FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**HAV/24UL/LSC/2025/0631**
Property	**:**	**15 Chudleigh Court, Clockhouse Road, Farnborough , GU14 7UA**
Applicant	**:**	**Mark Gidley**
Representative	**:**	**None**
Respondent	**:**	**Chudleigh Court RTM Company Limited**
Representative	**:**	**None**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**R Waterhouse FRICS**
Venue	**:**	**FTT (Property Chamber) Residential Property Havant Justice Centre, Elmleigh Road, Havant, Portsmouth**
Date of decision	**:**	**11 August 2025**

DECISION

Decisions of the tribunal

(1) The tribunal determines that no consultation procedure that satisfies the Landlord and Tenant Act 1985 section 20 was undertaken in respect of the tarmacking which had a cost of £22960 incurred in 2024.

(2) The tribunal determines in the absence of a valid consultation procedure; the Applicant is limited to a service charge in respect of this item of £250.00

(3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985, and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

(4) The tribunal refuses to make a Rule 13 Order for costs to be paid by the Respondent to the Applicant.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the "tarmacking" that was carried out in 2024.

2. The Applicant has made an application for determination of liability to pay and reasonableness of service charges for the year 2024 for £706.00 in relation to works to "tarmac carpark and pathways."

3. The Applicant says that no consultation was carried out with the leaseholders.

4. The Application was received on 3 March 2025.

5. Directions were issued on 20 May 2025.

6. The principal issue in dispute is whether the Respondent should have carried out a formal consultation pursuant to section 20 of the Landlord and Tenant Act 1985 in relation to the tarmac works and, if so, whether it did so and if not what the level of service charge should be for the "tarmacking" works.

The determination

7. The Application was determined on the papers within the bundle of 135 pages.

The background

8. The property which is the subject of this application is a ground floor one bedroom flat, located within a three-storey block of purpose-built flats, there being 24 flats in total The property was built around 1981.

9. Neither party requested an inspection, and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

10. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

The Applicants Statements of Case

11. The Applicants statement of truth notes they purchased the flat number 15 Chudleigh Court in December 2001 and subsequently extended the lease in June 2022.

12. The Applicant submits that no section 20 process has been undertaken since the RTM took over management in 2012. The Applicant further asserts that the RTM uses reserve funds to pay for works without the need for section 20 consultation.

13. The Applicant submits the specific challenge relates to works to tarmac the carpark and the pathways. The expenditure amounting to £22,960.

14. The Applicant has calculated the expenditure per flat as being £956, which is £706 in excess of the £250 limit where no section 20 consultation has taken place.

15. At [66] the Applicant notes that reserve fund contributions had been made by him for 2021 of £200 and likewise in 2022 for a further £200 for "tarmacking".

16. The Applicant has also made a Rule 13 application for their costs.

The Respondents Statement of Case

17. The Respondent's statement of case dated 30 June 2025 notes the Chudleigh RTM was formed to take over the management of Chudleigh Court because a majority of the leaseholders were dissatisfied with the previous managing agents.

18. The Respondent submitted from the start of their responsibilities the reserve fund was to be used to smooth out payments from the leaseholders so that where possible no unexpected bills would be raised to perform major works.

19. The Respondent in their Statement of case assert that the Applicant has been involved and kept informed in the discussions on the "tarmacking" before the works commenced and the cost incurred.

20. Specifically;

(i) At the AGM 2020 building a reserve fund to meet the cost of "tarmacking" was mentioned.

(ii) Two quotes were sent to the Applicant, and the Applicant was invited to submit their own, but none was received

(iii) 4 August 2022 the Applicant was sent an e mail by the Respondent inviting them to discuss their concerns

(iv) 9 August 2022 an e mail was sent by the Rrspondent to the Applicant inviting them to view the accounts

(v) At the AGM of 2022 "tarmacking" works were discussed and agreed

(vi) The works discussed further in AGM of 2023 indicating a start date of Spring 2024

(vii) It is acknowledged that the cost of works exceeded the initial budget of the previous management company,

21. The Respondent asserts that they do not believe the Applicant is entitled to any refund in respect of any of the service charges as they have been incurred reasonably.

22. The Respondent submits that the Applicant's application under Landlord and Tenant section 20c and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 should be refused.

The Lease

23. The Applicant holds a lease dated 29 June 2022, following a surrender and regrant of an earlier lease dated 22 May 1981, of Flat 15 Chudleigh Court, Clockhouse Road , Farnborough GU14 7UA

3 The tenant hereby covenants and agrees

(11) Subject to any statutory restriction on the recovery thereof to pay the Landlord or its agents a one Twenty-fourth part (hereinafter called " the Tenant's Maintenance Contribution" of all expenditure and other liability from time to time incurred by the Landlord (or any managing agent appointed by the Landlord in respect of the Development).."

The Law

24. The law in respect of the consultation process and dispensation thereof is contained below.

Landlord and Tenant Act 1985 Section 20 (Requirement to consult leaseholders)

25. Section 20 of the Act provides:

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either- (a) complied with in relation to the works or agreement, or (b) dispensed with in relation to the works or agreement by (or on appeal from) a tribunal

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement

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

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be the appropriate amount- (a) an amount prescribed by, or determined in accordance with, the regulations, and (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined"

Landlord and Tenant Act 1985 Section 20ZA (Dispensation from Consultation)

Landlord and Tenant Act 1985 s.20ZA

20ZA Consultation requirements: supplementary

(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

26. *In the event the requirements of section 20 have not been complied with, or there is insufficient time for the consultation process to be implemented, then an application may be made to the First-tier Tribunal pursuant to section 20ZA of the Act.*

The tribunal's decision

27. The Landlord and Tenant Act 1985 section 20 concerns the requirement that consultation takes place with the leaseholders if there is planned expenditure for "qualifying works" above £250.

28. In this case the "tarmacking" has incurred a cost of £ 22960 [57-Applicant's Statement of Truth] for the works, undertaken in 2024. The Respondent having written to the leaseholders on 9 April 2024 [77] advising of the works and their start date, the 10 April 2024.

29. The tribunal finds that "tarmacking" constitutes qualifying works and because given the number of leasehold flats, 24 [3 -Applicants Application] in the development determines that the amount payable in respect of the service charge item]is £956.67 per flat. This is in excess of the £250 limit.

30. The tribunal next needs to be satisfied that no consultation process has been undertaken. The Applicant states that none has, and the Respondent's submission details the communications between the Respondent.

31. The statutory requirement for consultation are quite precise and contained in Landlord and Tenant Act 1985 section 20 and supporting Orders, Service Charges (Consultation Requirements) (England) Regulations 2003. Whilst there has been ongoing communication between the parties this does not meet the requirements of consultation.

32. Therefore, in the absence of a section 20 consultation, the Respondent is limited in respect of the item of "tarmacking" of demanding £250.

Application under s.20C and refund of fees

33. There remains the issue of the application under Landlord and Tenant Act section 20C and the Commonhold and Leasehold Reform Act 2002 paragraph 5A of Schedule 11.

34. The Applicant has been successful in their application concerning the "tarmacking "and so the tribunal makes an Order preventing any of the Landlords cost of the proceedings being passed through the service charge or administration charge.

35. In respect of the Rule 13 cost application by the Applicant, there has been no behaviour by the Respondents that would support such an application and so no Order is made under Rule 13.

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).