



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

**Case Reference** : **MAN/00CW/LDC/2014/0011**

**Property** : **Parkgate House Court & Courtyard  
The Parade  
Parkgate  
Wirral  
CH64 6SQ**

**Applicant** : **Parkgate House Management  
Limited**

**Representative** : **N/A**

**Respondents** : **The leaseholders of the Property**

**Representative** : **N/A**

**Type of Application** : **Landlord and Tenant Act 1985  
- section 20ZA**

**Tribunal Members** : **Judge J Holbrook (Chairman)  
Judge L Bennett**

**Date and venue of  
Hearing** : **Determined without a hearing**

**Date of Decision** : **2 October 2014**

**DECISION**

## DECISION

**Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to works comprising the reconstruction of a party wall separating the Property from neighbouring property known as The Warren.**

## REASONS

### Background

1. On 19 August 2014 an application was made to the First-tier Tribunal (Property Chamber) (“the Tribunal”) under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) for a determination to dispense with the consultation requirements of section 20 of the Act. Those requirements (“the consultation requirements”) are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”).
2. The application was made on behalf of Parkgate House Management Company Limited, the management company for Parkgate House Court & Courtyard, The Parade, Parkgate, Wirral CH64 6SQ (“the Property”). The Respondents to the application are listed in the Annex to this decision. They are the leaseholders of the 12 apartments and 4 townhouses which together comprise the Property.
3. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
4. The works in respect of which a dispensation is sought concern urgent remedial works to a party wall which separates the Property from neighbouring property to the north, known as The Warren.
5. On 8 September 2014 Judge Bennett issued directions and informed the parties that, unless the Tribunal was notified that any party required an oral hearing to be arranged, the application would be determined upon consideration of written submissions and documentary evidence only. No such notification was received, and the Tribunal accordingly convened in the absence of the parties on 2 October 2014 to determine the application. Written submissions and documentary evidence in support of the application were provided by the Applicant. No submissions were received from any of the Respondents.
6. The Tribunal did not inspect the Property.

## Grounds for the application

7. The Property is understood to be a residential development of 16 units, including 12 apartments and 4 townhouses. The development is separated from neighbouring property by a freestanding party wall.
8. During the latter part of 2013 a horizontal crack appeared in the party wall. A party wall surveyor was appointed to investigate. The surveyor subsequently advised that the wall is in an unstable and thus unsafe condition: it needs to be taken down and rebuilt. In August 2014 a Party Wall Award was made by which it was determined that the Applicant management company is responsible for 100% of the cost of the necessary works.
9. The Applicant accepts the findings of the party wall surveyor and now wishes to carry out the works as soon as possible, conscious of the possibility that the party wall may collapse and possibly cause serious injury. Additional cracks have appeared in the wall recently. A desire to complete the works before the onset of winter adds to the urgency of the situation.

## Law

10. Section 18 of the Act defines what is meant by “service charge”. It also defines the expression “relevant costs” as:

*the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*

11. Section 19 of the Act limits the amount of any relevant costs which may be included in a service charge to costs which are reasonably incurred, and section 20(1) provides:

*Where this section applies to any qualifying works ... the relevant contributions of tenants are limited ... unless the consultation requirements have been either—*  
*(a) complied with in relation to the works ... or*  
*(b) dispensed with in relation to the works ... by the appropriate tribunal.*

12. “Qualifying works” for this purpose are works on a building or any other premises (section 20ZA(2) of the Act), and section 20 applies to qualifying works if relevant costs incurred on carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.00 (section 20(3) of the Act and regulation 6 of the Regulations).
13. Section 20ZA(1) of the Act provides:

*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 works ... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.*

14. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord (or management company) to:
  - give written notice of its intention to carry out qualifying works, inviting leaseholders to make observations and to nominate contractors from whom an estimate for carrying out the works should be sought;
  - obtain estimates for carrying out the works, and supply leaseholders with a statement setting out, as regards at least two of those estimates, the amount specified as the estimated cost of the proposed works, together with a summary of any initial observations made by leaseholders;
  - make all the estimates available for inspection; invite leaseholders to make observations about them; and then to have regard to those observations;
  - give written notice to the leaseholders within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder if that is not the person who submitted the lowest estimate.

## **Conclusions**

15. The Tribunal must decide whether it is reasonable for the works to go ahead without the Applicant first complying with the consultation requirements. Those requirements are intended to ensure a degree of transparency and accountability when a landlord (or management company) decides to undertake qualifying works – the requirements ensure that leaseholders have the opportunity to know about, and to comment on, decisions about major works before those decisions are taken. It is reasonable that the consultation requirements should be complied with unless there are good reasons for dispensing with all or any of them on the facts of a particular case.
16. It follows that, for it to be appropriate to dispense with the consultation requirements, there needs to be a good reason why the works cannot be delayed until the requirements have been complied with. The Tribunal must weigh the balance of prejudice between, on the one hand, the need for swift remedial action to ensure that the condition of the Property does not deteriorate further and, on the other hand, the legitimate interests of the leaseholders in being properly consulted

before major works begin. It must consider whether this balance favours allowing the works to be undertaken immediately (without consultation), or whether it favours prior consultation in the usual way (with the inevitable delay in carrying out the works which that will require). The balance is likely to be tipped in favour of dispensation in a case in which there is an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation.

17. In the present case, it is very clear that there is indeed an urgent need for swift remedial action to make the party wall safe in order to address the obvious health and safety risks that exist at present. We have no hesitation in finding that the balance of prejudice favours permitting the works to proceed without delay.
18. We also note that the statutory consultation process has in fact begun (although there has not been time for it to be concluded): on 15 August 2014, each of the Respondents was given a notice of intention to carry out the works in question. Additional information has been provided to the Respondents in the course of these proceedings and none of them have objected to the application. The Applicant has also obtained estimates for the cost of carrying out the works. These range from approximately £4,400 to £6,500 (exclusive of VAT). However, due to the appearance of further cracks in the wall, the Applicant considers that the actual cost may be in the region of £7,000.
19. The fact that the Tribunal has granted dispensation from the consultation requirements should not be taken as an indication that we consider that the amount of the anticipated service charges resulting from the works is likely to be reasonable; or, indeed, that such charges will be payable by the Respondents. We make no findings in that regard.

## ANNEX

### List of Respondents

Ray Jones	Apartment 1
Robert & Audrey Barr	Apartment 2
Francoise Morgan	Apartment 3
Mark Ames	Apartment 4
Rob & Gaynor Mellor	Apartment 5
John Watt	Apartment 6
Bill Fortescue	Apartment 7
Michael Wilde	Apartment 8
Dennis & Audrey John	Apartment 9
Peter Collinge	Apartment 10
Pam Jenkins & Graham Thompson	Apartment 11
Eric & Pam Kimpton	Apartment 12
Graham Reeves	Courtyard No. 1
Alex Lips	Courtyard No. 2
Peter Betts	Courtyard No. 3
Keith & Carole Jeffries	Courtyard No. 4