



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

Case reference : **MAN/ooCB/LDC/2024/0004**

Property : **Mendell Court, Mendell Close,
Bromborough, Wirral, CH62 7JP**

Applicant : **Housing 21**

Representative : **Nicola Elwick**

Respondent : **The Respondent's listed in the Appendix
to this Decision**

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 member : **Judge C Goodall**

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

Date of decision : **19 September 2024**

DECISION

Background

1. The Applicant 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 says that the required works are the replacement of the emergency call system at the Property (“the Works”).
3. The Applicant would normally expect to recover the costs incurred in carrying out the Works from the leaseholders at the Properties under the service charge provisions in their leases. In this case, there are 49 flats, of which 12 are shared ownership. The Tribunal has assumed that the Respondents are those leaseholders at the Property from whom a service charge can be collected to contribute towards the costs of the Works.
4. 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 15 January 2024.
5. Initial Directions were issued, but the Applicant then sought to withdraw the application, and then sought to withdraw the withdrawal. Eventually, Directions were re-issued on 3 July 2024 requiring the Applicant to serve all the Respondents with full details of the Works and explaining why it had decided to seek dispensation rather than carry out a full consultation.
6. 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.
7. The Tribunal has not received any response from any Respondent, and has been informed by the Applicant that it is not aware of any objection to the application for dispensation from consultation from any Respondent either.
8. The Application has been referred to the Tribunal for determination. This is the decision on the Application.

Law

9. 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).

10. 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 either 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.
11. 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)).
12. 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).
13. 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, but to decide whether it would be reasonable to dispense with the consultation requirements.
14. 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.
15. 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

16. In accordance with the Directions, the Applicant has supplied the Respondents with a suite of documents containing a rationale for the Works and attaching material specifying the nature of the replacement emergency call system and some financial quotes for the costs to be incurred.
17. The Applicant’s case is that the existing emergency call system at the Property has numerous faults resulting in the system breaking down on a number of occasions. Repairs are said to be difficult due to lack of availability of spare parts.
18. It is also inferred in the application that the existing system is an analogue system which risks obsolescence due to phasing out of analogue systems and their replacement with digital.
19. The documents supplied to the Respondents are reasonably detailed and comprehensive and do not need to be repeated in this determination.
20. No real explanation of the reason for preferring to seek dispensation rather than consult has been provided, but the Tribunal has been informed that informal consultation has been carried out with the Respondents in any event.
21. No Respondent has objected to the Application.

Discussion and decision

22. 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. No Respondent appears to the Tribunal to have suffered or be likely to suffer any prejudice as a result of the grant of the Application.
23. 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.
24. This decision does not operate as a determination that any costs charged to any Respondent for the costs of the Works are or would be reasonably incurred or that they are recoverable under the Respondents’ leases. They may well be, but these are entirely different issues from those under consideration in this determination. The Respondents’ rights to challenge such costs under section 27A of the Act in the future are unaffected by this determination.

Appeal

25. 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)

Appendix - Respondents

Name
Maureen Brammer
Ann Peck
Robert Styles
Edith Dolan
Ada Foulkes
Paul Janvier
Patricia Rendle
George Smart
Brian Gowland
Audrey Jones
Cyril Richard Dawson
Megan Owens