



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

Case Reference : **MAN/00EQ/LDC/2023/0061**

Property : **Lea Court, Madeley, Crewe, Cheshire
CW3 9DN**

Applicant : **Housing 21**

Representative : **Gemma Hartshorn, Housing & Care
Manager**

Respondents : **Various Long Residential Leaseholders -
See Annex A**

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

Tribunal Member : **Judge J Holbrook**

Date of Decision : **19 February 2024**

DECISION

Application

1. Housing 21 applies to the Tribunal under Section 20ZA of the Landlord and Tenant Act 1985 (the Act) for dispensation from the consultation requirements of Section 20 of the Act and the Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987) in respect of Qualifying Works at the property. The qualifying works concern replacement of the emergency call system.
2. The Respondents are the Long Residential Leaseholders at the Properties and listed at Annex A to this decision.

Grounds and Submissions

3. The application to the Tribunal was received on 16 September 2023.
4. The Applicant is the landlord of the property.
5. The Tribunal did not carry out an inspection but understands from the papers that Lea Court consists of 63, 2 bedroomed apartments, which are a mixture of rented and leasehold properties that are purpose built for residents who receive extra care or have a support need.
6. On 30 November 2023, a Tribunal Legal Officer made directions requiring the service of documents by the Applicant upon each of the Respondents. The directions provided that in the absence of a request for a hearing the application would be determined upon the parties' written submissions.
7. The Applicant has provided a statement of case explaining why the application was made to the Tribunal together with supporting documents. It is summarised below.
8. The Applicant recognises that the telecoms infrastructure will change to a digital environment by 2025. Analogue systems installed now could become obsolete way in advance of their expected lifecycles. There is a corporate recognition of the need to move to a more reliable and contemporary service.
9. Due to the increasing unreliability to the emergency call system at Lea Court and the potential risks to the health and safety of residents, the Applicant decided that the system should be replaced as soon as possible.
10. The Applicant therefore explored the market to invest in a suitable digital system. 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 are a limited number of other digital systems that offer general functionality comparable to analogue systems, but they have limited health and safety features in comparison to the Appello system. Although there are a few systems that provide a digital service on site, no other provider supports a fully encrypted digital onsite and offsite pathway.

The Applicant has provided a detailed quotation from Appello Smart Living Solutions dated 30 November 2023. The gross price is £106, 191.18 which is £1,685.57 per unit. The installation rates have also been evaluated against another contractor who priced the installation of the digital installation and Appello were found to be more competitive. In addition, Appello are the only company able to supply a digital end to end solution.

11. On 3 January 2024, the Applicant held a consultation meeting at Lea Court. The agenda included:
 - PROPOSED START ONSITE & FORECAST COMPLETION
 - CONTRACTOR START & FINISH TIMES
 - WHAT TO EXPECT WHEN WORK STARTS ON COURT
 - IMPACT UPON THE COURT & RESIDENTS
 - QUESTIONS
12. The Tribunal did not receive any submissions from Respondent leaseholders. Neither the Applicant nor a Respondent requested a hearing.
13. The Tribunal therefore convened without the parties to make its determination on 19 February 2024.

Law

14. Section 18 of the Act defines “service charge” and “relevant costs”.
15. Section 19 of the Act limits the amount payable by the lessees to the extent that the charges are reasonably incurred.
16. Section 20 of the Act states:-
“Limitation of service charges: consultation requirements
Where this Section applies to any qualifying works..... the relevant contributions of tenants are limited..... Unless the consultation requirements have either:-
 - a. complied with in relation to the works or
 - b. dispensed with in relation to the works by a tribunal.This Section applies to qualifying works, if relevant costs incurred on carrying out the works exceed an appropriate amount”.
17. “The appropriate amount” is defined by regulation 6 of The Service Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations) as “..... an amount which results in the relevant contribution of any tenant being more than £250.00.”
18. Section 20ZA(1) of the Act states:-
"Where an application is made to a 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."

Tribunal's Conclusions with Reasons

19. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. The Tribunal began with a general review of the papers in order to decide whether the case could be dealt with properly without holding an oral hearing. Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed). None of the parties requested an oral hearing and having reviewed the papers, I am satisfied that this matter is suitable to be determined without a hearing.
20. Having considered the submissions made by the Applicant I accept that it is necessary and appropriate to replace an unreliable system with a more robust and contemporary system for the health and safety of the residents. The Applicant has informed the leaseholders about the works, albeit outside of the consultation requirements, and notified leaseholders of the application to the Tribunal giving the reasons why it believes the application is necessary.
21. The Supreme Court in the case of *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 set out detailed guidance as to the correct approach to the grant or refusal of dispensation of the consultation requirements. 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. *Daejan* confirms that the factual burden is on a tenant to identify any "relevant prejudice" which they claim they will or might have suffered. In this context "relative prejudice" means a disadvantage that they would not have suffered if the consultation requirements had been fully complied with, but which they will suffer if an unconditional dispensation is granted. After carefully considering all the evidence and noting that none of the leaseholders has indicated to the Tribunal any objection to the application, I have not identified any relevant prejudice to the leaseholders, and I am therefore satisfied that it is reasonable to dispense with the consultation requirements unconditionally.

It is not necessary to consider at this stage the extent of any service charges that may result from the works payable under the terms of the Respondents' leases. Dispensation from the consultation requirements does not imply that any resulting service charge is reasonable. The leaseholders retain the ability to make an application the Tribunal should they wish to challenge the costs of the works in the future.

Order

23. The Applicant is dispensed from complying with the consultation requirements in respect of the works specified in the application.

Judge J Holbrook
19 February 2024

Annex A – List of Respondents

1. Mr & Mrs Durham
2. Kathleen Powner
3. Ann Kiely
4. Margaret Worrall
5. Mr & Mrs Stanier
6. Patricia Phillips
7. Jean Weaver
8. Dave & Cathy Wright
9. Lucy Dale
10. Gary Thorpe
11. Dave & Nina Hale
12. June Beeston
13. Elizabeth Morrell
14. Martin Sadler
15. Elizabeth Humphries
16. Mary Corfield
17. Carol Nixen
18. Peter Hogan
19. Doreen Wrigley
20. Irene Wilson
21. Anne Edwards
22. Ida Morris
23. Margaret Baines
24. Pat Byrne
25. Dorothy Richardson
26. Christine Hutchins
27. Audrey Park
28. Mrs Fayers
29. June Potter
30. Terrance Greatbatch
31. Mr & Mrs Tucker
32. Doris Sutton
33. Bryan & Cynthia Hope
34. Elaine Lloyd
35. Graham Ikin
36. Joseph Pritchard

37. Violet Simon
38. Janet Allen
39. Jeanette Walley
40. Marjorie & Ray Hardy
41. Pat Parkes
42. Jean Jennings
43. Mr Fisher
44. Jean & Bob Perrin
45. Thalia Wright
46. Pamela Howe
47. John Preston
48. Robert Hilditch
49. Geoff Bosworth
50. Rita Whelan
51. Shelagh Robinson
52. Gordon & Gail Mackie
53. Dave & Edna Peake-Fives
54. Thelma Pile
55. Kathleen Platt
56. Raymond Birks
57. Dorothy Walker
58. Jill Goodwin
59. Dorothy Johnson
60. Peter Rixham
61. John Procter

