



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

**Case Reference** : **CAM/00JA/LDC/2024/0034**

**Properties** : **Various Shared Ownership Properties in  
Cambridgeshire, Northamptonshire and  
Buckinghamshire**

**Applicants** : **The Hyde Group**

**Respondents** : **Various Shared Ownership Leaseholders of  
properties listed in the Schedule at Annex 1**

**Type of Application** : **To dispense with the consultation  
requirements referred to in Section 20 of the  
Landlord and Tenant Act 1985 pursuant to  
Section 20ZA**

**Tribunal** : **Judge JR Morris**

**Date of Application** : **5<sup>th</sup> June 2024**  
**Date of Directions** : **15<sup>th</sup> July 2024**  
**Date of Decision** : **10<sup>th</sup> September 2024**

---

**DECISION**

---

© CROWN COPYRIGHT

**Decision**

1. The Tribunal determines that it is reasonable to dispense with compliance with Schedule 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) regarding the Applicant entering into a long-term qualifying agreement for the provision of buildings insurance.

## **Reasons**

### **The Application**

1. An Application for retrospective dispensation from the section 20 consultation requirements in respect of a qualifying long-term agreement for buildings insurance was received on 5 June 2024. The Application Form states that consultation was carried out with the majority of the shared ownership leaseholders but 1,311 leasehold houses were missed out by mistake. The lease provided with the application requires the landlord to insure the property and the cost of that insurance to be recovered from the tenant as part of the service charge. Unless dispensation is granted by a tribunal, the amount the landlord can recover from those properties where no consultation was carried out will be limited to £100 per year. The only issue for a tribunal is whether it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be reasonable or payable.
2. Directions were issued on 15 July 2024 stating that the Tribunal would decide the matter based on written representations, unless either party makes a request for an oral hearing by 19 August 2024. No request was received. The Directions also required the Applicant Landlord to send to each of the leaseholders, by hand delivery or by first-class post and email if known, copies of the application form (excluding any list of respondents' names and contact addresses) and a copy of the directions by 31 July 2024 and write to the Tribunal to confirm that this had been done by 5 August 2024. Those leaseholders who opposed the application were to complete a reply form attached to the Directions and send it to the Tribunal by 19 August 2024; and send to the Landlord a statement in response to the application. The Applicant confirmed it had carried out the Directions on 29<sup>th</sup> July 2024. None of the Respondent Leaseholders to this Application opposed the Application.
3. The Applicant provided a Statement of Case in which it was stated that the Applicant is the freeholder of the properties listed in Annex 1 to this Decision and is a not-for-profit private registered provider of social housing. The Applicant looks to recoup the cost of management of its portfolio of 15,000 leasehold properties via the service charges it collects under the leases of those properties. As a not-for-profit registered social landlord, any monies it cannot recoup affect its service provision elsewhere. As a result, any order that the Applicant cannot recover costs it has incurred will be detrimental to the Applicant and its social and affordable housing tenants. The Applicant's properties are situated over a wide area and has made a successful dispensation application for its properties in Surrey Kent, Hampshire, and West Sussex. This Application only relates to those in Cambridgeshire, Northamptonshire, and Buckinghamshire upon whom the section 20 consultation documents were not served.

4. The Applicant provided a copy of a sample Lease and identified the relevant passages as follows:
5. By clause 4.2 taken from one of the sample leases of the relevant properties (11 Jubilee Gardens, Rushden, NN10 0NS), the Applicant covenanted:  
 “At all times during the Term (unless such insurance shall be cancelled, invalidated or revoked by any act or default of the Leaseholder) to keep the Premises insured against loss or damage by fire and such other risks as the Landlord may from time to time reasonably determine having due regard to the UK Finance Mortgage Lenders' Handbook (or such replacement publication) requirements from time to time or that the Leaseholder or the Leaseholder's mortgagee may reasonably require in some insurance office of repute to its full reinstatement value (including all professional fees in connection with any reinstatement and two years' loss of rent) and whenever required will produce to the Leaseholder copies of the insurance policy and the receipt for the last premium and will in the event of the Premises being damaged or destroyed by fire or other risks covered by such insurance as soon as reasonably practicable make a claim against the insurers and lay out the insurance monies in the repair, rebuilding or reinstatement of the Premises.”
6. By Clause 3 (2) (b) and Clause 6 the lessees covenanted with the Landlord to pay the Service Charge during the Term by equal payments in advance at the times at which and in the manner in which rent is paid under the lease .....
7. The Service Charge in the lease is defined in the particulars of the sample lease as the specified proportion of the service provision. The specified proportion is defined in the lease particulars as "a fair and reasonable proportion to be determined by the landlord from time to time.
8. By clause 6(5) of the lease:  
 “The relevant expenditure to be included in the Service Provision shall comprise all expenditure reasonably incurred by the Landlord In connection with the repair, management, maintenance and provision of services for the Estate and shall include (without prejudice to the generality of the foregoing):  
 (a) the costs of and incidental to the performance of the Landlord's covenants contained in clause 4.2 (Insure) and clause 4.3 (repair maintain renew communal facilities).”

## **The Law**

9. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to long term qualifying contracts (contracts for more than 12 months) if the relevant costs incurred exceed an amount which results in the relevant contribution of any tenant being more than £100.

10. The consultation provisions appropriate to the present case are set out in Schedule 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations).
11. Section 20ZA allows a Landlord to seek dispensation from these requirements, as set out Annex 2 of this Decision and Reasons and this is an Application for such dispensation.

## **Submissions & Evidence**

12. The Applicant provided a witness statement from Mr Joe Pyner who is the Applicant's Service Charge Manager and was previously the Home Ownership Team Leader.
13. Mr Pyner said that the Applicant sought to enter a qualifying long-term agreement for building insurance for shared ownership houses of various sizes and bedroom numbers. The new building insurance agreement start date was 1 April 2024. All the properties were covered under a previous building insurance agreement, which has since come to an end. The buildings insurance contract covers the Applicant's portfolio and public notice is required as part of the procurement process. This contract exceeded the public notice value and therefore was subject to consultation under Schedule 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003. In accordance with section 20 of the Landlord and Tenant Act 1985 consultation was carried out with what were believed to be all affected lessees as follows:

### *(Stage 1)*

14. On 4 September 2023 a Notice of Intention to enter into a long-term qualifying agreement was issued (copy provided).
15. In response, the Applicant received several questions and observations from lessees, each of which was responded to, as evidenced in tabular form within the bundle. The findings of the consultation process were relayed to the procurement team and to the insurance manager, who were tasked with inviting tenders and selecting appropriate providers for inclusion within the Notice of Estimates.
16. Following required practice, tender documents were advertised through the 'Find a Tender' government portal, following which three tenders were received, with one firm later withdrawing their interest.

### *(Stage 2)*

17. On 20 February 2024 a Notice of Proposal to lessees which included details of the tender process, a summary of the observations to the Notice of Intention, and the Applicant's own scoring of the bids was issued (copy provided).

18. In response the Applicant received several further questions and observations from lessees, each of which was responded to, as evidenced in tabular form within the bundle (copy provided).
19. Buildings insurance cover was subsequently placed with Arthur J Gallagher Insurance Brokers Ltd with effect from 1 April 2024, building insurance and terrorism invoices and policy summary were provided.
20. Mr Pyner said that shortly after the completion of the consultation process it was found that in identifying the properties to which the section 20 procedure was to apply, all houses, both leasehold and freehold, had inadvertently been excluded from the mail merge spread sheet. Unlike the freehold houses, the Applicant is responsible for the building's insurance of the leasehold houses and so should have been included. As a result of this mistake 1,311 leasehold houses had not been included in the section 20 consultation process.
21. An application for retrospective dispensation was submitted to the Tribunal as soon as the error was found. In accordance with the Tribunal Directions dated 15 July 2024 all the Respondents were sent copies of the application form (excluding any list of respondents' names and contact addresses) and a copy of the directions by 29 July 2024. No response was received from the relevant leaseholders.

## **Findings**

22. The Tribunal found that the Applicant undertook a fully compliant statutory consultation in respect of all lessees except for those who are party to the applications for dispensation. In accordance with its statutory obligations, it responded to all the observations and questions raised by those lessees who were consulted and undertook a proper and appropriate procurement process having offered the contract through a government portal.
23. The Tribunal found that it was the intention of the Applicant to consult all the leaseholders and that the omission regarding the Respondents was due to an error which it sought to remedy as soon as it was discovered.
24. The Tribunal found that the Respondents have not identified any relevant prejudice which they might suffer if dispensation were granted.

## **Decision**

25. In making its decision the Tribunal had regard to the decision of the Supreme Court in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14. In summary, the Supreme Court noted the following:

- 1) The main question for the Tribunal whether the landlord's breach of the section 20 consultation requirements resulted in the leaseholders suffering real prejudice.
  - 2) The financial consequence to the landlord of not granting a dispensation is not a relevant factor.
  - 3) The nature of the landlord is not a relevant factor.
  - 4) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
  - 5) The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
  - 6) The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/ or legal fees) incurred in connection with the landlord's application under section 20ZA.
  - 7) The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
  - 8) The Supreme Court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
  - 9) The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
  - 10) Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
26. The Applicant having shown its intention to have consulted all the leaseholders and no relevant prejudice having been identified the Tribunal finds it reasonable, in accordance with Section 20ZA of the Landlord and Tenant Act, to grant unconditional retrospective dispensation from the consultation requirements of Section 20 of the Act in regard to the Applicant entering into a long-term qualifying agreement for the provision of buildings insurance.
27. In granting dispensation, the Tribunal makes no determination on whether the costs of the works are reasonable or payable. If any leaseholder wishes to challenge the reasonableness of the costs arising from the relevant works, then a separate application under Section 27A of the Landlord and Tenant Act 1985 should be made.

**Judge JR Morris**

### **Annex 1 – Properties of Respondent Leaseholders**

11, 12, & 14	Jubilee Gardens, Rushden, Northamptonshire NN10 0NS
93, 101, 103, & 105	Howards Way, Northampton, Northamptonshire NN3 6RL
58	Hillside Gardens, Townsend Road, Wittering, Peterborough, Cambridgeshire PE8 6DX
15, 17 & 46	Tyhurst, Middleton, Milton Keynes, Buckinghamshire MK10 9RR
6	Wheatfield Close, Headlands, Northampton, Northamptonshire NN3 6BW
5 & 7	Poulter Croft, Milton Keynes, Buckinghamshire MK10 9SY

### **Annex 2 – Rights of Appeal**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.