



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

**Case Reference** : **BIR/OOCN/LDC/2024/0006**

**Property** : **1-68 Warwick Crest  
Arthur Road  
Edgbaston  
Birmingham  
B15 2LH**

**Applicant** : **Warwick Crest Ltd**

**Applicant's  
Representative** : **Cannon Jones  
(Dale Jones)**

**Respondents** : **The Various leaseholders of 1-68  
Warwick Crest  
Edgbaston  
Birmingham  
B15 2LH**

**Type of Application** : **An Application for the dispensation of all  
or any of the Consultation  
Requirements provided for by Section  
20ZA of the Landlord & Tenant Act  
1985**

**Tribunal Members** : **Mr G S Freckelton FRICS (Chairman)  
Mr V Ward FRICS (Regional Surveyor)**

**Date of Hearing** : **19<sup>th</sup> August 2024**

**Type of Hearing** : **Paper Determination**

**Date of Decision** : **19<sup>th</sup> August 2024**

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**DECISION**

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## **Background**

1. By Application dated 9<sup>th</sup> February 2024, the Applicant, through its Managing Agent, Canon Jones, applied to the Tribunal for Dispensation from the Consultation Requirements imposed by Section 20 of the Landlord & Tenant Act 1985 ('the Act') and the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of the property known as 1-68 Warwick Crest, Arthur Road, Edgbaston, Birmingham, B15 2LH.
2. The Application requested that the matter be dealt with on the Standard Track as the works had already been completed. It was considered that a paper determination would be appropriate. The Tribunal issued Directions dated 29<sup>th</sup> April 2024.

## **The Facts**

3. The property at Warwick Crest, Arthur Road, Edgbaston, Birmingham, B15 2LH is understood to comprise of a block of sixty-eight, purpose-built self-contained flats over seventeen floors.
4. The Applicant in this case is the freeholder, represented by Canon Jones who manage the property and the Respondents are the various long leaseholders of the flats.
5. By way of clarification the application also confirms that 52 of the 68 leaseholders collectively enfranchised and formed Warwick Crest Ltd.
6. The Tribunal has been provided with a draft copy of the lease in respect of one of the flats (24 Warwick Crest) and understands that all the leases are in an identical form. The Tribunal also understands that there is no dispute between the parties that the works required are the responsibility of the Applicant and that the various Respondents contribute towards the cost through the service charge.
7. Clause 3 of the lease provides for the Lessor to carry out the necessary maintenance works and Schedule 6 provides for the leaseholders to pay a service charge in respect of the works detailed in Schedule 4. Clause 6 of Schedule 7 provides that the Landlord will:  
  
*... do all such acts and things as are set out in Schedule 4 and for which the Landlord's expenses are required and in particular to maintain and repair the Common Parts.*
8. Schedule 4 defines the Landlord's Expenses as:  
  
*...all sums required or estimated by the Landlord's Surveyor to be required ..... or to carry out .... any painting maintenance repairs renewals improvements innovations ..... in relation to the Buildings...*
9. The Tribunal has not carried out an inspection of the property and the matter has therefore been determined on the papers provided to it by the parties. However, the Tribunal has inspected the exterior of the property on a satellite image.
10. According to the Application, work is required to install a Grade D LD2 fire alarm in accordance with BS5839 pt 6.

11. The Applicant states that an external façade survey was carried out by FR Consultants Limited, Abbey House, Premier Way, Romsey, SO51 9AQ dated 22<sup>nd</sup> June 2023 and that the property had a B2 EWS rating. Furthermore, a Fire Risk Appraisal of the external walls has been carried out and the fire engineer has confirmed that alternative measures of remediation are available to the property.
12. The alternative measures comprise: ‘...*the replacement of open vents that will not allow the passage of smoke or hot toxic gasses from externally into the internal envelope or upgrade the fire alarm system into every flat minimum Grade D LD2 in accordance with BS5839 pt 6*’.
13. The Applicant has therefore decided to install the fire alarm as recommended by the fire engineer being a Grade D LD2 fire alarm be installed in accordance with BS5839 pt 6 as this removes the need to carry out any other works to the external fabric of the building.
14. In addition to the above, West Midlands Fire Service had carried out an inspection of the building and requested that a Waking Watch be put in place. The estimated cost of this is expected to be in the region of £5,000.00 plus VAT per week.
15. In view of the above advice the application confirms that Warwick Crest Ltd have instructed Fire Compliance Services, Unit 7, The Courtyard, Roman Way, Coleshill, Birmingham, B46 1HQ to install the Grade D LD2 fire alarm system to prevent Waking Watch costs being incurred and payable by all leaseholders. A copy invoice for the work, dated 2<sup>nd</sup> April 2024 in the sum of £82,815.60 inclusive of VAT has been provided to the Tribunal.
16. Following completion of the works FR Consultants Limited provided an External Wall Fire Review (Form EWS1) dated 15<sup>th</sup> March 2024 confirming that in their view the property now has a B2 rating and that ‘*the fire risk is sufficiently low that no remedial works are required*’. The Tribunal therefore concludes that the installation of the fire alarm system has resolved the deficiency previously noted in the building.
17. The Applicant confirms that it wrote to all the leaseholders on 7<sup>th</sup> February 2024 to notify them that it was the intention of Warwick Crest Ltd to install the fire alarm at short notice and without consultation.
18. The Application confirms that the Applicant seeks dispensation from all of the consultation requirements of the Act.
19. The Applicant submits that although it has not commenced the consultation process all the Respondent leaseholders are aware of the proposed works. This is evidenced by the letters sent to the various leaseholders by the Applicant on 7<sup>th</sup> February 2024.
20. The Directions issued by the Tribunal directed the Applicant to send to all the leaseholders a form which the Tribunal had requested each leaseholder to complete and return to it no later than 19<sup>th</sup> June 2024. This form asked the parties to confirm to the Tribunal whether or not they (a) supported the application for dispensation from full consultation for the works and; (b) agreed that the Tribunal may decide the matter on the basis of written representation only (no hearing).

21. The form also confirmed to the leaseholders that if they failed to return the form, the Tribunal would assume that the individual leaseholders did not oppose the dispensation application.
22. Responses were received from the owners of 16 Warwick Crest, 26 Warwick Crest and 44 Warwick Crest. All three responses confirmed support for the application. The responses from 26 and 44 Warwick Crest also confirmed their agreement to the Tribunal deciding the matter on the basis of written representations only (no hearing). The response from 16 Warwick Crest expressed no preference in respect of a hearing or written representations.
23. The Tribunal understands, based on the Application and the Applicant's submission that the Application for Dispensation is sought on the following grounds:
  - a) Warwick Crest Ltd commissioned FRC fire engineers to carry out a review of the PAS 9980:2022 and they confirmed that alternative measures of remediation were a possibility, which would improve the EWS rating from B2 to B1.
  - b) The most cost-effective and practical alternative measure was to install a Grade D LD2 fire alarm system to each property in accordance with BS5839 pt 6.
  - c) Contractors were invited to quote for installing a fire alarm system throughout Warwick Crest and it was Warwick Crest Ltd's intention to undertake the Section 20 consultation.
  - d) West Midlands Fire Service contacted Warwick Crest Ltd and demanded interim measures be implemented at Warwick Crest such as a Waking Watch until the fire alarm system was installed.
  - e) The cost of the Waking Watch was likely to be in the region of £5,000.00 (plus VAT) per week and it was therefore decided to proceed with the fire alarm installation without consultation to allow the fire alarm to be installed immediately and save the owners incurring significant Waking Watch costs.
24. The Tribunal infers from the submissions that if the full consultation process had been undertaken, the delay could result in considerable financial cost to the leaseholders due to the cost of the Waking Watch.
25. The Tribunal notes that the leaseholders have all been informed and had an opportunity to comment on the proposed works and costs but no observations objecting to the proposed works were received. The Tribunal has received three responses supporting the application and therefore infers that none of the remaining leaseholders are opposed to the proposed works and that they all support them.

## **The Law**

26. Where a landlord proposes to carry out qualifying works, which will result in a charge being levied upon a leaseholder of more than £250.00, the landlord is required to comply with the provisions of Section 20 of the Landlord & Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.
27. Failure to comply with the Regulations will result in the landlord being restricted to recovery of £250.00 from each of the leaseholders unless he obtains a dispensation from a Leasehold Valuation Tribunal under Section 20ZA of the Act, (now the (First-tier Tribunal) (Property Chamber)).

28. In deciding whether or not to grant dispensation, the Tribunal is entitled to take into account all the circumstances in deciding whether or not it would be reasonable to grant dispensation. An application to grant dispensation may be made before or after the commencement of the works.

### **The Tribunal's Decision**

29. It is evident to the Tribunal that the work was urgent. The condition of the façade is such that either a Waking Watch needed to be implemented immediately or a suitable fire alarm system needed to be installed.
30. It is also evident to the Tribunal that if the full consultation process had been followed then the works would have been delayed which would have resulted in considerable cost of a Waking Watch, to the leaseholders.
31. The Tribunal is satisfied on the information provided that it is reasonable to dispense with the consultation requirements in this case. The Tribunal is satisfied that the leaseholders will not suffer (or have not suffered) any prejudice by the failure to consult. Indeed, they would, in the Tribunal's view, be significantly prejudiced if the work was delayed.
32. The Tribunal is satisfied that the works appear comprehensive and that if properly completed as advised by the fire engineer and West Midlands Fire Service, the alarm system should resolve the problem.
33. The Tribunal is also influenced by the fact that none of the Respondents have made any submission to the Applicant or, more importantly to the Tribunal opposing the Application.
34. Accordingly, the Tribunal grants the dispensation requested under Section 20ZA and determines accordingly.
35. This Determination does not give or imply any judgement about the reasonableness of the works to be undertaken or the cost of such works.

### **APPEAL**

36. 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.

G S Freckelton FRICS.  
Chairman.  
First-tier Tribunal (Property Chamber)