



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

Case Reference : **MAN/00BU/LDC/2023/0069**

Property : **Sandringham Court, London Road, Holmes Chapel, Cheshire CW4 7PL**

Applicant : **Sandringham Court RTM Company Limited**

Applicant's Representatives : **Premier Estates Ltd**

Respondents : **The Residential Long leaseholders referred to in the Schedule to this Decision**

Type of Application : **Landlord and Tenant Act 1985 – s 20ZA**

Tribunal Members : **Judge J.M.Going
J.Gallagher MRICS**

Date of Decision : **18 March 2024**

DECISION

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The Decision

Any remaining parts of the statutory consultation requirements relating to the new intercom system which have not been complied with are to be dispensed with.

Preliminary

1. By an Application dated 13 October 2023 (“the Application”) the Applicant applied to the First-Tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) under section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) for the dispensation of all or any of the consultation requirements provided for by section 20 of the 1985 Act in respect of works required to install a new warden and intercom system (“the new intercom system”) within the property (“Sandringham Court”).
2. The Tribunal issued Directions on 4 January 2024 confirming that it considered that the Application could be resolved on submission of written evidence leading to an early determination, but that any of the parties could request an oral hearing. None have done so.
3. The Directions also confirmed that any Respondent (“Apartment Owner”) who opposed the Application should, within the stated timescale, send to the Tribunal any statement they might wish to make in response. None have done so. The sole response has been a telephone call from one Apartment Owner seeking clarification of the process.
4. The Tribunal convened on 13 March 2024 to determine the Application.

The facts and background to the Application

5. Sandringham Court has not been inspected by the Tribunal but is described in the Application as a purpose-built residential development containing 18 self-contained one or two-bedroom apartments. The Tribunal has also been able to gain useful insights from Google’s Street view. It appears to have been built in the late 1980s.
6. The Applicant, acting through its managing agent Premier Estates Ltd (“Premier”) has provided various documents including copies of a sample lease (“the Lease”), letters, a Notice dated 24 January 2023 sent to each Apartment Owner and quotations from Apello Smart Connect dated 9 December 2022 with a price for the works of £24,917.16 excluding VAT, (which with VAT assumed to be at the standard rate would amount to £29,900.59) and from Incom dated 20 June 2023 for 15,242.75 plus VAT being £18,291.30.

7. It is understood, from the Lease, that each Apartment Owner owns an apartment under a 125-year term lease and is due to pay through the service charges a share of (inter alia) the costs of the Lessor's obligations to keep in a good and tenable state of repair ".....the audio emergency communications system in and upon the said building as are enjoyed or used by the Lessee in common with the owners or lessees of the other Apartments and other premises comprised in the said building" and to "supply provide purchase maintain renew replace repair and keep in good and serviceable order and condition the.... common television aerial emergency call system entrance door control system audio emergency communication system and any other mechanical devices which the Lessor may deem desirable or necessary for the general conduct management and security of the Reserved Property and all parts thereof".

8. The Lease also contains provisions limiting ownership to those over the state retirement age.

9. Premier has explained that a new warden and intercom system is required in the communal areas and apartments because of advice that:- "all telephone lines are upgrading to digital by 2025, and therefore the current system requires upgrading to digital in preparation for the switch. The warden call system is experiencing issues and will greatly benefit from an upgrade for the reassurance for safety of the residents.

On the 12 July 2022, we obtained one quotation from Incom Systems whom are our current contractor to install an Advent XT2 Warden Call & Combined door entry system. Another quotation was obtained from Lifeline for a Smart Connect System, and not the same system as Incoms.

We have contacted numerous contractors to query if they can quote for an Advent XT2 Warden Call & Combined door entry system, so that the quotation is comparable as per the Section 20 Consultation regulations but unfortunately, we have not been successful."

"...due to being unable to obtain a comparative quotation after contacting numerous companies, we have requested a Section 20 dispensation."

"The Warden Call system is a vital piece of equipment in the event that the residents require assistance."

"with the delays in obtaining comparable quotations due to inflation the quotation from Incom is increasing and.....we would like to prevent increased costs".

10. None of the evidence has been disputed, and none of the Apartment Owners have indicated to the Tribunal any objection to the Application.

The Law

11. Section 20 of the 1985 Act and the Service Charges (Consultation requirements) (England) Regulations 2003 (SI 2003/1987) ("the Regulations") specify detailed consultation requirements ("the consultation requirements") which if not complied with by a landlord, or dispensed with by the Tribunal, mean that a landlord cannot recover more than £250 from an individual tenant in respect of a set of qualifying works.

12. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord (or management company) to go through a 4-stage process: –

- Stage 1: Notice of intention to do the works

Written notice of its intention to carry out qualifying works must be given to each tenant and any tenants association, describing the works in general terms, or saying where and when a description may be inspected, stating the reasons for the works, inviting tenants to make observations and to nominate contractors from whom an estimate for carrying out the works should be sought, allowing at least 30 days. The Landlord must have regard to those observations.

- Stage 2: Estimates

The Landlord must seek estimates for the works, including from a nominee identified by any tenants or the association.

- Stage 3: Notices about estimates

The Landlord must supply tenants with a statement setting out, as regards at least 2 of those estimates, the amounts specified as the estimated cost of the proposed works, together with a summary of any individual observations made by tenants and its responses. Any nominee's estimate must be included. The Landlord must make all the estimates available for inspection. The statement must say where and when estimates may be inspected, and where and when observations can be sent, allowing at least 30 days. The Landlord must then have regard to such observations.

- Stage 4: Notification of reasons

The Landlord must give written notice to the tenants within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder, unless, either the chosen contractor submitted the lowest estimate, or is the tenants' nominee.

13. Section 20ZA(1) states that: –

“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.”

14. The Supreme Court in the case of *Daejan Investments Ltd v. Benson and others (2013) UK SC 14* set out detailed guidance as to the correct approach to the grant or refusal of dispensation of the consultation requirements, including confirming that: –

- The requirements are not a freestanding right or an end in themselves, but a means to the end of protecting tenants in relation to service charges;

- The purpose of the consultation requirements, which are part and parcel of a network of provisions, is to give practical support to ensure the tenants are protected from paying for inappropriate works or paying more than would be appropriate;

- In considering dispensation requests, the Tribunal should therefore focus on whether the tenants have been prejudiced in either respect by the failure of the landlord to comply with the requirements;

- The financial consequences to the landlord of not granting of dispensation are not a relevant factor, and neither is the nature of the landlord;
- The legal burden of proof in relation to dispensation applications is on the landlord throughout, but the factual burden of identifying some relevant prejudice is on the tenants;
- The more egregious the landlord's failure, the more readily a Tribunal would be likely to accept that tenants had suffered prejudice;
- Once the tenants have shown a credible case for prejudice the Tribunal should look to the landlord to rebut it and should be sympathetic to the tenants' case;
- The Tribunal has power to grant dispensation on appropriate terms, including a condition that the landlord pays the tenants' reasonable costs incurred in connection with the dispensation application;
- Insofar as tenants will suffer relevant prejudice, the Tribunal should, in the absence of some good reason to the contrary, effectively require a landlord to reduce the amount claimed to compensate the tenants fully for that prejudice.

The Tribunal's Reasons and Conclusions

15. The Tribunal began with a general review of the papers, to decide whether the case could be dealt with properly without holding an oral hearing. Rule 31 of its procedural rules permits this provided that the parties give their consent (or do not object when a paper determination is proposed).

16. None of the parties have requested an oral hearing and having reviewed the papers, the Tribunal is satisfied that this matter is suitable to be determined without a hearing. The documentation, which has not been challenged, provides clear and obvious evidence of the contents and the relevant facts, allowing conclusions to be properly reached in respect of the issues to be determined.

17. Before turning to a detailed analysis of the evidence, the Tribunal reminded itself of the following considerations: –

- The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements.
- In order to grant dispensation the Tribunal has to be satisfied only that it is reasonable to dispense with the requirements: it does not have to be satisfied that the landlord acted reasonably, although the landlord's actions may well have a bearing on its decision.
- The Application does not concern the issue of whether or not service charges will be reasonable or payable. The Apartment Owners retain the ability to challenge the costs of the additional works under section 27A of the 1985 Act.
- The consultation requirements are limited in their scope and do not tie the Applicant to follow any particular course of action suggested by the Apartment Owners, and nor is there an express requirement to have to accept the lowest quotation. As Lord Neuberger commented in *Daejan* "The requirements leave untouched the fact that it is the landlord who decides what

works need to be done, when they are to be done, who they are done by, and what amount is to be paid for them”.

- Albeit, as Lord Wilson in his dissenting judgement in the same case also noted “What, however, the requirements recognize is surely the more significant factor that most if not all of that amount is likely to be recoverable from the tenant.”
- Experience shows that the consultation requirements inevitably, if fully complied with, take a number of months to work through, even in the simplest cases.
- The Office of the Deputy Prime Minister in a consultation paper published in 2002 prior to the making of the regulations explained “the dispensation procedure is intended to cover situations where consultation was not practicable (e.g. for emergency works)....”

18. Applying the principles set out in *Daejan* the Tribunal has focused on the extent, if any, to which the Apartment Owners have been or would be prejudiced by a failure by the Applicant to complete its compliance with the consultation requirements.

19. As the Upper Tribunal has made clear in the case of *Wynne v Yates [2021] UKUT 278 (LC) 2021* there must be some prejudice to the Apartment Owners beyond the obvious facts of not having been consulted, or of having to contribute towards the costs of works.

20. The Tribunal finds no evidence of any actual or relevant prejudice to the Apartment Owners: there is no evidence that any dispute or have disputed the need for the new intercom system; it is clear that they have been made aware of the issue for a considerable time and have received a Stage 1 notice; they have had ample opportunity to make observations or nominate alternative suppliers, but there is no evidence that any felt the need to do so; it is also noted that estimates have been obtained and published.

21. In the absence of any objections to the Application and having regard to the steps that have been taken, the Tribunal has concluded that the Apartment Owners will not be prejudiced by dispensation being granted.

22. The Tribunal is therefore satisfied that it is reasonable to dispense with the consultation requirements.

23. Nevertheless, and as has been confirmed, this Decision relates solely to the Application. Nothing within it, should be taken as an indication that the Tribunal considers that any service charge costs relating to the new intercom system are reasonable or indeed payable or, removes the parties’ right to make a further application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 in respect of such matters, should they feel it appropriate.

Tribunal Judge
JM Going 18 March 2024

**The Schedule hereinbefore referred to
The Residential Long Leaseholders**

The Estate of Mr Keith Gray
The Estate of Mrs AJ Ford
Ms Kathryn Waddington
Mr Edward Rucker
Ms Joan Keelty and the Estate of Mr Thomas Keelty
Mr R Hellings and the Estate of Mrs M Hellings
Mr & Mrs Higham
Mr & Mrs Atherton
Mrs B Beagan & Ms J Charles & Mr G Rooney
Mr John J Woods
Mr David Smith
Mr DE Smith
Mr John B Adams
Mr & Mrs O'Brien
Mr & Mrs P Griffiths
Mrs Christine M Rimmer
Mrs Gillis
Ms Barbara A Burton