FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**BIR/00FY/LDC/2022/0024**
Properties	**:**	**Hine Hall, Ransom Drive, Mapperley, Nottingham NG3 5PN**
Applicant	**:**	**Hine Hall Management Ltd (1)** **Hine Park (Freehold) Ltd (2)**
Representative	**:**	**Franklin Management Ltd (David Thomas)**
Respondents	**:**	**The leaseholders of Hine Hall**
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** **Regional Surveyor V Ward FRICS**
Date and place of hearing	**:**	**Paper determination**
Date of decision	**:**	**15 August 2022**

DECISION

Background

1. Hine Hall ("the Property") is a residential development of 83 apartments in Nottingham.

2. In an application to the Tribunal submitted on 20 July 2022, Hine Hall Management Ltd ("the First Applicant") sought dispensation from the consultation requirements contained in section 20 of the Landlord and Tenant Act 1985 ("the Act") in respect of the installation of a fire alarm system.

3. Regional Surveyor Ward issued Directions dated 26 July 2022 requiring the First Applicant to serve a copy of the application together with relevant accompanying documents and a copy of the Directions on all lessees. The Directions incorporated a response form allowing all lessees the opportunity to consent to or oppose the application, and to indicate whether they required a hearing and to give reasons if they opposed the application. Lessees were required to respond by 9 August 2022.

4. Eight lessees responded, in respect of nine flats, all of whom consented to the application.

5. The Tribunal is of the view that the application can be dealt with without a hearing on the basis of the documents supplied and the response to some additional points on which it asked the First Applicant to provide additional information.

6. This decision is the determination of the Tribunal on the application for dispensation. We have carefully considered the application and **determine that we should grant it** for the reasons that are set out below.

Facts

7. The Property is a converted former hospital built in the 1800s by Thomas Hine. It is divided into 9 separate blocks with their own entrances, but all blocks are linked as one building of up to 4 storeys high. The Tribunal has not inspected the Property, but has seen some plans and a layout. It is clear that the Property is a complex building with many corridors and stairwells.

8. On 23 June 2022 Nottingham City Council ("NCC") and Nottinghamshire Fire and Rescue Service ("NFRS") conducted a joint inspection of the Property. The outcome of that inspection was the issue of emails (dated 23 June (from NFRS) and 1 July 2022 (from NCC)) stating that in their view the Property had inadequate fire stopping protection and compartmentation. In case of fire, they were not satisfied that the existing fire alarm system, which only sounded in each block, would keep the residents safe. They issued an informal indication that as regulators they

would require, instead, a simultaneous evacuation alarm system on the sounding of a single detector or call point. They indicated that a BS 5839-1 Category L5 alarm system ("the Alarm") was required. It was indicated that an Improvement Notice would be issued if required, but the authorities preferred to work informally with the Property managers.

9. The authorities also required a waking watch until the Alarm system was installed, and it would appear also have required or will require work to improve the fire protection throughout the Property. Those requirements and works are not the subject of this application.

10. The Tribunal requested an indication of the likely cost of the installation of the Alarm. We were provided with a quotation dated 21 August 2021 for an alarm system meeting the specification required of £45,693.00 + VAT. It is clear to us that at the lessees are all likely to be charged a cost above £250.00 for the installation of the alarm if this quote is accepted and represents value for money.

The leases

11. The Tribunal has been provided with a sample lease. This was not copied to all lessees as they will each have access to their own leases. We assume that all leases are on the same terms as the sample lease supplied, save for the flat specific variables.

12. It is not a matter for the Tribunal in this application to determine whether the correct interpretation of the leases requires all lessees to contribute towards the costs of the Alarm. What is however clear is that the lease requires the payment of a proportion of the costs incurred by the **lessor** in carrying out certain works – see clauses 5(b), 6(b), and the Fifth Schedule.

13. The Lessor in the sample lease, dated 31 October 1980, is Zodeco Ltd. The Tribunal assumes that the current freeholder, named in the application as Hine Park (Freehold) Ltd, is the successor in title to Zodeco Ltd. It seems clear to us that the obligation to install the Alarm falls upon the freeholder. This conclusion is supported by the First Applicant's representative's explanation to us, dated 11 August 2022, that the First Applicant will be "carrying out the work on behalf of the freeholder".

Law

14. 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).

15. Section 20 imposes another control. It limits the leaseholder's contribution towards a service charge to £250 for works, and to £100 for payments due under a long term service agreement 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 or payments for services under a long term agreement (i.e. for a term of more than 12 months) costing more than £100. The two options are: comply with "consultation requirements" or obtain dispensation from them. Either option is available.

16. 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)). The processes are set out in Part 2 of Schedule 4 of those regulations. A timetable is built in to these processes which could require at least 60 days in theory for the processes to be completed.

17. To obtain dispensation, an application has to be made to the Property Chamber of the First-tier Tribunal who may grant it if it is satisfied that it is reasonable to dispense with the consultation requirements (section 20ZA(1) of the Act).

18. 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 or enter into the long term agreement, but to decide whether it would be reasonable to dispense with the consultation requirements.

19. 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; 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.

20. The Tribunal may impose conditions on the grant of dispensation. Commonly, a Tribunal might require that the landlord should pay the leaseholders costs of seeking dispensation.

21. 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."

Discussion

Preliminary issue

22. The Tribunal noted that the First Applicant is a management company. It is not a party to the sample lease that we have seen. It is named in that lease, but enters into no obligations or covenants. In that lease, it seems clear to us that the obligation to install the Alarm falls upon the freeholder. The First Applicant's representative confirmed to the Tribunal that it is carrying out work on behalf of the freeholder. The application should therefore have been made by the freeholder, not its agent.

23. To resolve this issue, exercising its powers under Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal adds the freeholder, Hine Park (Freehold) Ltd, as the Second Applicant to these proceedings.

24. It is for the Applicants to decide which of them will enter into the contract for the installation of the Alarm, and how that will then be charged to the lessees, and it is for the lessees to raise the question of whether the lease entitles that Applicant to then pass on the cost to the lessees. The consequence of adding the Second Applicant to the application is that it permits the Applicants to decide between them the precise contractual arrangements in the knowledge that both of them have been granted dispensation.

Discussion on the substantive application

25. The task for the Tribunal in this application is to determine whether to give permission for the Applicants to incur the cost of installing the Alarm without having to undertake the process required by Schedule 4 Part 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003. Were the Tribunal not to grant the application, a more lengthy and costly administrative process would be required before the Applicants could install the Alarm secure in the knowledge that they were not exposed to the risk of being unable to recover more than £250 per lessee towards the cost of the Alarm (though it should be noted that the Applicants will remain exposed to a challenge to the reasonableness of the costs under section 27A of the Act).

26. The Tribunal must consider the question of whether any lessee is prejudiced by the making of a dispensation order. None of the lessees have claimed so. It seems to the Tribunal to be in the interests of the lessees for the Alarm to be installed as early as possible to reduce the cost of any waking watch and to ensure the Property is safe for the residents and at the lowest cost that can reasonably be obtained. In principle therefore, it appears to be in their interests for the Tribunal to grant the dispensation application.

27. The disadvantage to the lessees resulting from the granting of dispensation is that they will not have the benefit of a full consultation. In particular, they will not have the opportunity to make representations to the Applicants, or to recommend installers from whom alternative quotes should be obtained.

28. In principle, the Tribunal considers that the advantages to the lessees of granting the application outweigh the disadvantages and we therefore decided to grant the Application, as that appears to us to be in the interests of the lessees. Doing so saves time and cost and enables the Alarm to be installed urgently. It is likely to be of benefit to the lessees to keep the costs surrounding the Alarm installation as low as possible.

29. Lessees may obviously still communicate any concerns they have to the Applicants. The lessees retain the right to challenge the eventual cost of the Alarm in separate proceedings under section 27A of the Act.

30. The parties should note that granting this application:

    a. Does not mean that the Tribunal has determined the Alarm installation cost would be reasonably incurred;

    b. Does not mean that the Tribunal has determined that the lease permits the Applicants to charge the cost of the Alarm as a service charge cost.

31. The grant of this application simply means that full consultation in relation to the Alarm installation under section 20 of the Act is dispensed with.

Appeal

32. 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)