

**IN THE FIRST-TIER TRIBUNAL PROPERTY CHAMBER**  
**(RESIDENTIAL PROPERTY)**

**B E T W E E N**

THE MAYOR AND COMMONALTY AND  
CITIZENS OF THE CITY OF LONDON

Applicants

and

22 LONG LEASEHOLD PROPERTIES WHERE THE  
CITY OF LONDON CORPORATION IS LANDLORD

Respondents

**THE GROUNDS OF THE APPLICATION SEEKING DISPENSATION**

The supply of facilities management services to City residential long leaseholders under a Qualifying Long Term Agreement

1. The Applicants ("The City of London Corporation" aka "the City") currently provide facilities management services to buildings in the West End within its Investment Property Portfolio.
2. Twenty-two residential long leasehold properties are affected where the financial contribution from long leaseholders exceeds the prescribed sum of £100 for consultation purposes.
3. A variety of separate contracts for the supply of facilities management services terminate on 31 March 2023. The City is therefore applying for dispensation from the relevant consultation requirements in relation to a proposed facilities management contract from 01 April 2023 to 31 March 2033.

Proposed new contractual arrangements for the supply of facilities management services

4. The City's intended contractual arrangements for the supply facilities management services after the end of the current contracts in March 2023 are summarised below.
5. The City will shortly enter into an Integrated Facilities Management (IFM) Framework Agreement ('the Framework') for the supply of facilities management services. The Contract Notice was published on 13 April 2022. A copy of the notice is **attached** to this application. The Award Notice will be published in September 2022.
6. The City of London Corporation is about to put in place the Framework for provision of Integrated Facilities Management (IFM) services, for use by UK public sector bodies.
7. The Framework is the consolidation of Facility Management (FM) services under a single supplier including hard and soft FM services bringing efficiencies in contract management, supply chain, project management and collaborative planning.
8. The Framework will be divided into six Lots reflecting property groups:
  - Lot 1 - Corporate Property
  - Lot 2 - Commercial Property
  - Lot 3 - Performing Arts Venues
  - Lot 4 - Heritage property / Mixed Use (including Office Space, Events, & Archives)
  - Lot 5 - Schools
  - Lot 6 - Police and Courts
9. This application is concerned with Lot 2 – Commercial Property.
10. The Framework itself did not require the production of a Schedules of Rates. No costs will be incurred by the Corporation under the Framework Agreement.

11. Once the City has entered into the Framework Agreement, the City will then enter into a separate Call-Off Agreement ('the Call-Off Agreement') for the supply of facilities management services under the Lot 2, with estimated annual costs as follows:

| <b>Purchasing Type</b> | <b>Contract Description</b>                                     | <b>Estimated Cost £pa Annualised Exc VAT</b> | <b>Start Date</b> | <b>End Date</b> |
|------------------------|---|--|-------------------|-----------------|
| Schedule of Rates      | Integrated Facilities Management Services - Commercial Property | £4,800,000                                   | 01/04/23          | 31/03/33        |

12. The Call-Off Agreement will arise out of a mini-competition involving a Schedules of Rates. The costs of the facilities management services will be incurred by the Corporation under the terms of the Call-Off Agreement.
13. The proposed Call-Off Agreement will be an agreement:
- (i) entered into by the City as Landlord; and
  - (ii) for a term of more than twelve months; and
  - (iii) under which relevant costs in any accounting period will exceed an amount which results in the relevant contribution of tenants, in respect of that period, being more than £100.
14. Therefore, the proposed Call-Off Agreement is properly characterised as a Qualifying Long Term Agreement to which section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 ('the Regulations') apply.

#### Dispensation requirements

15. The City is unable to comply with the consultation requirements as set out in the Regulations.

16. A degree of consultation has taken place. While it has been the intention of the City to apply for a dispensation order to dispense with the consultation requirements contained in Section 20 of the Landlord and Tenant Act 1985, it has nevertheless carried out the "Notice of Intention" stage of the consultation process.
17. This was done to canvass the views of residents and to answer their questions and concerns. A Notice of Intention was sent to leaseholders in the West End on 28 April 2022. An example copy of these Notices is **attached** to this application.
18. No observations were received from leaseholders in response to those notices.
19. In relation to the Notice of Intention, it is not apparent whether Schedule 1 or Schedule 2 of the Regulations is applicable to the Call-Off Agreement as the proposed Qualifying Long Term Agreement. The City assumes that the relevant Schedule is Schedule 2, however the City's Notice of Intention has not advised leaseholders that public notice will be given in relation to the Call-Off Agreement nor has it invited leaseholders to nominate a supplier.
20. No public notice will be required during the mini-competition leading to the Call-Off Agreement. Therefore, the Call-Off Agreement will not be an agreement for which public notice is required, thereby precluding the use of the consultation procedures under Schedule 2 of the Regulations.
21. As procurement under the mini-competition will be limited to suppliers who are party to the existing Framework Agreement (and will not be open to, for example, to suppliers nominated by leaseholders) it was not possible for the City to comply with the requirement of Schedule 1 to invite leaseholders to propose the name of a supplier from whom the City should try to obtain an estimate.
22. In relation to an eventual Notice of Proposal (the usual second stage of leaseholder consultation), Schedule 2 of the Regulations requires the preparation and notification of a proposal that is open for leaseholder observations for 30 days from the date of the relevant notice.

23. The City will provide a Notice of Proposal under Schedule 2 in the usual way, subject to a dispensation in relation to the consultation requirements.
24. The Tribunal has power to dispense with the consultation requirements in a particular case "if satisfied that it is reasonable" to do so (section 20ZA(1), Landlord and Tenant Act 1985). Pursuant to the decision in Daejan Investments Limited v Benson [2013] UKSC 14, the right to be consulted is not a free-standing right and the approach to be adopted on a dispensation application is to ask: if dispensation was granted, would the tenants suffer any relevant prejudice?
25. The consultation requirements in the Regulations are a means of achieving the purpose of ensuring that tenants are not required to pay:
  - (i) for unnecessary services or services provided to a defective standard; and
  - (ii) more than they should for necessary services provided to an acceptable standard.

### **Conclusion**

26. The City is seeking to procure facilities managements services under the Framework for the reasons set out above. The Framework Agreement, and subsequent Call-Off Agreement, will result in lower relevant costs for long leaseholders. However, the use of the Framework Agreement, and subsequent Call-Off Agreement, precludes strict compliance with the requirements of the consultation Regulations.
27. It is considered therefore that it is reasonable to dispense with the consultation requirements in Section 20 of the Landlord and Tenant Act 1985 in relation to the Call-Off Agreement to be entered into by the City through the Framework Agreement for the supply of facilities management services.
28. If dispensation is granted, it is submitted that the dispensation will serve long leaseholders' interests by ensuring the City is able to obtain the lowest prices for facilities management services. Leaseholders will not be paying for inappropriate services or paying more than would be appropriate and would therefore not suffer any relevant prejudice.

Statement of Truth

I believe that the facts stated in these Grounds are true.



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Andrew Cusack

Principal Lawyer for the Applicants

30 August 2022

**Attachments to Grounds:**

1. Contract Notice (Framework Agreement)
2. Notice of Intention (West End)