FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/45UD/LDC/2024/ 0106
Property	**:**	Cowdray Court, 1-25 North Street Midhurst, West Sussex, GU29 9UA
Applicant	**:**	Telegraph Management Limited
Representative	**:**	Mr Hoang- Brown of counsel instructed by Jennifer Hughes (Director)
Respondent	**:**	The Lessees of 4, 7, 18, 20 and 24 and the other Lessees
Representative	**:**	Mr David Pick (for the lessees of 4, 7, 18, 20 and 24 only)
Type of Application	**:**	To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
Tribunal Member	**:**	Judge J Dobson Mr P Smith FRICS Ms T Wong
Date of Hearing	**:**	26th July 2024
Date of Decision	**:**	30th August 2024

DECISION

Summary of the Decision

1. **The Applicant is not granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act, finding that the relevant agreement entered into by the Applicant is not a qualifying long- term agreement. The need for dispensation does not therefore arise.**

2. **In addition, the cost of the services, and hence the service charges demanded in respect of the services, pursuant to the agreement fall below £100.00. Even if the agreement had been a qualifying long- term agreement, consultation or lack of it would have had no practical effect and there is no or insufficient merit to reaching a determination which serves no useful purpose.**

3. **The Tribunal has made no determination on whether the costs of the works are reasonable or payable.**

4. **The Applicant's application that the Tribunal fees be recoverable is refused.**

The application and Background

5. The Applicant applied by application [4- 41] in June 2024 for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 ("the Act") from the consultation requirements imposed by Section 20 of the Act in respect of an agreement entered into in relation to Cowdray Court, 1-25 North Street, Midhurst, West Sussex, GU29 9UA ("the Property").

6. The Applicant is the freehold owner of the Property. The Respondent lessees hold leases of one or more dwellings within the Property.

7. The Property comprises 2 flats, 2 cottages and otherwise terraces of houses, being 24 dwellings in total, and all of those are leased. It is described in the application as a gated retirement community.

8. The Applicant explains in the application that it relates to a 5- year agreement ("the Agreement") which it is said was entered into with Tunstall UK ("Tunstall") when the Property was being built. Tunstall is said to be a monitoring company, who supply hard wired smoke detectors to each property along with a pull chord system compatible with Care Line & Aimi pendants. It is said that the Agreement was entered into prior to the lessees moving in, by which it may or may be meant prior to the leases being granted. It is said that dispensation is thought to be required because the term of the Agreement exceeds 5 years.

9. It appeared as at the Directions dated 2nd July 2024 [42- 49] that the key point was that the Agreement was due for renewal- for a term unclear- in August 2024 (the precise date is not given and so where within that month is not apparent). Further, a relevant point seemed to be suggested as that if the contract were not to be renewed, firstly the equipment installed by Tunstall would require removal, at cost and causing some damage and secondly, if a new company supplying the same service were found (and where it is said there is no other UK- based company providing a like for like service), that company would charge to install new equipment and other external works would be required (although clarity as to why may assist). That included some surmising on the part of the Tribunal of how the matters set out fitted together because, as noted in the 2nd July 2024 Directions, the application was not well explained.

10. The application stated that the cost to each dwelling per year is £166.00. It was said that was reduced from the full price by way of a loyalty discount of 15% in return for the taking out of a 5- year contract.

The history of the case

11. The Tribunal gave Directions on 2nd July 2024, explaining that the only issue for the Tribunal is whether, or not, it is reasonable to dispense with the statutory consultation requirements and is not the question of whether any service charge costs are reasonable or payable. The Directions Order listed the steps to be taken by the parties in preparation for the determination of the dispute, if any.

12. The Directions listed the application for a hearing at 10am on 26th July 2024 but stated that the Tribunal would determine the application on the papers received unless a party objected in writing to the Tribunal within 7 days of the date of receipt of the directions. Objections were received from the lessees of the specific dwellings indicated above ["the Identified Lessees"] (although strictly it is the dwellings which are identified rather than the individuals who are the lessees).

13. Having considered the application further and noted the objections, the Tribunal was satisfied that the listing for the hearing should be retained. Directions were given dated 23rd July 2024 so stating and briefly explaining the reasons for that.

14. The Applicant provided a bundle for the hearing, comprising 250 pages. The bundle contained the application and supporting document, including a lease; the response of the Identified Lessees at length [57- 158], principally enclosures; the reply to that of the Applicant at some length [162- 210] and finally case authorities [211- 250]. The bundle did not contain the contract entered into between the Applicant and Tunstall, as mentioned below. It also did not include a copy of any service charge demand in respect of or including the service provided by Tunstall.

15. Whilst the Tribunal makes it clear that it has read the bundle, the Tribunal does not quite refer to all of the documents in this Decision, it being

unnecessary to do so. Various matters mentioned in the bundle or at the hearing do not require any finding to be made for the purpose of deciding the relevant issues in the cases. The Decision seeks to focus solely on the key issues. It should not be mistakenly assumed that the Tribunal has ignored matters not specifically referred to below or left them out of account. Where the Tribunal refers to specific pages from the bundle above and below, it does so by numbers in square brackets [ ].

The Law

16. Section 20 of the Landlord and Tenant Act 1985 ("the Act") and the related Regulations contain the relevant provisions.

17. Section 20(1) states that:

> "Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of the tenants are limited in accordance with subsection (6) or (7) 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]."

18. Section 20(2) defines "relevant contribution" as being, in effect, the amount due under the service charge provisions in respect of the works or under the agreement.

19. Section 20 (4) enables regulations to be made providing the circumstances in which the section will apply to agreements and section 20 (5) adds further in relation to the amounts in consequence of which the section will apply.

20. Section 20 (6) and (7) provide that where amounts have been set, the contributions of a lessee are limited to that amount.

21. The Service Charges (Consultation Requirements) (England) Regulations 2003 (the "Regulations") identify at regulation 3 the agreements which are not qualifying long term agreements. That includes at (d) an agreement for a term not exceeding 5 years and entered into at a time when there are no lessees at that time.

22. Otherwise, an agreement is not a Qualifying Long-Term Agreement ("QLTA") if it is for a term not exceeding 12 months.

23. Regulation 4 provides the relevant amount, saying as follows:

> "Section 20 shall apply to a qualifying long term agreement if relevant costs incurred under the agreement 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."

24. The effect is that where the lessor enters into at a QLTA at a cost of over £100.00 per lease, the relevant contribution will be limited to £100.00 per lease unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal.

25. Section 20ZA (4) of the Act provides that "the consultation requirements" will also be prescribed by regulations.

26. The requirements in respect of QLTAs for which public notice is not required are set out at regulation 5 and at Schedule 1 to the Regulations.

27. An application for dispensation may be made prospectively or retrospectively.

28. Section 20ZA (1) provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation "if satisfied that it is reasonable to dispense with the requirements".

29. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14 [211- 219].

30. The leading judgment of Lord Neuberger explained that a tribunal should focus on the question of whether the lessee will be or had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were "a means to an end, not an end in themselves".

31. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).

32. Where the extent, quality and cost of the works (or services) were in no way affected by the lessor's failure to comply, Lord Neuberger said as follows:

> "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- i.e. as if the requirements had been complied with."

33. The "main, indeed normally, the sole question", as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.

34. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.

35. If dispensation is granted, that may be on terms. That is to say that dispensation is granted but only if the landlord accepts- and fulfils- appropriate conditions. Specific reference was made to costs incurred by the lessees, including legal advice about the application made.

36. There have been subsequent decisions of the higher courts and tribunals of assistance in the application of the decision in *Daejan* but none are relied upon or therefore require specific mention in this Decision.

37. More generally, the Tribunal considers that the case authorities demonstrate that the Tribunal has a very wide discretion to, if it considers it appropriate, impose whatever terms and conditions are required to meet the justice of the particular case- in *Daejan* it was said "on such terms as it thinks fit- provided, of course, that any such terms are appropriate in their nature and their effect".

38. The matters in respect of dispensation necessarily apply only if a requirement for a consultation has arisen and no consultation or no compliant one was carried out.

The Hearing

39. The hearing was conducted fully remotely as video proceedings.

40. The Applicant was represented by Mr Hoang- Brown of counsel. He was accompanied by Ms Hughes, director of the Applicant. There was no attendance by or on behalf of any lessee.

Applications to dismiss

41. The first matter dealt with by the Tribunal was an application and further application made by the Identified Lessees' representative. Those were for the Applicant's application for dispensation to be dismissed.

42. The basis was that the Applicant had failed to provide the application to the lessees "immediately" as required by the Directions dated 2nd July 2024.

43. Mr Hoang- Brown submitted in response that the application had been sent to everyone and certainly in advance of the date by which the Tribunal had required confirmation of sending. He contended that "immediately" meant without undue delay and suggested that the lessees who wished to object had done so.

44. The Tribunal refused the applications to dismiss.

45. The Tribunal considered that there was no information to support an argument that the Applicant had not provided the application for

dispensation to all the lessees. “Immediately” is a somewhat imprecise term and the best definition for these purposes might equate to ‘as soon as possible’ practically speaking. There was no evidence of lack of that. However, even if the Applicant had not provided the application sufficiently swiftly to amount to “immediately” in those terms, there was no suggestion that it failed to do so by the date by it was required to confirm such provision to the Tribunal or that any small delay from “immediately”, had impacted on the lessees and their ability to object to the application for dispensation if they wished to do so. There was nothing to support a failing which merited the dismissal of the application for dispensation.

Substantive case

46. The Tribunal then heard about the substantive matters. A summary of the hearing is set out immediately below and then the Tribunal turns to the cases presented and the basis for its Decision.

47. The Tribunal is mindful of the lack of attendance on behalf of any lessee and that the specific bases for the outcome are ones which might not have been anticipated by any lessee, or possibly by the Applicant. Therefore, in order that the lessees may understand the outcome and the reasons for it, the Tribunal sets out below and in addition to the parties’ written cases, the matters which were presented to it in the hearing fairly fulsomely (although not in every last minor detail).

48. The Tribunal heard oral evidence from Ms Hughes, albeit to a fairly limited extent, in relation to the substantive dispute. The Tribunal also received submissions from Mr Hoang- Brown.

49. Having done so, the Tribunal explained that it would take a period of time for the written Decision to be provided but that given that time was relatively short before the date on which the Applicant would need to renew the contract with Tunstall if indeed the Agreement was found to be a year- by year one and not in the middle of a five- year term, the Tribunal would retire to consider whether it could provide an oral outcome as to whether or not the application was granted and on the basis that the reasons for that would be provided fully in writing separately.

50. The Tribunal resumed the hearing having considered the case. The Tribunal indicated that it had determined that for 2020 to 2024- 2025 the Tribunal had found on the evidence that the agreement was a yearly one and not longer and that the service charges would be and had been under £100.00 per dwelling (see the reasons and effect in full below). The Tribunal re-iterated that the full reasons would be provided separately in writing as soon as practicable, although in the event would not affect any practical matter.

The written cases

51. As mentioned above, the Applicant said that it has entered into an agreement with Tunstall UK prior to the leases being granted. The service

provided by Tunstall was said by the Applicant to be "part of the sales offering". It was believed that the Agreement was a QLTA as the term exceeded 5 years. It was said that the cost to the lessees was £166.00 per property, reduced from the full cost because of the 5 – year contract.

52. When the Applicant sent its statement of case [50- 52], the Applicant included clarification of the position with regard to the contact as contended by it. It was said that the Agreement was a rolling contract originally entered into in 1998/1999. It would be renewed for 1 year on 1st September 2024. In additional, the Agreement was said to be terminable on 2 months' notice. It was said that the Applicant made a 5- year commitment to Tunstall and had received discounts amounting to 27%.

53. The statement of case identified the fee to exceed £100.00 per annum and the Agreement to be a multi- year one. The Applicant further sought a conclusion as to whether the Agreement was in fact a QLTA on "the basis of the technical length of commitment" (a phrase not easy to understand) and relied upon *Paddington Walk Management Ltd v Governors of Peabody Trust* (2009) [220- 235] in relation to that.

54. The Agreement itself was not provided, as noted above and returned to below.

55. The Applicant provided a "Summary of Contract Charges" document for the coming year [53- 55]. The document indicated the current year to be "YEAR 3 OF 5" and referred to "5 YEAR Commitment". The "Contract Period" was "1st September 2024 – 31st August 2025". The starting charge for the Property was £2,988.44. The sum after discounts was provided as "£2240.43 PLUS VAT".

56. The Tribunal considers that it can fairly be said that the position as set out in the Applicant's written case remained some way less than clear.

57. The statement of case of the Identified Lessees [57- 60] contended that they had been prejudiced and would continue to be. They relied on the extent, quality and cost being affected. They contended that the Agreement was a QLTA given rolling 12- month periods. Reference was made to the cost contended by the Applicant of removal of the Tunstall system. It was contended that the Applicant has failed "to maintain and keep in good repair and condition and when necessary renew and replace ... the fittings and equipment provided by the Landlord." (see discussion of Lease provisions below).

58. It was expressed in the statement of case and in the context of any comparison with cost from other suppliers that the cost per dwelling was £93.35. That was potentially significant- see below.

59. Various matters which it is said would have been done in the event of a consultation process were identified, principally with regard to other providers of services. The Identified Lessees attached several pages of

documents related to other suppliers of what it was contended were equivalent or similar services and report from Which.

60. The Applicant's reply to the Identified Lessees' case [164- 171] as that the service is to be reviewed next year. It said that no difficulties with the service have been identified. There was again reference to a 5-year agreement. It is also said that: "The Applicant has made their application to the Tribunal for dispensation in the interest of not only transparency, but to conclude matters in avoidance of any further disruption to the leaseholders at the subject property." Whilst the reply responds to the Identified Lessees case paragraph by paragraph, it is not necessary to set out more of it.

The Applicant's case at the hearing

61. The Applicant's case was that dispensation was sought only for the next year of the Agreement with Tunstall, so 1st September 2024 onwards. It was said that it would not be possible to renew the Agreement if consultation was required.

62. The Applicant's position was again expressed to be that there was a 12-month contract, which would roll on if nothing altered. There was not, however, a 5- year contract. Rather there had been a commitment to maintaining the service for 5 years made in 2020 and in that way the Applicant had received a discounted rate for the service.

63. Hence and notwithstanding the Applicant's application itself, with the benefit of representation, the Applicant's position was that the Agreement was not a QLTA in any event. Mr Hoang- Brown relied on an authority of *Paddington Basin Developments Ltd and others v West End Quay Estate Management Ltd* (2010) [236- 250]. He said that the 5- year commitment did not make the Agreement more than yearly. In response to the Tribunal's request for clarification about the fact that the quote referred to "YEAR 3 OF 5", it was said that there had been a clerical error and the year would not be the third one.

64. The Tribunal also noted that on the Applicant's case, there was no need for dispensation and no answer was needed from the Tribunal. Mr Hoang-Brown identified that s20ZA applies in the event of a QLTA.

65. In response to the Tribunal's query at this point with regard to the contract with Tunstall, Mr Hoang- Brown accepted the Agreement itself was not within the hearing bundle- and consequently the Tribunal could not consider it in respect of the 2024- 2025 year. The Applicant relied on the evidence of Ms Hughes. As the Tribunal noted in the hearing, that was rather unsatisfactory.

66. The Tribunal next sought clarification of the cost per dwelling in light of the figure given in the Respondent's case and the invoice for 2024- 2025. The Tribunal repeats that the application had said that the cost was £166.00 per dwelling but the documentation gave a substantially different figure of £2240.43 plus VAT and that difference was significant to the case.

67. Mr Hoang- Brown agreed that the service charge cost was under £100.00 per dwelling. It was established that the Applicant did not pass on the VAT as service charges. The relevant total for the service charges was £2240.43.

68. Mr Hoang- Brown invited the Tribunal to determine whether the Agreement was a QLTA. The Tribunal queried whether it ought to decline to do so on the basis that was academic given the level of service charges per dwelling. It was submitted that a determination of whether the Agreement was a QLTA would be of assistance to both the Applicant and the lessees (and it will be seen below that in the event the Tribunal identified that it ought to answer the question).

69. Mrs Hughes gave evidence that the original contract had been signed by the original freeholder. She said that the charge from Tunstall had always been under £100.00 per dwelling. In 2020, and at a time when the Covid-19 pandemic was ongoing with all of the many regrettable effects, Tunstall had said that it would hold its costs if the Applicant entered into a 5-year contract.

70. Mr Hoang- Brown explained that the Applicant would prefer the Tribunal to determine that the Agreement with Tunstall was not a QLTA on the basis of not being an agreement for over a year. That is rather than a determination that the Agreement would have required a consultation if the service charges in consequence had been over £100.00 per dwelling but was not otherwise. He accepted that in view of the fact that the Applicant's concern was to identify whether there was a need for consultation- and if so, to obtain dispensation- and if not then the specific basis did not matter. Mr Hoang- Brown asked the Tribunal to make a determination that there was no need for consultation and hence no requirement for dispensation.

71. Mrs Hughes also gave evidence of the reason for the application as being that the Identified Lessees and their representative had raised numerous queries about agreements entered into and that, for safety's sake, the Applicant had been advised by its solicitor to apply to the Tribunal.

72. She also said that the provision of the service had been a selling point and had been a feature of the sales pack. She suggested that it was covered by the leases in general terms in references to services.

73. Mr Hoang- Brown submitted that there was enough for the Tribunal to reach a determination for the period from 2020. He maintained notwithstanding the wording used by Ms Hughes, that there was a 1- year contact but a commitment or understanding to continue for 5- years.

74. He also argued that *Paddington Basin* was authority that an agreement could be for 1 year and then continue for longer if not terminated and so may in the event subsist beyond one year without being an agreement which could be a QLTA. The Tribunal noted that a 1- year agreement which

carries on and would not be a QLTA, whereas a 5- year agreement which was terminated early could be a QLTA.

75. In relation to provision of the service, Mr Hoang- Brown added to Ms Hughes' evidence the possibility that the references to the service in the sales pack may have led to the incorporation of the requirement of the provision of the service into the leases.

76. Finally, Mr Hoang- Brown argued that if there has been a need for consultation, it was appropriate to grant dispensation as the lessees had not shown any prejudice because of any failure on the part of the Applicant to comply with any dispensation requirements. In particular, he advanced the Applicant's position that none of the other providers to which reference had been made by the Identified Lessees and their representative provided a service equivalent to the service provided by Tunstall. The lessees would not, he submitted, be in a better position in the event of use of another provider but rather would be worse off.

Consideration

77. This is in the event a somewhat unusual case. There is an application for dispensation where the Applicant's case is that there is no need for such dispensation.

78. The Lease of a what the Tribunal takes to be a sample dwelling was provided ("the Lease") [16- 41]. The document gives no property number, even blanked out, although some other details are blanked out. The Tribunal understands that the leases of the other dwellings are in the same or substantively the same terms. In the absence of any indication that the terms of any other of the leases differ in any material manner, the Tribunal has considered the Lease.

79. The minimum age for residents is identified as 55 years.

80. The Applicant has various obligations under the Lease, principally set out in clause 5. and Schedule 5, including to "maintain and keep in good repair and condition" the structure and exterior of the "Buildings" and certain other elements of those. The lessee is required to contribute to the costs and expenses of the Applicant complying with its obligations principally pursuant to clauses 2. to 4. There is reference to some systems in the Lease and to "fixtures and equipment provided by the Landlords". The statement of case of the Identified Lessees suggests that they accept the service and equipment to form part of the Applicant's obligations and there is no hint that the service charges for the provision of the service have been queried over the years. It is not necessary to say more for the purpose of this determination and so the Tribunal moves on from the Lease.

81. There was a misunderstanding, the Tribunal considers in the written application as to what constitutes a QLTA. The relevant period for agreement being for a term not exceeding 5 years only applies if the agreement was entered into when there were no lessees and that original

term is still ongoing. The second of those requirements does not apply in this instance.

82. Instead, and as identified in the hearing, the relevant period of any subsequent agreement for it to be a QLTA is over 1 year. Provided the agreement lasts for over 1 years, the agreement is QLTA. Otherwise, it is not.

83. The first question is therefore the term of the Agreement and so whether the Agreement is a QLTA in the first place.

84. The Applicant's case as presented in the hearing utilised the same facts as set out in the written case but was advanced rather differently thereafter.

85. The Tribunal noted that the Applicant's case had become essentially clear that a 5- year commitment was entered into in 2020. Mr Hoang- Brown had explained convincingly about a 5- year commitment but yearly contracts and some of the written case had been advanced on that basis. Ms Hughes had specifically referred to a 5- year contract in her oral evidence as well as the application itself having used the term "contract".

86. There was therefore a potential basis for concluding that there was the 5-year contract, not commitment, that Ms Hughes had referred to orally and in writing (she had completed the application). However, the Tribunal found that the use of the word "contract" by Ms Hughes throughout was an error and that she had not intended to refer to something different to the firm but non- contractual commitment indicated by Mr Hoang- Brown in the hearing and in the clarified statement of case.

87. The Tribunal found that the Agreement was for a term of one year and a new agreement was entered into each year.

88. It follows that the Agreement was not a QLTA and that is effectively the end of the matter.

89. The consultation requirements are requirements for a QLTA. There is nothing which the Tribunal needs to grant dispensation from. None of the consequences of a failure to follow consultation requirements arise where there are no requirements.

90. In case the Tribunal is wrong about that, the Tribunal addresses the situation which would arise in the event that the Agreement is a QLTA.

91. Given that the effect of a requirement to consult arising is that the sum is limited to £100.00, in the event of the cost being under £100.00 that would render the effect consultation, dispensation or lack of them irrelevant. The Applicant could still recover service charges of up to £100.00 in any event.

92. The case presented and evidence available was again somewhat contradictory. The Applicant had given a very particular figure in the

written application. It was not clear where that figure had come from but logically the Applicant must have believed it to be correct at the time of applying. It may be that it reflected the starting figure before the discounts were applied to it and/ or included VAT but it was hard to discern and not explained.

93. However, the documentary evidence about the costs and the Applicant's oral case was that for the year 2024 to 2025, the period for which dispensation was most clearly sought, the cost of the service by Tunstall was under £100.00 per year absent VAT. Hence, necessarily the service charges which would be rendered by the Applicant to meet the cost of that service would be under £100.00 per dwelling.

94. The Tribunal found no difficulty in accepting that the Applicant could and did reclaim the VAT and that the sums demanded as service charges were net of that figure. All else aside the net effect was to arrive at the sum identified by the Respondent's representative.

95. The Tribunal would have been greatly assisted by a service charge demand and related documentation which demonstrated the specific sum charged to the lessees for the services under the Agreement with Tunstall and so which demonstrated very particularly that the sum was under £100.00. That would have the need to assess such rather less clear evidence as was received.

96. Whilst the evidence received by the Tribunal was some way off being entirely satisfactory, there was no sensible basis on the evidence presented to conclude that the sum which the Applicant was being charged for 2024-2025 in the invoice from Tunstall was not the contract sum and there was no evidence that service charges were other than the sum net of VAT as divided between the 24 dwellings. It was logical that the VAT element would not be demanded and would be reclaimed. The Tribunal considered that it could infer that the service charges were under £100.00 per dwelling from the evidence received and the figure provided on behalf of the Identified Lessees of the sum net of VAT rather than inclusive of VAT.

97. The Tribunal found as a fact that the charge was under £100 per dwelling and specifically £93.35.

98. Further, on the evidence available, and accepting that to be limited to the evidence of Ms Hughes stating the cost had been held from 2020, and so implicitly was the same for the previous years as it was for 2024- 25, and so the margin was quite a fine one, the Tribunal found as a fact that the cost had also previously been under £100.00 per dwelling for the period 2020 to 2023 inclusive and the service charges necessarily also under £100.00 per dwelling.

99. The Tribunal declined to make any specific finding about earlier years.

100. The Tribunal therefore found that the cost would be- and had previously been- under £100.00 per dwelling for the period 2020 to 2024-

2025, with the effect that whether the Agreement was a QLTA or it was not, the Applicant was not prevented from recovering the service charges charged for the services.

101. The Tribunal has determined above that there was no need for consultation for the period 2020 to 2024-2025- because the Agreement was not a QLTA in any event. However, if indeed the Tribunal was wrong about that, it necessarily follows that there ought to have been consultation. There was no consultation as required.

102. Nevertheless, even if the Agreement was a QLTA, nothing arises in this application from lack of consultation. Notionally, dispensation from consultation requirements could be granted but with no purpose.

103. The practical purpose of dispensation being sought is to prevent the landlord being limited to charging service charges beyond the sum of £100.00 (or £250.00 in relation to major works). The Applicant is not charging more than £100.00. Therefore, dispensation would not alter the position. It would matter not whether it was or was not granted.

104. The Tribunal does not therefore consider it appropriate to make a determination whether the Applicant may dispense with consultation where there is no purpose served by such a determination. Indeed, the Tribunal finds it problematic for there to be any grant of dispensation where there is no reason for it. Neither the matters raised by the Identified Lessees in respect of a grant of dispensation or any other matters with regard to dispensation are relevant in the event.

105. In light of the above, the application for dispensation is dismissed, although very much in the circumstances and for the reasons explained.

106. This decision is confined to determination of the issue of potential dispensation from the consultation requirements in respect of the QLTA. The Tribunal has made no determination on whether the costs are payable or reasonable. If a Lessee wishes to challenge the service charges payable, a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.

107. The Tribunal identifies for the avoidance of doubt that prejudice as relevant to dispensation- if required- relates to that caused by lack of consultation and not wider matters. If the Identified Lessees have an argument with regard to the service contracted for- and without seeking to suggest that they should, or expressing the opposite view- that is a potential issue about service charges demanded for the service and not part of the issue determined.

Tribunal fees

108. Mr Hoang- Brown applied for the Applicant's fees to be paid by the lessees who had responded.

109. He argued that the Applicant had been successful in the case on the basis that it had been determined that it had not been required to consult and did not need dispensation and that the application for dispensation had not been rejected on its merits.

110. The Tribunal did not accept that submission and determines that the Applicant must bear the fees for the application.

111. The Applicant had decided to apply for dispensation which it did not need. There was to that extent no reason for the proceedings.

112. The Tribunal understands that the Applicant sought re- assurance that there was no need for dispensation and with regard to the Agreement entered into. However, that was matter of its own comfort, rather than being something which there was any other compelling reason for. The answer was not needed. The time spent by the Tribunal was not required.

113. It is right to say that the response of the Identified Lessees was to object to the application and the bases of those objections were not accepted by the Tribunal. It is also right to say, and more relevant, that in the absence of those responses objecting the Applicant would not have incurred the hearing fees.

114. However, the Applicant's application suggested that dispensation was required and as identified above, it was quite difficult to follow the Applicant's written case, even once clarified which rather went to invite difficulties. Elements of the Applicant's written case were discarded and replaced in the hearing and elements were clearly incorrect. The basis on which the Applicant succeeded at the hearing was not readily discernible as being the Applicant's position in the written application, or entirely even in the later statement of case.

115. Taking those matters together, it is not appropriate for a party other than the Applicant to bear the fees.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.