



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

Case reference : **LON/00AR/LDC/2023/0103**

Property : **Paines Brook Court, Paines Brook Way,
RM3 9JN**

Applicant : **Housing 21**

Respondents : **Agnes Jackson (Flat 58)
Fionna Taylor (Flat 59)
Melvyn Myers (Flat 62)
Wendy Beckingham (Flat 63)
Colin Overton (Flat 64)**

Type of application : **Dispensation from statutory consultation requirements**

Tribunal : **Judge Nicol**

Date of decision : **2nd October 2023**

DECISION

The Tribunal grants the Applicant dispensation under section 20ZA of the Landlord and Tenant Act 1985 from the statutory consultation requirements in relation to works to replace the existing analogue emergency call system with a new digital emergency call system.

Reasons

1. This application for dispensation from statutory consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 has been determined on the papers. A face to face hearing was not held because the Tribunal directed that the case was suitable for the paper track and the parties did not object.
2. The Applicant owns and manages the subject property, being 64 flats in a purpose-built block. The Respondents have shared ownership leases of some of the flats. Presumably, the rest of the flats are not let on long leases.

3. The Applicant is looking to replace their current analogue call system with one which is digital. The infrastructure of such systems is changing in the same way as other services from analogue to digital so that such a change is unavoidable as well as offering significant service upgrades such as the ability to handle multiple simultaneous calls. They looked at the market and found only one, from Appello Smart Living Solutions, which is able to encrypt both data and speech. They wish to go with this one provider in order to have this benefit and other functionality such as flat-to-flat video calling and wi-fi and Bluetooth provision.
4. Although no quote has been provided, it appears that such works would be subject to consultation requirements under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 on the basis that the costs would exceed the threshold of £250 per flat. The Applicant has applied to the Tribunal for dispensation from those requirements under section 20ZA of the Act because they cannot carry out a tender process with only one contractor and they would like to get this done sooner rather than later.
5. Under section 20ZA(1), the Tribunal may dispense with the statutory consultation requirements if satisfied that it is reasonable to do so. The Supreme Court provided further guidance in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854:
 - (a) Sections 19 to 20ZA of the Act are directed to ensuring that lessees of flats are not required to pay for unnecessary services or services which are provided to a defective standard or to pay more than they should for services which are necessary and provided to an acceptable standard. [42]
 - (b) On that basis, the Tribunal should focus on the extent to which lessees were prejudiced by any failure of the landlord to comply with the consultation requirements. [44]
 - (c) Where the extent, quality and cost of the works were unaffected by the landlord's failure to comply with the consultation requirements, an unconditional dispensation should normally be granted. [45]
 - (d) Dispensation should not be refused just because a landlord has breached the consultation requirements. Adherence to the requirements is a means to an end, not an end in itself, and the dispensing jurisdiction is not a punitive or exemplary exercise. The requirements leave untouched the fact that it is the landlord who decides what works need to be done, when they are to be done, who they are to be done by and what amount is to be paid for them. [46]
 - (e) The financial consequences to a landlord of not granting dispensation and the nature of the landlord are not relevant. [51]
 - (f) Sections 20 and 20ZA were not included for the purpose of transparency or accountability. [52]
 - (g) Whether or not to grant dispensation is not a binary choice as dispensation may be granted on terms. [54, 58, 59]

- (h) The only prejudice of which a lessee may legitimately complain is that which they would not have suffered if the requirements had been fully complied with but which they would suffer if unconditional dispensation were granted. [65]
 - (i) Although the legal burden of establishing that dispensation should be granted is on the landlord, there is a factual burden on the lessees to show that prejudice has been incurred. [67]
 - (j) Given that the landlord has failed to comply with statutory requirements, the Tribunal should be sympathetic to the lessees. If the lessees raise a credible claim of prejudice, the Tribunal should look to the landlord to rebut it. Any reasonable costs incurred by the lessees in investigating this should be paid by the landlord as a condition of dispensation. [68]
 - (k) The lessees' complaint will normally be that they have not had the opportunity to make representations about the works proposed by the landlord, in which case the lessees should identify what they would have said if they had had the opportunity. [69]
6. The Tribunal does not understand why it would not have been possible to comply with the statutory consultation requirements in this case. There seems to be no particular urgency.
 7. Further, the Applicant asserts that the Appello system has functionality unavailable in other systems. If there were consultation, all parties would be able to weigh this advantage against advantages which other contractors may be able to offer, including on price. Without a proper tendering process, neither the Applicant nor the Respondents would be able to carry out such a comparison.
 8. However, none of the lessees have objected to the application for dispensation, either to the Applicant or to the Tribunal, let alone established any basis for thinking that they would be prejudiced by the lack of consultation.
 9. The Tribunal's role in this application is limited to determining only if the statutory consultation requirements may be dispensed with. As stated in the Tribunal's directions, "This application does not concern the issue of whether any service charge costs will be reasonable or payable." By failing to carry out a proper tendering process or to consult, the Applicant would seem to be opening themselves up to a greater risk of a challenge to the reasonableness or payability of any resulting service charges but that is not an issue for the Tribunal at this stage.
 10. Given the lack of any objection or any evidence of prejudice, the Tribunal has determined that it is reasonable to dispense with the statutory consultation requirements.

Name: Judge Nicol

Date: 2nd October 2023

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).