FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AY/LDC/2025/0637**
Property	**:**	**5,353 leasehold properties in the northern area of the London Borough of Lambeth**
Applicant	**:**	**London Borough of Lambeth**
Representative	**:**	**Mari Roberts, solicitor, of Sharpe Pritchard LLP**
Respondents	**:**	**The leaseholders named in the Tribunal application**
Representative	**:**	**The tenants who responded are cited below**
Type of application	**:**	**Application to dispense with the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985**
Tribunal	**:**	**Judge Adrian Jack**
Date of Decision	**:**	**19th December 2025**

DECISION

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1. The applicant ("Lambeth") seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from the consultation requirements imposed by section 20 of the 1985 Act. The application concerns a qualifying long-term agreement ("QLTA") with Wates Property Services ('Wates') for the provision of maintenance and repair services. This agreement was entered into in 2024 following the premature termination of another QLTA with Fortem Solutions Limited ("Fortem").

2. The dispensation application is dated 28th January 2025 and directions were issued on 5th February 2025. Paragraph 2 of the directions required those leaseholders who oppose the application to complete and return a reply form, with a statement in response to the application, by 16th May 2025. There were delays in Lambeth serving notice of its application, but I am satisfied that all tenants who wished to object to the application have been able to participate.

The law

3. Section 20 of the 1985 Act requires the carrying out of a consultation by a landlord who proposes either to enter a QLTA, where the cost to a tenant will exceed £100 per annum or to carry out major works where the cost to a tenant will exceed £250. The Service Charges (Consultation Requirements) (England) Regulations 2003 contain detailed provisions as to the steps to be taken by a landlord. Failure to follow the consultation requirements limits the recoverable costs of a landlord under a QLTA to £100 per annum and in respect of major works to £250.

4. Section 20ZA of the 1985 Act permits a landlord to apply to the 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, [and] the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."

5. The Supreme Court in *Daejan Investments Ltd v Benson* [2013] UKSC 14, [2013] 1 WLR 854 held (reading from the headnote):

> "that the purpose of a landlord's obligation to consult tenants in advance of qualifying works, set out in the [1985 Act and 2003 Regulations], was to ensure that tenants were protected from paying for inappropriate works or from paying more than would be appropriate; that adherence to those requirements was not an end in itself, nor was the dispensing jurisdiction under section 20ZA(1) of the 1985 Act a punitive or exemplary exercise; that, therefore, on a landlord's application for dispensation under section 20ZA(1) the question for [what is now the First-tier Tribunal] was the extent, if any, to which the tenants had been prejudiced in either of those respects by the landlord's failure to

comply; that neither the gravity of the landlord's failure to comply nor the degree of its culpability nor its nature nor the financial consequences for the landlord of failure to obtain dispensation was a relevant consideration for the tribunal; that the tribunal could grant a dispensation on such terms as it thought fit, provided that they were appropriate in their nature and effect, including terms as to costs; that the factual burden lay on the tenants to identify any prejudice which they claimed they would not have suffered had the consultation requirements been fully complied with but would suffer if an unconditional dispensation were granted; that once a credible case for prejudice had been shown the tribunal would look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the tenants fully for that prejudice; and that, accordingly, since the landlord's offer had exceeded any possible prejudice which, on such evidence as had been before the tribunal, the tenants would have suffered were an unqualified dispensation to have been granted, the tribunal should have granted a dispensation on terms that the cost of the works be reduced by the amount of the offer and that the landlord pay the tenants' reasonable costs, and dispensation would now be granted on such terms.

Per Lord Neuberger of Abbotsbury PSC, Lord Clarke of Stone-cum-Ebony and Lord Sumption JJSC. (i) Where the extent, quality and cost of the works were unaffected by the landlord's failure to comply with the consultation requirements an unconditional dispensation should normally be granted…"

Lambeth's case

6. Lambeth rely on a witness statement from Mr Andrew Marshall, who is its assistant director of housing, capital and asset management. He says:

> "5. The Council is required to carry out responsive repairs and maintenance works to the properties it lets to its tenants and leaseholders to ensure safety compliance and good quality housing and living conditions. This work also covers communal areas in blocks and on its various estates. These works may well result in an individual leaseholder being required to pay a service charge of more than £250 a year in respect of the works undertaken to their block or estate. They will therefore be 'qualifying works' under LTA 1985 and consultation is required under the Regulations. In addition, even if the works in question are only responsive repairs carried out on a regular basis to each block, the cost of those works is likely to amount to in excess of £100 per leaseholder which is the threshold for consulting on a qualifying long-term agreement under LTA 1985.

6. In 2021, Housing Services procured and awarded new contracts for responsive repairs and maintenance for the northern (Lot 1) and southern (Lot 2) areas of the Borough. Consultation with leaseholders took place as required under the provisions of LTA 1985 prior to these contracts being awarded.

7. A Notice of Intention in respect of the Council's intention to enter into a qualifying long-term agreement for the carrying out of responsive repairs and maintenance was served on all leaseholders in the Borough on 2 August 2019. This was in the same terms for all leaseholders…

9. Following the Notice of Intention consultation, the Council designed the long-term agreements which were advertised in the Official Journal of the European Union. Fortem were in effect threatening to down tools unless they received a substantial increase in the payments to them. A pre-qualification and shortlisting stage then took place to ensure that those who had expressed an interest had the ability to provide the services being procured. Those who passed that stage were then invited to submit full tenders which were evaluated based on cost and quality criteria. The tenders that scored the highest across all the criteria became the preferred bidders.

10. The Council's Cabinet approved the award of the proposed contracts to the identified preferred bidders at its meeting on 15 March 2021…

11. Following this, a Notice of Proposal was served on all leaseholders on 22 April 2021. Different Notices were served on leaseholders in the northern (Lot 1) and southern (Lot 2) area of the Borough as the contract for each area was being awarded to different companies…

15. Fortem were awarded the Lot 1 Contract for responsive repairs for the north area of Lambeth commencing on 12 July 2021 (the "Contract"). The Contract period was for a six year initial term, with two four-year extension options. The notional tender value of the Contract was £7,700,000 annually. The Contract included a break provision which gave the Council the right to terminate the Contractor's employment after the fourth anniversary (July 2025) of the commencement of the Contract term.

16. The Contract operated on a Price Per Property model ('PPP') where the contractor was paid an annual sum for the maintenance of each property. Any works which cost above the £2,000 inclusive work order limit ('IWOL') were valued on the tendered schedule of rates and paid as an extra over to the IWOL, in addition to the PPP amount. The onus was on

potential service providers to carry out due diligence at the time of bidding and familiarise themselves with the Council's stock.

17. Breyer Group Plc ('Breyer') were the formal reserve contractors for the north area.

18. As part of the 2021 procurement, Wates Property Services ('Wates') were awarded the equivalent Lot 2 contract for responsive repairs for the southern area of the Borough. The contract awarded to Wates operated on the same PPP model…

19. The best-scoring contractor based on quality/price split for both the north and south was Fortem. However, the procurement rules did not permit Fortem to be awarded the contract for both areas; the south area contract therefore was awarded to Wates, the next best-scoring contractor…

27. There were challenges from the commencement of the [Fortem] Contract. There were also commercial pressures placed on the Council to keep the service operating effectively.

28. Fortem were of the view that unless significant changes were made to the commercial model it was unviable for them to continue delivering the services. Fortem would have required a 90.88% uplift on their originally tendered annual contract value to, in their view, be in a position to viably continue under the Contract to July 2027. This was not sustainable nor was it commercially viable from the Council's point of view.

29. Given the evolving challenges and following a period of discussion and negotiations with Fortem, the Council concluded that it needed to agree an exit strategy with Fortem. This was necessary as there was no contractual option to terminate the contract until July 2025 at the earliest. A copy of the Report to the Cabinet Member dated 24 June 2024 is [exhibited] (save for Part II which is exempt from disclosure). The recommendation in this Report… was that the Cabinet Member approve and authorise a clean break and an exit from the Fortem Contract in the form of an exit agreement, details of which were set out in the confidential Part II report. The recommendations were approved by the Cabinet Member.

30. The Contract with Fortem came to an end by mutual agreement on 31 July 2024.

31. Prior to the Fortem Contract ending, the Council engaged in confidential discussions with Breyer, the reserve contractor, around the remaining length of contract and a review of the commercial model. In order for them to step in as the main contractor, Breyer required an increase from a pricing perspective and also a longer contractual term. The terms proposed by Bryer were not acceptable to the Council and it was

therefore agreed that the reserve contractor would not be taking up the contract.

32. The Council also engaged in discussions with Wates, the incumbent south area repair and maintenance contractor, and decided to grant a direct award of the north area contract to Wates. The decision to do so was made under the special urgency provisions contained in the Council's Constitution in order to ensure continuity of delivery for this essential service provision to both tenants and leaseholders. The 24 June 2024 Cabinet Report referred to above also recommended the award of a direct contract to Wates…

33. The contract with Wates for the north area repairs and maintenance services is for an annual value of £10,316,000 (£8,599,000 revenue and £1,717,000 capital) and a total contract value of £20,632,000 (£17,197,000 revenue and £3,434,000 capital) over the two-year contract term running from 1 August 2024 to 31 July 2026. This is based on 'uplifted' rates which are higher than Wates' tendered rates from 2019-21 to take account of matters such as inflation and specific risks arising out of staff transfers, such as redundancy costs and TUPE issues.

34. A contract of two years was agreed with Wates as the Council was not able to re-procure the north area contract within the limited time period available. A two-year contractual term enables the Council to maintain service delivery, whilst future procurement is considered. In addition, the two year time period aligns with the term that was remaining of the Fortem Contract. Whilst a long term contract may have resulted in more competitive pricing, it was not deemed possible for the Council to consider extending the term given the considerations and limitations imposed by the Public Contracts Regulations 2015 (as amended).

35. The Council considered that the best option was to directly award to Wates as it provides continuity of delivery by an existing provider and a transition that was not negatively felt by residents. Wates has experience of delivering against a PPP and Price Per Void (PPV) model. Importantly, Wates was able to commence work on 1 August 2024 with a short lead in period as it is already providing similar services in the south of the Borough.

36. Despite being higher than their original tendered rates in 2021, the rates being offered by Wates in respect of this new contract are still significantly lower than the rates Fortem were requesting to continue with the Contract and lower than the rates Breyer were willing to offer if they were to take over as the main contractor.

37. From 1 August 2024, the works and services in the north of the Borough will therefore be provided to leaseholders by the remaining 'best' scoring contractor from the compliant procurement exercise that led to the 2021 contracts being awarded, with the lowest tendered prices, albeit those prices now have an 'uplift'."

The tenants' objections with Lambeth's responses

7. Some leaseholders have objected to the application. Ms Anna McGregor who is a leaseholder at Calais Gate was represented by her father, Mr Bruce McGregor, a retired solicitor. They raised various objections, the nature of which can be seen from Lambeth's response. On 10th May 2025, Ms McGregor applied for an order for disclosure of the Fortem and Wates contracts. Lambeth was reluctant to supply copies of these contracts, as they contained commercially sensitive information, but eventually it was directed that Mr McGregor could inspect the contracts at their offices.

8. In the meantime Lambeth replied to Ms McGregor's objections on 16th May 2025 as follows:

"3. Scope of the Wates Contract

The contract entered into with Wates for the North Area is consistent with the original Section 20 notices issued in 2019 and 2021. It delivers responsive repairs and voids works, including limited activity in respect of leaseholder properties where relevant under the lease. These services align with the scope of the original Fortem contract. There is no material inconsistency between the descriptions in the witness statement of Andrew Marshall and subsequent clarifications. The distinction between 'key' and 'supplementary' activities reflects operational structuring within the contract rather than a fundamental departure from the published scope. Type B properties are typically purpose-built blocks and are often estate based. Shared or external communal areas to these properties are outside the PPP scope and delivered separately through the Community Works team. This is consistent with the model in the South Area and the former Fortem contract.

4. Role of the Community Works Team

The Community Works Team undertakes specific tasks outside the PPP scope, such as adaptations, Fire Risk Assessment remedial actions and communal repairs to purpose built blocks. This reflects the structured allocation of responsibility based on property types and contractual exclusions. Where works are delivered outside the PPP, recharges are subject to Schedule of Rates (SOR) pricing.

5. Financial Prejudice and Comparability

The Council has made clear that leaseholders are not being charged for the contract value itself. They are only liable for works carried out to their property, block or estate, in line with their leases. To provide assurance that leaseholders have not suffered financial prejudice as a result of the change in contractor, the Council is content to share a comparison of three identical Schedule of Rates – items for a lamp, a wall and a fence – under both the Fortem and Wates contracts… This illustrative pricing demonstrates that Fortem's agreed contractual rates were in fact higher than Wates' proposed rates for the same works. It should also be noted that, despite these higher baseline rates, Fortem were seeking further uplifts during commercial negotiations, which would have increased costs to the Council even further had the contract continued. This comparison supports the Council's position that the appointment of Wates did not result in adverse financial consequences for leaseholders…

7. Application of the *Daejan* Test

The Council notes Mr McGregor's reference to the *Daejan v Benson* decision. It is well established that the central test for granting dispensation is whether leaseholders have suffered 'relevant prejudice' from the failure to consult. In this case:

• Leaseholders are not being recharged for the appointment of Wates.

• There is no evidence of increased leaseholder liability as a result of the failure to consult.

• Leaseholder contributions are limited to the scope of their leases.

• There is no evidence that leaseholders are paying more than they otherwise would have under a formally procured contract entered into following a section 20 consultation.

• Alternative routes (such as Breyer or Fortem) would have resulted in either higher cost or service failure risks.

While the Fortem contract was robust and contained clear provisions governing price increases and contract governance, the Council was ultimately faced with a commercial reality. It is inherently difficult to compel a profit-making organisation to continue delivering a contract that it considers commercially unviable. In practice, such contractors may seek to protect their financial position by delaying, refusing or reducing the quality of service — thereby frustrating performance in a way that risks service disruption and reputational harm to the client. This was reflected in Fortem's conduct, as noted in Mr Marshall's witness statement (paragraphs 28–30), where they began withholding

key services unless significant additional payments were agreed. These concerns were part of the rationale for early termination. The lessons learned are informing future procurement strategy and contract management improvements."

9. Although Ms McGregor was given the opportunity to make further submissions after inspecting the contract, neither she nor her father in fact did so.

10. Ms Christina Kostoula of Shipley House by letter of 2nd April 2025 said:

> "I am writing to formally express my strong opposition to Lambeth Council's decision to apply to the First-tier Tribunal (Property Chamber) to dispense with the statutory requirement to consult leaseholders regarding specific works/contracts.
>
> This decision is deeply concerning and appears to be an attempt to bypass leaseholders' legitimate rights to scrutinise and challenge works that directly affect us, both financially and in terms of the quality of the services provided. As a leaseholder, I am entitled under Section 20 of the Landlord and Tenant Act 1985 to be consulted on major works and long-term contracts. This statutory right is not merely procedural; it is a fundamental safeguard to ensure transparency, accountability, and fairness in how leaseholders are charged for works and services. By seeking to dispense with this requirement, the council is denying leaseholders the opportunity to raise valid concerns about the quality, necessity, and cost effectiveness of the works being undertaken.
>
> In this case, the council entered into contracts without proper consultation, and now seeks to avoid accountability for what I believe might well be substandard works carried out by contractors who were appointed without leaseholder input. This is unacceptable. Leaseholders should not be forced to bear the financial burden of poor decision-making or inadequate workmanship. I urge the council to reconsider its decision to proceed to tribunal and instead engage in meaningful consultation with leaseholders. This would allow us to present our counter-arguments and ensure that any works or contracts are fair, reasonable, and in the best interests of all parties."

11. On 2nd May 2025 Lambeth responded as follows:

> "• The Council fully recognises the importance of leaseholder consultation under Section 20 of the Landlord and Tenant Act 1985. Consultation is a fundamental safeguard to promote transparency, accountability, and to give leaseholders an opportunity to comment on major works or long-term agreements. However, the legislation also recognises that, in certain circumstances, strict compliance with consultation

requirements may not be reasonably practicable. Section 20ZA provides a statutory mechanism allowing a landlord to apply for dispensation where there are compelling grounds – typically urgent, unforeseen or unavoidable situations affecting service continuity or tenant safety.

- As set out in the Council's application and supporting evidence:

    - The Council's former contractor for the North Area, Fortem, indicated they were no longer willing to continue delivering services under the originally agreed commercial terms.

    - Fortem's refusal to perform essential repairs created an urgent risk to service continuity for tenants and leaseholders alike.

    - Despite attempts to negotiate, no viable commercial resolution was found, and it was necessary to terminate Fortem's contract by mutual agreement with effect from 31 July 2024.

    - To avoid a critical breakdown in repairs and maintenance services, the Council urgently engaged Wates, an existing contractor already delivering services successfully in the South Area of the borough.

- The reserve contractor for Lot 1 (Breyer) was approached but declined to take on the contract. The Council explored interim options but concluded that a short-term contract with Wates, already mobilised in the South, offered the only practical and immediate solution. The appointment of Wates was made under emergency circumstances to ensure continuity of essential repairs and to safeguard residents' health and saf Given these circumstances, there was insufficient time to conduct the full statutory Section 20 consultation prior to entering into the contract with Wates.

- It is important to stress that:

    - Leaseholders are not charged for the overall value of the Wates contract. Recharges arise only for actual works carried out to an individual property, block, or estate, and only where permitted under the lease.

    - Where recharges apply, costs are assessed using the National Housing Federation Schedule of Rates v7.2, ensuring a transparent, standardised approach to valuation.

o The Council remains committed to delivering services to a reasonable standard and to ensuring that costs passed to leaseholders are fair, reasonable, and reflective of necessary works only."

12. Danielle Donnelly of the William Bonney Estate objected to Lambeth's application but did not give reasons.

13. Dean Barnes of Penryn House said:

> "• I object to the application on the grounds that Lambeth seems to generally do a bad job at negotiating contracts, and allowing them to circumvent the process entirely is only going to result in a worse deal for the residents who pay for it.
>
> • I have not sent a statement to the landlord (Lambeth) as I find them to generally be unresponsive and unhelpful to most communications."

14. Eva Gomez of Frank House said:

> "I would like to object to this application by Lambeth council to dispense with consultation requirements under section 20ZA of the landlord and tenant act to enter into a contract with Wates for the provision of housing repairs.
>
> The letter says the council entered into this contract in April 2024, surely dispensation should have been obtained before and not after the fact.
>
> This is Lambeth asking for forgiveness instead of permission and a continuation of Lambeth council autocracy in how it treats its leaseholders and constant erosion of our rights.
>
> The letter doesn't say how long the contract entered into is or when leaseholders will be given a chance to be properly consulted.
>
> A year on from the contract start date should have given the council plenty of time to undertake a proper procurement process including leaseholder consultation.
>
> The tribunal needs to ask why this has not happened.
>
> This is not the first time the council breaks the law by not consulting with leaseholders before entering into long term contacts, recently it did so with contacts for the provision of electricity. There seems to be a trend on this modus operandi by the council of regularly bypassing leaseholders' rights."

15. Bella Foxwell of Seymour House says:

"[T]he supporting information provided is vague, inconsistent, and in some areas, seemingly contradictory. There are several aspects of the original procurement process that appear to have been disregarded, or at least significantly altered, without sufficient justification:

- Lambeth has stated that the Fortem contract became unaffordable, despite clear inflation clauses within the contract which should have made costs predictable and manageable. There has been no clear explanation of how this situation arose or why it wasn't better controlled.

- The original procurement documents specified that no contractor should hold contracts for both the North and South areas. This principle seems to have been ignored, with Wates now holding both. If this was once considered a risk, what has changed to make it acceptable now?

- Furthermore, the evidence shows that Wates began work on 1 August 2024, yet leaseholders were not consulted in the months prior. Given that discussions on ending the Fortem contract reportedly began as early as April 2024, there was more than enough time to inform and engage residents properly.

- It also appears that Wates has effectively stepped in as a 'reserve contractor', yet they were not formally appointed as such. This raises serious questions about governance and due process.

- Significant cost increases also give cause for concern. The contract value has jumped dramatically—by over 150%—which may breach public procurement rules. How has this been allowed to happen without proper scrutiny?

- Leaseholders have not been consulted, on the basis that the decision would not substantially affect us. I disagree. Not only are we financially responsible for many of these costs, but unresolved works, potential defects, and handover issues directly impact our homes and well being.

- We are also now facing an £85,000+ mobilisation fee for Wates—despite them already operating in the borough. What exactly does this fee cover, and why should leaseholders be liable for it?

- Lastly, there has been no explanation of the cost implications of ending the Fortem contract early. Was there a penalty or settlement involved? If so, how much was paid, and how was this decision weighed against retendering the contract competitively? The documentation provided, particularly around pricing models and benchmarking, fails to demonstrate

value for money. Relying on indicative figures and internal comparisons is no substitute for running a full and open procurement process."

16. Lambeth's respondent is this:

"Given the urgent need to safeguard essential repairs and maintenance services, it was not practicable to undertake full Section 20 consultation within the available time, hence the application for dispensation.

• The appointment of Wates was not a use of the formal reserve contractor process. The reserve contractor for Lot 1 (Breyer) was approached but declined to take on the contract. The Council explored interim options but concluded that a short-term contract with Wates, already mobilised in the South, offered the only practical and immediate solution. Their use was based on continuity of service, not a formal reserve designation.

• It is important to clarify that this does not constitute a variation of the existing South Area contract. A new contract was entered into for the North Area under emergency procurement principles, justified under the Public Contracts Regulations 2015 where urgent operational needs arise.

• While statutory consultation under Section 20 was not possible due to urgency, the Council acknowledges the potential financial impact on leaseholders and has brought the matter before the Tribunal for consideration, as required by law. No costs are recharged to leaseholders automatically. Recharges arise only where works are delivered to an individual property, block or estate, in line with the lease terms. Any unfinished works left by Fortem are subject to formal contract closure procedures. The Council has processes in place to manage outstanding work and to assign responsibility for defect rectification or re-instruction where required. The defects liability and warranty positions are being actively managed through legal and commercial processes. These are not affected by the dispensation application and will be enforced independently of the new contract with Wates.

• The £85,167.15 mobilisation fee relates to the scaling-up of Wates' operations to cover an additional, geographically separate area (the North Area), including the provision of extra operatives, vehicles, IT systems and supervisory staff. This mobilisation cost is borne by the Council and is not recharged to leaseholders.

• No additional 'penalty' or compensatory payment was made to Fortem upon termination. Payments were limited to works completed prior to the termination date of 31 July 2024. Final

account discussions are ongoing but relate solely to standard reconciliation of completed works.

• The Council commissioned independent expert advice to benchmark the pricing offered by Wates. While a full competitive tender could not be undertaken due to time constraints, the Council took steps to verify that the rates offered were reasonable and comparable to market expectations in the sector.

A full procurement process is now being prepared to replace the interim arrangement with Wates. This will allow for open market testing of service delivery models and pricing structures, including consideration of alternatives to the PPP model. The upcoming procurement will be subject to consultation and leaseholder engagement as appropriate. This dispensation application relates only to the interim measures taken to ensure continuity of essential services, not to any future long-term arrangements that will be competitively tendered."

17. Jennifer Haynes of Cubitt Terrace indicated that she objected to Lambeth's application, but made no representations.

18. Malcolm Russell, whose address is unclear, objected in these terms:

> 6. I also note that Lambeth Council's application does not convey many material factors which are likely to have a bearing on whether or not leaseholders suffer financial prejudice as a result of entering into a qualifying long term contract with Wates for 2 years without consultation. The purpose of consultation is to assess the best option from different points of view, using input from those receiving the service to ensure that best value for money is achieved to provide reasonable standards of service in terms of the Landlord and Tenants Act. With the Council's own expert witness saying in paragraph 40 of his statement that the form of contract entered into by the Council with Wates is no longer favoured by social housing providers and the increased cost above the original contracted cost charged by Fortem for this service, plus the mobilisation fee payable by the Council to Wates for their appointment, plus that the Council has to continue to pay Fortem anyway for the remaining period of the contract with them (up to July 2025), even though they are paying Wates (at the higher level) for the same service, there are significant areas in which financial prejudice to the Council is arising in breaking the Fortem contract as it did and handing it to Wates, as it did. Even if these additional costs are not passed on directly to leaseholders, they will be absorbed in some area of the Council housing budget, probably the Housing Revenue Account, and this will mean that other services which should be provided by the Council for leaseholders and tenants will either not be done, or will be done a lot less. Although indirect, this

still comprises financial prejudice as a result of not consulting before entering into the contract with Wates, and which can be remedied by having a real consultation in which leaseholders and their representatives can identify more appropriate methods of providing the service for which Fortem and now Wates have been contracted. This is not just a matter of governance, audit and accountability in handling public funds, it is also a matter that consultation could have, and would, if done now, mitigate to some extent by looking at the type and length of contract that should be entered into, not just whether Wates is suitable for the North of Lambeth, based solely on the claim that there was/is no alternative. It is true that there was little time to act when the Council suddenly withdrew from the contract with Fortem, but acting quickly does not mean not acting correctly and/or carefully. The Council should not, of course, have allowed themselves to get into this situation (they knew for a long time that there were 'challenges' with Fortem and they seemed unable to use contract terms to ensure compliance with standards required) but even with a short notice period, there were interim options that consultation could have helped identify, and consultation could have been done quickly had the Council used its largest (by far) leaseholder representative body (the Lambeth Homeowners Association, with well over a thousand members). There were options, but the Council did not avail themselves of any of them, and did not consult (again) as required by law.

7. Lambeth Council has also not disclosed that there have been several attempts by leaseholders, in particular by me, to ascertain the circumstances in which it suddenly broke the contract with Fortem giving rise to sudden need to appoint a replacement rather than use contractual powers to ensure Fortem compliance with the 2021 contract, at least until the break clause in July 2025, which would have given time to undertake the statutory consultation of leaseholders and consideration of alternative approaches in the knowledge (which seems to have been obtained after the Wates contract was let) provided by the expert, Mr Miller, as referred to in the Council's witness (Mr Marshall)'s statement at paragraph 40 that the type of contract they currently had was no longer in favour. After all, Mr Marshall's statement at paragraph 27 states that the problems with Fortem were there from the outset of the contract in July 2021. So, we have the situation in which Lambeth Council has been having 'challenges' with Fortem for three years but has not, in that time, made contingency plans or attempts to plan for their replacement. The Council has refused point blank to provide any information on how this has come to pass and the matter has now been referred to the Housing Ombudsman for investigation. These are material facts which should be in the Council's application because they have a direct bearing on the level, extent and likelihood of financial prejudice being suffered by all leaseholders in Lambeth for the reasons described above.

8. Another factor which has not been disclosed clearly in the Council's application, but is mentioned at paragraph 19, page 4 of Mr Marshall's statement. As part of the argument for using WATES in place of FORTEM, he states that FORTEM won the original (2021) tender for both North and South areas (ie they won both bid Lots) but it was against the procurement rules to award both North and South to the same contractor, therefore they awarded one of the bidding lots (the South) to WATES which was the second highest scoring bid. If procurement rules prevented the same company being given both the North and South in 2021, does that not also apply now? Has the Council broken its own procurement rules in awarding the contract for the North to Wates, especially without consultation?

9. Finally, Lambeth Council has a track record of making retrospective applications to the Tribunal for dispensation on its obligation to consult leaseholders prior to entering into a long term agreement. In particular, a recent case regarding the provision of electricity and gas. While this was granted, the Tribunal was highly critical of how the Council had behaved."

19. Lambeth replied as follows:

"6. The Council wishes to clarify that there is no ongoing financial liability to Fortem up to July 2025. The contract with Fortem included a break clause which could be triggered in July 2025, but it did not guarantee payment beyond the date of termination. Following unsuccessful efforts to address service delivery and commercial concerns, the Council and Fortem resolved on a mutually agreed termination date of 31 July 2024. Fortem's contractual entitlements, including any payments, ceased as of that date, save for any works completed during the term of the contract and subject to standard contractual final account procedures.

Therefore, the suggestion that the Council is making parallel payments to both Fortem and Wates is incorrect. The Council is not incurring duplicated costs and is not making payments to Fortem for services beyond the agreed termination date.

Regarding the decision to terminate the Fortem contract, the Council did explore options to address Fortem's concerns regarding the contract's commercial viability and to stabilise performance, including negotiating with Fortem over a reasonable period. Unfortunately, despite these efforts, no commercially acceptable solution was reached, and both parties ultimately agreed that an early exit was in the best interests of all stakeholders, particularly to ensure continuity and quality of service to residents.

Given the urgency of the situation and the operational need to maintain statutory repair services in the North Area of the Borough, the Council proceeded to contract with Wates – already delivering services in the South Area – to ensure there was no disruption to essential housing functions. These actions were taken responsibly and in good faith, with a view to maintaining core services and mitigating risks to tenants and leaseholders. The application for dispensation reflects these circumstances and does not, in our view, give rise to financial prejudice.

7. As set out in Mr. Marshall's statement (para. 27–34), Fortem indicated the commercial model was no longer viable, and the Council considered alternative providers. Breyer, the reserve contractor, was approached but declined. The Council explored interim options but concluded that a short-term contract with Wates, already mobilised in the South, offered the only practical and immediate solution. This is addressed under point 6 above.

8. To clarify, during the 2021 procurement exercise, Fortem submitted the highest scoring bids for both the North and South Lots. However, as part of the Council's procurement strategy, it was decided not to award both Lots to a single provider. The reference to 'procurement rules' in paragraph 19 of Mr. Marshall's statement is misleading and this should have been a reference to the Council's own procurement strategy. This approach was not due to a legal or regulatory prohibition, but was instead a strategic decision by the Council to mitigate service delivery risks and avoid overreliance on a single contractor across the borough. The strategy aimed to promote competitive performance between providers and safeguard continuity of service in case of underperformance.

Following the decision to terminate the Fortem contract early, the Council reviewed its options and concluded that awarding the North Area contract to Wates – an existing provider with a proven mobilisation in the South – was the most viable and immediate solution to safeguard essential services. This was not contrary to procurement law and was carried out with due diligence, subject to a separate application for dispensation from consultation.

9. It is acknowledged that the Council has previously sought dispensation in different circumstances. However, the present situation must be judged on its own merit, and the circumstances surrounding the termination of the Fortem contract are materially different and significant.

As set out in paragraphs 28–30 of Mr. Marshall's witness statement, Fortem made it clear that they would not continue to deliver the service at the originally agreed contract value. They

> sought a significant uplift in the contract value with no commitment to improve any aspects of the service being delivered. Subsequently they began to withhold delivery of key aspects of the service in order to exert commercial pressure on the Council. In short, they were unwilling to perform unless their financial demands were met.
>
> The Council could not accept this position, which effectively placed residents at risk and attempted to undermine the contract's agreed terms. In response, the Council took actions to ensure continuity of service by appointing an alternative provider."

20. Mr Russell made a long reply to this and summarised his case in this way:

> "In brief, Lambeth Council has entered into a contract with Fortem which was problematic from the start and which they could not enforce or compel Fortem to comply with and then were forced to abandon at their own cost so suddenly that they had not made adequate arrangements for a replacement that complied with legal, governance and financial prudence requirements; it has entered into a contract with Breyer as back up to Fortem which it seems they could not enforce; and ends up with a much more expensive contract with Wates to replace Fortem in the North to provide the same Service that it (Wates) is providing in the South of the Borough at a lower cost; and has not followed the trend of moving away from PPP and PPV contracts which, according to its own expert source, the majority of Social Housing providers has done due to the risks these types of contracts bring. This seems to fall into the territory in which [Lord] Neuberger made some caveats to the financial prejudice point in *Daejan* where he referred to the conduct etc of the Landlord being so egregious as to make it unreasonable to grant dispensation."

21. Meriem Et-Taheri and Jamal Et-Taheri of Shipley House indicated that they opposed Lambeth's application but gave no reasons.

22. Naomi Lev of Tradescent Rd raised an issue with Lambeth, but does not appear to have raised a formal objection to Lambeth's application.

23. Robert Hadfield of Aveline St indicated he opposed by the application, but gave no reasons.

24. Robyn Maybank of Seymour House objected and gave detailed reasons. These, however, are very similar to the objections I have set out above from other tenants. Without disrespect I shall not repeat them. I can confirm that I have read them in detail. Lambeth's reply is likewise the same as above.

25. Tara Fallon of Dorset Road says:

> "I most certainly object to an application for exemption from statutory law on consultation made by the council. It is cavalier; there has been no reason provided on why this should happen, and I can think of no scenario where we would need to allow Lambeth Council to breach statutory law. Leaseholders require more protection in law rather than less."

Conclusions

26. I turn then to my conclusions.

27. Firstly, I note a number of tenants complaining that Lambeth have made other section 20ZA applications in respect of other contracts. This in my judgment is irrelevant. Each application must be judged on its own merits and demerits. The behaviour of a landlord in other situations is not a relevant consideration.

28. Secondly, as I have set out at the start of this decision, the key issue is one of prejudice. Mr Russell submits that the current case "seems to fall into the territory in which [Lord] Neuberger made some caveats to the financial prejudice point in *Daejan* where he referred to the conduct etc of the Landlord being so egregious as to make it unreasonable to grant dispensation."

29. I do not accept this description of what Lord Neuberger said in *Daejan*. On the contrary, the former President of the Supreme Court emphasises the need for the tenants to have suffered prejudice before a section 20ZA application can be refused. At para [67], he says that "the more egregious the landlord's failure, the more readily [the Tribunal] would be likely to accept that the tenants had suffered prejudice." However, this still requires that prejudice be established.

30. Thus, thirdly, I turn to the issues of prejudice. Various tenants make reference to the defects in the contract as originally granted to Fortem. This is not in my judgment relevant to the position in the spring and summer of 2024. At that point, Lambeth had to do what it could in the light of Fortem's refusal to carry out its obligations at the prices originally agreed.

31. Now it may be (and I give no view about this whatsoever) that the tenants may have some complaint about the alleged inadequacies in the original Fortem contract, but by 2024 Lambeth was facing a situation in which what Lambeth describes as "the commercial reality" meant that it had to find someone else to do the work. I find as a fact that Fortem were threatening to down tools unless they received a substantial increase in the payments to them. It is against that background that they approached first Breyer and then Wates to take over the contract.

32. In my judgment, Lambeth acted reasonably in taking the steps they did. In particular, I find as a fact that there was insufficient time for

Lambeth to carry out a full tendering operation with a full section 20 consultation.

33. The tenants in my judgment have failed to show that they have suffered any prejudice from the allocation of the contract for the northern part of Lambeth to Wates. They have not shown that the work could have been done any more cheaply by anyone else.

34. Further they have failed to show how Lambeth could have achieved continuity of service provision if they had not appointed Wates. Given the large number of long leaseholders in the north of the Borough and the large number of periodic Council tenants potentially affected, Lambeth had a heavy duty to ensure that it could respond to the regular repairing issues which arise in connection with so many properties. In my judgment they acted reasonably in giving a two year contract to Wates. I find as a fact that they could not have done better in the circumstances.

35. Accordingly, I find that it is reasonable to dispense with the consultation requirements.

36. I do not understand Lambeth to be seeking any costs order, so I shall make no order in respect of the fees payable to the Tribunal.

DETERMINATION

(a) The Tribunal grants a dispensation pursuant to section 20ZA of the Landlord and Tenant Act 1985 in respect of the matters the subject of the application.

(b) The Tribunal makes no order in respect of the fees payable to the Tribunal.

Signed: Judge Adrian Jack **Dated: 19th December 2025**