



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

**Case Reference** : CHI/45UB/LDC/2023/0065

**Property** : Mitchison Court Downside Sunbury-on-Thames

**Applicant** : Housing 21

**Representative** :

**Respondents** : Patricia McMahon Flat 2  
Jeanette Ridge (dec) by Flat 19  
her personal  
representative Joyce  
Ridge Stevens  
Jean Hampton Flat 24  
Elsa Lennie Flat 29

**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** : Judge N Jutton

**Date of Determination** : 22<sup>nd</sup> August 2023

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## DECISION

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### **Summary of the Decision**

- 1. The Applicant is granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements in respect of works to replace the existing emergency call system.**

### **The application and the history of the case**

2. The Applicants applied for 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 sought dispensation from consultation in respect of work to replace the existing analogue emergency call system with a new digital emergency call system at the Property.
3. The Tribunal gave Directions on 15<sup>th</sup> June 2023, explaining that the only issue for the Tribunal was whether, or not, it is reasonable to dispense with the statutory consultation requirements (not the question of whether any service charge costs are reasonable or payable).
4. The Directions provided that any party who objected to the application should complete a pro forma which was attached to the same. No objections to the application have been received by the Tribunal and the Applicant has confirmed that no objections have been received by it. The Directions also provided that the application would be dealt with on the papers alone without a hearing unless a party objected. None of the parties has objected and accordingly the Tribunal has proceeded to deal with the application without a hearing.

### **The Law**

5. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the related Regulations provide that where the lessor intends to undertake major works with a cost of more than £250 per lease in any one service charge year the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.

6. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation “if satisfied that it is reasonable to dispense with the requirements”.
7. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14.
8. The leading judgment of Lord Neuberger explained that a tribunal should focus on the question of whether the lessee will be or had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were “a means to an end, not an end in themselves”.
9. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).
10. Where the extent, quality and cost of the works were in no way affected by the lessor’s failure to comply, Lord Neuberger said as follows:

“I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): 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.”
11. The “main, indeed normally, the sole question”, as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the Lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.
12. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.
13. If dispensation is granted, that may be on terms.
14. The effect of *Daejan* has been considered by the Upper Tribunal in *Aster Communities v Kerry Chapman and Others* [2020] UKUT 177 (LC), although that decision primarily dealt with the imposition of conditions when granting dispensation and that the ability of lessees to challenge the reasonableness of service charges claimed was not an answer to an argument of prejudice arising from a failure to consult.

## Decision

15. The Property the Applicant says is a purpose-built block of 39 flats described as 'Extra care scheme with shared ownership'. The Applicant says that the existing analogue emergency call system is proving to be increasingly unreliable. The Applicant seeks to replace the system with a digital system as soon as possible. The Applicant says that the United Kingdom's telecommunication structure is changing from analogue to digital. That the only fully digital emergency call system is that which the Applicant proposes to install which is provided by an organisation called Appello Smart Living Solutions. The Applicant's concern is that analogue systems or partially analogue systems will in the future no longer work. That it is in the best interests of the residents at the Property for their own care and safety for the existing failing system to be replaced.
16. No leaseholder has objected.
17. In my judgment it is just and equitable to grant dispensation to the Applicant for the proposed works to replace the existing emergency call system with a digital emergency call system. In all the circumstances, and upon the basis of the submissions made by the Applicant, I am satisfied that consultation should be dispensed with.
18. In reaching my decision I have taken account of the fact that no party has objected to the application. The leaseholders have had opportunity to raise any objection and they have not done so. I do however direct that the dispensation is conditional upon the Applicant or their agent sending a copy of this decision to all the leaseholders so that they are aware of the same.
19. For completeness I confirm in making this determination I make no findings as to the liability to pay or the reasonableness of the estimated costs of the works.

Judge N Jutton

22 August 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 to the First-tier Tribunal at [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) being 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

