



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

Case Reference : **BIR/00CT/LDC/2018/0009**

Property : **Danielle Court 23 Manor Road Solihull B91 2BH**

Applicant : **Danielle Court Management Limited**

Representative : **Inspire Property Management**

Respondents : **The Leaseholders of Danielle Court**

Type of Application : **An Application under Section 20ZA of the
Landlord & Tenant Act 1985 for dispensation of
the Section 20 consultation requirements.**

Tribunal Members : **Mr Vernon Ward BSc (Hons) FRICS
Judge David R Salter**

Date of Decision : **10 December 2018**

DECISION

Background.

1. The Application requests the Tribunal to grant a dispensation from the consultation requirements contained within section 20 of the Landlord and Tenant Act 1985 (“the 1985 Act”) and the Service Charge (Consultation Requirements) (England) Regulations 2003 (“the 2003 Regulations”) in respect of repairs required to Danielle Court, Manor Road, Solihull B91 2BH.
2. The Applicant, Danielle Court Management Limited, is the freeholder of the development, whilst the Respondents are the lessees/leaseholders of the nine apartments contained therein.
3. The works in question are the replacement of the door entry system to the entrance door to the block and the gate to the development as the existing system has failed.
4. The Applicant has obtained quotations for a new system as follows:

Contractor	Cost	Cost per leaseholder
DoctorLocks (with video)	£7,740.00	£860.00
DoctorLocks (without video)	£4,386.00	£487.33
RC Security (bell)	£2,950.00	£327.77
RC Security (Videx)	£4,250.00	£472.22
RC Security (Fermax)	£6,850.00	£761.11

5. Under the provisions of the 1985 Act and the 2003 Regulations, the Applicant is required to consult if the cost of the works is in excess of £250 including VAT per leaseholder. The works proposed will therefore be qualifying works within the meaning of section 20ZA (2) of the 1985 Act. The Applicant claims that agreement to proceed with the works is urgently required due the inconvenience caused by the failure of the existing system.
6. Following Directions of the Tribunal, copies of all quotations and ancillary information were forwarded to all leaseholders. The Applicant received no representations in respect of the same and further the Tribunal received no representations direct from any lessee/leaseholder.

THE LEASE

7. The Lease and an ancillary Trust Deed were originally drawn on a tripartite basis, with, in addition to the Lessor and Lessee, a Maintenance Trustee

responsible for the upkeep of the development. The Applicant is the freeholder of the development and is a company of which the shareholders are the apartment lessees/leaseholders hence it appears that the need for the Maintenance Trustee has fallen away due to the direct relationship between the Applicant freeholder and the apartment lessees/leaseholders.

8. Under Clause 4.1 of the Lease, the lessees covenant to pay the 'Maintenance Contribution'.

9. The Maintenance Contribution is defined within the Lease as:

1.7 "the Maintenance Contribution" means a sum equal to the percentage proportion appropriate to the Demised Premises (as specified in the Second Schedule to the Trust Deed but subject to the provisions of Clause 3.4 thereof) of the aggregate Annual Maintenance Provision for the whole of the Building for each Maintenance Year.

10. The Lease defines the "Building" as Danielle Court.

11. The Second Schedule to the Trust Deed sets out the percentage of the Annual Maintenance Provision payable in respect of each flat as a maintenance contribution as 11.1% per flat.

12. The Annual Maintenance Provision consists of various items set out in the Third schedule to the Trust Deed, of which clause 2 indicates the expenditure incurred in respect of items set out in the First Schedule.

13. The First Schedule to the Trust Deed sets out the purposes for or towards which the maintenance fund is to be applied. Paragraph 8 of that schedule is as follows:

Television Serial Radio Relay and Internal Telephone

8. Paying all expenses of providing maintaining repairing renewing servicing or otherwise relating to the communal television aerial or aerials the relay service for radio or telephone broadcasts or similar apparatus the internal telephone system of the building and the video or door porter system (if any of the foregoing are installed) including any fees or charges payable to the contractor person or corporation in respect of the same.

THE INSPECTION

14. The Tribunal carried out an inspection of the development on 3 December 2018. Present at the Inspection were Mr Mark Bruckshaw of Inspire Property

Management, the Applicant's managing agent, Mr D Moule, leaseholder of Flat 8 and Mr R Hillier, leaseholder of Flat 9.

15. Danielle Court comprises a modern development of nine apartments arranged over ground, first and second floors, with three flats per floor. The development is gated.
16. The Tribunal inspected the communal areas of the development both internally and externally. The practical effects of the intercom system being out of action is that visitors to the site either have to come at a pre-arranged time for the gate to be opened or alternatively have to phone a leaseholder to open the gate. For visitors to then enter the building itself, the leaseholder has to manually open the main entrance door which is particularly inconvenient for owners of second floor apartments.
17. The Tribunal were told that no objections to the proposed works had been received and that, indeed, the majority of leaseholders wished for the works to be carried out as soon as possible. The Applicant also provided a copy of the Minutes of a shareholders' meeting of Applicant which indicated that the four shareholders in attendance were all in favour of the dispensation application.

THE LAW

18. Section 20 of the 1985 Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the procedures landlords must follow which are collectively known as 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.
19. There are essentially three stages in the consultation procedure, the pre tender stage; Notice of Intention, the tender stage; Notification of Proposals including estimates and in some cases a third stage advising that the leaseholders that the contract has been placed and the reasons behind the same.
20. It should also be noted that the dispensation power of the First-tier Tribunal under section 20ZA of the 1985 Act only applies to the statutory consultation requirements and does not confer any power to dispense with any contractual consultation provisions which may be contained in the lease.

THE TRIBUNAL'S DETERMINATION

21. The Lease provides for the cost of the replacement of the intercom to be recovered from leaseholders by way of the service charge.
22. It is clear to the Tribunal from the information supplied by the Applicant that the works are required. Due to the nature of the development it is apparent that the intercom system being out of operation would, apart from the inconvenience referred to in paragraph 16, present problems to occupiers of upper floor apartments who do not have full mobility.
23. Section 20ZA of the 1985 Act does not expand upon or detail the circumstances when it may be reasonable to make a determination dispensing with the consultation requirements. Following the Supreme Court's judgement in *Daejan Investments Limited v Benson et al* [2013] UKSC 14, the Tribunal in considering whether dispensation should be granted in this matter should take into account the extent to which leaseholders were prejudiced by the landlord's failure to consult.
24. The Tribunal cannot see that the leaseholders would be prejudiced by the consultation procedures not being followed. The Applicant has used specialist contractors to obtain two quotations to ensure that the cost of the works is reasonable. The leaseholders appear to have been kept fully informed as to the works proposed and from the submissions made by the Applicant appear to have been instrumental in the decision making process. Further, no leaseholder has made representations of any kind to the Tribunal.
25. The Tribunal is satisfied that the works are required and that, on the evidence provided, it is reasonable to dispense with the consultation requirements of section 20 of the 1985. Accordingly, dispensation is duly granted.
26. Parties should note that this determination does not prevent any later challenge by any of the respondent leaseholders under sections 19 and 27(A) of the 1985 Act on the grounds that the costs of the works when incurred had not been reasonably incurred or that the works had not been carried out to a reasonable standard.
27. In making its Determination, the Tribunal had regard to its inspection, the submissions of the parties, the relevant law and its knowledge and experience as an expert Tribunal, but not to any special or secret knowledge.

Appeal

28. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

V WARD