



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

**Case Reference** : **MAN/00BN/LDC/2015/0003**

**Property** : **The Kensington, 59-61 Palatine Road  
Didsbury, Manchester, M20 3LJ**

**Applicant** : **Palatine Road Management  
Company Limited**

**Representative** : **HML Guthrie**

**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** : **30 March 2015**

**DECISION**

## DECISION

**Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to remedial works concerning a breached damp proof membrane to the basement apartment known as 1 The Kensington.**

## REASONS

### Background

1. On 16 February 2015 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 Palatine Road Management Company Limited, the management company for The Kensington, 59-61 Palatine Road, Didsbury, Manchester M20 3LJ (“the Property”). The Respondents to the application are listed in the Annex to this decision. They are the leaseholders of the 18 apartments within 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 breached damp proof membrane to a basement apartment within the Property.
5. On 25 February 2015 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 30 March 2015 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 purpose-built residential development comprising 18 apartments.
8. Apartment 1 (which is located in the basement of the Property) is currently suffering from water penetration as a consequence of a

breach of the basement's damp proof membrane. The leaseholder of the apartment has complained that the apartment is uninhabitable and that the water penetration poses a risk to his health. It is also considered that the problem is having a detrimental effect upon the marketability of the apartment concerned.

9. The Applicant has obtained a report from specialist contractors confirming that the damp proof membrane has failed and recommending that remedial works be carried out.

## **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 prevent further water penetration into the basement apartment and to repair the damage which has already been

caused. In its present condition, the Property appears to pose a risk to the health and safety of occupiers of the basement apartment and 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 6 February 2015, each of the Respondents was given a notice of intention to carry out the works in question. The Applicant has also obtained estimates for the cost of carrying out the works. These range from £7,800 to £10,200 (exclusive of VAT).
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

Mr Christopher David Conboy	Apartment 1
Ms Sara E Hurst	Apartment 2
Ms Fiona Williams	Apartment 3
Ms M C Rea	Apartment 4
Mr A M Duffell	Apartment 5
Mr John E Davies	Apartment 6
Miss Shelina Kassam	Apartment 7
Mr Harry Bertram Strawson	Apartment 8
Mr John O'Mahony	Apartment 9
Mayfair Developments	Apartments 10 and 13
David Navin Ltd	Apartment 11
Mr Billy Yau	Apartment 12
Mr & Mrs Mullally	Apartment 14
Mr & Mrs Woolley	Apartment 15
Mr & Mrs Acharya	Apartment 16
Mr Richard Anthony Husk	Apartment 17
Ms Heather Joan Winrow	Apartment 18