



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

<b>Case Reference</b>	:	LON/00AU/LDC/2019/0107
<b>Property</b>	:	Holloway Estate N7, Southwark Estate SE1; Sydenham Hill Estate SE26; William Blake Estate SE7; Windsor House Estate N1 ("the Five Estates")
<b>Applicant</b>	:	The Mayor and Commonalty and Citizens of the City of London
<b>Representative</b>	:	Mr C McCarthy (Counsel)
<b>Respondent</b>	:	363 lessees affected by the proposed works on the Five Estates
<b>Representative</b>	:	Mr C McCarthy (Counsel)
<b>Type of Application</b>	:	Dispensation with Consultation Requirements under section 20ZA Landlord and Tenant Act 1985.
<b>Tribunal Members</b>	:	Judge Robert Latham Susan Coughlin MCIEH
<b>Date and venue of Hearing</b>	:	18 September 2019 at 10 Alfred Place, London WC1E 7LR
<b>Date of Decision</b>	:	30 September 2019

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**DECISION**

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The Tribunal grants this application to dispense with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985, in respect of window replacement works only, on the conditions specified in paragraph 27 of this decision. The relevant consultation requirements are those imposed by Schedule 4, Part 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003

### **The Application**

1. On 4 July 2019, the Applicant issued this application seeking dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed by Schedule 1 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”). The Applicant states that it is planning to enter into five separate Qualifying Long Term Agreements (QLTAs) to “access” the LHC Framework Agreement to procure the supply of windows on the Holloway Estate N7; the Southwark Estate SE1; the Sydenham Hill Estate SE26; the William Blake Estate SE7; and the Windsor House Estate N1 (“the Five Estates”).
2. Pursuant to the Directions given by the Tribunal on 9 July 2019, the Applicant has sent particulars relating to the application to the 363 leaseholders affected by it. The leaseholders were directed to return a form to the Tribunal (copied to the Applicant) indicating whether they supported or opposed the application.
3. Seven leaseholders have completed the form:
  - (i) Two leaseholders, Theresa Wallis-Smith and Eleanor Marriott have completed forms opposing the application. Ms Wallis-Smith has attached an e-mail dated 15 June in which she suggests that the proposed works are improvements which fall outside the terms of her lease. Ms Marriott has not set out her grounds for opposing the application.
  - (ii) Two leaseholders initially opposed the application, but have now withdrawn their objections.
  - (iii) Three leaseholders support the application.
4. On 2 September 2019, the Tribunal initially considered the application on the papers. We sought to identify the outcome sought by the Applicant through this application. Our preliminary view was that the use that the Applicant sought to make of the LHC Framework Agreement was not a QLTA to which Schedule 1 applied. Their concern rather related to the requirements imposed by Schedule 2, Part 4 of the Regulations when they came to consult on the qualifying works which they intended to execute on the five Estates. Their particular concern seemed to be the right of a tenant (or a tenants’ association) to nominate a person from whom the landlord should try to obtain an estimate for the carrying out of the qualifying works

which was inconsistent with the LHC Framework Agreement. The Tribunal therefore set the matters down for an oral hearing today.

5. The Tribunal directed that the Applicant was required to attend; but that no leaseholder needed to attend. We noted that this is an application to dispense with the consultation requirements imposed by Schedule 1 in respect of agreements to enter into five QLTAs. It is not an application under Schedule 4 in respect of qualifying works relating to the replacement of the windows and decorations of the common parts to the blocks on the five estates.
6. On 18 September, the Applicant was represented by Mr C McCarthy (Counsel). He did not provide a Skeleton Argument and did not accept that there was any substance to the concerns which we had raised. This was somewhat surprising given that it became apparent that the Applicant does not intend to enter into any contract directly with the LHC. Mr McCarthy was accompanied by Ms Cathy Lawson (Solicitor), Mr John Skivington (LHC Group Director), Mr P Smith and Mr M Sunnucks (Project Managers employed by the Applicant) and Mr M Harrington (Applicant's Chamberlains Department). The Tribunal is grateful for the assistance provided by these officers in seeking to identify the outcome that the Applicant seeks to achieve.
7. Despite the fact that the LHC Framework Agreement has been used by a large number of local housing authorities and social landlords over the past 30 years, the Applicant was unable to produce any tribunal decision which has addressed the impact of the LHC Framework Agreement on the statutory consultation requirements. We were told that the LHC Framework Agreement is used by some 20 LHAs and 200-300 social landlords in London. After the hearing, the only decision that the Tribunal was able to find in which the LHC Framework Agreement has been considered, is the decision of HHJ Roger Cooke in *Haringey LBC v Hall and others* (unreported), Central London County Court, 6 Decembe 2004).

### **The Law**

8. The only issue which this Tribunal is required to determine is whether or not it is reasonable to dispense with the statutory consultation requirements, and if so, whether to impose any conditions. **This application does not concern the issue of whether any service charge costs will be reasonable or payable.** However, the statutory consultation procedures are part of the statutory armoury to protect leaseholders from paying excessive service charges.
9. Section 20 of the Act provides (emphasis added):

“(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement. (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement:

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.”

10. The appropriate amount set by Regulation in relation to “qualifying works” is an amount which results in the “relevant contribution” of any tenant being more than £250 and in relation to a QLTA is £100.

11. Section 20ZA provides:

“(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section:

“qualifying works” means works on a building or any other premises, and

“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.”

12. The consultation requirements for “Qualifying Long Term Agreements other than those for which Public Notice is Required” are contained in Schedule 1 of the Service Charge (Consultation Requirements) (England) Regulations 2003.

13. There is a separate duty to consult when a landlord intends to carry out “Qualifying Works”. The consultation requirements for “Qualifying Works for which Public Notice is not Required” are contained in Schedule 4, Part 2. A summary of those requirements is set out in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854, the leading authority on dispensation (at [12]):

Stage 1: Notice of Intention to do the Works: Notice must be given to each tenant and any tenants’ association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent, allowing at least 30 days. The landlord must have regard to those observations.

Stage 2: Estimates: The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.

Stage 3: Notices about Estimates: The landlord must issue a statement to tenants and the association, with two or more estimates, a summary of the observations, and its responses. Any nominee’s estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.

Stage 4: Notification of reasons: Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and the association of its reasons, or specifying where and when such a statement may be inspected.

### **The Outcome that the Applicant is seeking to Achieve**

14. In 2015, the Applicant arranged for consultants to undertake surveys and report on the condition of the windows on the Five Estates. The conclusion is that the windows have exceeded their expected life expectancy and that replacement is economically more viable than the alternative of repair and redecoration. The details of the proposed works have not yet been finalised. For example, there are Crittall windows on the Windsor House; it is unlikely that the replacement windows will be Crittall. The programmes will also include decorative works to the internal and external common parts. The scope of these works has yet to be identified. It seems that such decorative works will be executed outside the Framework Agreement since there is, at present, no LHC Framework Agreement for this type of work.
15. On 15 April 2019, the Applicant sent a letter to the 363 leaseholders on the Five Estates. The letter stated that the Applicant proposed to enter into five QLTA’s by utilising an existing Framework Agreement. However, the letter goes on to state that the Applicant is not (sic) a party to the

Framework Agreement. The Applicant rather seeks to “access” the Framework Agreement to procure the supply and installation of the windows from approved suppliers

16. LHC has entered into a number of long term agreements with window suppliers which adhere to European Directives, English Law and Local Government requirements, including advertisement of the relevant Official Journal of European Union notices. The LHC is a Not for Profit Company. The scheme has been operating for over thirty years. We were told that it was assessed by 20 LHAs in London and 200-300 social landlords. It is also used extensively outside London. The Applicant stated that none of these contracts will require a public notice as the contracts will not exceed the threshold of £4.5m.
17. The Tribunal was provided with the Framework Agreement 2018-2022 “WD1 – Windows, Doorsets and Associated Products”. “WD1 Workstream U10” relates to PVC-U Windows, Doorsets and Associated Products. Four suppliers have been approved for London. They were selected under a procurement assessment which gave a weighting of 60% to quality and 40% to price. The suppliers offer a discount of between 2.5% to 10% on their normal price, but the LHC charge the landlord a fee of 5% for accessing the agreement. The four suppliers are:
  - (i) Graham Holmes who scored highest with a 55.84% score for quality and 34.17% for price. They offer a 10% discount on their normal rates.
  - (ii) The Window Co score 60% on quality and 26.9% on price. They offer a discount of 7%.
  - (iii) Nationwide score 59.46 on quality and 26.12% on price. They offer a discount of 3%.
  - (iv) Anglian score 56.57% on quality and 26.75% on price. They offer a discount of 2.5%.
18. When it comes to tendering for the Five Estates, the Applicant would draw up the specification of works for each estate. It would supervise the works. However, it would seek to utilise the Framework Agreement for the tendering process in respect of the windows. The contractors could tender for less than the rates which they have agreed with the LHC, but could not tender for more. The Applicant would have the option of selecting the most competitive tender under the Framework which again would be assessed 60% on quality and 40% on price. If it chose to do so, the supplier would pay the 5% commission included in its tender to the LHC. However, the Applicant would not be obliged to accept the tender, in which case no commission would be payable. It could then tender externally outside the Framework Agreement. In any event, the Framework Agreement would not extend to the decorative works to the common parts and this would be a separate tendering process.

## **The Tribunal's Decision**

19. Having heard submissions from Mr McCarthy, the Tribunal remains of the view that this is not a QLTA falling within Schedule 1 of the Regulations. Our reason for this conclusion is that the Applicant is not intending to enter into any legal agreement with the LHC. The contract would rather be with any supplier selected pursuant to the mini-procurement exercise. Even if the Applicant does access the Framework Agreement in respect of all or any of the major works to be executed on any of the Five Estates, the Applicant is not bound to accept the "call off". The 5% commission, which is included in the supplier's tender, is only payable to the LHC if the Applicant decides to enter into a contract with one of the approved suppliers. This is not an additional charge, but rather than an expense factored into the tenders secured pursuant to the mini-procurement exercise. The Tribunal was told that this commission is not added to the price approved by the LHC, but forms part of it.
20. Dispensation is rather required because if the Applicant decides to access the Framework Agreement, it will not be open to the leaseholders to nominate a person from whom the landlord should try to obtain an estimate for the proposed works, as this would be inconsistent with the structure of the Framework Agreement. The Applicant contends that access to this Agreement enables the landlord to ensure a higher quality of works through the use of reliable contractors. There is also a saving of between 5% to 10% where the Framework contractor uses a sub-contractor as there is no management mark-up.
21. The duty to consult on the proposed works will only arise when the Applicant has formed a more definite view of the works that it intends to execute on each of the Five Estates. Some of those works may be procured pursuant to a mini-tendering exercise. Other works, such as those to the internal and external common parts, are to be procured outside the Framework Agreement. The stage at which the Applicant has drawn up a schedule of the works for which mini-tenders are to be sought by accessing the Framework Agreement, has not yet been reached.
22. When this point is reached, a duty to consult will arise pursuant to Schedule 4, Part 2 of the Regulations. It is apparent that this is the stage at which the Applicant will require dispensation. The letter, dated 15 April 2019, which the Applicant has sent to leaseholders, states:

"Given the value of the proposed Agreements, the Notice of Intention should also invite leaseholders to nominate a contractor. On receipt of nominations, the City should then try to obtain estimates for the works from the nominated contractors. However, as above, the City is proposing to procure the Agreements from an existing framework to which contractors have already been appointed and it is not inviting nominations from leaseholders."

23. At this stage, there is no reason why the Applicant should not comply with the other requirements of the consultation procedures, giving the leaseholders the opportunity to make representations on the nature of the works which are proposed and an explanation should the landlord not choose the Framework contractor who has submitted the lowest estimate.
24. The Tribunal is satisfied that it is appropriate to deal with this application as one to dispense with the Consultation Requirements under Schedule 4, Part 2, rather than Schedule 1. The Tribunal is satisfied that prejudice does arise as the leaseholders are unable to nominate their own contractor from whom a tender should be sought. The Tribunal therefore grants dispensation on conditions.
25. The Applicant did not inform the Tribunal when it intends to serve the Notice of Intention with regard to the proposed works on each of the Five Estates. It is probable that at this time the relevant leaseholders will be different from those named as respondents to this application.
26. This dispensation relates only to the window replacement works where the Applicant decides to access the Framework Agreement for the tendering process. The full consultation procedure must be followed in respect of any “qualifying works” carried out outside the Framework Agreement. The Tribunal understands that this will include decorative works to the external and internal common parts.
27. The Tribunal is willing to relax the strict requirements of the statutory procedures to enable the Applicant to access the Framework Agreement for any “qualifying works”. However, the Tribunal expects the Applicant to comply with the spirit of the procedures in so far as access to the Framework Agreement permits it to do so. Dispensation is therefore granted on the following terms:

Stage 1: Notice of Intention to do the Works: Notice must be given to each tenant and any tenants’ association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations should be sent, allowing at least 30 days. The landlord must have regard to those observations. The Notice should also specify how the mini-tendering exercise will be executed through accessing the Framework Agreement and why it is considered that this will secure best value for the leaseholders.

Stage 2: Estimates: The landlord is entitled to seek estimates for the works by accessing the Framework Agreement

Stage 3: Notices about Estimates: The landlord must issue a statement to tenants and the association, with two or more estimates secured through the mini-tendering exercise, a summary of the observations received in respect of the scope of the proposed works, and its responses. The statement must say



where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.

Stage 4: Notification of reasons: Unless the chosen contractor submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and the association of its reasons, or specifying where and when such a statement may be inspected.

### **Notification of this Decision**

28. The Tribunal directs the Applicant to send a copy of this decision to all lessees. In addition, the Tribunal will send a copy of the decision to Theresa Wallis-Smith and Eleanor Marriott, the two lessees who have opposed the application. The Applicant should also, if possible, place a copy of this decision on its website.
29. The Tribunal recognises that the Applicant's desire to access the Framework Agreement raises difficult issues as to the impact of the statutory consultation requirements. The Tribunal has power to review our decision if any party considers that we have erred in law and seeks permission to appeal.

**Judge Robert Latham,  
30 September 2019**

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case

number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).