



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

Case Reference : **BIR/41UD/LDC/2024/0020**

Properties : **Various Properties in the ownership of Longhurst Group as Landlord**

Applicant : **Longhurst Group Ltd**

Representative : **Sinade Livsey**

Respondents : **The Lessees**

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

Tribunal Member : **V Ward BSc Hons FRICS – Regional Surveyor
R P Cammidge FRICS
P Morris FRICS MCI Arb**

Date of Decision : **21 January 2025**

DECISION

Background

1. The Applicant Landlord seeks dispensation from all or some of the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (“the Act”).
2. Section 20 of the Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the procedures landlords must follow which are particularised, 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 by way of a “qualifying long term agreement” (“QLTA”) unless the consultation requirements have been met or dispensation from the same has been granted. A qualifying long term agreement is an agreement for more than 12 months where the amount payable by any one contributing leaseholder under the agreement in any accounting period exceeds £100. In addition, 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 £250.00.
3. The Applicant holds either a freehold or superior leasehold title to the Properties that are the subject of this application. The Respondents are the leaseholders of the Properties.
4. The justification for seeking dispensation relates to the provision of a Gas Services Contract to provide gas safety checks and gas repairs. Further details are given below.
5. Directions were issued on 2 September 2024. These instructed the Applicant to write to each of the Respondents concerned by email, hand delivery or first-class post by 20 September 2024, setting out the following:
 - (a) Informing them of the application;
 - (b) Providing a copy of Directions;
 - (c) Advising them that a copy of the application supporting documents, a copy of these directions and a statement setting out the details of the consultation carried out, would be available on the Applicant’s website, advising them of the URL address, and notifying them that any response to the application should be made by 18 October 2024 using the Reply Form at the end of these Directions;

- (d) Informing the Respondents that if they wish to receive a printed copy of the application and these Directions they should write to the Applicant.
 - (e) Advise the leaseholders that as the application progresses additional documents will be added to the website, including the final decision of the tribunal.
6. The Applicant confirmed that they complied with the above on 17 September 2024.
 7. The Directions advised the Respondents that if they wished to object they must do so by 18 October 2024.
 8. On 11 October 2024, the Applicant advised the Tribunal that their properties situated at Knightthorpe Lodge, Windleden Road, Loughborough, LE11 4HD did not receive the benefit of the gas services provision that was the subject of this application. Accordingly, on 22 November 2024, the Tribunal wrote to the Respondents at Knightthorpe Lodge to the effect that it would not be considering properties at Knightthorpe Lodge as part of its decision.
 9. One Respondent requested an oral hearing. The Tribunal wrote to that Respondent requesting confirmation that they required an oral hearing and that if one was arranged they would participate in the same. No response was received. In view of this the Tribunal did not consider it proportionate when considering the overriding objective (rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013) to arrange an oral hearing.
 10. The Tribunal has therefore determined this application on the basis of the written submissions of the parties and without an inspection.

Law

11. 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).
12. Section 20 imposes an additional control. It limits the leaseholder’s contribution towards a service charge to £100.00 for payments due under a long term service agreement or 250.00 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 services under a long term agreement (i.e. for a term of more than 12 months) costing more than £100.00 or for works costing

more than £250.00. The two options are: comply with “consultation requirements” or obtain dispensation from them. Either option is available.

13. 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)).
14. To obtain dispensation, an application has to be made to this Tribunal. It may grant it if it is satisfied that it is reasonable to dispense with the consultation requirements (section 20ZA(1) of the Act).
15. 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.
16. 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.
17. The general approach to be adopted by the Tribunal, following *Daejan*, has been summarised in paragraph 17 of the judgment 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.”

The Submissions of the Parties

The Applicant

18. The Applicant’s statement provided the following information:

The Applicant seeks total dispensation of the consultation requirements imposed by S.20 of the Landlord and Tenant Act 1985 (as amended) in regard to the long-term agreement entered to provide a Gas Services Contract. The Gas Services Contract consists of a two tier service including gas safety check and gas repairs. The level of service provided is delivered in accordance with the lease.

Longhurst Group sought to obtain at least two quotes and through a framework approached seven contractors providing tender opportunities. Additionally, Longhurst Group sought to obtain a tender from a nominated contractor. Despite efforts to obtain more than one quote, out of the eight contractors approached only one contractor provided a tender and estimate for the contract.

Given the challenging market and our large operational geographical area the awarded contractor was the only contractor who provided a bid and estimate for the tender. The awarded contractor already holds contracts within the area in which we operate.

The existing contract came with our previous contractor came to an end 22 September 2022. We entered into an emergency contract on 23rd September 2023 to allow sufficient time for section 20 to be undertaken to procure for a long term agreement.

Longhurst Group considered the impact of postponing the contract award further which would have meant the gas services contract would be awarded during the winter months when it is expected to receive an increase in heating repairs. Procuring such contract during the winter months could have an impact on leaseholders as it is expected to experience issues during mobilising and the impact is less with mobilising such contract during the summer months.

The Respondents

19. A total of eighteen replies were received from Respondents. Of these, twelve were in favour and four were objections. Of the reasons given for the objections, the following are relevant to the dispensation application before the Tribunal:
 - a) Granting dispensation will encourage the Applicant to not follow the consultation procedures when future long term contracts are placed.
 - b) For only one company to submit a tender raises the questions about the tender process.
 - c) Following the consultation procedure will not enable the most efficient company to be given the contract.
 - d) The Applicant has bought in other large scale contracts and these do not work and cause problems for the residents.

- e) The Applicant is the landlord of in excess of 25,000 properties and have been seeking to consolidate services by employing contractors that can cover their entire portfolio. This has the effect of reducing the number of tender quotations they receive and if a large scale contract is introduced it reduces the quality of services provided.

Discussion and Decision

- 20. The Tribunal accepts the rationale for making the Application. Since *Daejan*, it has been clear that the grant of dispensation or otherwise should not be an exercise in punishing the landlord for not carrying out a full section 20 consultation. The Tribunal should concentrate on whether prejudice is suffered through the lack of a full section 20 consultation.
- 21. The Applicant made their best efforts to carry out a consultation exercise. This was unsuccessful due to a lack of tender bids. The intention to undertake a formal consultation process is clearly demonstrated in the bundle. An extension of an existing contract was negotiated to allow sufficient time for this to take place. A timetable was established which should have given adequate time for a process to be completed but as multiple tenders were not received, a competitive outcome was unavailable and the only tender had to be accepted.
- 22. None of the objectors have explained how they might be prejudiced by not having been part of the consultation exercise. A grant of dispensation in this case has no implications for any other contract the Applicant may place; they fail to consult or apply for dispensation at their peril. Whilst it is undoubtedly true that the nature of the contract may be off putting to many, possibly smaller, contractors, Landlords such as the subject have an obligation to produce tenders of this type and from an administrative cost viewpoint, it is reasonable that the Applicant seeks a contractor that services a significant part of their stock.
- 23. As set out in the point 16 above, it is the leaseholders who have to prove prejudice as an argument against dispensation. Whilst the tribunal understands the general nature of the points made by those objecting, they do not demonstrate a clear and reasoned demonstration of prejudice suffered by the lack of consultation.
- 24. We therefore determine that the Application is granted. The Applicant may dispense with the consultation requirements contained in section 20 of the Act in respect of this contract.
- 25. This decision does not operate as a determination that any costs charged to any Respondent for the works are reasonable or payable. The Respondents remain at liberty to challenge such costs under section 27A of the Act in the future should they consider the costs of the service provided is excessive or the quality poor.

26. Furthermore, the Applicant shall place a copy of the Tribunal's eventual decision on dispensation together with an explanation of the leaseholders' appeal rights on their website within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on their home page.

Appeal

27. 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.