FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**BIR/OOCN/LDC/2024/0013**
Properties	**:**	**Saxon Court, 300 Turves Green, Birmingham, B31 4BY**
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		**30 December 2024**

DECISION

Background

1. Saxon Court is a residential elderly living facility run by Housing 21 ("the Applicant"), which is an industrial and provident association. The facility contains 87 flats and 8 bungalows all with 2 bedrooms for people over the age of 55 with an on-site care provider. The Tribunal assumes that 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 warden call telephone system allowing emergency calls.

2. 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 ("the Act") and the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations") in respect of the carrying out of works at the Property loosely described as "replace the emergency call system". The intention is to instal an Appello Smart Living Solutions system ("the Works").

3. The full rationale for the carrying out of the Works is:

   "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. In addition to analogue systems becoming obsolete, legacy systems are becoming increasingly unreliable.

   Housing 21 have recognised the safety and reliability issues created for residents because of this transition and since 2016 have taken a proactive stance to ensure that our systems are digital ready. We also wanted to ensure that the investment delivered suitable, fit for purpose systems that overcame existing legacy health and safety issues that affects emergency call systems. We therefore explored the market to ascertain what systems were available to achieve these requirements.

   Although there a few systems that provide a digital service onsite, no other provider [apart from 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."

4. Directions were issued by the Tribunal on 21 June 2024 requiring the Applicant to provide all lessees by 19 July 2024 with a copy of the application for dispensation, a statement explaining the purpose of the

application and the reason why dispensation is sought, and the Directions, and copies of any quotations relating to the Works.

5. 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.

6. 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

7. 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). It not, a service charge payer can challenge those costs under section 27A of the Act.

8. 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.

9. To comply with consultation requirements a person collecting a service charge has to follow procedures set out in the Regulations (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.

10. 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).

11. 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.

12. 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

13. By the time the Tribunal determined the application, it had the following key documents, in addition to the application form. These were:

    a. A short explanation of the reason for the carrying out of the Works from the Regional Extra Care Manager dated 1 July 2024 stating that the new warden call system was being installed because of breakdowns the previous system was experiencing and the risk to residents from not having a fully operational system in place;

    b. An invoice dated 24 July 2024 from Appello Smart Living Systems Ltd for £167,238.46 plus VAT;

    c. A certificate from a Contract Administrator on behalf of the Applicant authorising payment of the above invoice;

    d. Twelve completed tribunal response forms from lessees at Saxon Court agreeing to the application for dispensation.

Discussion and decision

14. The Tribunal accepts that it is reasonable to make 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.

15. We therefore need to consider whether there is any prejudice to the Respondents arising from the use of the dispensation route to consultation rather than the fuller statutory procedures under the Regulations, which would have provided the opportunity to make representations suggesting alternatives to the Appello system, or alternative suppliers of similar systems.

16. No Respondent has claimed to have suffered or be likely to suffer any prejudice as a result of the grant of the Application. No objections to the application have been received by the Tribunal.

17. We note that the Works were carried out in around July 2024 and no Respondent has contacted the Tribunal since then.

18. 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.

19. This decision does not operate as a determination that any costs charged to any Respondent for the Works are or would be reasonably incurred. They may well have been, but that is an entirely different issue, and Respondents remain at liberty to challenge such costs under section 27A of the Act in the future should they wish.

Appeal

20. 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)

SCHEDULE
The Respondents

Ruby Doley
Patricia Allen
Barbara Gulliver
Lillian Mitten
Paulie Barlow
Annie Russell
Linda Bignell
Tina Helfrich & Judith Jenner
Mrs Edge
Janet Goodman
Elizabeth Wilkes
Elizabeth Donaghue
Lavinia Wilson
Elaine Hughes
Margaret Turner
Lorraine Buffery
Alan & Jane Pendergast
Ivy & Phillip Burley
Freda McMahon
Alma Hand
Barbara Packer
Pauline Hartley
Susan & Robert Poller
Jean Pugh
Janet Bardell
Anne McCarthy
George Brookes
John Wester
Roderick Keefe
Ina Hendrickson-Brown