



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

**Case Reference** : **MAN/36UE/LDC/2023/0034**

**Property** : **Greyfriars, Flints Terrace, Richmond,  
DL10 4DQ**

**Applicant** : **Housing 21**

**Respondents** : **Various Residential Long Leaseholders  
– See Annex**

**Type of Application** : **Section 27A Landlord and Tenant Act  
1985 – Section 20ZA**

**Tribunal Members** : **Mr J Fraser FRICS  
Mr W Reynolds MRICS**

**Date of  
determination** : **11<sup>th</sup> December 2023**

**Date of decision** : **15<sup>th</sup> January 2024**

---

**DECISION**

---

**© CROWN COPYRIGHT 2024**

## **DECISION**

1. The application to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 and The Service Charges (Consultation Requirements) (England) Regulations 2003, in respect of the Works carried out at the Property, is granted.
2. The Works carried out are the installation of an emergency call system at the Property replacing a failed system described as unrepairable. No other works are included in this application and determination.

## **REASONS**

### **Background**

3. This is an application made by Housing 21 (“the Applicant”) for dispensation of the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and The Service Charges (Consultation Requirements)(England) Regulations 2003 (“the Consultation Requirements”) for the installation of an emergency call system at Greyfriars, Flints Terrace, Richmond, North Yorkshire, DL10 4DQ (“the Property”).
4. Directions were given by the Tribunal on the 27<sup>th</sup> July 2023, inter alia, it was stated that the matter would be determined by way of written submissions and that the parties were invited to inform the Tribunal if they wished to make oral representations at a hearing. No such applications have been received by the Tribunal and the determination has proceeded based on the submissions provided to the Tribunal.
5. On the 14<sup>th</sup> September 2023, an order was made by the Tribunal proposing to strike out the proceedings as the Applicant had failed to comply with the directions of the 27<sup>th</sup> July 2023. This was addressed by the Applicant and the directions of the 27<sup>th</sup> July 2023 were subsequently complied with.
6. This Tribunal has not inspected the Property, it is described in the application as a supported living development comprising 39 two-bedroom apartments, built in 2011 with 34 of the apartments being rental properties and 5 of the apartments held on a shared ownership basis. The 5 shared ownership apartments are subject to long leases, the lessees being the Respondents to this application.
7. The cost of the emergency call system is stated as being £87,114.29 gross of VAT, equating to £1,979.87 per apartment. However, this apportionment is based on 44 properties, albeit the application states that there are 39. The apportioned cost is therefore assumed to be higher at £2,233.70 per apartment.

## **The Law**

8. Section 20 of the Act provides:

- (1) *Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either-*
  - (a) *complied with in relation to the works or agreement, or*
  - (b) *dispensed with in relation to the works or agreement by (or on appeal from) a tribunal*
- (2) *In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement*
- (3) *This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.*
- (4) *The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement-*
  - (a) *if relevant costs incurred under the agreement exceed an appropriate amount, or*
  - (b) *if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.*
- (5) *An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be the appropriate amount-*
  - (a) *an amount prescribed by, or determined in accordance with, the regulations, and*
  - (b) *an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with the regulations.*
- (6) *Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.*
- (7) *Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations*

*is limited to the amount so prescribed or determined”*

9. In the event the requirements of Section 20 have not been complied with, or there is insufficient time for the consultation process to be implemented, then an application may be made to the First-tier Tribunal pursuant to section 20ZA of the Act.

10. Section 20ZA of the Act provides:

(1) *Where an application is made to a tribunal for a determination to dispense with all or any 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*

(2) *In section 20 and this section-  
“qualifying works” means works on a building or any other premises, and “qualifying long term agreement” means (subject to section (3) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.*

11. In **Daejan Investments Ltd v Benson [2013] UKSC 14** it was determined that a Tribunal, when considering whether to grant dispensation, should consider whether the tenants would be prejudiced by any failure to comply with the Consultation Requirements.

12. In **Wynne v Yates and others [2021] UKUT 278 (LC)** Upper Tribunal Judge Elizabeth Cooke said at paragraph 39:

*“There must be some prejudice to the tenants beyond the obvious fact of not being able to participate in the consultation process.”*

13. In **Marshall v Northumberland & Durham Property Trust Ltd [2022] UKUT 92 (LC)** at paragraph 64 Deputy Chamber President Martin Rodger KC said:

*“Mr Marshall QC submitted that an absence of prejudice cannot be assumed simply because there is a need to undertake work urgently (by which I mean within too short a period to allow the full statutory procedure to be followed). I agree.”*

14. Therefore, the Tribunal must consider whether the Respondents would suffer prejudice by granting the Applicant dispensation from the Consultation Requirements.

### **The Applicant’s submission**

15. The Applicant’s submission is that the existing call alarm system in the property was not working and was out of use, they state that it was unrepairable and that therefore a new system was installed as a matter of urgency. It is not known

what date the works were carried out, the application form does however state that the works have been completed at the time of the application dated 17<sup>th</sup> May 2023.

16. The Applicant states that the “Residents were made aware of the works, meeting was held to discuss dates and time scales”, albeit no copies of such correspondence sent to the residents are submitted to the Tribunal.
17. The system is described by the Applicant as providing telecare and fire alarm calls. However, due to BT announcing that traditional analogue services will no longer be supported after 2025, it was necessary to install a digital system operating using Voice Over IP (VOIP). The Appello system chosen by the Applicant provides a digital service, fully encrypted, uses VOIP and complies with British Standard BS8521-2 for signalling alarm calls to monitor centres over digital networks. Further it can handle multiple calls concurrently. In addition, the Appello system includes enhancements of a 3 second connection speed, functionality on personal devices, flat to flat video calling, Wi-Fi provision enabling customers to access internet in their home and Bluetooth capability. The Applicant states that they are unable to tender a directly comparable system as only Appello offers the desired functionality.
18. The Applicant includes within their submissions a “Housing 21 Negotiated Tender Report”. This report is undated and is signed by a Senior Building Surveyor with the provision for signature denoting approval by a Property Improvement Manager incomplete. The Tribunal therefore assumes the document is in draft form. This report includes background on the Applicant’s general approach to upgrading to digital alarm systems and details of a tender exercise carried out at the Applicant’s Oldham site. Three providers were considered at the Oldham site; Appello, Chubb and Tunstall, with each tender scored on a weighting of 60% for performance and 40% for price, Appello scored highest at 90.4%, with Chubb and Tunstall scoring 81% and 65.81% respectively. For the Oldham site, Appello were stated to be circa 18% more expensive than Chubb and Tunstall, however Appello were preferred due to providing a service more suited to Housing 21’s needs.
19. Within the tender report, the cost for the subject property, per apartment is assessed at £1,650+VAT (£1,980 including VAT) and is stated to be higher than recent quotations obtained at other sites by the Applicant at £1,541+VAT (£1,849 including VAT). A justification for that increase is provided based on the specific attributes of the subject property. However, as stated above, the Tribunal notes that on the assumption that there are 39 apartments, not 44, this analysis is assumed to be incorrect, skewing the stated cost lower than the actual cost per apartment. The final reasoning provided in the tender report is that Appello can deploy with immediate effect and will provide an interim wireless system to restore some telecare services.

### **The Respondent’s submissions**

20. The Respondents have not provided any submissions to the Tribunal and the Applicant has not informed The Tribunal of any objections raised by the Respondents to the Applicant.

## Determination

21. The Tribunal is being asked to exercise its discretion under section 20ZA of the Act. Section 20ZA (1) provides the Tribunal may do so where “*if satisfied that it is reasonable to dispense with the requirements*”.
22. The key issue for the Tribunal to consider is whether granting dispensation would result in prejudice to the Respondents. In the absence of any submissions from any Respondent objecting to the works or to the Application, or contending that granting the Application would result in prejudice, the Tribunal finds no evidence that the Respondents would suffer prejudice in the event that the Application for dispensation from the Consultation Requirements were granted.
23. The Applicant has set out their reasons for failing to comply with the Consultation Requirements and, they submit, have chosen to install the system to ensure that it meets the needs of the occupants of the Property and having specific regard to it being a supported living site.
24. On the basis of the written submissions provided and having regard to the nature of the Property and the works undertaken, the Tribunal grants dispensation from the Consultation Requirements imposed by Section 20 of the Landlord and Tenant Act 1985 and The Service Charges (Consultation Requirements) (England) Regulations 2003.
25. Nothing in this determination or order shall preclude consideration of whether the Applicants may recover by way of service charge from the Respondents any or all of the cost of the work undertaken or the costs of this application should a reference be received under Section 27A of the Landlord and Tenant Act 1985. We make no findings in that regard.

Signed: J Fraser  
Chair of the First-Tier Tribunal  
Date: 15<sup>th</sup> January 2024

## **Annex – List of Respondent Leaseholders**

1. Mrs Evelyn Wood
2. Mrs Doreen Key
3. Mr & Mrs Henderson
4. Mr & Mrs Howard
5. Dr P Welsh

### **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 to appeal 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 be 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 applications 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 rounds 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).