements is made in section 20ZA(1) of the Act which states:
- ‘Where an application is made to a leasehold valuation tribunal (a jurisdiction transferred 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.’ (*emphasis added*).
- 21 In *Daejan Investments Ltd. v Benson et al.* [2013] UKSC 14 (*Daejan*), the Supreme Court set out the proper approach to be taken to an application for dispensation under section 20ZA of the Act. In summary, this approach is as follows:
- a. The Tribunal should identify the extent to which lessees would be prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the landlord to comply with the consultation requirements;

- b. That no distinction should be drawn between ‘a serious failing’ and ‘technical error or minor or excusable oversight’ on the landlord’s part save in relation to the prejudice it causes;
  - c. The financial consequences to the landlord of not granting a dispensation are not relevant factors when the Tribunal is considering how to exercise its jurisdiction under section 20ZA; and
  - d. The nature of the landlord is not relevant.
- 22 Further, in exercise of its power to grant a dispensation under section 20ZA of the Act, the Tribunal may impose such terms and conditions as it thinks fit, provided only that these terms and conditions must be appropriate in their nature and effect.
- 23 For the sake of completeness, it may be added that the Tribunal’s dispensatory power under section 20ZA of the Act only applies to the aforesaid statutory and regulatory consultation requirements in the Act and does not confer on the Tribunal any power to dispense with contractual consultation provisions that may be contained in the pertinent lease(s).

### **Applicant’s Submission**

- 24 The Applicant’s case is set out in the Application.
- 25 The Building is described as consisting of 45 rental apartments and 15 shared ownership apartments located in the centre of Brownhills Walsall. The apartments are for people over the age of 55 years and includes and on-site restaurant, shop and hair salon.
- 26 The works have not been carried out and no consultation has been carried out either. The Applicant advises that if dispensation is granted then the leaseholders will be notified explaining the reasons for the replacement and costs involved with the intention that the works would start no sooner than 30 days after the leaseholders are notified.
- 27 The Applicants advise they wish to replace the emergency call system as soon as possible. They advise the proposed system by Appello Smart Living Solutions is the only fully digital emergency call system available that uses secure encryption to authenticate both data and speech. It also has certain features that the other systems do not provide. The Applicants also advise that the analogue system will become obsolete in 2025 when the service will cease.
- 28 The Applicant has been aware of the need to undertake this upgrade since 2016 and has been proactive in its consideration of installing a new system thereby avoiding any future safety and reliability issues that may arise. The Appello system provides all the necessary requirements of the Applicant and in particular additional safety enhancements that the other systems do not provide.
- 29 The new system can handle multiple simultaneous calls and will not block a fire alarm call if made to the monitoring centre. The Applicant advises this is particularly important because an Extra Care site can generate up to 10,000 calls

per month. Therefore, having this feature will greatly enhance the safety of their residents.

- 30 The Applicant advises that because of all the features the Appello system provides and the need to ensure the safety of the residents there is no comparable system available with the desired functionality and therefore they are unable to seek any alternative systems via tender.

### **Respondent's Submission**

- 31 No submissions were submitted to the Tribunal by any of the Respondents.

### **The Tribunal's Determination**

- 32 The Tribunal has had regard to the evidence provided by the Applicant, the relevant law and its knowledge and experience as an expert Tribunal. It also noted that none of the Respondents objected to the dispensation sought in the application.

- 33 It is clear to the Tribunal from the information supplied by the Applicant that the works are urgently required to the Property.

- 34 Section 20ZA does not expand upon or detail the circumstances when it may be reasonable to decide dispensing with the consultation requirements. However, the Supreme Court in *Daejan* found that the Tribunal in considering whether dispensation should be granted must consider the extent to which lessees would be prejudiced by a landlord's failure to consult.

- 35 There are essentially three stages in the consultation procedure:

Stage 1 - the pre-tender stage notifying the parties of the intention to carry out works;

Stage 2 - the tender stage notifying the parties of proposals including estimates; and

Stage 3 - advising the leaseholders that the contract has been placed and the reasons behind the same.

- 36 The dispensation sought in this matter is, in effect, a means for dispensing with the need to carry out a tender exercise and in order to expedite the carrying out of the installation of a new fully digital emergency call system which will significantly improve the current functionality of the existing system.

- 37 The Tribunal is therefore satisfied that the Applicant should be permitted to dispense with the normal consultation requirements. In the circumstances and applying the tests set out in section 20ZA and the approach specified in *Daejan*, the Tribunal finds that the lessees would not be prejudiced by granting the dispensation of the section 20 consultation requirements in the Act and in the Regulations to the extent sought in the application and that it would be reasonable to grant such dispensation. Therefore, dispensation is granted.

- 38 Parties should note that this determination relates only to the dispensation sought in the application and does not prevent any later challenge by any of the lessees under sections 19 and 27A of the Act on the grounds that the costs of the works incurred had not been reasonably incurred or that the works had not been carried to a reasonable standard.

### **Appeal to the Upper Tribunal**

- 39 If any party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such appeal must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).
- 40 If the party wishing to appeal does not comply with the 28-day time limit, the party 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.
- 41 The application for permission to appeal must identify the decision to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

**Nicholas Wint FRICS**

**Date:** 17 August 2023