FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case references	**:**	**LON/00AY/LDC/2023/0181** **LON/00AY/LDC/2023/0224**
Property	**:**	**St George Wharf, London, SW8 2LS**
Applicants	**:**	**(1) St George South London Limited** **(2) Fairhold Holdings (2005) Limited**
Representative	**:**	**(1) Forsters LLP** **(2) JB Leitch Ltd**
Respondents	**:**	**The long residential leaseholders of St George Wharf**
Type of application	**:**	**To dispense with the requirement to consult leaseholders regarding Qualifying Long Term Agreements (Section 20ZA, Landlord and Tenant Act 1985)**
Tribunal	**:**	**Judge Vance** **Mr S Mason, FRICS**
Date of decision	**:**	**21 February 2024**

Decision

Background

1. At a hearing that took place on 22 and 23 January 2034, the Tribunal heard:

   (a) applications brought by Fairhold Holdings (2005) Limited ("Fairhold") (LON/00AY/LDC/2023/0224) **[6]** and St George South London Limited ("St George) (LON/00AY/LDC/2023/0181) **[15]** (together, "the Landlords") under s.20ZA Landlord and Tenant Act 1985 ("the 1985 Act") seeking dispensation from the statutory consultation obligations imposed under s.20 of that Act. Dispensation was sought regarding entry into management agreements with Rendall & Rittner ((R&R"); and

(b) consolidated applications brought by Fairhold (LON/00AY/LSC/2021/0369) and Mr Burke, a leaseholder of a flat on the St George Wharf estate (LON/00AY/LSC/2023/0064) seeking a determination of Mr Burke's liability to pay service charges under s.27A of the 1985 Act and administration charges under Schedule 11, para. 5 Commonhold Leasehold and Reform Act 2002 ("the 2002 Act").

2. This is the Tribunal's decision in respect of the two s.20ZA applications. A decision regarding the s.27A applications will be issued separately. Numbers in bold and in square brackets below refer to pages in the s.20ZA hearing bundle prepared by the Landlords (388 pages) except where preceded by the prefix "M" where they refer to pages in the s.27A hearing bundle..

3. St George is the freehold owner of the St George Wharf estate ("the Development"), a large mixed-use site, consisting of 1,185 residential units and 29 commercial units. Mr Burke is the original long leaseholder of a triplex penthouse, Flat 298, situated on the 18th, 19th, and 20th floor of Drake House, one the several blocks forming part of the Development. Mr Burke's immediate landlord is Fairhold, which holds a headlease of Drake House dated 12 April 2005, registered at HM Land Registry under title no.TGL287211)

4. Both St George and Fairhold have retained R&R as their managing agents, and R&R have managed the Estate since 2012. It entered into management agreements:

   (a) with St George, on 1 January 2012 **[136],** renewed on 7 March 2022 **[210]** and 21 March 2023 **[212]**; and

   (b) with Fairhold, on 1 January 2012 **[M219]**, 1 January 2015 **[M1109]**, and 15 July 2020 **[M1137]**.

5. If any of these agreements amounted to a qualifying long term agreement ("QLTA") for the purposes of Section 20 of the 1985 Act and the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the 2003 Regulations") the relevant landlord should have followed the statutory consultation requirements imposed under s.20 and the 2003 Regulations, and consulted with leaseholders before entering into the agreement. If it did not do so then it is limited to recovering £100 per leaseholder, per year, in respect of that QLTA, unless dispensation from the consultation requirements is obtained from this Tribunal. No consultation took place before any of the agreements were entered into with R&R.

6. The Tribunal issued directions on St George's application on 6 July 2023, and on both applications on 11 September 2023 **[25]**,**[31]**. These directions afforded all leaseholders the opportunity to object to the grant of dispensation sought by the landlords. No leaseholder, including Mr Burke, has objected to the grant of dispensation, or suggested that any conditions should be imposed on the grant of dispensation.

The Law

7. Section 20 of the Act requires landlords to consult with tenants before they incur the costs of qualifying works, or enter into long term agreements for the provision of services for which a service charge will be payable. The consultation requirements apply if costs incurred under a QLTA in any accounting period exceed an amount which results in the relevant contribution of any tenant, in respect of that period, being more than £100 (regulation 4 of the 2003 Regulations).

8. 20ZA(1) of the 1985 Act provides that where an application is made to the tribunal for the grant of dispensation from all, or any, of the consultation requirements, the Tribunal may make such a determination if it satisfied that it is reasonable to dispense with the requirements. Section 20ZA(2) defines a QLTA "an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months."

9. The leading authority in relation to s.20ZA dispensation requests is *Daejan Investments Ltd v Benson* [2013] 1 WLR 854 ("*Daejan*") in which the Supreme Court set out guidance as to the approach to be taken by a tribunal when considering such applications. This was to focus on the extent, if any, to which leaseholders were prejudiced in either paying for inappropriate works or paying more than would be appropriate, because of the failure of the landlord to comply with the consultation requirements. In his judgment, at [44-45] Lord Neuberger said as follows:

> "44. Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT [now the FTT] should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements.
>
> 45. Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the Requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be – ie as if the Requirements had been complied with."

10. This Tribunal's focus should not, therefore be on the seriousness of the breach of the consultation requirements, but on any prejudice caused by the breach. The overarching question is not whether the landlord had acted reasonably, but is whether the tribunal is satisfied that it is reasonable to dispense with compliance.

11. At [65- 69] Lord Neuberger set out what, in his judgment, was the correct approach to the identification of prejudice. He said that:

> "65 … the only disadvantage of which they could legitimately complain is one which they would not have suffered if the requirements had been fully complied with, but which they will suffer if an unconditional dispensation were granted."

12. He explained that "the factual burden of identifying some relevant prejudice that they would or might have suffered would be on the tenants" but that a landlord could scarcely complain if the tribunal viewed the tenants' arguments sympathetically [67].

13. In *Corvan (Properties) Ltd v Abdel-Mahmoud* [2018] HLR 36 the Court of Appeal held [31-38] that where a management agreement was for a term of "one year from the date of signature hereof and will continue thereafter until terminated upon three months' notice by either party" it constituted a contract for a minimum of 15 months as it mandated continuation beyond the first year (one year plus three months' notice). As such, the agreement was held to be a QLTA that required consultation with leaseholders.

St George's position

14. Clause 2.2 of the agreement dated 1 January 2012 specifies that the Management Period "…shall begin on the date of this agreement and subject to clause 7 shall continue for a period of one year commencing from the date of this agreement and thereafter from year to year until terminated by not less than six months' notice in writing given by the Owner to the Managing Agent at any time or vice versa or until terminated in accordance with the provisions of clause 7 of this agreement if earlier". Clause 7 allowed St George the right to terminate the Agreement upon notice in specific circumstances, none of which have exercised by the parties to the agreement. The agreements dated 7 March 2022 and 21 March 2023 limited the management period to one year only.

15. St George's position is that at the time the initial 1 January 2012 agreement was entered into, it did not consider that the agreement constituted a QLTA and it therefore did not consult with leaseholders before entering into the agreement. It acknowledges, however, that following the decision in *Corvan* the Agreement is likely to be a QLTA, and consultation should have taken place. We agree that the 1 January 2012 agreement amounted to a QLTA on which St George should have consulted. The minimum term of the agreement was for more than a year because it could not be terminated until at least six months after the first year. It therefore constituted a contract for a minimum of 18 months. However, the 7 March 2022 and 21 March 2023 agreements were not QLTA's because they limited the management period to one year only

16. St George seeks unconditional dispensation under s.20ZA regarding the 1 January 2012 agreement, contending that R&R's fees are competitive and in line with, or possibly below, the market rate for such a development, and because the residential leaseholders have suffered no financial prejudice as a result of the failure to consult. It agrees that it will not put the costs of its application for dispensation through the service charge.

17. In a witness statement dated 27 September 2023 **[126]**, Mr Gareth Cunnew, a Customer Service Director at St George referred to other proceedings before this Tribunal (LON/00BJ/LSC/2019/0330 and LON/00BJ/LSC/2019/0338), which concerned the application of VAT to staff costs included in the service charge for the Development ("the VAT Application"). He explains that the VAT Application was issued by the residents' association at St George Wharf, the St George Wharf Residents Association, and around 500 of the residential lessees in the Estate participated, amounting to around 42% of the total residential tenants in the Estate.

18. Mr Cunnew stated that St George primarily operates as residential property developers, and that it does not have the expertise, facilities, or staff for the day-to-day management of a large mixed used developments. It therefore relies on the professional expertise of managing agents for the management of all its developments. The complexity of managing the Development was, he said, recognised at para. 82 of the Tribunal's decision in the VAT Application **[192]**. Mr Cunnew also points out that at para 14 of its decision the Tribunal recorded that "…no complaint is made at all about the standard or costs of management. The net cost of the services is not challenged as being unreasonable nor is the standard of works or services in question". At paras. 18 and 19 the Tribunal said that it found the Development to be well managed, with comprehensive property services, and with an impressive overall standard of maintenance. It recorded that its inspection disclosed a good standard of property management for what would be a demanding estate to manage, warranting the instruction of experienced property managers.

Fairhold's position

19. Clause 6.1 of the 1 January 2012 agreement **[M223]** specifies that it is to "run for a period of one year from the date hereof and thereafter will continue thereafter until terminated upon three months' notice in writing by either party but this agreement may be terminated at any time by the mutual consent of the parties in writing".

20. Clause 6.2 makes provision for a party to serve notice to terminate where the other party is in breach of the agreement and clause 6.3 provides for termination without notice if the agent enters into bankruptcy or liquidation and in other circumstances not relevant to this application.

21. Mr Bates submitted that the 1 January 2012 agreement was not a QLTA because:

    (a) the initial term was only one year and a QLTA arises only where the initial term is more than 12 months; and/or,

    (b) the termination provisions allow termination within the 12 months, so that the minimum term is less than 12 months:

22. We do not agree with Mr Bates that the initial term of the agreement was for only one year. Although clause 6.1 refers to the agreement running for one year, it also provides that the same contract period *will* continue "thereafter" until terminated upon three months' notice, meaning that the agreement was intended to continue indefinitely after the initial one year period until terminated.

23. The relevant question, therefore, is whether the inclusion of the words "but this agreement may be terminated at any time by the mutual consent of the parties in writing" in clause 6.1 means that the initial period of the contract could have been brought to an end on, or before, the expiry of that one year period, or whether the contract had to be allowed to continue for a period longer than 12 months.

24. We agree with Mr Bates that the clause allows for termination within the initial one year period. It does not in our view matter that notice of termination before the end of 12 months had to be by mutual consent of the parties and not capable of being given by way of a unilateral notice. What is key is whether this was an agreement whose term must exceed 12 months, and in our determination it was not. Although it was an agreement for more than one year, it was potentially terminable on three months' notice at, or before, the end of 12 months. It did not entail a minimum commitment for more than 12 months and the agreement was therefore not a QLTA.

25. The term of the 1 January 2015 agreement **[M1109]** is specified as starting on of 1 January 2015, for a "fixed term of one year less one day". Clause 3.1 of the agreement states that in the event that the Manager continues to provide management services "beyond the expiry of the Term, its instruction to do so shall be strictly on a month to month basis in accordance with the provisions of this Agreement subject to termination under Clause 12. Clause 12.1 enabled either party to end the agreement on the giving of not less than three months' notice in writing, and clause 12.2 allowed for either party to terminate it in specified circumstances including material breach of the terms of the agreement and entry of R&R into liquidation.

26. Mr Bates submitted that the 1 January 2015 agreement was not a QLTA because:

    (a) its initial term was for a year less a day; and/or

(b) any "hold over" is a new agreement on a month-to-month basis; and/or,

(c) the termination provisions allowed termination within the 12 months, so that the minimum term was less than 12 months.

27. We agree with him that the initial term was for less than one year. In our view the contents of clause 3.1 did not alter that position so as to result in the minimum term of the agreement being that of more than one year. If that is wrong, we conclude that the termination provisions at clause 12.1 allowed for termination within the initial one year period, meaning that the agreement did not entail a minimum contract commitment for more than 12 months. The agreement was therefore not a QLTA.

28. The 15 July 2020 agreement **[1137]** is in very similar terms to the 1 January 2015 agreement. Its term is specified as starting on the date of the agreement, for a "fixed term of one year less one day". Clause 3.1 of the agreement states that in the event that the Manager continues to provide management services "beyond the expiry of the Term, its instruction to do so shall be strictly on a month to month basis in accordance with the provisions of this Agreement but subject to three months' notice of termination at any time (an "additional period")".. Clause 12.1 is in the same terms as the 1 January 2015 agreement.

29. Mr Bates submitted that the 15 July 2020 agreement was not a QLTA for the same reasons as the 1 January 2015 agreement. We concur. The initial term was for less than one year and nothing in clause 3.1 alters that position. In any event, as with the 1 January 2015 agreement, the termination provisions at 12.1 allowed for termination within the initial one year period, meaning that the agreement did not entail a minimum commitment for more than 12 months.

Dispensation

30. We consider it reasonable to grant St George unconditional dispensation from all of the consultation requirements with respect to the agreement it entered into with R&R on 1 January 2012.

31. If we are wrong in concluding above that the agreements R&R entered into: (a) with St George on 7 March 2022 and 21 March 2023; and (b) with Fairhold on 1 January 2012, 1 January 2015, and 15 July 2020, were not QLTAs then we would also have concluded that it was reasonable to grant unconditional dispensation regarding each and all of those agreements.

32. Our reasons are as follows:

(a) no leaseholder has raised any objection to the grant of dispensation and none have suggested that they have been prejudiced by the failure of the Landlords to comply with the consultation requirements;

(b) on the contrary, the fact that the no challenge was raised in the VAT Application to the amount of R&R's fees, or the standard of service it has provided, together with the Tribunal's findings in that case that the Development was well managed, with an impressive standard of maintenance suggests the absence of any relevant prejudice.

Amran Vance

21 February 2024

Appendix - 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).