FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BG/LDC/2022/0016**
Property	:	**10 Park Drive, London E14 9ZW**
Applicant	:	**CWG (Wood Wharf Two) Limited**
Representative	:	**Mr Justin Bates of Counsel instructed by Winckworth Sherwood LLP**
Respondents	:	**The residential leaseholders of the Property as listed in the application as amended**
Representatives	:	**Ms Porchelvi Arivumani and Mr Krishnaraj Pannati (leaseholders of Apartment 409), Mr Amish Patel (leaseholder of Apartment 606) and Mr Subba Muppidi (leaseholder of Apartment 1010)**
Type of application	:	**Dispensation from compliance with statutory consultation requirements**
Tribunal members	:	**Judge P Korn** **Mrs A Flynn MRICS**
Date of hearing	:	**16 January 2023**
Date of decision	:	**30 January 2023**

DECISION

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Description of hearing

This has been a face-to-face hearing.

Decision of the tribunal

(1) The tribunal dispenses with those of the statutory consultation requirements referred to in section 20ZA of the Landlord and Tenant Act 1985 ("**the 1985 Act**") which have not been complied with in respect of the qualifying long-term agreement which is the subject of this application.

(2) The dispensation is unconditional, subject to paragraph (3) below.

(3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 extinguishing any liability on the part of any of the Respondents to pay towards the Applicant's costs in these proceedings as a service charge. The tribunal also makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing any liability on the part of any of the Respondents to pay towards the Applicant's costs in these proceedings as an administration charge.

The application and background

1. The Applicant seeks a declaration that the statutory consultation requirements referred to in section 20ZA of the 1985 Act do not apply to certain proposed variations to an existing long-term agreement relating to the Property. In the alternative, the Applicant seeks dispensation under section 20ZA of the 1985 Act from compliance with those statutory consultation requirements.

2. The Property comprises 346 apartments. The Applicant is the head leaseholder of the Property. On 22 May 2015 it granted a lease of the Property to CW Wood Wharf A3 Limited (which has since changed its name to CW 10 Park Drive Limited) ("**the Immediate Landlord**"). Wood Wharf Estate Management Limited was also a party to that lease in its capacity as the management company. The Immediate Landlord later granted long leases of individual apartments to the Respondents.

3. As at the date of this application the Immediate Landlord had granted long leases in respect of 278 apartments (out of the total of 346 apartments) and had entered into agreements for lease in respect of a further 3 apartments. Under the terms of the apartment leases, the leaseholders are entitled to use a health club, to be provided in a separate building when constructed at 15 Water Street, close to the Property.

4. In 2018, the Applicant needed to appoint a service provider to operate the health club and to allow access to a temporary health club until the permanent health club was available for use. Although the Property was under construction at the time, on 24 April 2018 the Applicant served a notice of intention to enter into a qualifying long-term agreement pursuant to section 20 of the 1985 Act on each person who had entered into an agreement to take a long lease of an apartment.

5. The Applicant invited three operators, Third Space, Virgin Active, and Gymbox, to tender to provide the required services by 20 July 2018. Virgin and Gymbox declined to offer to tender. Third Space put forward a bid which the Applicant states offered the full range of services required. The Applicant informed the Immediate Landlord and prospective leaseholders of the position and gave a deadline for observations in respect of Third Space's proposal. Following the end of the consultation period, the Applicant made an application to the First-tier Tribunal (the "**FTT**") on what it describes as a protective basis to seek dispensation from full compliance with the consultation requirements in the light of its inability to obtain more than one bid.

6. On 18 September 2018 the Applicant, Canary Wharf Group PLC (as guarantor) and Third Space (Wood Wharf) Limited ("**Third Space**") entered into a Residential Services Agreement ("**the Agreement**") for Third Space to provide a health club to the residents of the Wood Wharf Estate, including the Property. The Agreement also made provision for the residents of the Property to access another of Third Space's existing health clubs on a temporary basis until the health club opened. The Agreement commenced on 18 March 2019. On 9 October 2018, the FTT determined that following *BOW Trading Ltd v South Anglia Housing Limited [2014] 1 WLR 920* the consultation requirements in relation to qualifying long-term agreements did not apply to the Agreement insofar as it related to the Property, because the Property had not yet been constructed at the time of the Agreement and there was no requirement to consult leaseholders until they held actual leases.

7. As a result (the Applicant states) of the global pandemic, the Applicant and Third Space later entered into dialogue regarding the change in the way health facilities were then being used. Their conclusion was that the health club provision envisaged in 2018 might not meet the needs of residents. They therefore decided that there was a need to vary the Agreement to provide – as they put it – a better provision to the residents. The proposed variations would affect the scope of the services being provided to leaseholders and, potentially, the costs chargeable as a service charge. Accordingly, the Applicant considered that it was at least arguable that the statutory consultation provisions were engaged by these proposed variations, and therefore on 7 October 2021 it served on leaseholders a notice of intention to vary the Agreement pursuant to section 20 of the 1985 Act. It also provided a

detailed explanation of how the revised proposal compared to the original proposal.

8. According to the Applicant, due to an error in the address schedule which incorrectly identified their apartments as unsold, some leaseholders were not served with the abovementioned notice of intention. The Applicant concedes that it is at least arguable that the variation of the Agreement engages the statutory consultation provisions. Accordingly, if the variation does engage those provisions then the Applicant seeks dispensation from compliance with those provisions insofar as is necessary. However, the Applicant's primary contention is that there is no need for dispensation because the statutory provisions are not engaged.

Applicant's case

9. The Applicant's primary argument is that the proposed variation of the Agreement does not engage the statutory consultation requirements referred to in section 20ZA of the 1985 Act and therefore that it does not need dispensation in respect of any failure to comply with those provisions.

10. The Applicant contends that it is free to vary the Agreement without engaging the consultation provisions for two separate reasons. First, because of how the Applicant intends to charge for these services, it will not be requiring the leaseholders to pay a "service charge" to which the 1985 Act applies. For it to be a service charge to which the 1985 Act applies, it has to be "variable" as defined by section 18 of the 1985 Act. The charge for use of these facilities is a fixed fee for the first 2½ years and thereafter a fee determined by, amongst other things, the retail prices index. That, in the Applicant's submission, is not a "variable" service charge because any increases are governed by an index, rather than by actual costs. On this point it relies on the decision of the Court of Appeal in *Coventry City Council v Cole [1994] 1 W.L.R. 398* and the decision of the Upper Tribunal in *Anchor Trust Ltd v Warby [2018] UK.UT 370 (LC); [2019] L. & T.R. 2.*

11. Secondly, either further or in the alternative, the Applicant contends that it is important to appreciate that this is a proposed variation of an agreement which itself did not require consultation (as held by the FTT in its earlier decision). If the original agreement did not require consultation, then in the Applicant's submission a variation cannot do so either. The requirement to consult (or not) must be ascertained at the outset and cannot depend on developments which post-date the agreement. On this point it relies on the decision of the Court of Appeal in *Corvan (Properties) Ltd v Abdel-Mahmoud [2018] EWCA Civ 1102; [2019] 1 P. & C.R. 3 at paragraphs 35 to 41.*

12. The Applicant goes on to state that if either of the above points is correct then there was no need to consult. It would therefore follow that there was no need to obtain dispensation and the tribunal can - as it did previously - simply dismiss the application as being unnecessary.

13. Alternatively, if dispensation is required the Applicant notes that in considering whether to grant dispensation the tribunal will need to consider the issue of what 'prejudice' (if any) was suffered by leaseholders as a result of the failure to comply with the statutory consultation requirements. The Applicant then goes on to make submissions as to what 'prejudice' means in this context and to summarise what it considers to be the relevant facts.

<u>Respondents' case</u>

14. Comments on the application have been made by various leaseholders. The leaseholder of Apartment 304, Chinonye Richmond, has raised a series of questions, which the Applicant has tried to address. The leaseholder of Apartment 606, Amish Patel, has expressed the view that the original plans are being scaled back. The leaseholder of Apartment 609, Srinwasan Krishnamoorthy, has complained that the Applicant is moving away from offering an exclusive facility. The leaseholders of Apartment 810, Edward and Susan Stollery, argue essentially that the Applicant is offering substantially inferior facilities in return for only a minimal reduction in service charges. The leaseholder of Apartment 812, Yen-Lan Chueh, states that the Applicant has not tried to engage in communication regarding the proposals.

15. The leaseholders of Apartment 1009, Jaymini Shah and Hiten Shah, argue that the variations constitute a breach of the Applicant's original promises as to the standard of the health facilities. The leaseholder of Apartment 1010, Subba Reddy Muppidi, objects on the ground that the variation would have a significant detrimental effect on the value of the Apartment. The leaseholder of Apartment 1111, Abu Tarafdar, states that he does not agree with the variation. The leaseholder of Apartment 1603, Nitin Parshotam, states that he has previously provided the Applicant with details of his objections, but he has not clarified what these concerns are for the purposes of this application.

16. The leaseholders of Apartment 409, Porchelvi Arivumani and Krishnaraj Pannati, have provided a more formal and more detailed statement of case. They state that in the original marketing brochure, which was the basis on which they decided to purchase, the facilities were stated to be exclusively meant for 10 Park Drive and there was no reference to sharing these facilities with other buildings within the Canary Wharf estate. However, the Applicant has now changed its position so that the facilities will be shared with other buildings in the estate and with paying members of the public, thereby causing prejudice to leaseholders. They also state that the occupational lease

"was never shared with [them] for signing at the point of sale" and that the Covid-19 pandemic does not constitute a justification for a failure to provide resident-exclusive facilities.

The hearing

17. At the hearing Mr Bates for the Applicant summarised the factual background and the legal arguments contained in the Applicant's written submissions.

18. Mr Brian D'Eath, Managing Director of Residential Sales for Canary Wharf Limited, had provided a witness statement in advance of the hearing and he was cross-examined on that witness statement. As part of his evidence and also in cross-examination he confirmed on behalf of the Applicant and the Immediate Landlord that there were no circumstances in which leaseholders would be charged more for use of the health club facilities than the fixed costs set out in the Agreement for the duration of that Agreement.

19. Mr Pannati on behalf of the Respondents questioned why the Applicant had not considered 'Educated Body' as a possible health club services provider. He also referred the tribunal to the comparison within the hearing bundle between the original proposal and the varied proposal and said that the varied proposal was inferior in quality and in location, and that residents had been misled as they had been told that their facility would be exclusive to them and would be operational by the end of 2021. He also felt that the varied facilities would end up being more expensive.

20. In relation to the question about Educated Body, Mr D'Eath said that Educated Body was not approached because it does not construct health clubs, and the Applicant needed to appoint an operator which could construct a health club as well as running it.

21. Those of the Respondents who were present at the hearing were invited to comment on the Applicant's legal arguments as to why – in the Applicant's submission – the statutory consultation requirements were not engaged in this case. Mr Pannati said that the rationale for the tribunal's previous decision that the statutory consultation requirements did not apply was that at that time the Property had not been fully constructed, but this was not the case now.

The relevant legal provisions

Landlord and Tenant Act 1985

Section 18(1)

In the following provisions of the Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent – (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and (b) the whole or part of which varies or may vary according to the relevant costs.

Section 19(1)

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.

Section 20(1)

Where this section applies to any … qualifying long-term agreement, the relevant contributions of tenants are limited … unless the consultation requirements have been either (a) complied with … or (b) dispensed with … by … the appropriate tribunal.

Section 20ZA

(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 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 long term agreement" means … an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

Tribunal's analysis

Are the statutory consultation requirements engaged?

22. The Applicant's primary position is that the statutory consultation requirements are not engaged in relation to the proposed variations to the Agreement. It offers two reasons for this, and we will deal with them in turn.

Variation of an agreement which itself did not require consultation

23. As noted above, a previous tribunal determined that the original Agreement was not subject to the statutory consultation requirements as the Property at that stage had not been constructed or let.

24. The Applicant submits that the proposed variations are not subject to the statutory consultation requirements because the original Agreement itself was not subject to those requirements. In support of its position it has referred the tribunal to the decision of the Court of Appeal in *Corvan (Properties) Ltd v Abdel-Mahmoud*.

25. *Corvan* concerned the question of whether an agreement between a freeholder and a property management company constituted an agreement for more than 12 months and therefore constituted a qualifying long-term agreement (a "**QLTA**") for the purposes of section 20ZA(2) of the 1985 Act. The relevant clause in the agreement provided: *"The contract period will be for a period of one year from the date of signature hereof and will continue thereafter until terminated upon three months' notice by either party"*. The Court of Appeal held that it was a QLTA because the second use of the word "will" introduced a mandatory requirement that the agreement would continue beyond the initial 12 months, albeit that it was not clear precisely how long it would continue.

26. McFarlane LJ, giving the decision of the Court of Appeal in *Corvan*, then went on to state at paragraph 37 that the deciding factor – in determining whether an agreement was long enough to constitute a QLTA – was the minimum length of the commitment. He then added, at paragraph 39, that the issue was whether an agreement **must** exceed 12 months, not whether it merely might end up lasting longer than 12 months in practice.

27. The Applicant submits that the decision in *Corvan* is authority for the proposition that the requirement to consult (or the lack of any such requirement) must be ascertained at the outset and cannot depend on developments which post-date the agreement, but we do not accept this as a general proposition. First of all, the comments in *Corvan* on which the Applicant is relying are strictly *obiter* as the Court of Appeal decided that the agreement in that case was a QLTA. But in any event, the issue in that case was how certain does the minimum length need to be for an agreement to qualify as a QLTA. The Court of Appeal's conclusion was that it does not make an agreement a QLTA if it exceeds 12 months in practice where there is no contractual commitment for it to last longer than 12 months.

28. That is very different from the scenario in our case. Here, the reason why the original Agreement was not a QLTA when signed was that it related to a building which had not yet been constructed and in respect

of which there were not yet any leaseholders. Also, *Corvan* was not dealing with a formal variation of an agreement but with the question of how to interpret contractual obligations under an agreement which had not been (and was not going to be) varied.

29. In our view, if for example an agreement is entered into in good faith for a fixed period of (say) 6 months and then it is later varied so as to extend the fixed term to (say) 5 years it would at that point become a QLTA. This is because the only thing previously preventing it from being a QLTA was that its minimum term was for 12 months or less. Once it is contractually varied so as to run for a minimum term of greater than 12 months it becomes a QLTA. This is different from a situation in which a landlord enters into a series of agreements, each of which is for a minimum term of 12 months or less, the point being that the agreement itself as varied is now (in the example given) for a minimum term of greater than 12 months.

30. Similarly, and in our view analogously, if an agreement is not a QLTA simply because at the date of signing the agreement there are no leaseholders, then any material variation to that agreement once there is a completed building and once individual leases have been granted would render it a QLTA and the landlord would be required to go through the statutory consultation process. The obligation to consult would obviously not apply to the terms of the **original** agreement, as leaseholders would have purchased their flats with knowledge of the terms of the original agreement and in any event it would be too late to consult on the original agreement. Instead, consultation would be required in respect of the variations, and this is consistent with the purpose of sections 18 and 19 of the 1985 Act which is to protect leaseholders from unreasonably incurred service charges and from sub-standard services.

31. Accordingly, we do not accept that the proposed variations are exempt from the statutory obligation to consult merely by virtue of the fact that the original Agreement did not need to be consulted on.

Are the relevant service charges variable?

32. The Applicant's other argument on the issue of whether the statutory consultation requirements are engaged is that the service charge is not variable insofar as it relates to the health club facilities, that it therefore does not fall within section 18 of the 1985 Act, and that accordingly it is not subject to the statutory consultation requirements.

33. In *Coventry City Council v Cole*, the service charge was a fixed sum of £208 per year together with an additional charge representing that proportion of £208 which reflected any increase in the building cost information service tender price index. For reasons which are not relevant to our case, the legislative provision governing the question of

whether the tenant had a statutory right to challenge the reasonableness of the service charge in *Cole* was section 621A(1) of the Housing Act 1985, which defines "service charge" as *"an amount payable by a purchaser or lessee of premises – (a) which is payable, directly or indirectly, for services, repairs, maintenance or insurance or the vendor's or lessor's costs of management, and (b) the whole or part of which varies or may vary according to the relevant costs"*. This is identical to the relevant part of section 18 of the 1985 Act for all purposes relevant to our case.

34. The Court of Appeal in *Cole* held that the charge in question was a fixed charge and therefore did not vary according to the relevant costs. It followed that it was not subject to challenge pursuant to, or by reference to, section 621A(1) of the Housing Act 1985.

35. In *Anchor Trust Ltd v Warby*, the Upper Tribunal applied the Court of Appeal's decision in *Cole* to section 18 of the 1985 Act. In that case, the issue was how to treat a management allowance within a service charge provision which in the first year was based on costs to be incurred in that year but in subsequent years was based on the first year's charge uplifted by increase in the retail prices index ("**RPI**"). In that case, Martin Rodger QC, delivering the judgment of the Upper Tribunal, stated at paragraph 45 that the issue concerned the jurisdiction of the FTT and was an issue of law that depended on the terms of the lease. At paragraph 47 he then quoted from the *Cole* decision as follows: *"The reasonableness of a fixed charge can be examined at the time when the long lease is being negotiated. Assuming the fixed charge is reasonable the tenant is protected over the whole period of the lease from fluctuating and unpredictable costs. His only exposure to risk is in the risk attendant on a clause which depends on inflation"* (Neill LJ at 408 G-H).

36. Martin Rodger QC then continued, at paragraph 54, to explain why fixed charges made variable merely by an inflation index are not in need of statutory protection in circumstances where the charge was initially not a fixed charge but then later varied by reference to an inflation index which was set out in the lease. He first noted (as was accepted by the landlord) that the charge for the first year was susceptible to challenge under section 19 of the 1985 Act in the normal way. He then added: *"It may therefore be taken that the base charge was reasonable since, if it was not, it could have been reduced at the leaseholders' initiative to one which was reasonable. The leaseholders were therefore protected from fluctuating and unreasonable costs except to the extent that such fluctuations were the result of inflation"*.

37. The present case is materially different from *Anchor Trust Ltd v Warby*, and in our view the rationale for the decision in *Coventry City Council v Cole* as quoted in *Anchor Trust Ltd v Warby* does not apply here. In our case, it is not being argued that the Respondents' leases

themselves fixed the service charge or fixed any individual head of service charge, whether by fixing them absolutely or by reference to an index or other formula such as RPI. Instead, the Applicant's argument is that the charges under the **Agreement** (i.e. the health club Agreement) are fixed and that these fixed charges will be passed on to leaseholders. But the rationale for the decisions in *Coventry City Council v Cole* and *Anchor Trust Ltd v Warby* is that the individual **leases** fixed the amount of the service charge in question. The reasonableness of the fixed charge could therefore be examined at the time when the relevant lease was being negotiated, and the relevant leaseholder could decide whether or not to complete the lease on that basis. However, in our case the negotiation of the (health club) Agreement and of the variations to it does not involve the leaseholders except to the extent that they are consulted. They are not a party to that Agreement and will not be a party to any varied version of that Agreement. Although it could be argued that the Respondents will have entered into their leases with knowledge of the terms of the original Agreement, (a) that does not by itself turn any element of the service charge under their **leases** into a fixed service charge outside the ambit of section 18 of the 1985 Act and (b) in any event they did not enter into those leases with knowledge of the proposed variations to the Agreement.

38. Accordingly, the argument that the Agreement itself, even when varied, does and will provide for a fixed charge misses the point. The service charge under the leases, including that which relates to the payment for health club facilities, is variable or at least may vary under the terms of those leases, and the Applicant has not claimed otherwise. And statutory consultation is the Respondents' only guaranteed opportunity to have input into the proposed variations; they cannot choose not to complete their leases as they have already completed them. Therefore, in the absence of any submissions that any part of the service charge is fixed under the terms of the Respondents' leases, the whole of the service charge under their leases can be challenged in whole or in part under section 27A of the 1985 Act by reference to section 19 of the 1985 Act.

39. As we do not accept the argument that the service charge falls outside section 18 of the 1985 Act and as we do not accept the Applicant's other argument on jurisdiction (see above), our conclusion is that the proposed variations to the Agreement are subject to the statutory consultation requirements.

The dispensation application

40. In the alternative, the Applicant submits that dispensation from compliance with the statutory consultation requirements should be granted.

41. As noted by the Applicant, on an application for dispensation the key issue following the decision of the Supreme Court in *Daejan Investments Ltd v Benson [2013] UKSC 14* is the issue of 'prejudice' to leaseholders. As is clear from the decision in *Daejan*, the issue is not whether the leaseholders have suffered prejudice as a result of the decision to enter into a particular QLTA (or to carry out qualifying works). Rather, as stated by Lord Neuberger at paragraph 44 of *Daejan*, *"given that the purpose of the [consultation] requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the [tribunal] should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements".*

42. At paragraph 67 of *Daejan*, Lord Neuberger states that *"the factual burden of identifying some relevant prejudice that they would or might have suffered would be [i.e. is] on the tenants".*

43. As regards the submissions made by those of the Respondents who have raised objections to the application, some complain that the provision of the health club was a central feature in persuading them to purchase their flat, whilst others express the concern that there may be a drop in property values as a result of the proposed changes. Some express the view that the variations would lead to a poorer service, and some complain that the proposed variations constitute a breach of promise. One of the Respondents complains generally about lack of communication but is not specific enough for this to be a proper ground for refusing dispensation, and in any event the information contained in the hearing bundle shows that there has been communication. Another Respondent states that the Applicant should have approached the service provider Educated Body and invited them to tender, but we are satisfied by the Applicant's explanation as to why it did not do so.

44. The concerns raised by those of the Respondents who have objected to the application are wide-ranging, but none of the Respondents have identified any relevant prejudice suffered or potentially suffered by virtue of the Applicant's failure fully to comply with the statutory consultation requirements. It is possible that some of their concerns have a degree of validity, but in order for the validity of any specific objection properly to be tested that objection must be raised in the correct forum as part of a legal challenge which falls within the jurisdiction of that court or tribunal.

45. What the Respondents have failed to appreciate is that the application before this tribunal is a narrow one. It is simply an application for dispensation from compliance with the statutory consultation

requirements. As noted above, the decision in *Daejan* is authority for the proposition that dispensation should not be refused where the tenants/leaseholders have failed to identify any prejudice **that arises out of the failure to comply with the consultation requirements**. An FTT decision in relation to breaches of the consultation requirements cannot be a tick-box exercise in which a landlord must be punished for non-compliance merely because leaseholders are unhappy. Even where prejudice has been identified it does not automatically follow that dispensation should be refused, but where – as here – no prejudice has been identified as having arisen out of the failure fully to consult, dispensation should be granted.

46. Where a tribunal is minded to grant dispensation, the tribunal still needs to consider whether to grant dispensation subject to conditions. There may, for example, be cases in which some prejudice has been identified but where the cost consequences of that prejudice are modest and/or quantifiable, and in those circumstances a tribunal might consider it appropriate to grant dispensation subject to the landlord paying the relevant costs. However, in this case, no relevant prejudice has been identified and therefore it is not appropriate to make the granting of dispensation conditional on the Applicant complying with any specific terms. This is subject to what we say below about the costs incurred in connection with the application itself.

47. We appreciate that those Respondents who have objected to the application may consider this conclusion to be unfair. However, as noted above, that conclusion arises in part out of the narrow nature of this type of application. The Respondents should also note that this application and this decision do **not** deal with the issue of the reasonableness of the charges themselves, nor with certain other issues raised by the Respondents, and the Respondents may wish to take legal advice on all or any of these other points.

Conclusion

48. Accordingly, the tribunal dispenses unconditionally with those of the statutory consultation requirements referred to in section 20ZA of the 1985 Act which have not been complied with in respect of the qualifying long-term agreement which is the subject of this application.

49. To repeat, this determination is confined to the issue of consultation and does not constitute a decision on the reasonableness of the cost of the relevant services.

Costs

50. At the end of the hearing the tribunal invited submissions on the question of whether it should make an order under section 20C of the

Landlord and Tenant Act 1985 (a “**Section 20C Order**”) extinguishing any liability on the part of any of the Respondents to pay towards the Applicant’s costs in these proceedings as a service charge. The tribunal also invited submissions on the question of whether it should make an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (a “**Paragraph 5A Order**”) extinguishing any liability on the part of any of the Respondents to pay towards the Applicant’s costs in these proceedings as an administration charge.

51. Counsel for the Applicant said that the Applicant was not seeking to recover these costs from the Respondents and would be happy for the tribunal to make a Section 20C Order and a Paragraph 5A Order. Those of the Respondents who were present at the hearing were content for the tribunal to make such orders and were accordingly deemed to have applied for such orders.

52. In the circumstances, including the fact that the purpose of the application was to clarify the legal position as the need or otherwise for statutory consultation and that the application did not arise out of any default on the part of any of the Respondents, we consider it right to make both of these orders. Accordingly, we hereby make a Section 20C Order extinguishing any liability on the part of any of the Respondents to pay towards the Applicant’s costs in these proceedings as a service charge and a Paragraph 5A Order extinguishing any liability on the part of any of the Respondents to pay towards the Applicant’s costs in these proceedings as an administration charge.

Name: Judge P Korn **Date:** 30 January 2023

RIGHTS OF APPEAL

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

B. 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.

C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then

look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

D. 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.