FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BE/LSC/2024/0623**
Property	**:**	**Pitman Building: Arabella Street, London, SE16 4EN and Abbey Street, London, SE16 4EH**
Applicant	**:**	**Various Leaseholders from Pitman Building**
Representative	**:**	**Evis Charalambous, Litigant in person**
Respondent	**:**	**The Hyde Group**
Representative	**:**	**Emma Hardman, Anthony Collins Solicitors LLP**
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	**:**	**Judge Bernadette MacQueen** **Ms S Beckwith, MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**2 April 2025**
Date of decision	**:**	**23 April 2025**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the Respondent has not complied with the statutory consultation required under section 20 of the Landlord and Tenant Act 1985 and therefore the Applicants' contribution to the works is limited to £250.

(2) Notwithstanding the decision made at (1) above the Tribunal determines that the amount of £95,386.42 for the cost of the works is reasonable and payable if dispensation from the consultation requirements is granted.

(3) Notwithstanding the decision made at (1) above the Tribunal determines that the amount of £9,539 for the cost of the Respondent's management fee is reasonable and payable if dispensation from the consultation requirements is granted. This amount has been reduced from £14,307.96 for the reasons set out in this decision.

(4) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.

(5) The Tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that the Applicants shall not be liable to pay any administration charges in respect of litigation costs.

(6) The Tribunal determines that, within 28 days of this Decision, the Respondent shall reimburse the Applicants with the application and hearing fee that the Applicants paid to the Tribunal.

The Application

1. The Applicants sought a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the major works to the door entry system. The value of the dispute was said to be £109,694.38, comprised of £95,386.42 for the work and £14,307.96 management fee.

2. The Applicants also sought orders under section 20C of the 1985 Act and Paragraph 5A Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

The Hearing

3. Evis Charalambous appeared on behalf of the Applicants in person. The Respondent appeared and was represented by Emma Hardman. Daniel Miller, Home Ownership Team Leader of Hyde Housing Association, and Andy Goldberger, Technical Surveyor of Hyde Housing Association, attended the hearing and gave evidence.

4. A bundle consisting of a total of 275 pages in a digital format divided into sections A to G was before the Tribunal which the Tribunal had read. The Respondent had also provided a skeleton argument. The Applicants provided a skeleton argument, which was handed to the Tribunal during the hearing.

5. 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.

The Background

6. Pitman Building, Arabella Street SE16 4EN and Abbey Street, SE16 4EH (the Property) was a block of 72 purpose built flats. Access to flats 1 to 10 was street access from Freda Street. Flats 11 to 35 had access from Abbey Street and Flats 36 to 72 had access from Arabella Street.

7. The Property had a mix of tenure which consisted of 33 tenants of the Respondent and 39 leaseholders (14 of which were the Applicants).

8. The Respondent was Hyde Housing Association Limited, which was a not for profit charitable registered provider of social housing. The Respondent owned the freehold title of the Property.

Agreed Facts

9. A copy of a standard form shared ownership lease for the Property was included within the bundle at section F12 to F54. This lease was dated 25 November 2013 and made between Hyde Housing Association Limited (1) and Azure Frawley (2). The Respondent confirmed that all leases were granted on a similar basis to this Lease.

10. There was no dispute that the Applicants were liable to pay for the works under their lease. The issues in dispute were whether the statutory consultation was completed and whether the works were reasonable.

The Works

11. The Respondent undertook work to replace the door intercom and access control system at the Property (the Works). The Respondent described the Works as removing the old system, installing a new video door entry

system and installing a new fob access control system. The new video entry system required multiple entry panels to be fitted on each sub landing as well as the main entrances to the Property. As part of this a new GSM antenna, controller cabinets and external cameras were installed.

12. The Works were undertaken for flats 36 to 72 in April 2024 and for flats 11 to 35 in May 2024. The total cost was £109,694.38, which was made up of £95,386.42 for the Works and £14,307.96 management fee which was 15% of the cost of the Works.

13. The Respondent had not yet demanded the cost and had not yet deducted any sums from the reserve fund.

The Issues in Dispute

14. It was the Applicants' position that the Respondent did not complete the section 20 consultation properly and therefore Leaseholders should only be required to pay £250 toward the Works.

15. The Respondent acknowledged that it had not fully complied with the section 20 consultation in relation to part of the Works, namely that relating to flats 11 to 35 of the Property, but stated that the consultation was completed correctly for flats 36 to 72.

16. The Respondent confirmed that it would be making an application for dispensation from the requirements in relation to flats 11 to 35. For the avoidance of doubt, this application for dispensation was not before the Tribunal at this time.

17. In relation to the Works, it was the Respondent's position that the Works and the management fee were reasonable.

18. The issues for the Tribunal were therefore as follows:

    (i) Whether the section 20 consultation was carried out correctly for flats 36 to 72.

    (ii) The payability and reasonableness of the Works and the management fee.

19. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal made determinations on the issues as follows.

The Law

Section 20 Consultation

20. Section 20 of the 1985 Act and Service Charges (Consultation Requirements) (England) Regulations 2003 (the Consultation Regulations) set out the statutory consultation procedures. In the event that the consultation process is not followed correctly, there is a statutory maximum of £250 that is payable unless and until dispensation from the consultation requirements has been granted by the Tribunal (section 20ZA of the 1985 Act).

21. As there was an existing qualifying long term contract in place, the relevant part of the Consultation Regulations was Schedule 3. The relevant provisions provide:

> 1. (1) The landlord shall give notice in writing of his intention to carry out qualifying works–
> (a) to each tenant; and
> (b) where a recognised tenants' association represents some or all of the tenants, to the association.
>
> (2) The notice shall–
> (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
>
> (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
>
> (c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;
>
> (d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure.

Limitation of Service Charge: Reasonableness

22. Section 19 of the 1985 Act provides that:

> "Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—
>
> (a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;
and the amount payable shall be limited accordingly.

Qualifying Long Term Agreement (QLTA)

23. On 5 October 2022, the Respondent entered into a contract with Alphatrack for fire safety and security work for an initial period of 4 years. The Works were therefore qualifying works under an existing qualifying long-term agreement (QLTA) with Alphatrack.

24. There was no dispute that the Respondent complied with the requirements of the Consultation Regulations in establishing the QLTA. A copy of the Notice of Intention dated 13 September 2021 and Notice of Proposals dated 19 August 2022 were within the bundle at F86 to F112.

Chronology

25. The following chronology sets out the relevant steps taken with regards to the Works:

(i) 8 November 2023 the Respondent sent a Notice of Intention to "all leaseholders and shared owners at Pitman Building SE16" (F114 to F116 of the bundle). It was not disputed that this notice only included the cost of the Works for the part of the building for flats 36 to 72. The estimated cost set out in the Notice was £56,990.23 plus a management fee of 15% of the contract cost.

(ii) 18 April 2024, a further Notice of Intention was sent to "all tenants, leaseholders and shared owners at Pitman Building SE16". The Respondent explained that this further Notice was sent because the Notice of Intention of 8 November 2023 only covered the cost of the Works to the area relating to flats 36 to 72. The estimated cost set out in the Notice of Intention of 18 April 2024 (D6 to D8 of the bundle) was £94,593.68 plus a management fee of 15% of the contract cost.

(iii) The Notice of Intention dated 18 April 2024 stated that the consultation period ended on 23 May 2024.

(iv) The Works were undertaken in April 2024 for the area for flats 36 to 72 and commenced on 13 May 2024 for the area for flats 11 to 35.

26. It was the Respondent's position that it accepted that there had been a breach of the consultation requirements for the Works that related to the area for flats 11-35 because that work had been completed prior to the 30 day consultation period. However, the Respondent stated that the work for the area for flats 36 to 72 had complied with the consultation requirements because the Notice of Intention of 8 November 2023 related to that work and the cost of the Works to flats 36 to 72 was stated.

The Tribunal's Decision

27. The Respondent accepted that it had not complied with the consultation requirements for flats 11 to 35 because the Works were commenced before the period for representations as set out in the notice of 18 April 2024 had expired. The Tribunal agrees that the consultation requirements were not complied with.

28. The Tribunal does not accept the Respondent's submission that consultation was completed correctly for flats 36 to 72. To maintain this position, the Respondent had to consider the Works as two distinct elements – namely works to flats 11 to 35 and works to flats 36 to 72, determining that the Notice of 8 November 2023 covered the works for flats 36 to 72 and that the Notice of 18 April 2024 covered the works for flats 11 to 35. The Tribunal does not accept this analysis.

29. Pitman Building was treated as one block by the Respondent and the costs of the Works were to be divided between the 72 flats in order for the Respondent to arrive at a cost per flat. No service charge apportionment schedule was included in the bundle, however, the Respondent's letter of 6 August 2025 (D11 of the bundle) stated that the final costs of the Works were £95,386.42 plus £14,307.96 and that the apportioned cost for the property receiving the letter was £1,523.53. This figure is arrived at by taking the total costs of the Works and dividing them by 72. It was therefore not tenable for the Respondent to submit that the notice of 8 November 2023 complied with the consultation arrangements for flats 36 to 72 when it was addressed to "all tenants, leaseholders and shared owners at Pitman Building SE16". Consequently, the Tribunal does not accept that the Respondent can retrospectively and arbitrarily state that the Notice sent on 8 November 2023 was valid because it covered the cost of the Works for flats 36 to 72.

30. Further, the effect of serving the Notice of 18 April 2024 without explanation was that there was no clarity as to the nature and scope of the Works. The Notice of Intention of 8 November 2023 was sent to "all tenants, leaseholders and shared owners at Pitman Building SE16". This Notice stated that the estimated cost of the Works was £56,990.23 (plus

management fee of 15%). The Respondent then sent another Notice dated 18 April 2024 for the same work again addressed to "all tenants, leaseholders and shared owners at Pitman Building SE16" but this time stating the cost of the Works as £94,593.68 (plus management fee of 15%). No explanation was provided as to why two Notices had been served.

31. The Tribunal therefore does not find that the Respondent can retrospectively say that the Notice of 8 November 2023 related to the cost of the works for flats 36 to 72 and so complied with the consultation requirements when a further Notice was sent on 18 April 2024 also addressed to "all tenants, leaseholders and shared owners at Pitman Building SE16". This Notice of 18 April 2024 stated that the consultation period would end on 23 May 2024. Therefore, by commencing the Works at the Property before this consultation period ended, the section 20 consultation requirements had not been met.

The Tribunal reaches this decision for the following reasons:

32. An examination of the Notice of Intention dated 8 November 2023 shows that this notice was addressed to "all leaseholders and shared owners at Pitman Building SE16". The work was described as "Fire safety works; update the door entry system". The notice stated that the works will be delivered under a QLTA notified on 13 March 2023. The total estimate of this work was stated as £56,990.23 (including VAT) and the Notice further stated that a management fee was also being charged. This management fee was expected to be 15% of the contract cost. Whilst the total estimated costs were given as £56,990.23, an individual cost has not been given as at paragraph 5 the notice stated:

> "Your estimated cost, including management fee is #VALUE!"

33. By drafting the Notice of 8 November 2023 in that way the Respondent had invited consultation from "all leaseholders and shared owners at Pitman Building SE16" about works estimated to cost £56,990.23 plus 15% of the contract price for the management fee. The Respondent did not realise at this time that the cost of the Works for the area where flats 11 to 35 were situated were not included. Therefore, consultees could have reasonably assumed that they were being consulted on the total estimated amount which would be divided between 72.

34. When the Respondent realised its error in that the cost of the Works given in the Notice of 8 November 2023 did not include an amount to cover the area for flats 11-35, a further Notice dated 18 April 2024 was sent. An analysis of the Notice of Intention dated 18 April 2024 (page D-6 of the bundle) showed that it was again addressed to "all tenants,

leaseholders, and shared owners at Pitman Building SE16". The work was described as "Door entry works; Installation of a new door entry system". This Notice stated that the work was to be carried out under a QLTA notified on 19 August 2022 and stated that the Respondent needed to consult with "all tenants, leaseholders and shared owners at Pitman Building SE16" before the work to install a new door entry system was completed. Further this Notice confirmed that the Works would start in May 2024 and that the estimated total was £94,593.68 including VAT and a management fee which was expected to be 15% of the contract cost.

35. This cost estimate is close to the final total cost of the Works and includes both the works to the area of flats 36 and 72 (which were included in the previous Notice of Intention dated 8 November 2023), and the additional works for the area covering flats 11 to 35. The estimated cost for the leaseholder who received this Notice (D8 of the bundle) was stated as £1,510.87, and the Notice stated that the consultation period ended on 23 May 2024.

36. The Notice of 18 April 2024 and the Notice of 8 November 2023 described the Works differently, quoted different QLTAs and gave different estimated costs.

37. As with the Notice of 8 November 2023, because of the way the Notice was drafted, those receiving the Notice of 18 April 2024 could reasonably assume that they were being consulted on the total estimated amount which would be divided between 72.

38. Given that the Works were undertaken in April 2024 for flats 36 to 72 and May 2024 for flats 11 to 35, the Works were completed before the expiry of the consultation period given in the Notice dated 18 April 2024, which was 23 May 2024. This Notice was sent to all tenants, leaseholders, and shared owners at Pitman Building SE16 and no clarity was provided by the Respondent to explain why a further Notice was sent.

39. The Tribunal therefore finds that the consultation process for the Property was not completed in accordance with the Consultation Regulations. Consequently, the contribution is limited to £250, this being the statutory maximum. The Respondent will need to make an application for dispensation for the whole of the Property.

Payability and Reasonableness of the Works

40. Notwithstanding the decision that the Tribunal has made that the Respondent will need to apply for dispensation from consultation requirements for the reasons set out above, the Tribunal goes on to consider the payability and reasonableness of the Works.

41. The Applicants did not dispute that the Works are payable under the lease; the issue for the Tribunal was reasonableness.

42. The Applicants submitted that the original intercom system was working and did not have a history of faults or of needing repairs and therefore did not need to be replaced. Additionally, the Applicants stated that the system should not require replacement yet, as the Property had only been occupied since 2013.

43. Further, the Applicants stated that the new system had had faults as it had not been possible to open entrances on some floors. Included within the bundle at D-12 was an email sent by one of the Applicants to the Respondent dated 27 August 2024 which stated that for the past two days the door system had not been working and that the new system had more problems in a few weeks that the old system did in ten years. The Applicants also submitted that the new system had less functionality as it was possible to activate the camera even when no one was ringing, however this feature was not present on the new system.

44. The Applicants therefore challenged the reasonableness of the decision to complete the Works and also the quality of the Works under section 19 of the 1985 Act.

45. The Respondent told the Tribunal that the previous door entry system had been made by a manufacturer who no longer manufactured replacement parts or components for the system and did not support it with critical spare parts or technical support. This meant that routine repair or remedial work could not be economically achieved. Further, the Respondent acknowledged that, whilst flats 11-35 did not have a long history of faults, other blocks with the same system had had faults. Therefore, given the age of the system and the difficulty with obtaining spare parts and completing repairs, the Respondent had taken the decision to replace the system. The new system would have replacement components available and technical support and therefore it was the Respondent's view that the new system was reasonable.

46. Additionally, it was the Respondent's position that because other blocks had the new door entry system, residents at Pitman Building would be disadvantaged when using the car park as this area would use the new door entry system. In reply, the Applicants stated that it would be possible for the Respondent to issue a fob to those who had a car so they could access the car park without needing to install a new system.

47. The Respondent submitted that the costs were reasonable. The Respondent included invoices for the Works at pages F56 to F85. The Respondent submitted that the contractor, Alphatrack, had been appointed under an existing QLTA and this had been subject to a public procurement process upon which leaseholders had been consulted. The prices charged for the Works were based on a schedule of rates that

formed part of the QLTA. There had therefore been market testing at the time of procurement.

48. In response to the Applicants' assertion that the new system had had faults, the Respondent acknowledged this but explained that this had been as a result of the system being new and that these problems were resolved. In reply to the Applicants' submission that the new system had less functionality as, under the previous system, it had been possible to activate the camera even when no one was ringing, the Respondent contended that this was a feature that the Applicants should not have because of concerns around data breaches.

The Tribunal's Decision - Reasonableness

49. The question for the Tribunal is whether the costs of the Works are reasonable and the service has been delivered to a reasonable standard within the meaning of section 19 of the 1985 Act. There was no dispute that the Works fell within the terms of the Lease.

50. The Tribunal accepts the evidence of the Respondent that the works were necessary as the manufacture no longer manufactures replacement parts or components and it is not supported with technical support. The Tribunal accepts that repairs would be uneconomical and could result in the system failing. The Tribunal therefore finds that it is reasonable for a new system to be installed.

51. Whilst the Tribunal understands that there have been a difficulties with the new system, the Tribunal accepts the Respondent's evidence (paragraph 16 of Andy Goldberger's witness statement – G8) that there have been a number of call outs in relation to the new system but these are typical of any new system and that most if not all of this will be covered by warranty.

52. The Tribunal notes that other blocks have had the new system and therefore having the same system across the block is a necessary and reasonable.

53. The Tribunal finds that the cost of the Works was reasonable. The Tribunal accepts the Respondent's evidence that Alphatrack was appointed under an existing QLTA which had been the subject of public procurement. The Works were based on a schedule of rates that formed part of the QLTA and therefore had been market tested.

54. Turning to the management fee, the Tribunal notes that this was set at 15% of the contract price. At the invitation of the Tribunal, the Respondent accepted that on the facts of this case, a 12.5% management fee may be seen as more appropriate by the Tribunal. On the facts of this particular case, the Tribunal finds that a management fee of 10% of the

contract price would be reasonable. This is because the consultation process was confusing and inconsistent and ultimately led to the finding of this Tribunal that it has not been completed in accordance with the Consultation Regulations. The Tribunal therefore finds that the management fee should be limited to 10% of the contract price.

Application under section 20C and refund of fees

55. The Applicants made an application for a refund of the fees that had been paid in respect of the application and hearing. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders that the Respondent refund any fees paid by the Applicants within 28 days of the date of this decision.

56. In the application form, the Applicants applied for an order under section 20C of the 1985 Act and paragraph 5A Schedule 11 of the Commonhold and Leasehold Reform Act 2002. The Respondent confirmed that it did not object to the Tribunal making orders under these sections.

57. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act and paragraph 5A schedule 11 of the Commonhold and Leasehold Reform Act 2002, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Name: Judge Bernadette MacQueen Date: 23 April 2025

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).