FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case references	**:**	**(1) BIR/41UK/LDC/2021/0024** **(1) BIR/41UK/LIS/2021/0035** **(2) BIR/41UK/LDC/2021/0026** **(2) BIR/41UK/LIS/2021/0038**
Properties	**:**	**(1) 80, 83, 84 & 85 Lichfield Street and 60 Sunset Close Tamworth B79 7QL** **(2) 49 Sunset Close Tamworth B79 7QL**
Applicant Freeholder	**:**	**Tamworth Borough Council**
Representative	**:**	**Anthony Collins Solicitors** **Ms Stephanie Lovegrove - Counsel**
Respondent Leaseholders	**:**	**(1) Mr T Hill** **(1) Mr D Smith** **(1) Ms J Merriman** **(2) Spires Independent Properties Limited**
Type of applications	**:**	**Applications under section 20ZA of the Landlord and Tenant Act 1985 for dispensation of the consultation requirements in respect of qualifying works.** **Applications in respect of the liability to pay and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985.** **Applications for Orders under section 20C of the Landlord and Tenant Act 1985.**

Applications for Orders under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

Tribunal members	**:**	**V Ward BSc Hons FRICS – Regional Surveyor** **Judge P Ellis** **M Alexander BSc (Hons) FRICS (Observing)**
Date of Decision	**:**	**23 March 2022**

DECISION

Background

1) This is the Tribunal's decision in respect of consolidated service charge and dispensation applications.

2) The first service charge application was made in September 2021 by Mr T Hill, Mr D Smith and Ms J Merriman, the long leasehold owners of 80, 83, 84 & 85 Lichfield Street and 60 Sunset Close Tamworth B79 7QL. This application asked the Tribunal to determine whether consultation procedures under the Landlord and Tenant Act 1985 ("the Act") were properly carried out by the freeholder Tamworth Borough Council in respect of roof repairs the costs of which formed part of service charges for 2021. This application was accompanied by applications for Orders under section 20C of the Act and under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

3) The second service charge application was made in October 2021 by Spires Independent Properties Limited, the long leasehold owner of 49 Sunset Close Tamworth B79 7QL. This application asked the Tribunal to determine whether consultation procedures were correctly followed by the freeholder Tamworth Borough Council in respect of structural repairs (and associated works including roof repairs), the costs of which formed part of service charges for 2021. This application was accompanied by applications for Orders under section 20C of the Act and under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

4) Each of the above applications was the stimulus for an application for retrospective dispensation under section 20ZA of the Act by the freeholder, Tamworth Borough Council.

5) The Tribunal consolidated the relevant service charge and dispensation applications and ultimately consolidated and heard all cases together. There were no objections to the cases being consolidated.

6) For simplicity the Tribunal uses the following designations throughout this decision:

Applicant freeholder	Tamworth Borough Council
Respondents 1	Mr T Hill – owner of 80 and 83 Lichfield Street Mr D Smith – owner of 84 and 85 Lichfield Street Ms J Merriman – owner of 60 Sunset Close

The leaseholders were represented by Mr Hill during the proceedings.

Respondent 2	Spires Independent Properties Limited – owner of 49 Sunset Close

The Applicant was represented by Mr L Clarkson a Director of the company during the proceedings.

Inspection

7) The Tribunal carried out an external inspection of the properties on 28 February 2022. Present at the inspection was Mr Clarkson on behalf of Respondent 2.

Brief details of the properties are as follows:

All the properties are flats which are situated in three storey blocks constructed of brick being surmounted by pitched interlocking concrete tiled roofs.

Numbers 80, 83 and 85 Lichfield Street are located within the block 74 to 86 Lichfield Street and are all on the first floor. Number 60 Sunset Close is located within the block 54 to 80 Sunset Close and is located on the second floor.

Number 49 Sunset Close is located within the block 41 to 50 Sunset Close and is located on the first floor.

Within the blocks themselves, there are flats are that are privately owned and there are others that have been retained and let by the Applicant. The proportions vary.

Hearing

8) A hearing was held later that same day. Members of the Tribunal were present in the hearing rooms at the Tribunal Hearing Rooms, 13th Floor, Centre City Tower, Hill St Birmingham B5 4UU whist the parties participated by video link.

Appearances

For the Applicant freeholder

Ms Stephanie Lovegrove – Counsel No 5 Chambers
Ms Penny Bournes – Anthony Collins Solicitors

Mr Paul Weston – Assistant Director Assets Tamworth Borough Council.

Respondents

Respondents 1
Mr T Hill
Mr D Smith
Mr Ian Beattie on behalf of Ms J Merriman

Respondent 2
Spires Independent Properties Limited represented by Mr L Clarkson

The Submissions of the Parties

9) The submissions of the parties both in writing and during the hearing as follows.

The Applicant

10) The Applicant both in their statement of case and in the witness statement of Mr Weston, initially set out the provisions within the leases relating to the subject properties that required them as the freeholder to carry out the repairs. The relevant elements of which are as follows:

"keep in repair the structure and exterior of the Properties and of the buildings in which the Properties are situated (including drains, gutters and external pipes) and to make good any defect affecting that structure;

keep in repair any property, premises, facilities or services that the Respondents have a right to use in common with other residents;"

11) The Applicant had identified that significant repairs and maintenance works would be needed to be carried out to its housing stock, in order to maintain it and keep it in repair; to comply with the Decent Homes Standard and to comply with its express and implied obligations to its leaseholders, including the obligations owed to the Respondents under their leases.

12) During the period 19 December 2018 and 22 February 2019, stock condition survey works were carried out on behalf of the Applicant in respect by Michael Dyson Associates Limited (independent building and structural surveyors) which identified that a number of properties had components approaching the end of their useful life which would need replacing in the coming years.

13) The Applicant carries out Stock Condition Reports every 5 years and uses the data for general financial business planning as part of its statutory financial

duties, in addition to reporting with regard to compliance with the Decent Homes Standard and for deriving its annual capital investment programmes. Amongst other information, the data confirms the construction date and type of roof structure at the properties surveyed as well as an indication of the best-case remaining life of the roof structure.

14) The Applicant explained that physical surveys were not conducted in respect of their entire stock and relevant to these matters only in relation to Sunset Close and not Lichfield Street. However, as all of the Properties were constructed in the 1950s, it was clear to the Applicant that the components reaching end of life at Sunset Close would also be the case in respect of Lichfield Street. Extracts of the stock condition report prepared over the period 27 February 2019 and 23 April 2019 on were exhibited by the Applicant.

The Stock Condition Report (SCR)

15) The SCR identified the various components of the properties surveyed and their life cycle.

The Roof Structure was identified as having a life cycle of 85 to 89 years.

The Main Roof covering was identified as Interlocking Concrete Tile and the life cycle was given as 50 years. The Applicant asked the Tribunal to specifically differentiate between the life cycle for the Roof *structure* and the Roof *covering*.

A further element of the survey gave the interlocking concrete tiled roof covering a remaining life of 15 years.

In the opinion of the Applicant, the SCR therefore indicated that the roof covering which formed part of the original structure when the properties were constructed in 1950s was now significantly past its 50 year life expectancy and as a proactive landlord, planned repairs are more reasonable and cost efficient than reactive repairs to old possibly leaking roofs.

The Consultation carried out

16) The Applicant considered that a long-term contract would offer best value and significant savings for the Applicant and its leaseholders in the long term. Due to the size and scope of project, the procurement process would need to follow a compliant and competitive tendering process using the National Housing Federation and in accordance with the Public Contracts Regulations 2015, requiring public notice of the proposed contract in the Official Journal of the European Union ("OJEU").

17) Section 20 of the Act requires local authority landlords to consult leaseholders who pay variable service charges (within the meaning of section 18 of the 1985 Act) in three circumstances where the landlord is:

- entering into a qualifying long-term agreement for the provision of goods or services, that is for a period of more than 12 months ("QLTA") and the leaseholder is required under the terms of their lease to contribute (by the payment of a service charge) to the costs incurred under the QLTA, where the cost to any one leaseholder in any 12 month accounting period is more than £100
- undertaking works of repair, maintenance and/or improvement to a building or any other premises ("Qualifying Works") and the leaseholder is required under the terms of their lease to contribute (by the payment of a service charge) to the costs incurred in carrying out the Qualifying Works ("QW"); and the cost to each leaseholder is more than £250
- undertaking Qualifying Works under an existing QLTA and the leaseholder is required under the terms of their lease to contribute (by the payment of a service charge) to the costs incurred in carrying out the Qualifying Works; and the cost to each leaseholder is more than £250.

18) The detailed consultation requirements to be followed are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (the "Regulations") and vary according to the circumstances pertaining, and whether the contract falls above or below the threshold that would require public notice of the contract (the "public procurement process").

19) The Applicant is aware that if a landlord fails to consult in accordance with section 20 then the amount that can be recovered is £100 per year where there is a QLTA; or £250 for Qualifying Works, unless a successful application is made to the Tribunal for dispensation.

20) As the proposed long-term contract would be a QLTA with an overall value that required it to be procured via the public procurement process, and the projected cost to be levied to each leaseholder by way of service charge would be more than £100 in any 12 month accounting period the Applicant commenced consultation with its leaseholders (including the Respondents) under Schedule 2 of the Regulations in accordance with section 20.

21) On 8 April 2019, the Applicant served a notice of intention to enter into a QLTA on leaseholders. Following on from this and on expiry of the consultation period set out in the notice of intention, the Applicant published an advert in the OJEU advertising its intention to let the proposed contract,

inviting interested contractors to tender. A copy of the tender evaluation report dated November 2019, which summarizes the tenders received was exhibited by the Applicant.

22) The Applicant notes the contractors were not quoting for specific items of works at that stage, including works to the Properties. They were instead quoting for rates that would apply to any works undertaken under the long-term contract.

23) The Applicant then served a notice of proposal and proposal dated 11 November 2019 on leaseholders (including the Respondents).

24) The Applicant submitted that it had consulted with the Respondents in accordance with Schedule 2 of the Regulations and following this awarded a contract to Wates Property Services in January 2020 to commence on 1 April 2020 for the provision of repairs and planned works in respect of all properties owned by the Applicant, for a 10 year contract period (the "Contract").

25) In August 2020, it became clear that roof covering replacement works were required to be carried out to the Properties under the Contract (for the avoidance of doubt all the properties at Lichfield Street and Sunset Close). This was because the interlocking concrete tile roof coverings at Lichfield Street and Sunset Close had reached the end of their expected lifespan and were consequently becoming uneconomical to repair. The Properties were constructed in the 1950s, it was clear that the expected lifespan of 50 years identified in the SCR had been exceeded and that the roof coverings at the Properties required replacement.

26) The Applicant reiterated that surveys were conducted at Sunset Close, but not Lichfield Street. However, as all of the Properties were constructed in the 1950s and all had the same interlocking concrete tile roof structure, the Applicant concluded that the results of the survey applicable to Sunset Close would apply equally to Lichfield Street. The Applicant submits that the sample survey approach on property types is a common approach for landlords with large stock numbers to take.

27) As the works were Qualifying Works under an existing QLTA, prior to commencing the works, the Applicant served a further notice of intention to carry out Qualifying Works under an existing QLTA on leaseholders at Lichfield Street and Sunset Close (including the Respondents) on 18 August 2020, in accordance with Schedule 3 of the Regulations.

28) The notice dated 18 August 2020 served on the Respondents complies with paragraphs 1(1), 1(2) (a) to (c) of Schedule 3 of the Regulations. The Applicant

accepts however that the notices do not comply with paragraphs 1(2) (d) and (e) of Schedule 3 of the Regulations as the Applicant did not invite the Respondents to make observations about the Qualifying Works nor the Applicant's estimated expenditure of carrying out the Qualifying Works under the Contract in the notices.

29) The works were completed at 60 Sunset Close in July 2020 and at Lichfield Street and 49 Sunset Street in September 2020.

Structural works to 49 Sunset Close

30) In March 2021, the Applicant submitted that it became clear following surveys that structural works including concrete repairs were required to the block containing 49 Sunset Close. Spalling concrete was visible in various locations to the walkways at the front edge of the walkways and also to various boot lintels and bay windows within the block, as well as concrete cracking being visible within the masonry above the rotating lintels at the Building. Consequently, the block required reinforced masonry lintels to be installed above and within the brickwork piers to the walkways and masonry panels, which also required repairing, incorporating masonry reinforcement. In addition, as the block longevity was 60 years, the existing concrete structures had reached the end of their expected lifespan.

31) A copy of the budget proposal document prepared by Bersche-Rolt (Structural repair specialists), sub-contractor for Wates Property Services dated 19 March 2021, indicating the need and justification for the works was exhibited. Relevant sections (2.3.1 to 2.3.4) from the "Observations and Recommendations" section of the report are as follows:

> *Blocks 41 to 50 and 51 to 60 Sunset Close are the same form of construction albeit shorter in length, with walkways at 22 m long and without the concrete planters to the gable elevations.*
> *The walkways are divided into bays between supporting brickwork piers.*
> *Spalling concrete is visible in various locations to the front edge of the walkways, which has an existing high build waterproof coating and also to various boot lintels and the bay windows around the blocks.*
> *Cracking is also visible within the masonry above rotating boot lintels, which should have B-R reinforced masonry lintels installed above and within the brickwork piers to the walkways and masonry panels, which should be repaired incorporating masonry reinforcement.*

32) As the works proposed were Qualifying Works under an existing QLTA, prior to commencing the Applicant served a further notice of intention to carry out Qualifying Works under an existing QLTA on leaseholders at the Building

(including the Respondent) on 15 June 2021, in accordance with Schedule 3 of the Regulations. In addition, the notice was reissued to Respondent 2 on 2 July 2021. The Applicant states that the notice dated 15 June 2021 (and reissued on 2 July 2021) served on the Respondent complies with paragraphs 1(1), 1(2) (a) to (c) of Schedule 3 of the Regulations. The Applicant accepts however that the notices do not comply with paragraphs 1(2) (d) and (e) of Schedule 3 of the Regulations. This is because the Applicant did not invite the Respondent to make observations about the Qualifying Works nor the Applicant's estimated expenditure of carrying out the Qualifying Works under the Contract in the notices.

The cost of the works.

33) The Tribunal finds it convenient at this point to summarise the costs per leaseholder as invoiced in July 2021 (November 2021 for the structural repairs):

80, 83, 84 and 85 Lichfield Street	£5,164.02
60 Sunset Close	£5,245.11
49 Sunset Close	£5555.88 (Roof works) £1548.74. (Structural Repairs)

NB. The invoices for the roof works also included additional, relatively minor, charges for other works. These charges have been excluded.

Application for dispensation

34) As the Applicant omitted to invite the Respondents to make observations about the Qualifying Works to be carried out under the QLTA nor the Applicant's estimated expenditure of carrying out the Qualifying Works under the QLTA, in accordance with paragraphs 1 (2) (d) and (e) of Schedule 3 of the Regulations, in the notices of intention served on the Respondents, the Applicant seeks dispensation from the consultation requirements set out in paragraphs 1(2) (d) and (e) and 3 and 4 of Schedule 3 of the Regulations in accordance with section 20ZA of the Act in respect of this notice.

35) The Applicant submitted that no "relevant prejudice" has been suffered by the Respondents as a consequence of this technical breach of Schedule 3 of the Regulations by the Applicant in accordance with *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 ("*Daejan*").

36) The Applicant set out the principles arising from *Daejan:*

- the correct legal test on an application to the [Tribunal] for dispensation is whether leaseholders had suffered "relevant prejudice" as a result of the landlord's failure to comply with the consultation requirements and, if so, what is the extent of that prejudice;
- the court made clear the purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate;
- in considering applications for dispensation the Tribunal should focus on whether leaseholders were prejudiced in either respect by the landlord's failure to comply;
- if the extent, quality and cost of the works are not affected by any failure to carry out consultation in accordance with section 20, then dispensation should normally be granted;
- the factual burden of identifying some relevant prejudice is on leaseholders, who would need to show the steps they would have taken had the breach not happened; and in what way their rights have been prejudiced as a consequence;
- the Tribunal has discretion to grant partial dispensation from the consultation requirements; and the Tribunal has the power to reduce the amount that a landlord can recover via the service charge.

In addition, further case law applying *Daejan* has made it clear that:

- notices are not defective so long as leaseholders are not prejudiced
- dispensation may be granted by the Tribunal even where credible prejudice has been proven by leaseholders

37) The Applicant therefore submitted that no "relevant prejudice" has been suffered by the Respondents as a consequence of this technical breach of Schedule 3 of the Regulations by the Applicant in accordance with *Daejan* and therefore that it is reasonable for the Tribunal to make the order for dispensation sought by the Applicant in accordance with section 20ZA of the Act particularly since the Respondents were still able to make observations on the costs of the Qualifying Works and the necessity for the Qualifying Works, irrespective of not being expressly invited to so by the Applicant.

38) In addition, the Applicant submitted that the extent, quality and cost of the Qualifying Works were not affected by the Applicant's failure to comply with paragraphs 1 (2) (d) and (e) of Schedule 3 of the Regulations.

The Respondents

Lichfield Street and 60 Sunset Close

39) Respondents 1 stated that the Applicant did not serve the notices correctly nor were they invited to comment on the same. They therefore had no opportunity to consider whether work was actually required or how it was to be carried out, and yet were expected to pay a substantial sum for such unexpected works, which greatly exceeded any service charge demands for previous years, without prior notice or opportunity to prepare financially.

40) With regard to service of the notices, there was an inconsistency as to where they were sent. For example, the notices of intention to enter into a QLTA were sent to a combination of property and billing addresses, yet the notice of the actual proposed works and costs involved for Leaseholders were sent direct to the Properties and not to billing addresses and a named addressee.

41) Following receipt of the service charge demands, the Respondents sought copies of consultation documentation from the Applicant which was, at least initially, not forthcoming and they were left no option but to make a (service charge) application to the Tribunal.

42) The Lichfield Street owners consider it unreasonable that works were carried out on their properties following a survey of Sunset Close which whilst the same age as Lichfield Street may deteriorate at a different rate due to location, proximity to trees, pollution etc. Therefore, in the opinion of the Respondents, comparing Sunset Close to Lichfield Street based on age, was not a sound basis to proceed and the Applicant demonstrated this by the fact that they have had separate independent surveys carried out on other flats in the area.

43) The Respondents consider that the Applicant simply repaired all of their housing stock based on age and not current condition; it was their duty as a Landlord to ascertain whether work was actually necessary. During the hearing Mr Smith put it to Mr Weston that the works were carried out because the Applicant had secured funding for the same rather any works actually being required. This was rejected by Mr Weston.

44) The Respondents also state that the Applicant was already contractually bound to Wates before the conclusion of the QLTA consultation hence giving lip service to their public duty. This, too, was rejected by the Applicant.

45) With regard to the Applicant's argument that the roofs were becoming uneconomical to repair, the Respondents state that to the best of their knowledge no repairs were ever carried out and in respect of Lichfield Street, Mr Smith said that during his ownership he wasn't aware of a single roof leak.

46) In respect of the dispensation application, the Respondents consider that they were prejudiced as they were unable to financially prepare for the cost and secondly, they were deprived of the right to assess the extent of the roof work and to seek expert advice and also challenge whether there was a more cost-effective approach. The Tribunal is therefore urged not to grant dispensation.

49 Sunset Close

47) On behalf of Spires Independent Properties Limited, Mr Clarkson gave the following evidence both in writing and during the hearing. In common with the other Respondents, Mr Clarkson considered the services of the notices to be at fault. He stated that the 2020 notice (presumably the QW notice for roof works of 18 August 2020) had been sent to a different address than the one usually used by the Applicants for communications such as invoices. Therefore, this was not received.

48) In any event, if the 2020 notice was in the same format as the 2021 notice (presumably the QW notice for the structural works of 15 June 2021), it was in any event invalid for the following reasons:

- Only one notice was served rather than the requisite three.
- There is no explanation of why the works are necessary,
- The Respondent unable to make observations within a 30 day period
- The Respondent was not given the option to nominate a contractor (which would also seem to apply to the rest of the leaseholders)
- The Respondent is not aware if the Applicant obtained two estimates for the proposed works (with at least one of the estimates to be from a contractor wholly unconnected with the landlord)
- Details of these estimates must be provided to leaseholders

49) In addition, and in relation to the works referenced in the first section 20 notice (which was not received) and from *Aster Communities v. Kerry Chapman and Others* [2021] EWCA Civ 660, the Applicant quotes the following:

"In other words, if the landlord wishes to avoid consultation requirements, it may have to pay for the leaseholders to have an expert to help them work out if works are necessary or could be done in a different, cheaper way to avoid unnecessary works or unnecessary expense."

The Applicant denied the Respondent the opportunity to ascertain:

- If the work was necessary

- Proportionate
- Not gold plated (The Tribunal interprets this comment as at reasonable cost)

50) Both in writing and at the hearing, Mr Clarkson, took issue with the fact that in respect of the roof works, other than the generic SCR there were no other independent surveys to ascertain that the works were actually required. During questioning in the hearing, Mr Weston said that surveyors employed by the Respondent would have carried out a ground level external inspection of each block to confirm that the works were necessary before they were actually carried out. However, there were no copies of any inspection reports presented by the Applicant and in addition, there was no evidence regarding roof leaks or roof repairs, in respect of either the Lichfield Street or Sunset Close properties. In the opinion of the Respondent, the roof did not require replacement for 20 plus years. The only formal report in respect of the structural repairs appears to be the one prepared by Bersche-Rolt, referred to above.

51) In summary, the Respondent asked the Tribunal to limit the recovery by the Applicant to £250.00.

The Law

52) The relevant legislation is set out in the Appendices to this decision.

The Tribunal's Determination

The Consultation Procedure

53) Due to the nature of the Applicant and the works proposed, the relevant consultation requirements are set out in Schedule 2 to the Service Charges (Consultation Requirements) (England) Regulations 2003. These are given in full in the appendices to this decision. The Tribunal would make the following comments in respect of the various elements of the process with regard to this matter.

Notice of intention.

The Notice of Intention issued by the Applicant appears broadly compliant. In respect of the issue raised by Mr Clarkson, the lack of opportunity to nominate a contractor is not a requirement under schedule 2 consultation and as required by paragraph 1 (d), the Applicant stated why nominations are not being invited.

Notification of landlord's proposal

Again, the Tribunal considers this Notice broadly compliant with the exception of paragraph 4 (2) (b) and (c):
(b)invite the making, in writing, of observations in relation to the proposal; and
(c)specify—
(i)the address to which such observations may be sent;
(ii)that they must be delivered within the relevant period; and
(iii)the date on which the relevant period ends.

In their summary of the consultation carried out, the Applicant states that they have invited observations from the leaseholders however the only mention of observations in the copy of the notice provided to the Tribunal is in relation to observations received during the consultation period, presumably this relates to those received as a result of the notice of intention.

Landlord's response to observations

There were no observations received so no necessity for the Applicant to provide a response.

54) Following the consultation under schedule 2, the Applicant must then follow the requirements set out in Schedule 3 Consultation Requirements for Qualifying Works under Qualifying Long Term Agreements and Agreements to which Regulation 7(3) applies. Schedule 3 is also reproduced in Appendix 1.

55) The Applicant admits and it is clear that paragraph 1 (d) and (e) were not complied with but states that the Respondents were free in any event to make observations.

Service of Notices

56) All Respondents cite incorrect service as a reason for the consultation period being flawed. The Applicant submits that there are no specific statutory provisions relating to the service of notices required by under the Regulations in accordance with section 20 and further submits that the relevant leases do not prescribe any particular method for the service of notices.

57) The Respondents complain that regular correspondence addresses were inexplicably not used and when requested, copies of documentation was not readily forthcoming.

58) The Tribunal does not need to make a decision on whether service was good as the consultation was flawed. The Applicant admits the omission in relation to the Schedule 3 requirement to invite observations and the similar requirement under Schedule 2 may also have been omitted. The Applicant states as follows:

"even though the Notice of Intention did not invite observations from the Applicants, the Applicants were of course, still able to make observations on the costs of the Qualifying Works and the necessity for the Qualifying Works. Consequently, no disadvantage has been suffered by the Applicants as a result of this omission. For the avoidance of doubt, no observations were made by the Applicants."

The Tribunal does not accept this statement. The QW Notice was the first occasion upon which the Respondents were given an indication of the charges that were going to be levied. The QLTA Notices don't give any indication of this kind, only that wide-ranging works were be carried out to the Applicant's housing stock.

The dispensation applications and whether the works were appropriate?

59) The Tribunal then moves to consider the applications for dispensation under section 20ZA of the Act. According to *Daejan*, the Tribunal should focus on the extent to which the tenants were prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the landlord to comply with the regulations. No distinction should be drawn between "a serious failing" and "a technical minor or excusable oversight" save in relation to the prejudice it causes. The financial consequence to a landlord in not being granted dispensation is not a relevant factor to be considered by the Tribunal nor is the nature of the landlord. The burden of proof in applications for dispensation remains throughout on the Landlord but the factual burden of identifying some 'relevant' prejudice that the Lessees would or might have suffered, caused by the Landlord's failure to consult, is on the Lessees, that is to say the Respondents in this case. Where the Lessees say that they were not given the requisite opportunity to make representations about the proposed works to the Landlord, the Lessees have to identify what they would have said if the opportunity had arisen.

60) Of the Respondents' respective cases, the central issue raised in respect of the flawed consultation, is the lack of opportunity to comment on the Schedule 3 Notice to the effect that they did not consider the works were required. This was raised in their submissions and discussed at length in the hearing. The sole formal justification for the roof works appears to have been the SCR. Whilst Mr Weston, stated that one of the Applicant's own surveyors inspected each block before the works, there was no evidence provided to the Tribunal

of these survey notes. Nor was there was a record of any repairs to the blocks in question to repair roof leaks or other roof related problems. To the contrary, Mr Hill said he was not aware that there had been any leaks to Lichfield Street.

61) The SCR predicts an expected lifecycle of 50 years for the properties which were built in the 1950s. In respect of the SCR, the surveying works were carried out between 19 December 2018 and ended on 22 February 2019 whilst the report was prepared over the period 27 February and 23 April 2019. The report predicts an expected lifecycle of 50 years for the properties which were built in the 1950s. By that measure, the roof coverings were well past the date at which they should have been replaced.

62) However, the SCR also indicates that the interlocking roof tiled covering had a remaining life of 15 years. This coupled with the lack of a specific report on the blocks where the roof works were to be carried out and no evidence as to roof defects indicates in the opinion of the Tribunal that roof coverings with a significant remaining useful life were replaced; if the date of the survey is taken at 2019, a remaining life of 15 years and works carried out in 2020, it would appears that the works were 14 years "too soon".

63) The Tribunal agrees with Mr Weston that as a responsible landlord, repairs should be carried out in a timely manner to the benefit of the occupiers and also to avoid costly reactive repairs but would a reasonable landlord replace, what in the absence of evidence relating to repairs or defects, the Tribunal must consider was a roof in reasonable condition with a significant life span remaining? The Tribunal thinks not. A landlord faced with a report that indicates a remaining life of 2 years would, in the opinion of the Tribunal, be acting reasonably in replacing roof coverings but not 14 years.

64) The Tribunal has no issue with the cost of the roof works *per se* nor has a challenge been made to the same. The works were tendered, and multiple bids received.

65) The Tribunal has before it, service charge and dispensation applications. Considering the former applications and the payablity and reasonableness of the roof charges, the Tribunal finds that the roof works were not required when they were carried out. The Respondents will have the benefit of the new roof covering hence it would not be fair to the Applicant to disallow the charges totally. Using the SCR, the Applicant's own report, to determine that the existing roofs had 14 years useful life left, as above, and considering that a proactive landlord would replace the same within their last 2 years of life, leaves a net balance of 12 years. In the opinion of the Tribunal, the service charges payable by the Respondents in respect of the roof works should be adjusted as follows:

Estimated lifespan at date of survey in 2019 *Therefore, roof replacement required in 2034*	*15 years*
Total roof life span 1950 to 2034	*84 years*
Roof works carried out in 2020	
Remaining roof lifespan in 2020	*14 years*
Deduction for period at the end of life to replace the same	*2 years*
Net remaining roof lifespan in 2020	*12 years*
Remaining roof life at date of works as a percentage of total roof lifespan	*12/84 = 14.29% (Rounded)*

66) It is the Tribunal's determination that the service charge demands in respect of the roof works should be reduced by 14.29% as follows:

	Amount invoiced
80, 83, 84 and 85 Lichfield Street	£ 5,164.02
Reduction for prejudice	£ 737.94
Payable service charge reduced to:	£ 4,426.08
60 Sunset Close	£ 5,245.11
Reduction for prejudice	£ 749.53
Balance	£ 4,495.58
49 Sunset Close	£ 5,555.88
Reduction for prejudice	£ 793.94
Balance	£ 4,761.94

The structural works to 49 Sunset Close

67) The structural works carried out to the block containing 49 Sunset Close are however, a different matter. In addition to the SCR, there was the report prepared by Bersche-Rolt. The schedule of works within that report dated 30 April 2021 indicates specific repairs are required to the block which the

Tribunal is prepared to accept as evidence that the works were actually required.

68) As the costs were established by the QLTA process and in the absence of contrary evidence, accepted by the Tribunal as reasonable. Accordingly, the Tribunal finds that these works are reasonable and payable as invoiced.

Applications for Orders under section 20C of the Act and under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

69) The Respondent leaseholders requested the Tribunal make orders to the effect that they should not have to pay any of the Applicant local authority's costs of these proceedings via the service charge, and that any costs they may be liable for under any clause in the lease allowing the Applicant to charge an administration charge for their costs should not be payable.

70) The Tribunal invited submissions in respect of these applications during the hearing. The Applicant made comments to the effect that many of the arguments raised by the Respondents in respect of the QLTA were unnecessary and that the Applicant's position had always been clear. The Respondents made comments to the effect that they had attempted to resolve this matter with the Applicant directly to avoid an application to the Tribunal, but to no avail.

71) The purpose of section 20C is to give the Tribunal the power to prevent a landlord actually recovering its costs via the service charge when it was not able to recover them by a direct order from the Tribunal.

72) In *Tenants of Langford Court (Sherbani) v Doren Limited LRX/37/2000*, which concerned an application for the appointment of a manager under section 24 of the Landlord and Tenant Act 1987 in which the applicant tenants had been successful, the Lands Tribunal (Judge Rich QC) made the following remark:

"28. In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise."

73) However, there is also guidance in previous cases to the effect that an order under section 20C is to deprive the landlord of a property right and it should be exercised sparingly (see for example, *Veena-v-Chong*: Lands Tribunal [2003] 1EGLR175).

74) The Applicant admitted that an element of the consultation procedure was flawed, therefore, in the opinion of the Tribunal it would not be just and equitable if the Respondents were to be responsible for the cost of these proceedings.

75) Accordingly, the Tribunal makes make an order under section 20C of the Act that none of the Applicant's costs of these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents. It also makes an order under paragraph 5A of Schedule 11 of the 2002 Act that the Respondents' liability to pay any litigation costs incurred or to be incurred by the Applicant in connection with these proceedings is extinguished.

Appeal

76) 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.

V Ward

Appendices

Appendix 1

Application under Section 27A of the Landlord and Tenant Act 1985

Sections 18 and 19 provide:

18(1) In the following provisions of this Act 'service charge' means an amount payable by a tenant of a dwelling as part of or in addition to rent –

> (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements, or insurance or the landlord's costs of management, and
> (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose –

> (a) 'costs' include overheads, and
> (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

19(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

> (a) only to the extent that they are reasonably incurred, and
> (b) where they are incurred on the provision of services for the carrying out of works, only if the services are of a reasonable standard;

and the amount shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction, or subsequent charges or otherwise.

Section 27A, so far as relevant, provides:

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to –

(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Sub-section (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were included for services, repairs, maintenance, improvements, insurance or management of any description, a service charge would be payable for the costs, if it would, as to –

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would payable.

The 'appropriate tribunal' is this Tribunal.

Appendix 2

Section 20ZA of the Landlord and Tenant Act 1985

(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.

(3)The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

> (a)if it is an agreement of a description prescribed by the regulations, or
> (b)in any circumstances so prescribed.

(4)In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5)Regulations under subsection (4) may in particular include provision requiring the landlord—

> (a)to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
> (b)to obtain estimates for proposed works or agreements,
> (c)to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
> (d)to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
> (e)to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6)Regulations under section 20 or this section—

> (a)may make provision generally or only in relation to specific cases, and
> (b)may make different provision for different purposes.

(7)Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Appendix 3

The Service Charges (Consultation Requirements) (England) Regulations 2003

Schedule 2 - Consultation Requirements for Qualifying Long Term agreements for which public notice is required

Notice of intention

1.—(1) The landlord shall give notice in writing of his intention to enter into the agreement—

(a)to each tenant; and
(b)where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

(a)describe, in general terms, the relevant matters or specify the place and hours at which a description of the relevant matters may be inspected;
(b)state the landlord's reasons for considering it necessary to enter into the agreement;
(c)where the relevant matters consist of or include qualifying works, state the landlord's reasons for considering it necessary to carry out those works;
(d)state that the reason why the landlord is not inviting recipients of the notice to nominate persons from whom he should try to obtain an estimate for the relevant matters is that public notice of the relevant matters is to be given;
(e)invite the making, in writing, of observations in relation to the relevant matters; and
(f)specify—
(i)the address to which such observations may be sent;
(ii)that they must be delivered within the relevant period; and
(iii)the date on which the relevant period ends.

Inspection of description of relevant matters

2.—(1) Where a notice under paragraph 1 specifies a place and hours for inspection—

(a)the place and hours so specified must be reasonable; and
(b)a description of the relevant matters must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to relevant matters

3. Where, within the relevant period, observations are made, in relation to the relevant matters by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Preparation of landlord's proposal

4.—(1) The landlord shall prepare, in accordance with the following provisions of this paragraph, a proposal in respect of the proposed agreement.

(2) The proposal shall contain a statement—

(a)of the name and address of every party to the proposed agreement (other than the landlord); and
(b)of any connection (apart from the proposed agreement) between the landlord and any other party.

(3) For the purpose of sub-paragraph (2)(b), it shall be assumed that there is a connection between the landlord and a party—

(a)where the landlord is a company, if the party is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
(b)where the landlord is a company, and the party is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
(c)where both the landlord and the party are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
(d)where the party is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
(e)where the party is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(4) Where, as regards each tenant's unit of occupation, it is reasonably practicable for the landlord to estimate the relevant contribution to be incurred by the tenant attributable to the relevant matters to which the proposed agreement relates, the proposal shall contain a statement of that contribution.

(5) Where—

(a)it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4); and
(b)it is reasonably practicable for the landlord to estimate, as regards the building or other premises to which the proposed agreement relates, the total amount of his expenditure under the proposed agreement,
the proposal shall contain a statement of the amount of that estimated expenditure.

(6) Where—

(a)it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4) or (5)(b); and
(b)it is reasonably practicable for the landlord to ascertain the current unit cost or hourly or daily rate applicable to the relevant matters to which the proposed agreement relates, the proposal shall contain a statement of that cost or rate.

(7) Where it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (6)(b), the proposal shall contain a statement of the reasons why he cannot comply and the date by which he expects to be able to provide an estimate, cost or rate.

(8) Where the relevant matters comprise or include the proposed appointment by the landlord of an agent to discharge any of the landlord's obligations to the tenants which relate to the management by him of premises to which the agreement relates, each proposal shall contain a statement—

(a)that the person whose appointment is proposed—
(i)is or, as the case may be, is not, a member of a professional body or trade association; and
(ii)subscribes or, as the case may be, does not subscribe, to any code of practice or voluntary accreditation scheme relevant to the functions of managing agents; and
(b)if the person is a member of a professional body trade association, of the name of the body or association.

(9) Each proposal shall contain a statement of the intended duration of the proposed agreement.

(10) Where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, the proposal shall contain a statement summarising the observations and setting out the landlord's response to them.

Notification of landlord's proposal

5.—(1) The landlord shall give notice in writing of the proposal prepared under paragraph 4—

(a)to each tenant; and
(b)where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

(a)be accompanied by a copy of the proposal or specify the place and hours at which the proposal may be inspected;
(b)invite the making, in writing, of observations in relation to the proposal; and
(c)specify—
(i)the address to which such observations may be sent;
(ii)that they must be delivered within the relevant period; and
(iii)the date on which the relevant period ends.

(3) Paragraph 2 shall apply to a proposal made available for inspection under this paragraph as it applies to a description made available for inspection under that paragraph.

Duty to have regard to observations in relation to proposal

6. Where, within the relevant period, observations are made in relation to the landlord's proposal by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Landlord's response to observations

7. Where the landlord receives observations to which (in accordance with paragraph 6) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made, state his response to the observations.

Supplementary information

8. Where a proposal prepared under paragraph 4 contains such a statement as is mentioned in sub-paragraph (7) of that paragraph, the landlord shall, within 21 days of receiving sufficient information to enable him to estimate the amount, cost or rate referred to in sub-paragraph (4), (5) or (6) of that paragraph, give notice in writing of the estimated amount, cost or rate (as the case may be)—

(a)to each tenant; and

(b)where a recognised tenants' association represents some or all of the tenants, to the association.

Schedule 3 - Consultation Requirements for Qualifying Works under Qualifying Long Term agreements and agreements to which regulation 7(3) applies

Notice of intention

1.—(1) The landlord shall give notice in writing of his intention to carry out qualifying works—

(a)to each tenant; and
(b)where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

(a)describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
(b)state the landlord's reasons for considering it necessary to carry out the proposed works;
(c)contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;
(d)invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure;
(e)specify—
(i)the address to which such observations may be sent;
(ii)that they must be delivered within the relevant period; and
(iii)the date on which the relevant period ends.

Inspection of description of proposed works

2.—(1) Where a notice under paragraph 1 specifies a place and hours for inspection—

(a)the place and hours so specified must be reasonable; and
(b)a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works and estimated expenditure

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

Landlord's response to observations

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made, state his response to the observations.

Appendix 4

Section 20C of the Landlord and Tenant Act 1985

20C.— Limitation of service charges: costs of proceedings.

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before … the First-tier Tribunal, … are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

…

(aa) in the case of proceedings before the First-tier Tribunal, to the tribunal;

…

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

The purpose of section 20C is to give the Tribunal the power to prevent a landlord actually recovering its costs via the service charge when it was not able to recover them by a direct order from the Tribunal. The discretion given to the Tribunal is to make such order as it considers just and equitable.

Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002

Limitation of administration charges: costs of proceedings

5A (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

The table referred to in sub-paragraph 3(b) confirms that if the proceedings to which the costs relate were proceedings in the first-tier tribunal, then the first-tier tribunal is the relevant court or tribunal.

The Tribunal therefore has a discretion limited only by the requirement that it make a just and equitable decision.