



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

Case Reference : **MAN/00CE/LDC/2023/0032**

Property : **Swallowdale Extra Care Scheme
Jubilee Close Edlington Doncaster DN12 1EX**

Applicant : **Housing 21**

Respondent : **Various Leaseholders (see Annex)**

Type of Application : **Landlord & Tenant Act 1985 – Section 20ZA**

Tribunal : **Tribunal Judge Brown
Mr. Colin Snowball MRICS**

Date of Decision : **27 September 2023**

DECISION

The Application is refused.

DETERMINATION

The Tribunal determines that dispensation from consultation for the works as detailed in the application be refused pursuant to s20ZA Landlord and Tenant Act 1985.

INTRODUCTION

1. By application dated 27 April 2023 (the Application) the Tribunal was asked to grant to the Applicant dispensation of the consultation requirements of s20 of the Landlord and Tenant Act 1985 in relation to works proposed to replace the emergency call service at the Property with a digital system (the Works).
2. Directions were made by a Legal Officer on 20 June 2023. The matter was listed to be determined by way of submission of written evidence leading to an early determination or by a hearing if requested by the parties. A paper determination was considered appropriate in view the lack of any request for an oral hearing by any party and the Tribunal was content that it was able to dispose of matters without an oral hearing

THE APPLICATION

3. The Application set out as follows in support of the request:

“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 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.”

- 4. The Applicant stated “No consultation has been carried out to date. If the dispensation request is permitted, letters will be distributed to all leaseholders explaining the rationale for the replacement with all costs associated. The works will start no sooner than 30 days after receipt of the letter.” In support of the Application it stated “It is the desire to replace the emergency call system asap.”*

5. The Applicant provided its own record of estimated costs for the Works of £122,100. It provided a sample of the lease to which each leaseholder is a party, for a term of 125 years (less 10 days).
6. None of the Respondents replied to the Application; the Tribunal found no evidence of opposition.

THE LEGISLATION

7. The relevant legislation is contained in s20ZA Landlord and Tenant Act 1985 which reads as follows:

s20 ZA Consultation requirements: supplementary

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works....., the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

“qualifying works” means works on a building or any other premises;

.....

(4) In section 20 (setting out the consultation requirements) and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

8. The related regulations are the Service Charges (Consultation Requirements) (England) Regulations 2003. They set out a procedure for the landlord to consult with affected leaseholders before commencing relevant works. The consequence of a failure to consult appropriately, unless dispensation is granted by the Tribunal, is that the landlord is restricted to recovering from each leaseholder a maximum of £250 towards the cost of those works.

THE DETERMINATION

9. The Tribunal has jurisdiction under section 20ZA to dispense with consultation before works have been carried out, as relevant here. The Application does not concern the issue of whether any service charge costs resulting from any such works are reasonable or indeed payable and it will be open to lessees to challenge any such costs charged by the Applicant under section 19 of the Act.
10. While usually the only issue for the Tribunal to consider is whether or not it is reasonable to dispense with the consultation requirements, here there was a more fundamental point first to be considered.
11. It is commonly recognised that the purpose of the consultation requirements is to empower leaseholders, so they are protected from (a) paying for inappropriate works, or (b) paying more than would be appropriate. However, the dispensation route for a landlord exists because either there has been an

error in the formal consultation procedure and it is at risk of the sum it potentially can recover from leaseholders being capped, or because the works are urgent.

12. In this matter no explanation is offered as to why the Applicant has made no attempt to consult with the leaseholder Respondents. There is no persuasive evidence that the Works are urgent, preventing or restricting consultation. Indeed, the Applicant states it has been engaging with this project since 2016. No evidence was presented to the Tribunal that the emergency call system is defective in any way, only that it is preferable to switch from an analogue to a digital system.
13. It appears from the Applicant's case – see paragraph 3 – that the provision of an analogue platform to operate the current system is to continue until 2025. No evidence was provided that there was a need to complete works because of an imminent loss of the functionality of the current system or so as to minimise cost, for example. It is represented that “*Appello are the only supplier a digital solution with the desired functionality*”, but there was no evidence that Appello is at imminent risk of ceasing to be able to provide the service planned, or that there was an extended waiting time implying urgency to commit to a contract with Appello.
14. The Tribunal found that the Applicant here was attempting to avoid its responsibilities to consult by reason of the Application, for no persuasive reason. Section 20ZA is not a means to bypass the consultation requirements, it is a power to the Tribunal to be engaged in considering permitting dispensation when there is a reason to do so and we found on the facts as presented to us that no such reason was presented. Therefore, we determined that it was not reasonable to dispense with the consultation requirements. The Application is dismissed.

Tribunal Judge WL Brown

27 September 2023

ANNEX

Leaseholders

Shared ownership properties:

Flat 8, Swallowdale Extra Care Scheme, Jubilee Close, Edlington, Doncaster, DN12 1EX	Mr E Skelton
Flat 9, Swallowdale Extra Care Scheme, Jubilee Close, Edlington, Doncaster, DN12 1EX	Mr G Edwards
Flat 11, Swallowdale Extra Care Scheme, Jubilee Close, Edlington, Doncaster, DN12 1EX	Mr & Mrs Foster (Deceased)
Flat 12, Swallowdale Extra Care Scheme, Jubilee Close, Edlington, Doncaster, DN12 1EX	Mr & Mrs Webster
Flat 28, Swallowdale Extra Care Scheme, Jubilee Close, Edlington, Doncaster, DN12 1EX	Mrs J Wilson
Flat 30, Swallowdale Extra Care Scheme, Jubilee Close, Edlington, Doncaster, DN12 1EX	Paul Grayson & Linda Kelm
Flat 33, Swallowdale Extra Care Scheme, Jubilee Close, Edlington, Doncaster, DN12 1EX	Dorothy Scothern

Flat 34, Swallowdale Extra Care Scheme, Jubilee Close, Edlington, Doncaster, DN12 IEX	Mr & Mrs Condon
Flat 52, Swallowdale Extra Care Scheme, Jubilee Close, Edlington, Doncaster, DN12 IEX	Mrs M Bingham
Flat 54, Swallowdale Extra Care Scheme, Jubilee Close, Edlington, Doncaster, DN12 IEX	Mr & Mrs Moffit
Flat 57, Swallowdale Extra Care Scheme, Jubilee Close, Edlington, Doncaster, DN12 IEX	Mrs M Gunning
Flat 58, Swallowdale Extra Care Scheme, Jubilee Close, Edlington, Doncaster, DN12 IEX	Mr & Mrs Downes
Bungalow 2, Swallowdale Extra Care Scheme, Jubilee Close, Edlington, Doncaster, DN12 IEX	Mr & Mrs Astbury
Bungalow 4, Swallowdale Extra Care Scheme, Jubilee Close, Edlington, Doncaster, DN12 IEX	Mr Wood