



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

Case reference : **BIR/OOCN/LDC/2023/0029**

Properties : **16 & 24 Lime Grove, Yardley,
Birmingham, B26 1BP**

Applicant : **Cygnets Property Management PLC**

Representative : **None**

Respondents : **Miss N Newby-King & Mr A Mahmood
(1)
Mr A Hussain (2)**

Representative : **None**

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

Tribunal members : **Judge C Goodall
Regional Surveyor V Ward, FRICS**

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

Date of decision : **13 February 2024**

DECISION

Background

1. The Applicant (through its agent, Midland Heart Ltd) has applied for a decision by this Tribunal that it may dispense with the consultation requirements contained in section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of works to the Property (“the Application”). These legal provisions are explained in more detail below.
2. The Applicant states that it is responsible for the maintenance of a private road serving Lime Grove, Yardley. They state that there are twelve leasehold flats and eight separate houses (so 20 properties) served by the private road.
3. The Applicant says that works are required to the street lighting on the private road as follows:-
 - Rewire 5 external lamp posts with all the ground works included;
 - Fit new LED heads on each of the 5 columns (“the Works”).
4. The Respondents are two of the twelve lessees in the flats at Lime Grove. No application for dispensation from consultation in respect of any other flat is being sought in this application, presumably because the Applicant either cannot or does not wish to make a demand for a service charge in respect of the Works from the owners/occupiers of the other flats. Although the Applicant has informed the Tribunal that the eight privately owned houses at Lime Grove also contribute to a service charge for the upkeep of the road, there is no application for dispensation in relation to any service charges intended to be demanded from the owners of those houses.
5. The Applicant would normally expect to recover a proportionate part of the costs incurred in carrying out the Works from the Respondents under the service charge provisions in their leases.
6. Unless there is full compliance with the consultation requirements, or a dispensation application is granted, the Applicant is prevented by law from recovering more than £250.00 from each Respondent. Therefore it has made the Application, which was dated 27 October 2023.
7. Directions were issued on 21 November 2023 requiring the Applicant to serve the Respondents with full details of the Works and explaining why it had decided to seek dispensation rather than carry out a full consultation.
8. The Respondents were all given an opportunity to respond to the Application and make their views known as to whether the Tribunal should grant it. Neither of them have responded. No oral hearing has been requested.

9. The Application has been referred to this Tribunal for determination. We consider the application is suitable for determination without a hearing or an inspection. This is the decision on the Application.

Law

10. The Landlord and Tenant Act 1985 (as amended) 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).
11. Section 20 imposes an additional control. It limits the leaseholder’s contribution towards a service charge to £250 for works, 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 the building or other premises costing more than £250. The two options are: comply with “consultation requirements” or obtain dispensation from them. Either option is available.
12. 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)). A full consultation may typically take 3 – 6 months.
13. To obtain dispensation, an application has to be made to this Tribunal. We may grant it if we are satisfied that it is reasonable to dispense with the consultation requirements (section 20ZA(1) of the Act).
14. 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 or enter into the long term agreement, but to decide whether it would be reasonable to dispense with the consultation requirements.
15. 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 leaseholders 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; if so, 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.
16. The Tribunal may impose conditions on the grant of dispensation. Commonly, a Tribunal might require that the landlord should pay the leaseholders costs of seeking dispensation.

17. 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.”

The Application

18. The Applicant’s agent served a Notice of Intention to carry out the Works dated 13 October 2023. The Works were described. The reason for carrying out the Works was stated to be that following a 5-yearly electrical check, the agent had been advised that the wiring to the existing lamp-posts had failed.
19. The Tribunal has been advised that due to safety concerns, the street lighting on Lime Grove has been turned off. A resident has raised a concern about safety at night-time as a result. The agent regards the carrying out of the Works as urgent accordingly.
20. On 25 October 2023, the Applicant’s agent advised the Respondents that it considered the works to be so urgent that it intended to apply for dispensation from consultation rather than complete the statutory consultation process.
21. Two estimates for the cost of the Works have been obtained; one from Open View quotes for the following works:

“To Trench to 5 lamp posts, duct and wire make good tarmac & block paving, replace lamp post heads (AONIXLED3PC_2023-10-09), replace distribution board.

Replacement of Lamppost Heads to the original columns staying back to DB location. This is inclusive of all 100m civils, cabling, back fill, waste removal and making good to tarmac surface to the satisfaction of Midland Heart.”
22. The price is £68,881.67 plus VAT.

23. The second quote is from CCSS Fire & Safety, The works quoted for are:

“...the re-cabing of 5 x times lamposts back to DB location. This is inclusive of all civils, cabling, back fill, waste removal and making good to tarmac surface.

The quotation also includes the replacement of 5 x LED lamp post heads.”

24. The price is £22,784.47 plus VAT.

25. No Respondent has objected to the Application.

Discussion and decision

26. The Tribunal accepts the rationale for making the Application. The grant of dispensation is likely to be at a lower cost and obtained more speedily than carrying out the processes of full compliance with section 20 of the Act. Neither Respondent appears to the Tribunal to have suffered or be likely to suffer any prejudice as a result of the grant of the Application.

27. We **determine** that the Application is granted. The Applicant may dispense with the consultation requirements contained in section 20 of the Act in respect of the carrying out of the Works.

28. This decision does not operate as a determination that any costs charged to any Respondent for the cost of the Works are or would be reasonably incurred. They may well have been, but that is an entirely different issue, and the Respondents are at liberty to challenge such costs under section 27A of the Act in the future should they wish.

29. The parties should also note that although a sample undated lease was provided, the Tribunal has not verified that the cost of the Works is chargeable under the service charge provisions in the Respondents leases.

Appeal

30. 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
Chair
First-tier Tribunal (Property Chamber)