



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

Case Reference : **CAM/26UG/LDC/2024/0044**

Property : **Lea Springs, 14 Lower Luton Road,
Harpenden AL5 5FA**

Applicant : **Housing 21**
Representative : **Tracy Jones, Head of Extra Care South &
Humaira Rouman**

Respondent : **The Leaseholders at the Property as listed in
Annex 3**

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 : **19 July 2024**
Date of Directions : **6 September 2024**
Date of Decision : **14 October 2024**

DECISION

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Decision

1. The Tribunal is satisfied that it is reasonable to dispense with compliance with the consultation requirements of Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987).
2. The Applicant shall serve a copy of the Tribunal's decision on dispensation, together with the relevant appeal rights attached, to the Leaseholder and his Representative.

Reasons

The Application

3. On 8 July 2024 the Applicant applied for dispensation from the statutory consultation requirements in respect of qualifying works which are to replace an emergency call system. The Application is one of two applications received from the Applicant regarding the replacement of an emergency call system installed in sheltered housing. The second property is Lea Springs, 14 Lower Luton Road, Harpenden AL5 5FA. For the reasons given in the Submissions and Evidence Section the Applicant considers the need to replace the present call system in the two properties is now a matter of urgency.
4. The Property consists of 38 flats in total, it has 16 two bed flats and 22 one bed flats. The building has a ground floor, upper ground floor, first floor and second floor. There is a guest room located on second floor. 14 of the flats are held on long leases a copy of which was provided. The 14 Leaseholders are the Respondents in this Application. The total cost of the qualifying work was not provided but the Application indicates that the Applicant considers it to be likely to exceed the threshold of £250.00 per unit which requires the Applicant to consult the Leaseholders in accordance with the procedure required under section 20 of the Landlord and Tenant Act 1985.
5. Directions were issued on 6 September 2024 which stated that the Application would be determined on or after 14 August 2024 based on written representations and without an inspection, unless either party made a request for an oral hearing by 27 September. No request was received.
6. The Directions required the Applicant to send by 13 September 2024 to each of the Respondents, by hand delivery or by first class post and by email, if practicable copies of:
 - i. The application form without the list of leaseholders' names and addresses;
 - ii. The Directions;
 - iii. A clear concise description of the relevant works for which dispensation is sought;
 - iv. The estimate of the cost of the relevant works, including any professional fees and VAT;
 - v. Any other evidence relied upon; andTo file with the tribunal confirming that this had been done and stating the date on which this was done.
7. On 19 September 2024 the Applicant confirmed that this Direction had been complied with. No representations were received.

The Law

8. 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 qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.
9. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations are summarised in Annex 2 of this Decision and Reasons.
10. 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

11. The Applicant provided a bundle to the Tribunal which included:
 - A copy of the Lease,
 - The Application Form containing a Description of the Works, and
 - The Directions.
12. These together set out the Applicant's case as follows:
13. The relevant provisions of the Lease are:
 - a) Under Clause 5.6 the Landlord covenants to "provide the following services:
 - (a) employ a non-resident court manager for the general supervision of the Estate
 - (b) arrange for the answering of emergency calls"
 - b) Under Clause 7.1 the Leaseholders covenant to pay the Service Charge.
 - c) Under Clause 7.4 "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 Building and shall include the costs of and incidental to the performance of the Landlord's covenants contained in ...Clause 5.6".

14. The Applicant said that 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 is a limited number of other digital systems that offer general functionality comparable to the old analogue systems but have limited health and safety features in comparison to the Appello system.
15. Many telecare and fire alarm calls are still delivered using devices that transmit across the analogue UK telecommunications infrastructure. However, as with television services, the infrastructure is changing from analogue to digital. As a result, Internet Protocol will become the default communications method, meaning analogue telecare systems will soon no longer work. BT have already announced they will not be offering analogue services after 2020, with the total switch off concluding in 2025.
16. In addition to analogue systems becoming obsolete, they are becoming increasingly unreliable creating safety and reliability issues for residents. As a result, the Applicant has explored the market to ascertain what systems were digital ready, overcame existing health and safety issues and provided a good investment. Although there are a few systems that provide a digital service onsite, only the Appello Smart Living Solutions supports a fully encrypted digital onsite and offsite pathway. All aspects of the Appello connectivity are digital using Voice Over IP (VOIP) and the British Standard 388521-2 which is the BS for signalling alarm calls to the monitoring centre over digital networks. Other systems use elements of analogue to digital conversion technology to get alarm calls successfully delivered to monitoring centres but do not provide the safety enhancements seen in the Appello system.
17. A crucial requirement is ensuring the system is capable of handling simultaneous calls. Traditional analogue systems will only allow 1 call to be made at any one time with any subsequent calls forming a queue. In addition, if a fire alarm is activated traditional equipment may delay the fire call being received by the monitoring centre. Hybrid digital systems will allow 2 simultaneous calls, whereas the Appello system will allow unlimited calls raised and handled concurrently from any site. This is of particular importance on our Extra Care sites where up to 10,000 calls per month can be made from any one site. Having this capability is a significant enhancement in supporting the safety of residents.
18. Other relevant advancements provided by the Appello include:
 - 3 second connection speed to the monitoring centre
 - Application for functionality on personal devices
 - Flat to flat video calling
 - Wi-Fi provision enabling customers to access the internet in their home.
 - Bluetooth provision enabling accessories to be added to help with simple tasks like answering the door from their chair.

- An application to allow residents to use the system on a tablet from the comfort of their chair, whilst the main system is still mounted on the wall and permanently powered as the British Standards mandate.
19. To interconnect all the properties into a central system and achieve the same functionality, service, and assurance to all our residents, would not be possible with a hybrid of two separate systems onsite.
 20. At this stage of delivering the digital upgrade with Appello, we are unable to tender a directly comparable system as Appello are the only supplier a digital solution with the desired functionality.

Findings

21. The Tribunal was aware of the move from analogue to digital communications and the benefits that the latter can provide. Although this transition has been heralded for several years it is only relatively recently that analogue systems are becoming obsolete to the point that organisations are rapidly having to digitalise before the analogue is ‘switched off.’ The Tribunal therefore appreciates the urgency felt by the Applicant.
22. The Tribunal also appreciates the very significant benefits described in replacing the current call system by the one described. The Tribunal notes that the Applicant has identified a particular product that meets its requirements from what is in the knowledge and experience of the Tribunal a limited number of call systems.
23. Therefore, considering the pressing need to install a digital call system that meets the Applicant’s requirements and is, so far as possible, future proof, from a limited product market the Tribunal finds that the Leaseholders have not been prejudiced by the failure to carry out the consultation procedure.

Determination

24. 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.
25. The Tribunal is satisfied that it is reasonable to dispense with compliance with the consultation requirements of Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987).
 26. The Leaseholders should note that this is not an application to determine the reasonableness of the works or their cost. If, when the service charge demands in respect of these works are sent out, any Leaseholder objects to the cost or the reasonableness of the work or the way it was undertaken, an application can be made to this Tribunal under section 27A of the Act. A landlord can also seek a determination as to the reasonableness of the cost of the work.
 27. The Applicant shall serve a copy of the Tribunal's decision on dispensation, together with the relevant appeal rights attached, to all Leaseholders.

Judge JR Morris

Annex 1 – Right 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.

Annex 2 – The Law

1. 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 qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.
2. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations and are summarised as being in 4 stages as follows:

A Notice of Intention to carry out qualifying works must be served on all the tenants. The Notice must describe the works and give an opportunity for tenants to view the schedule of works to be carried out and invite observations to be made and the nomination of contractors with a time limit for responding of no less than 30 days. (Referred to in the 2003 Regulations as the “relevant period” and defined in Regulation 2.)

Estimates must be obtained from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

A Notice of the Landlord’s Proposals must be served on all tenants to whom an opportunity is given to view the estimates for the works to be carried out. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. (Also referred to as the “relevant period” and defined in Regulation 2.) This is for tenants to check that the works to be carried out are permitted under the Lease, conform to the schedule of works, are appropriately guaranteed, are likely to be best value (not necessarily the cheapest) and so on.

A Notice of Works must be given if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord must within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract and, where the tenants made

observations, to summarise those observations and set out the Landlord's response to them.

3. Section 20ZA allows a Landlord to seek dispensation from these requirements, as follows –
 - (1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
 - (2) In section 20 and this section—
"qualifying works" means works on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
 - (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
if it is an agreement of a description prescribed by the regulations, or in any circumstances so prescribed.
 - (4) to (7)... not relevant to this application.

Annex 3 – Leaseholders

Flat 4	Mrs Doreen Hardisty
Flat 11	Mr Peter Jeffreys
Flat 12	Mr Patrick Jarlath Kenny
Flat 13	Ms Helen Smith & Ms Marion Bracey
Flat 14	Mr Richard George Williams & Mrs Jo Williams
Flat 15	Mrs Ida Burgazzi
Flat 18	Mrs Maryan Greenfield
Flat 21	Mr Peter Haliday
Flat 22	Mr David Harvey Bisbrown-Lee & Mrs Ann Margaret Kay Bisbrown-Lee
Flat 24	Mrs Phyllis Hunt
Flat 25	Dr Gordon Garnham & Mrs Gllian Garnham
Flat 26	Mr Jack Wilson
Flat 28	Mrs Mary Edith Rich (deceased)
Flat 36	Mr Thomas Griffiths & Mrs Mary Eileen Griffiths