



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

**Case reference** : **BIR/00CN/LDC/2023/0014**

**Properties** : **13A Wye Cliff Road, Handsworth,  
Birmingham B20 3TA**

**Applicant** : **Midland Heart Ltd**

**Representative** : **None**

**Respondents** : **Ngoc Toi Nguyen & Jia Sing Cheong**

**Representative** : **None**

**Type of application** : **An application under section 20ZA of  
the Landlord and Tenant Act 1985 for  
dispensation of the consultation  
requirements.**

**Tribunal member** : **Judge C Goodall  
Mr V Ward BSc FRICS – Regional  
Surveyor**

**Date and place of  
hearing** : **Paper determination**

**Date of decision** : **20 December 2023**

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**DECISION**

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## **Background**

1. By an application dated 2 May 2023, the Applicant applied for an order dispensing with consultation obligations for works affecting the Property. The works were stated to be installation of a fire alarm and emergency lighting system along with a landlord's electricity supply and meter to run those systems.
2. The element of those works for which dispensation is requested is the award of a contract to National Grid via CCSS to provide an electrical supply and a landlord's meter to the building.
3. Directions were issued requiring the Applicant to send the respondent and the tribunal a statement explaining the purpose of the application, the nature of the works, and the reason why they are urgent. The Applicant did not respond to this direction until 12 October 2023.
4. The Respondent has not responded at all to the application. In its directions, the tribunal advised the Respondents that:

“If you fail to provide a statement, the Tribunal will assume you do not oppose the dispensation application.”
5. The tribunal has determined the application on the basis of the papers filed by the Applicant and without a hearing. This document sets out our decision and reasons.

## **The Property**

6. From a copy of the Respondent's lease which was supplied to us, it is apparent that 13 Wye Cliff Road is a single residential property on three floors divided into two flats. The Applicants own the ground floor flat themselves. The upstairs flat (no 13A) is on the first and second floors of the Property and it is let on a long term lease to the Respondents.

## **Rationale for the application**

7. In an email dated 12 October 2023, the Applicant advised the tribunal that:

“We have carried out a fire risk assessment and have identified that emergency lighting is required (as lighting can no longer be borrowed from external sources i.e. street lights). The decision to instal these systems is based on current legislation and guidance, namely British Standards BS5839P6:2019 and Local Authorities Coordinators of Regulatory Services (LACORS) & The Fire Safety Reform Order 2005 as such these works should commence at the very earliest opportunity.

The notice of intention to carry out the works has been served. We have also sent a letter explaining that we intend to apply for dispensation to permit us to award the contract to National Grid via CCSS as they are the

only contractor who can provide electrical supply and Landlords meter to the building. For the installation of the fire alarm and lights we will carry out the full Section 20 consultation, however we are requesting dispensation for the cost of the works to install the new electricity supply with National Grid.”

8. The tribunal asked for a copy of the fire risk assessment referred to, and an indication of the cost of the works for which dispensation was being applied for. We did not receive information on costs. We did receive a copy of a fire risk assessment dated 30 November 2023. It was clearly not the fire risk assessment referred to in the Applicant’s email of 12 October 2023. It states, in paragraphs 8.2 and 10.2, that emergency lighting and a new fire alarm system have already been installed.

## **Law**

9. The Landlord and Tenant Act 1985 (as amended) (“the Act”) imposes statutory controls over the amount of service charge that can be charged to long leaseholders. If a service charge is a “relevant cost” under section 18, then the costs incurred can only be taken into account in the service charge if they are reasonably incurred or works carried out are of a reasonable standard (section 19).
10. Section 20 imposes another control. It limits the leaseholder’s contribution towards a service charge to £250.00 for payments due for works on a building unless “consultation requirements” have been either complied with or dispensed with. There are thus two options for a person seeking to collect a service charge for works on a building costing more than £250.00. The two options are: comply with “consultation requirements” or obtain dispensation from them. Either option is available.
11. To comply with consultation requirements a person collecting a service charge has to follow procedures set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (see section 20ZA(4)). For qualifying works on a building, those procedures are set out in Schedule 4 of those regulations.
12. To obtain dispensation, an application has to be made to the Property Chamber of the First-tier Tribunal who may grant it if it is satisfied that it is reasonable to dispense with the consultation requirements (section 20ZA(1) of the Act).
13. The Tribunal’s role in an application under section 20ZA is therefore not to decide whether it would be reasonable to carry out the works, but to decide whether it would be reasonable to dispense with the consultation requirements.
14. The Supreme Court case of *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 (hereafter *Daejan*) sets out the current authoritative jurisprudence on section 20ZA. This case is binding on the

Tribunal. *Daejan* requires the Tribunal to focus on the extent to which the leaseholder would be prejudiced if the landlord did not consult under the consultation regulations. It is for the landlord to satisfy the Tribunal that it is reasonable to dispense with the consultation requirements; it is for the leaseholders to establish that there is some relevant prejudice which they would or might suffer, and for the landlord then to rebut that case.

15. The general approach to be adopted by the Tribunal, following *Daejan*, has been summarised in paragraph 17 of the judgement of His Honour Judge Stuart Bridge in *Aster Communities v Chapman* [2020] UKUT 0177 (LC) as follows:

“The exercise of the jurisdiction to dispense with the consultation requirements stands or falls on the issue of prejudice. If the tenants fail to establish prejudice, the tribunal must grant dispensation, and in such circumstances dispensation may well be unconditional, although the tribunal may impose a condition that the landlord pay any costs reasonably incurred by the tenants in resisting the application. If the tenants succeed in proving prejudice, the tribunal may refuse dispensation, even on robust conditions, although it is more likely that conditional dispensation will be granted, the conditions being set to compensate the tenants for the prejudice they have suffered.”

## **Discussion**

16. The information available to the tribunal is very limited. The Applicant says it wishes to instal a new fire alarms and emergency lighting system, and indeed it appears this work has already been completed.
17. The work for which dispensation has been requested is also limited; the Applicant says it will consult under section 20 on the works to instal the fire alarm and emergency lighting, but it seeks dispensation for the installation of a landlord’s electricity supply.
18. We are mindful that the only issue for us on a dispensation application is whether prejudice would arise to the Respondents if we were to grant dispensation. We cannot see that it would on the limited information available to us, and the Respondents, despite being warned of the likely effect of not responding to the Application, have not objected.
19. We therefore grant dispensation to the Applicants from the obligation to consult under section 20 of the Act on the proposal to instal a landlords electricity supply to the Property. This is a limited order, and does not permit the Applicants to charge the Respondents any service charge greater than £250.00 for installation of the fire alarm and emergency lighting system itself unless a full consultation took place under section 20 of the Act.
20. We have seen no material that establishes that the cost of any of the works undertaken by the Applicants was reasonably incurred. The Respondents

still have the right, despite this determination, to apply to the tribunal under section 27A of the Act, for a determination of whether any charges for the works are payable.

### **Appeal**

21. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall  
First-tier Tribunal (Property Chamber)