



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

Case Reference : **BIR/00FY/LDC/2021/0010**

Property : **Flats 1-24 (excl 13) plus Unit 32 The Wedge,
Vernon Road, Nottingham, NG6 0AU**

Applicant : **Nottingham Wedge Property Management
Company Limited**

Representative : **Mapperley Property Management Limited**

Respondent (1) : **The leaseholders of Flats 1-24 (excl 13) plus Unit 32**

Respondent (2) : **Wyn- Douse Development Limited**

Type of Application : **An application under section 20ZA of the Landlord
and Tenant Act 1985 for dispensation of the
consultation requirements in respect of qualifying
works.**

Tribunal Members : **Judge T N Jackson
Mr D Satchwell FRICS**

**Date of Paper
determination** : **2nd July 2021**

Date of Decision : **8th July 2021**

DECISION

Decision

The Tribunal grants dispensation from the consultation requirements of section 20 Landlord and Tenant Act 1985 in respect of the Works to replace the fire alarm system including the main fire panel, the repeater panel in the second communal block and all smoke/heat detectors in the flat hallways and kitchens, the smoke detectors in the communal areas and the large underground car park.

In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are payable or reasonable.

Reasons for decision

Introduction

1. By application dated 24th May 2021, the Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('the 1985 Act') of the consultation requirements provided for by section 20 of the same Act.
2. The application relates to the need to urgently replace the fire alarm system in the Property.
3. Directions were made on 3rd June 2021. Direction 6 required any Respondent who objected to the application to submit a statement to the Tribunal and the Applicant stating the reason and justification for the objection.
4. The Tribunal has not received any objection to the application.
5. The only issue for determination is whether we should dispense with the statutory consultation requirements. This Decision does not concern the issue of whether any service charge costs will be payable or reasonable.
6. References to page numbers in this Decision relate to the pages of the Applicant's bundle.

Background

7. The Property was built in 2006-7 and comprises two purpose -built blocks providing in total 23 one and two bedroomed flats within two communal areas and one ground floor retail unit (hairdressers).
8. The flats within the Property are the subject of Leases. We have been provided with a copy of a template Lease relating to Flat 1 dated 8th February 2008 between Bel-Air Homes Limited (1), Scott Anthony Boxall (2) and Nottingham Wedge Property Management Company Limited (3). The Lease is for a term of 999 years from 1st October 2006 with a premium and a yearly rent of £200.
9. From 1st January 2016, the Applicant took over the running of the freehold from a previous property management company.

10. The fire alarm system was originally installed in 2006/7 by the builder/first freeholder. It is one complete system in both blocks with a repeater panel in the second block. In 2016, the Applicant identified that the 'addressable' fire alarm system had not been 'addressed' previously and therefore arranged for each detector (two in each flat), all the communication/ car park detectors and all call points to be named and identified on the system so that the location of a fire could be swiftly identified.
11. Since January 2016, the system has been inspected and maintained twice a year in line with current fire safety legislation. The system has had many defects since 2016 and, on average, there has been 3-4 breakdowns every year that required repair and expense. On odd occasions, the faults shown on the panels would rectify themselves prior to the engineer's arrival, which the Applicant says has not happened in the other 21 blocks of flats they manage.
12. In March 2021, the Applicant engaged APS, a specialist company, to attend site to undertake an investigation of the system to diagnose the recurring fault. Despite spending 8 hours on the site, in a written report dated 17th March 2021, the engineer advised that a number of faults remained, the defects could not be repaired and advised that the system required a full upgrade as a matter of urgency as the site was not currently protected (pages 41-44). By email dated 23rd March 2021, the Applicant sought clarity as to the way forward and whether a new panel was required. By email dated 12th April 2021, the Manager of APS concluded that whilst a number of defects had been resolved, the system (including the panel) still had faults and recommended that the system be replaced (page 47).
13. Between 23rd March 2021 and 5th May 2021 the system returned to normal with all faults cleared, and the alarm appeared to be fully functioning again. Upon weekly testing the system was sounding from call points with correct detailing of the addressable location of the detectors. On 5th May 2021, the system was again showing faults as is evidenced in a photograph (page 23). The faults remain to date and have not cleared.

Proposed Works

14. The Applicant proposes to replace the fire alarm system including main fire panel, the repeater panel in the second communal block, all smoke/heat detectors in the flat hallways and kitchens, the smoke detectors in the communal areas and the large underground car park.

Procurement Process

15. The Applicant has obtained quotes from specialist companies to replace the entire fire alarm system:
 - i. APS dated 25th May 2021 in the sum of £10,378.00 plus VAT dated 25th May 2021 (pages 49-60)
 - ii. Quantum Fire and Security in the sum of £7,959.00 plus VAT dated 8th May 2021 (pages 61-64).

The Applicant proposes to contract with Quantum Fire and Security for £7,959 plus VAT if a dispensation is granted.

Consultation

16. The Applicant has not consulted with the Respondents. It appears from the correspondence, (although we have not been provided with a copy), that by email dated 26th May 2021, the Applicant advised all leaseholders of the two quotes and of the application for a dispensation made to the Tribunal. By email dated 8th June 2021 the Applicant sent all leaseholders a copy of the statement and Applicant's bundle that had been submitted to the Tribunal (page 67). The leaseholders were asked to consider the documents and the two quotes which they had previously been sent. The leaseholders were reminded of the need for the application to the Tribunal as the cost of the proposed works would amount to slightly more than £250 per leaseholder and advised that the works were required urgently as the system has broken down and was not fully operational which was unsafe. Leaseholders were directed to Direction 6 of the Directions which directs that any resident who wishes to object to the application should make a statement to the Tribunal before 25th June 2021.

Hearing/Inspection

17. In light of the current Public Health Epidemic, the Tribunal determined this matter without an inspection following the Amended General Practice Direction: Contingency Arrangements in the First Tier Tribunal dated 14th September 2020.
18. Neither party requested a hearing and we determined the matters on the papers.

The Law

19. Section 20 of the 1985 Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the procedures that landlords must follow and which are particularized, collectively, in the Service Charges (Consultation Requirements) (England) Regulations 2003. There is a statutory maximum that a lessee has to pay by way of a contribution to 'qualifying works' (defined under section 20ZA (2) as works to a building or any other premises) unless the consultation requirements have been met. Under the Regulations, section 20 applies to qualifying works which result in a service charge contribution by an individual tenant in excess of £250. In accordance with section 20ZA (1) of the 1985 Act, the Tribunal may dispense with the consultation requirements 'if it is satisfied it is reasonable' to do so.
20. The proper approach to the Tribunal's dispensation power was considered by the Supreme Court in *Daejan Investments Ltd v Benson* [2013] 1 WLR 854. In summary, the Supreme Court noted the following:
 - i. Prejudice to the tenants from the landlord's breach of the requirements is the main, and normally the sole question for the Tribunal in considering how to exercise its discretion under section 20 ZA (1).
 - ii. The financial consequences to the landlord of not granting the dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
 - iii. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.

- iv. 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 tenant. It is not appropriate to infer prejudice from a serious failure to consult.
- v. The 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.
- vi. Once the tenants have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
- vii. Compliance with the requirements is not an end in itself. Dispensation should not be refused solely because the landlord departs from the requirements (even seriously). The more serious and/or deliberate the landlords' failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- viii. In a case where the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the requirements, the dispensation should be granted in the absence of some very good reason.
- ix. The Tribunal can grant a dispensation on such terms as it thinks fit provided that they are appropriate in their nature and effect.
- x. 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 application under section 20 ZA (1).

Submissions

The Applicant

21. The Applicant believes that it has acted reasonably and responsibly by first engaging the services of a specialist alarm repair company in a bid to repair the system rather than immediately opting for replacement.
22. A repair has not been possible despite an 8- hour attempt by the specialist engineer. The Applicant asserts that it is therefore reasonable and appropriate, given the age and condition of the system, that it is replaced with new without wasting any further leasehold service charge funds on attempts to repair.
23. At present, only approximately $\frac{1}{2}$ to $\frac{3}{4}$ of the Property has working smoke/heat detectors so the replacement of the system is considered most urgent to protect its occupants and visitors from the risk of injury/death by fire. A working fire alarm system is also a condition of insurance.

24. The Applicant assert that the costs stated in the two quotes are within a range of reasonable costs one would expect to pay to replace a complete fire alarm system in a building such as the Property.
25. The Applicant considers that it's actions to date, and the nature of this application, do not create any prejudice to the Respondents as the application is made solely with the leaseholders' best interests at heart, whilst complying with the legal requirements of leasehold law.

The Respondents

26. The Tribunal has not received any objection to the application from the Respondents.

Deliberations

27. We are satisfied that it is reasonable to dispense with any outstanding consultation requirements in the circumstances of the present case, for the following reasons:
 - i. The Works relate to a fire alarm system and are urgently required for health and safety purposes to ensure the safety of the residents, users and the Property.
 - ii. No Respondent has objected to the application. We do not consider that the Respondents are prejudiced or will suffer any loss of opportunity as a result of the dispensation of the statutory consultation requirements.

Determination

28. The Tribunal therefore determines that, to the extent that the statutory consultation requirements were not complied with, the consultation requirements are dispensed with in relation to the Works.
29. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are payable or reasonable.

Appeal

30. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

Judge T N Jackson