DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON THE STATUTORY CONSULTATION REQUIREMENTS RELATING TO APPLICATIONS UNDER s.20ZA AND S.20C OF THE LANDLORD & TENANT ACT 1985

Reference Numbers:	LON/OOBF/LDC/2006/0078 LON/OOAT/LDC/2006/0081 LON/OOAW/LDC/2006/0082 LON/OOAS/LDC2006/0076 LON/OOBK/LDC/2006/0075 LON/OOAJ/LDC2006/0074 LON/OOAE/LDC/2006/0079 LON/OOBB/LDC/2006/0077
Property:	All Right to Buy lessees and subsequent purchasers of the leases of the Applicants.
Applicants:	London Borough of Brent London Borough of Ealing London Borough of Hillingdon London Borough of Hounslow Royal Borough of Kensington & Chelsea London Borough of Newham London Borough of Sutton City of Westminster
Respondents:	All Right to Buy Leaseholders in the above Boroughs.
Tribunal Members:	Miss A. Hamilton-Farey FRICS, FCIArb Mr. A. Andrew Mr. P. Casey MRICS
Applications Dated:	13th October 2006
Directions:	25th October 2006
Hearing:	17th & 18th January 2007
Date of Decision:	5th March, 2007

Decision:

The Tribunal refuses the application to dispense with the requirement to consult tenants under Schedule 2 paragraphs 4(4), (5) (6) and (7) of the Service Charge (Consultation Requirements) (England) Regulations 2003.

1. Background:

1.1 The Tribunal received eight separate applications from the Applicants for dispensation with all or some of the requirements to consult with the leaseholders under S.20ZA of the Landlord & Tenant Act 1985. In particular the Applicants sought dispensation with the requirements imposed by Schedule 2 paragraphs 4(4),(5),(6) and (7) of the Service Charge (Consultation Requirements) (England) Regulations 2003 ("The Regulations").

1.2 In the interests of proportionality and to ensure consistency, the Tribunal determined that although separate applications had been made, that they should be heard together.

1.3 Each of the applications has been made by the ALMO ("Arms Length Management Organisation") responsible for the management of the housing stock within the individual boroughs.

1.4 The application relates to all of the leasehold properties sold by the Applicants under the Right to Buy Scheme, as well as assignees of those properties, and is believed to be in respect of approximately 33,000 units. It is understood by the Tribunal that the total number of units owned and managed by the Applicants is approximately 125,000.

1.5 The Applicants sought to 'fast track' the applications on the basis that the Framework Agreements ("FWA") for which they sought dispensation were 'required to be in place to allow works to commence on leaseholders' properties in April 2007, when some of the Applicants current contracts expire'.

1.6 Directions were issued on 25th October 2007 which required, amongst other things, for the Applicants to provide a copy of those Directions and the application to any Respondent before the 20th November 2006, inform any Respondent that they could view any documentation relevant to the application, and in order to do so, furnish an address, dates and times at which this inspection might take place. The hearing date was listed as 20th December 2006.

1.7 Following the issue of those Directions, the Tribunal received several communications from Respondents to the effect that they had not been properly served with documents, that service did not include all of the documentation within the application, and that they had therefore been denied

an appropriate time in which to make a response to the application in time for the hearing.

1.8 In consideration of these communications, the Tribunal re-listed the hearing for the 17th & 18th January 2007 to enable respondents to make any submissions they wished, and to have a further period of time in which to prepare for the hearing. Bundles were to be lodged with the Tribunal and any Respondent who had opposed the application approximately 10 days before the dates set down for hearing.

2.0 The Law:

2.1 S.20 of the Landlord & Tenant Act 1985 ("The Act") was amended by S. 151 of the Commonhold and Leasehold Reform Act 2002 ("CLARA") with effect from 31st October 2003.

S.20(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either -

(a) Complied with in relation to the works or agreement, or
(b) Dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

S.20(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

S.20(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

2.2 The new section introduced the concept of a *"qualifying long term agreement"* which is defined in S20ZA(2) of the Act as:

An agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months".

2.3 Regulation 4 states:

"S.20 Shall apply to a qualifying long term agreement if relevant costs[1] incurred under the agreement in any accounting period exceed an amount which results in the relevant contribution of any tenant, in respect of that period, being more than £100.00."

[1] As defined in S.18(2) of the Landlord & Tenant Act 1985.

2.4 In addition, Regulation 6 of the Regulations in relation to Qualifying Works states:

For the purposes of subsection (3) of Section 20 the appropriate amount is an amount which results in the relevant contribution of any tenancy being more than £250.00

2.5 The Regulations set out the various consultation requirements for both qualifying works and qualifying long term agreements that are both subject to and exempt from EU Procurement Regulations. These requirements are set out in the 4 schedules to the Regulations each dealing with different consultation scenarios.

2.6 Each of the Schedules in setting out the consultation requirements, introduces an element of price competition either through a direct tendering exercise with non-OJEU ("The Official Journal of the EU") contracts, or through the implicit competition occurring through the OJEU contracting process.

2.7 Under Public Sector Procurement Regulations an Authority is required to advertise contracts over a specified value in the Official Journal of the European Union. Interested contractors may then tender for works in competition with others. This is known as a "Public Notice".

2.8 S.20ZA(1) of the Act makes it clear that-

"*Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.*"

2.9 The applicants seeks dispensation with the requirements under Schedule 2 paragraphs 4(4), (5), (6) and (7) of the Regulations, these require, amongst other things, the landlord to consult where it is entering into a qualifying long term agreement for which public notice is required.

2.10 The consultation requirements are contained within Para 5 of the Regulations -

5(1) *Subject to paragraphs (2) and (3), in relation to qualifying long term agreements to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA are the requirements specified in Schedule 1.*

5(2) Where public notice is required to be given of the relevant matters to which a qualifying long term agreement relates, the consultation requirements for the purposes of sections 20 and 20ZA, as regards the agreement, are the requirements specified in Schedule 2.

5(3)...

2.11 The Regulations define 'relevant matters' as -

"the relevant matters" in relation to a proposed agreement, means the goods or services to be provided or the works to be carried out (as the case may be) under the agreement

2.12 The paragraphs which the applicants seek to dispense with require the landlord to provide copies of the estimated relevant contribution to be incurred by each tenant, or where it is not reasonably practical to do so, for the landlord to inform the tenants of the total expenditure to be incurred under the contract. Where it is not reasonably practical for the landlord to make known that information, the landlord may inform the tenants of the current unit or hourly or daily rates applicable to the works or services.

Finally paragraph 7 of the Regulations states that-

'Where it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph 6(b), the proposal shall contain a statement of the reasons why he [the landlord] cannot comply and the date by which he expects to be able to provide an estimate, cost or rate'.

3. The Postponement Application:

3.1 The Hearing was attended by approximately 200 Respondents, officers from each Applicant, Instructing Solicitors and Miss Bhaloo of Counsel, for the Applicant. Mr. Fisher, the expert witness on behalf of the Applicants, also attended.

3.2 At the start of the Hearing, the Tribunal explained that the purpose was not to determine whether or not any costs which were likely to be incurred by the Applicants were reasonable, or indeed if they would be payable by any of the Respondents, and that the whole purpose of the application was to consider whether or not the Tribunal should give dispensation to the Applicants under S.20ZA.

3.3 Various Respondents addressed the Tribunal to the effect that they had either not been properly served with documentation, or were representing others who had not been properly served. The Respondents virtually unanimously requested that the hearing be adjourned to;

- Enable them to seek professional advice
- Enable them to prepare a unified approach to the case
- Enable them to access to all of the documentation and not therefore be disadvantaged

- Enable the Respondents to be provided with details of each other Respondent to the Application in accordance with the Procedure Regulations 5(1)[2]

The Tribunal adjourned the proceedings to consider the request for a postponement.

4. Decision following postponement request:

4.4 The Tribunal refused the request for a postponement on the following grounds;

- The Tribunal had asked the Respondents present at the Hearing whether anyone in the room claimed not to have received a single document in the case. No-one responded to confirm that this was the case.

- The Tribunal had been provided by the Applicants with a witness statement from each Applicant from the person who was responsible for the issue of the Directions to the Respondents, to the effect that they had used their list of leaseholders and sent a copy to each one on that list. The Tribunal was satisfied that this was sufficient to show that that overwhelming majority of leaseholders had been properly served with documents, and that any database used by the applicants would be unlikely to be 100% correct, given assignment of leases, properties being sub-let etc.

- The Directions issued in October 2006 made the nature of the application clear and leaseholders had been informed of where they could obtain further information.

- The Tribunal did not consider that the leaseholders had an intrinsic right to organise themselves into one group.

- The Tribunal considered that there were unlikely to be any alternative arguments which would be made by those who may not have been present, or properly served with documents, to those that had already been received, or were to be presented by the Respondents who attended the Hearing.

- The request for a postponement was opposed by the Applicants on the basis that Qualifying Long Term Agreements into which they wished to enter were urgent.

- The Tribunal confirmed that it relaxed the requirement to provide the names and addresses of each Respondent to the Respondents on the basis that it was satisfied that -

[2] Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003

"The particulars and documents included with an application are sufficient to enable the application to be determined; and no prejudice will or is likely to, be caused to any part to the application"[3]

Having given the oral decision on the postponement request, the Tribunal continued with the substantive Hearing.

5. The Substantive Hearing:

5.1 The Tribunal asked the Respondents at the start of the Hearing whether they had an individual spokesperson, or whether there were individuals who wished to make representations, in addition to the 81 written submissions already made. The Respondents confirmed that they did not have a spokesperson per application and wished to make their own representations.

5.2 The Tribunal directed that the Respondents would be heard alphabetically on a borough by borough basis following the submissions made on behalf of the applicants.

5.3 The Tribunal also confirmed to the Parties that although there were eight separate applications before it, these had been consolidated into one Hearing.

6 The Applicants' Case:

a. Miss Bhaloo on behalf of the applicants outlined the purpose of the application, which was to seek dispensation under S.20ZA of the Landlord & Tenant Act 1985 on the basis that it was not *"reasonably practicable"* for the applicants to provide the information specification in paragraphs 4(4) - (7) of Sch. 2 to the Regulations, and that the information could not be provided until after the Framework Agreements had been entered into.

b. The applicants were all members of an alliance known as LAPN ("London Area Procurement Network") which had been formed to facilitate collaboration between the participating boroughs with a view to promoting efficiencies in the procurement of services and goods. The objective of the alliance was to achieve savings of up to 10-20% of costs which would have been incurred in traditional procurement contracts.

c. LAPN would enter into a series of framework agreements to which individual contractors would be appointed for a four year term. Under the framework agreements, call-off contracts would be entered into as and when works and suitable contractors had been identified. The framework agreements set the terms and conditions under which

[3] Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 Reg 8(a) (b)

these individual call-off contracts would be awarded, and that the call-off contracts or 'work streams' would include all;

- Mechanical and engineering work
- Windows and doors (new and maintenance/repair)
- External enveloping works
- Specialist works
- General contractor works.

For the time being the work streams would not include the day to day responsive maintenance contracts.

d. Ms. Bhaloo then called Mr. Fisher, Interim Managing Director for LAPN to give his expert evidence.

6.1 Mr. Fisher's Evidence:

i. Mr. Fisher re-iterated the purpose of LAPN was to secure efficiencies in the procurement of goods and services across all of the participating members and made much of the reduction of costs through 'volume procurement, promoting open book pricing and partnering commitments'. That the process was within the ethos of the Egan report 'Rethinking Construction' and that LAPN would be able to 'establish continuity of work flow and relationships with the contractors' ensuring that clear performance indicators would be set and the contracts monitored against them.

ii.. Mr. Fisher cited, without giving specific examples, due to confidentiality, savings of an overall 10.80% on projects already being undertaken adopting open book accounting. He anticipated further savings in the order of 12-14% on contracts under the LAPN procurement process.

iii. He then went on to describe the process under which the framework agreement would be conducted. The applicants would appoint contractors to a series of framework agreements for a period of 4 years, although call off contracts might extend beyond that period. That the notices required under OJEU Regulations had already been served and that contractors had been identified to work within a specific work-stream. Up to 4 contractors per work stream had been identified, although for 1 work stream only 1 was to be approved.

iv. When an applicant had identified works to be carried out, they would decide whether to appoint a framework contractor for that stream of work, or conduct a mini tender exercise between all framework contractors for that stream of work, or, alternatively, they could contract in the usual way with a contractor of their choice outside the LAPN framework. The contractors already appointed under the framework agreements would price on the basis of the cost models that had formed a part of the original tendering process for inclusion on the

LAPN list. The overhead and profit elements which had been the subject of a tender exercise were now fixed for each individual contractor. There was now what could be termed an 'approved list'.

v There was no requirement for any applicant to use the framework system and they were free to enter into negotiations with any other contractors of their choosing, but that it was envisaged that applicants would use framework approved contractors for the majority of their works.

vi. In his statement Mr. Fisher informed the Tribunal that it was not possible at this stage in the proceedings for the applicants to identify;-

(i) The scope or
(ii) The value of the works or
(iii) The properties to which the particular works and costs will relate.

In addition Mr. Fisher stated that it was not possible for the applicants to give an estimate of costs when consulting on their proposals, and that

'any estimates would be meaningless and it is not possible to say what the total cost of the framework agreements or each or any of them will be, or to specify the cost of works or what the hourly or daily or unit or other rates will be'

vii. Mr. Fisher then gave the Tribunal details of how the process would work in reality and that the applicants would be able to satisfy themselves that they were achieving best value and were only recharging this amount to the residents. He told the Tribunal that leaseholders would have the advantage of knowing that the best possible rates were obtained and the best quality of service provided. He spoke about the computer system that would be established and which would hold such things as standard work specifications, cost information from projects completed and details of best practice and that this information would be promulgated amongst all LAPN members.

viii. Mr. Fisher finally informed the Tribunal that leaseholders would be able to rely on the consultation requirements laid down by Schedule 3 of the Regulations which require the landlord to give notice of the proposed works and their price and 'have regard' to any observations received.

ix. It was made clear to the Tribunal that the reason for the application was that it was not reasonably practicable for the Applicants to comply with the Regulations on the basis that works had not been

identified and could not be so identified until after the Framework Agreements had been entered into.

6. The Respondents' Case:

i. The Tribunal heard from several Respondents, including Mr. De Souza, an RBKC leaseholder, Mr. Breville (Westminster), Mr. Patel (Westminster) Ms. Crabbe (Ealing), Ms. Von Start (Brent), Ms. Brigden (Sutton). In addition the Tribunal had received approximately 81 written representations from Respondents in this case all of whom opposed the application.

ii. The Tribunal does not propose to rehearse each argument put forward by each Respondent whether in their written representations or their oral submissions. However a summary of the arguments for opposing the application for dispensation could best be outlined as follows:-

- That by entering into a qualifying long term agreement for all of the Applicants, the Respondents were being denied their opportunity to nominate contractors, which they might have been able to do if contracts were not consolidated. That because of the limits for expenditure before a landlord was obliged to advertise contracts in the OJEU, the consolidation of the contracts effectively removed the leaseholders ability to nominate and that this was wrong.

- The leaseholders were concerned that given a free rein to enter into this agreement their only recourse to being charged for unnecessary, or poorly carried out works was to make an application to the Tribunal after the works had been carried out under S.27A of the Landlord & Tenant Act, and they considered that this was unfair and they would face the financial burden of making such an application.

- The leaseholders in general were dissatisfied and disappointed with the works already undertaken by their landlords. That there was no control over costs or quality of works and several of the Respondents were already in dispute with their landlords over previously carried out works.

- That the appointment of contractors over a four year period of time lead to complacency and that contractors not on the approved list would be willing to secure contracts at a lower rate. Leaseholders would not be able to take advantage of these lower rates as they would be committed to paying under the LAPN contract.

- Leaseholders were sceptical about the computerised system for monitoring and accounting for the works. This system was not yet in place and was the subject of ongoing discussions with providers. It was clear to the Tribunal and the Respondents that it would be

unlikely that this computer system would be running by the time the first LAPN contract was in place.

- That as far as the leaseholders were concerned LAPN had not proved itself to be able to offer the savings as no concrete details had been provided. The leaseholders were concerned that LAPN would not be able to offer the promised savings and that they, the leaseholders, would be in a 4 year contract which they could not terminate.

- There was general lack of understanding on the part of the Respondents as to why the Applicants could not provide costs. Each ALMO had prepared a budget for expenditure which, in the Respondents opinion, must have been based on some fact or feasibility study etc. That each of the Applicants knew what their programme of work was and that it should not be impossible to provide a base line figure. Without this information any expenditure budget would be worthless

- Respondents were also concerned at the expertise of LAPN and the Applicants to undertake such a vast programme of works and based on past experience there was no confidence that the Applicants could properly perform under the contracts or properly monitor the works whilst underway.

- Many Respondents felt that they were being rushed into making a decision without sufficient information. The applications were being fast tracked on the basis that contracts were coming to an end. This should not be the reason for entering into something for which none of the Applicants had previous experience.

- The Respondents were suspicious of the lack of transparency in the current LAPN contracts and why the savings apparently already achieved could not be properly disclosed so that Respondents could judge for themselves the effectiveness of the proposed Agreements.

- The right to nominate contractors was 'dear to leaseholders' and the removal of this right by consolidating contracts had been proved in the past to be expensive. Leaseholders who had arranged for their own works had paid substantially less than when works were carried out by the Applicants.

- Finally, the Respondents were concerned that the LAPN system had been devised after the Regulations came into force, and had not been designed to accommodate the Regulations, but rather to only be able to function if dispensation was given. This in the Respondents view was wrong and that any procurement system designed after the Regulations had come into force, should have

taken into consideration those Regulations and been able to accommodate them.

At the end of the Hearing, the Tribunal requested any further written representations to be made within 14 days, in particular requesting that, in their written representations, the Applicants address the issue of whether or not the Frameworks Agreements were in fact agreements to which S. 20 applied.

Representations were received from the Applicants, Mr. De Souza, Mr. Breville and Mr. Patel, each confirming and reinforcing the arguments made at the Hearing.

7. Final Submissions:

a. Mr. Breville addressed the Tribunal in his representations to confirm his view that it was '*unreasonable to expect leaseholders to give up any of their statutory rights under S.20 and elsewhere, as they will need them to assert the case for remedial action. That it was not just the un-reasonability of LAPN that is at issue, but the legal rights of lessees who are already suffering from unsatisfactory outcomes over which they have little control.*

He continued, '*The process is not rigorous enough to protect leaseholders, who are in any event unlikely to be informed of what has happened until the issuing of Section 20 notices, when the deal has been made and the price levels agreed'.* Finally, '*that the Application fails to correctly apply the European Guidance on Framework Agreements and is therefore flawed with material consequences for future costs, and that the Application fails to meet the stated aims of the 2002 Act and is contrary to legislative intent.'*

b. Mr. De Souza's post hearing submission included his argument that '*the real nature of the Framework Agreements as far as works to leaseholders' properties are concerned, is not that of the contract under which they are done, but of an option agreement under which certain contractual terms can be obtained from Framework Contractors but only if the local authority in question wishes to use that contractor...'*

He went on to argue that '*under Regulation 4(1), no consultation requirements are required unless relevant costs are incurred under the agreement'*

c. Mr. Patel, who described himself to the Tribunal, as a professional in the field of procurement work, reiterated his oral opinion, and confirmed that in his professional opinion, LAPN was not in a position to deal with a computerised system and that several months work was required to have a suitable database in place, and

that there appeared to be very few elements of the LAPN strategy that was not subject to change.

The Tribunal finally considered the written submissions of the Applicant, and in particular the request that they be addressed on the issue of whether or not the Frameworks Agreement is a qualifying long term agreement to which S. 20 applies.

Ms. Bhaloo in her closing submissions informed the Tribunal that-

> *Framework Agreements are QLTAs to which section 20 applies. It is Submitted that they are clearly agreements entered into on behalf of the relevant landlords. Further it is submitted that section 20 does apply despite the fact that there is no obligation to let works to the appointed contractors. In any event if this were not right, the unchallenged evidence of Mr. Fisher was that each of the Applicants would be "highly likely" to let works under the agreements.*

Reasons for the Tribunals Decision:

- If LAPN is correct, once they have complied with the OJEU tendering requirements for public works, to enter into the framework agreements with contractors, (and they must comply with such requirements if the potential value of the contract is worth more than €3 Million), then they are not obliged to re-advertise through that process once the works are called off for a specific project.

- This is so whether or not the value of that called off contract exceeds the €3 Million or not. By following this procedure, if the Framework Agreement is a QLTA to which S.20 of the Landlord & Tenant 1985 applies, at the call off contract stage their requirements to consult with their leaseholders under S.20 would be considerably reduced.

- In particular the leaseholders would not have the right to be provided with tenders from at least two contractors because either the selected contractors or winning mini-tender contractors bid will be all that will be provided.

- There is no right of the leaseholder to nominate a contractor of their own choosing. Even if potential cost of works falls below the OJEU limit. The bundling together for Framework Agreement purposes, of a group of such works so as to exceed that limit, would again deny leaseholder's those rights, even for relatively small contracts.

a. Is this a Qualifying Long Term Agreement to which S. 20 Applies?

It is the view of the Tribunal that the Framework Agreement, whether or not it is a QLTA for the purposes of OJEU tendering requirements or not, is not a QLTA to which S.20 Applies for the following reasons:-

(I) That it is clear from the final submissions that the Framework Agreements are still in a draft form. The Tribunal is of the opinion that it cannot make a determination on a contract that has not been finalised and that the application in itself might be invalid. The Tribunal is also concerned that the Framework Agreements are still in draft form when in some instances, the contracts they are due to replace expire in April 2007, and that the Applicants should have been in a position at the time of the hearing to provide final copies of the documentation, or at least some identification of the contractors with whom it is intended to enter into these Framework Agreements.

(II) That under the proposed Framework Agreements no relevant costs (as defined in the LTA 1985) are incurred by any of the parties, as no works or services per se are undertaken or provided by virtue of those Agreements. Therefore in the tribunal's opinion S.20 does not apply. Relevant costs are only incurred under the individual call-off contracts and the Tribunal is not being asked to dispense with the requirements of S.20 under these subsidiary contracts, and which as far as the Tribunal is aware have not been drawn up or entered into.

(III) Both parties agreed that the new Public Contract Regulations have superseded those referred to in the definition of Public Notice in the 2003 Regulations. If this is so, and this Framework Agreement is not within the definition contained in the new Regulations, then there is no need to advertise the long term agreements in the OJEU, although the agreements are still qualifying long term agreements. If the Tribunal is correct in this view, then the applications are misconceived in that Schedule 1 and not Schedule 2 of the 2003 Regulations would apply. The result being that leaseholders would have the right to nominate their own contractors for the works.

(IV) In the Framework Agreements the contracting party is LAPN, under the call-off contracts the contracting party will be the individual ALMO requiring the works to be undertaken. It is the Tribunals opinion that the Framework Agreement and call-off contracts are a consolidated bundle of rights and obligations and that for relevant costs to be incurred there must be sufficient nexus between the Framework Agreements and the Call-off Contracts. This must, in the Tribunal's view, include precision as to the works to be undertaken and the price at which they are to be undertaken. There must also be an obligation on a contractor to carry out the works once identified and priced. The Tribunal does not consider that there is sufficient nexus in these contracts for it to be satisfied that relevant costs are "incurred under the agreement".

(V) The contracting party to the Framework Agreement is LAPN acting as agents on behalf of the Applicants, the Tribunal does not

consider that LAPN can be said to be a landlord to whom service charges can be payable by the leaseholders.

If the Tribunal is wrong in the above determination, it is the Tribunal's view that it would not be reasonable to dispense with the requirements to consult for each of the following reasons:

a. The Tribunal considers the evidence of Mr. Fisher (that it is impracticable for the Applicants to provide costs to the leaseholders) not to be sustainable. The Tribunal considers that the Applicants could comply with paragraph 4(7) of Schedule 2 which requires:-

> *'Where it not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (6)(b), the proposal shall contain a statement of the reasons why he cannot comply and the date by which he expects to be able to provide an estimate, cost or rate'.*

b. The Applicants have informed the Tribunal that it is not reasonably practicable to provide the estimates mentioned in sub-paragraph 6(b). This may be so, but the Tribunal cannot see why the Applicants cannot comply with the remainder of paragraph 4(7).

c. It is the Tribunal's view that the Applicants must be able to provide a statement of the reasons why they cannot comply with paragraph 6(b) and a date by which they expect to be able to provide that statement. The Regulations do not require the landlord to provide the information by a fixed date, and it is the Tribunal's view that a date in the future when tenders have been received would suffice to meet these requirements.

d. The Tribunal agrees with the submission made on behalf of the Respondents, that any of the Applicants, in formulating its operational budget for the financial year and future year planning, should be in a position to know what works are to be undertaken on its stock and the budget figure for those works. It would not be reasonable for any landlord to compile a budget on "guestimate" figures, based neither on previous project costs nor on a schedule of rates. The Tribunal had been informed that a schedule of rates had not been prepared for the Framework Agreement, but would be part of the call-off contracts. Given this uncertainty, the Tribunal considers that this effectively gives a blank cheque to LAPN and that this could not be in the best interests of the leaseholders.

e. Finally, the Tribunal is concerned that the purpose of S.20ZA was to dispense with the requirements to consult in certain circumstances. Whilst, if dispensation were given, the leaseholders would have the final costs and the option to make observations in the Schedule 3 consultation process, this removes many of the rights and security of the leaseholders with regard to the sums to be spent by the landlord. It

is in effect not a consultation exercise but the provision of information to which the leaseholders have no right to object. They may raise 'observations to which the landlord must have regard' but in real terms the contract has already been entered into, and the only recourse of the leaseholders is then to make an application to the Tribunal for a determination of their liability to pay under S.27A after the works have been carried out.

f. It is this Tribunals view that the LAPN contract as presented to them, leaves the leaseholders vulnerable to increased cost and that the Applicants failed to demonstrate with sufficient example, how the promised savings and efficiencies could be achieved.

The Tribunal therefore refuses the application to dispense with the consultation requirements requested.

S.20C Application:

Several Respondents had requested that the Tribunal make a determination under S.20C that the costs of the Applicant should not be relevant costs for service charge purposes.

The Applicants confirmed that they would not be seeking to place the costs of the application on the service charges.

The Tribunal therefore confirms that the costs of this Application are not relevant costs and may not be included in the present or future service charges of the Applicant.

Tribunal:

A. Hamilton-Farey FRICS, FCIArb
A. Andrew
P. Casey M
RICS.

Date: 13/07