



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

**Case reference** : **BIR/17UF/LDC/2024/0017**

**Properties** : **Waltham House St Johns Street  
Wirksworth  
Derbyshire DE4 4DT**

**Applicant** : **Housing 21 (an industrial and provident  
society)**

**Representative** : **None**

**Respondents** : **The lessees of the Property as listed on  
the Schedule to this decision**

**Representatives** : **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  
Regional Surveyor V Ward FRICS**

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

**Date of decision** : **29 October 2024**

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**DECISION**

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## **Background**

1. Waltham House is a residential elderly living facility run by Housing 21 (“the Applicant”), which is an industrial and provident association. The facility contains 39 accommodation units which the Tribunal understands are one or two bed units. All are let on long leases, some on a shared equity basis. The lessees pay a service charge to cover the costs of providing service installations, including a telephone system allowing emergency calls.
2. On 20 June 2024, the Applicant 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 (“the Act”) and the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of a the carrying out of works at the Property loosely described as “replacement of the emergency call system” (“the Works”).
3. Directions were issued by the Tribunal on 8 July 2024 requiring the Applicant to provide all lessees by 24 July 2024 with a copy of the application for dispensation and the Directions, but crucially, also, a statement explaining the purpose of the application and the reason why dispensation was sought, and copies of any quotations relating to the Works.
4. The Directions allowed for all lessees to respond to the application for dispensation by completing a form (the Tribunal response form) and sending it to the Tribunal and the Applicant. The form allowed the lessees to indicate whether they consented or objected to the application, and whether they wished for the Tribunal to hold a hearing.
5. No request for a hearing was received. The Tribunal accordingly has determined the application on the basis of the written documentation received. This document sets out our decision and the reasons for it.

## **Law**

6. The Act 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). If not, a service charge payer can challenge those costs under section 27A of the Act.
7. Section 20 of the Act 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 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. There are

also restrictions on entering into long term agreements without consultation.

8. 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) of the Act). There are detailed procedures (including an obligation to seek competitive quotes) which normally take in the region of three months to complete.
9. 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).
10. 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.
11. 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.

## **Documents**

12. By the time the Tribunal determined the application, it had the following key documents, in addition to the application form. These were:
  - a. An undated written notification to the lessees from Gemma Hartshorn, Housing and Care Manager explaining the reason for the proposed Works, a copy of which was sent to the Tribunal on 17 October 2024;
  - b. A quotation for a new digital telecare system from Appello Smart Living Solutions Ltd dated 25 July 2024, also sent to the Tribunal on 17 October 2024;
  - c. Two completed tribunal response forms and two letters from Kathleen Henderson, a lessee at Waltham House.
13. We now summarise the written evidence available to the Tribunal.

*The application form*

14. The application form explained that no consultation was to be carried out under section 20 of the Landlord and Tenant Act 1985. In its explanation for applying for dispensation, the Applicant provided details of the Appello system and said that Appello are the only supplier of a digital solution for telephony systems with the desired functionality suitable for installation at the Property. We infer that the Applicant's case is that a full section 20 consultation requires the Applicant to obtain competitive quotations, and there are no direct competitors to the Appello system so full consultation is not possible.
15. The Appello system is particularly favoured because, the form says, it is a fully digital system, which is now required because of the changing landscape of the telecoms industry in which analogue systems are no longer supported. Appello 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 BS8521-2 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.
16. A crucial requirement is said to be ensuring the system is capable of handling simultaneous calls. Traditional analogue systems will only allow one 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 two simultaneous calls, whereas the Appello system will allow unlimited calls raised and handled concurrently from any site. Having this capability is a significant enhancement in supporting the safety of residents.
17. Other relevant advancements provided by the Appello system 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.

*The Explanatory letter*

18. Ms Hartshorn’s explanatory letter is undated, contains no address or other contact details for the sender, and is on one page of A4. She states that the current warden call system was increasingly unreliable, is failing more often and needs to be replaced to ensure the safety of the residents. It seems there had been previous quotes for works to the call system, as the letter refers to the inclusion with the letter of an “updated quote” for the Works, though no details were provided. It invites the recipients to email her by 19 August 2024 if any resident has any further concerns. She says that if there are no opposing residents, the Works will continue as planned.

*The Appello quote*

19. The Appello quote sets out in some detail the specification of the system they quote for, which contains at least the following features:
- 2 personal neck or wrist mounted receivers for each unit of accommodation
  - Remote monitoring of the system at a charge after a 12 month warranty period of £22.50 per dwelling plus VAT
  - A 7” video speech unit plus camera in each dwelling to raise alarm calls and accept video calls from door entry panels
  - Connection to the fire alarm system in each room
  - Connection to mechanical and electrical systems in the communal areas, including lifts and door entry systems
  - Interface with staff handsets to notify of fire system activation
  - Connections to an Alarm Receiving Centre
  - Door entry and access control system with provision of fobs for residents (2no per dwelling)
20. This summary cannot be relied upon for identification of all key features of the quote. The quote must be read in detail for a full understanding of the proposed system.
21. The summary price quoted is £64,044.25. VAT is not mentioned. Certain elements are excluded from the quoted figure (such as wi-fi network).
22. On page 2 of the quote, the following appears:
- “As requested, a price for conventional DECT system is shown to assist with your cost evaluation and for comparisons to historical sites.”
23. DECT stands for Digital Enhanced Cordless Telecommunications. It is clearly a digital system and a possible alternative system that might be

used for a warden call system. It is equally clearly a system that Appello could instal. The quoted cost for a DECT system is £9,404.02.

*Ms Henderson's letters and forms*

24. Ms Henderson's highly articulate letters and completed forms have provided the Tribunal with an insight into the process followed by the Applicant in seeking dispensation. They also provide helpful information about the general response of some lessees to the whole dispensation process. Her first letter is dated 30 July 2024. Particular points in the letter are:
- a. The Applicant did not comply with Direction 4(b), (c), (d), or (e) of the Directions by 24 July 2024;
  - b. Even provision of a copy of the Directions dated 8 July was delayed until 16 – 18 July 2024;
  - c. The need for a new warden call system had not been raised in the past year;
  - d. In 2022, a similar plan for replacement of the warden control system had been put forward by the Applicant, but it had been voted down by the lessees;
  - e. The Applicant's liaison and communications with the lessees has been poor in recent times due to not replacing a full time manager;
  - f. Most residents are in their 70's, 80's or 90's and feel they lack understanding of complex legal matters;
  - g. A meeting with residents was convened by the Applicant on 24 July 2024. Nineteen residents attended. Some may not have been lessees. A brochure about the Appello system was handed out to some residents. There was general approval of the idea of replacing the warden call system. Some residents asked who would pay for the new system. Ms Henderson tells us that the person running the meeting said she had been told to say that the full cost would come out of the Waltham House sinking fund. Some residents requested confirmation of that statement in writing. Ms Henderson was concerned about increasing service charge costs which she told us had increased by close to 100% over the last two years;
  - h. Ms Henderson confirmed she had received an email confirming that the costs would come from the sinking fund with new service charges to be decided in the new financial year. We have not been provided with a copy;
  - i. Mrs Henderson suggested that some residents did not support the dispensation application but were perturbed by the need to explain their reasons.

25. A tribunal response form signed by Ms Henderson and noted as received by the Tribunal on 5 August 2024 confirmed that she objected to the application for dispensation but did not ask for a hearing.
26. Ms Henderson wrote a second letter on 18 August 2024. In this letter:
  - a. She said that a letter had been delivered to her flat on 13 August 2024. This appears to be the Applicant's statement of reasons (see paragraph 18 above;
  - b. Whilst the Appello quote was dated 25 July 2024, it was only copied to her on 13 August 2024;
  - c. Standing by her original decision to object to the application for dispensation on the grounds that the documents required had not been provided to her in accordance with the Tribunal's wishes, but now having seen the documents, Ms Henderson said she had changed her mind and would now not object to the application. However, she said she remained worried about future service charge bills and asked that the Tribunal restrict the cost charged to the lessees because of their failures in the procedural requirements in this application.
27. A Tribunal response form dated 29 August 2024 confirmed that Ms Henderson now consented to the application for dispensation.
28. The Tribunal received an email from Mr R Tresidder (also a lessee) to the Tribunal in which he states that there is no need to consult anyway on the proposed works as consultation is only required if a cost exceeding £250.00 is payable. As he has been assured by the Applicant that the Works will incur no cost to the lessees, there is no need to consult.

### **Discussion and decision**

29. Whilst not referred to above, Ms Henderson referred in her letter of 30 July 2024 to a document she indicated might have come from the website of the Leasehold Advisory Service ("LEASE"), an independent organisation providing help and guidance on leasehold issues, and Tribunal applications to the Property Chamber in particular. Their guidance is not law, but it is helpful in explaining how the law works.
30. In paragraph 8 of LEASE guidance on "Section 20 Consultation for Private Landlords, Resident Management Companies and their Agents" the following paragraphs appear:

"The purpose of the Regulations is to ensure that lessees are protected from (a) paying for inappropriate works, or (b) paying more than would be appropriate. In considering dispensation requests, the Tribunal should focus on whether the lessees were prejudiced in either respect by the failure of the landlord to comply with the Regulations (relevant prejudice).

Where a landlord has failed to comply with the Regulations, there may often be a dispute as to whether the lessees would suffer relevant prejudice if an unconditional dispensation was granted. While the legal burden is on the landlord throughout, the factual burden of identifying some relevant prejudice is on the lessees. They have an obligation to identify what they would have said, given that their complaint is that they have been deprived of the opportunity to say it. Once the lessees have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it and should be sympathetic to the lessees' case."

31. The requirement upon the lessees to identify what they would have said if a full consultation process had occurred is key. But the crucial point for this case is that, in our view, the lessees can only identify any prejudice they may suffer from the proposal to carry out the works if they have been given sufficient information to fully understand what works are proposed and what the consequences for them of the carrying out of the works might be.
32. It is therefore incumbent upon the Applicant to explain (at least) why the Works are required, what alternatives were considered when deciding what works to carry out, and the consequences for the lessees. Only then would the lessees be able to assess whether they might be prejudiced by the failure to consult on the Works. Particularly when an application for dispensation has already started, it is also crucial for the Applicant to comply with the Tribunal's procedural requirements, as those are judicially designed to ensure a fair process.
33. It is clear to us that the Applicant has not met the requirements we consider apply as set out in the preceding paragraph.
34. We raise no particular concern about the need for the upgrading or replacement of the warden control system. That need was explained in the Information letter (though with no supporting evidence), but the Respondents would have some knowledge of the capabilities of the current system, and Ms Henderson's letters gave the impression that there was general approval of the proposal to replace the system.
35. There is an issue regarding adequacy of the explanation of the process of researching and selecting alternatives to the Appello system.
36. In the application form, the Applicant identified that there are other suppliers of digital systems. Clearly, the Applicant has explored the market and decided on the Appello system, but the whole point of consultation is that the consultees should understand that process and be permitted to comment on and suggest alternatives. In particular, it should have been apparent to the Applicant that the comparative costs of the undoubtedly high quality system from Appello with any alternatives might be a relevant and important issue upon which the Respondents might wish to comment. The Explanatory letter said nothing about the alternative solutions, yet the Appello quote specifically refers to an alternative that



might merit further exploration by the Respondents particularly bearing in mind the significant cost disparity between the two systems.

37. It is also highly significant to the Tribunal that some Respondents (most obviously Mr Tresidder, but the Tribunal suspects a number of others as Ms Henderson claimed) would have genuinely formed the view that Housing 21 was going to pay for the Works.
38. We do not accept that the Applicant would have paid for the Works. The cost would be borne by the Respondents.
39. It may well be that there is an adequate sinking fund in the Waltham House service charge account from which the cost of the Works can be settled without requiring the Respondents to send a cheque for their share. But the Applicant should, in our view, have been much more open about this. The sinking fund belongs to the Respondents, not the Applicant. Any monies taken from it reduce the credit balance owned by each Respondent and mean the sum taken is no longer available to meet any other liabilities. Whilst they may not have to part with cash, there is no doubt whatsoever that the Respondents are paying for the Works out of their own money. They may well be asked to increase their service charge in the future to replenish the sinking fund.
40. To that end, the Respondents need to be aware that they will each be paying their share of the expenditure on the Works – averaging at in excess of £1,600 each if all pay equal amounts.
41. We regard the assurance that “the costs would come from the sinking fund with new service charges to be decided in the new financial year” as disingenuous; this phrase disguises the real impact of the words used. To be clearer, these words could mean “the costs will be taken out of the money owned by the residents that is in the sinking fund, and in the new financial year, we may well increase the service charge to top up your funds in the sinking fund to the previous level”.
42. Finally, we address the procedural issues. Direction 4 of the Directions was clear. We accept Ms Henderson’s evidence that the Applicant failed to comply with those Directions. When writing the Directions, the Regional Surveyor considered that the Respondents should be given sufficient time to consider the papers he had directed should be provided to all Respondents by 24 July 2024, so he selected 7 August 2024 as the time limit for providing a Tribunal response form.
43. On the facts, Ms Hartshorn only provided the documents to Ms Henderson on 13 August 2024, and she decided to give Ms Henderson only 6 or 7 days to respond.
44. Rule 3(4) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 requires the parties to co-operate with the Tribunal. That must mean that the Applicant should not undermine the Tribunal’s procedures and arrogate to itself the right to change the effects of Directions to suit its own purposes.

45. For section 20ZA applications to work practically, applicants are nowadays often asked to perform administrative functions relating to distribution of documents and provision of information to respondents. There has to be a degree of trust on the part of the Tribunal that applicants comply with both the spirit and the letter of the Directions. Regrettably, in our view the Applicant has fallen short of the standard expected on this occasion.
46. In summary, our view is that:
- a. The information letter required from the Applicant did not adequately explain the reasons for the application to enable the Respondents to make an informed choice about whether to consent to or oppose the application for dispensation;
  - b. The Applicant disingenuously allowed the Respondents to believe, when it knew that this was not the case, that the costs of the Works would be borne by the Applicant;
  - c. The Applicant failed to comply with the clear Directions of the Tribunal in complying with the administrative requirements set out in the Directions.
47. We **determine** that the Application is refused on the grounds that the information provided to the Respondents, and the processes adopted by the Applicant when providing that information, did not allow the Respondents to properly assess the merits of the proposal to carry out the Works. This is a significant prejudice to the Respondents in this case (even though they have not voiced that prejudice).
48. The Applicant can of course start the application for dispensation process again. If it does so, it will no doubt pay greater attention to the explanatory documentation provided to the Respondents to ensure that they are able to make a fully informed decision on the application.
49. We would add that whilst the Tribunal can impose conditions on the grant of dispensation, that power would not, in our view, allow us to require the Applicant to charge a reduced amount to Respondents for the costs of the Works. We would therefore not have been able to grant Ms Henderson's request for us to limit the costs of the Works in the light of the Applicant's procedural failures. Any Respondent can challenge the costs they are charged through a service charge in any event by separate proceedings, as is clarified in paragraph 6 above.

## **Appeal**

50. 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)

<b>Schedule of Lessees</b>		
	<b>Lessee</b>	<b>Apartment No</b>
	Alison Clamp	1 Waltham House
	Michael Edge	10 Waltham House
	Mary Stewart Irvine	11 Waltham House
	Respite Apartment Derbyshire Soc. Care	12 Waltham House
	Philip Hartley	14 Waltham House
	Clive Wallis	15 Waltham House
	Elizabeth Griffiths	16 Waltham House
	Michael Gowdey	17 Waltham House
	Margaret Tooms	18 Waltham House
	Jeremy Bolton	19 Waltham House
	Kathleen Henderson	19 Waltham House
	Eileen Francis Gamble	2 Waltham House
	Janet Penrose	20 Waltham House
	Gerald Bolton	21 Waltham House
	Doreen Else	22 Waltham House
	Brenda and Barrie Bibby	23 Waltham House
	Wendy Prince	24 Waltham House
	James Kilbourne	25 Waltham House
	Robert Taylor	26 Waltham House
	Freda Taylor	26 Waltham House
	Ronald Washington	27 Waltham House
	Elizabeth Washington	27 Waltham House
	Janet Hudson	28 Waltham House
	June (Deceased) Roberts	29 Waltham House
	John Glyn Watson Roberts	29 Waltham House
	Moira Mackenzie	3 Waltham House
	Margaret Doreen Player	30 Waltham House
	Mary Sharrod (deceased)	31 Waltham House
	Susan Staley	31 Waltham House
	Jane and Robert Tressider	32 Waltham House
	Mary Elizabeth Dicker	33 Waltham House
	Audrey Norris	34 Waltham House
	Gillian Haslam	35 Waltham House
	Graham Taylor	36 Waltham House
	Norman William Ward	37 Waltham House
	Jon Ponsford	38 Waltham House
	Beryl Mary Cecelia Taylor	39 Waltham House
	Paul Greenhough	4 Waltham House
	Catherine Phillips	40 Waltham House
	Peter Anthony Wadsworth	5 Waltham House
	Respite Apartment Derbyshire Soc. Care	6 Waltham House
	Nigel Livesey	7 Waltham House
	Sidney Herbert Keeling	8 Waltham House
	Agnes Rooney	9 Waltham House

