



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

**Case Reference** : **MAN/00EM/LDC/2019/0032**

**Property** : **1-17 Bywell View, Stocksfield,  
NE43 7LG**

**Applicant** : **Bywell View Management Ltd.**

**Representative** : **Kingston Property Services Ltd.**

**Respondents** : **Various Leaseholders  
(see Annex)**

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

**Tribunal Members** : **Judge P Forster  
Mr W A Reynolds MRCIS**

**Date of Decision** : **7 October 2019**

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**DECISION**

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## Decision

Compliance with the consultation requirements of s.20 of the Landlord and Tenant Act 1985 is dispensed with in relation to the demolition and rebuilding of the boundary wall, including uplifting and reinstating the adjoining block paving.

## Reasons

### Background

1. An application dated 17 July 2019 was received by the First-tier Tribunal under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) for a determination to dispense with the consultation requirements of s.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 Bywell View Management Ltd. (“the applicant”), of Cheviot House, Beaminster Way East, Newcastle Upon Tyne, NE3 2ER in respect of 1-17 Bywell View, Stocksfield, NE43 7LG (“the property”) which are two purpose built blocks of residential apartments. The respondents to the application are the long leaseholders of those apartments. A list of the respondents is set out in the Annex hereto.
3. The only issue for the Tribunal to determine is whether it is reasonable to dispense with the consultation requirements.
4. The reason for the application is that a brick wall on the boundary of the property has moved and the applicant is concerned about the safety of the residents of the adjoining property if repairs are not carried out urgently. The immediate area has been taken out of use and the parking spaces next to the wall cordoned off.
5. Photographs taken in March 2018, May 2019 and July 2019 show that the wall has moved considerably during this period. The intention is to demolish the wall, uplift the adjoining block paving, rebuild the wall and reinstate the paving. Three quotations have been obtained for the works in the sums of £5,200.80, £6,126.91 and £7,473.00 inclusive of VAT. Taking the lowest quotation, and assuming that the 16 leaseholders are equally liable for the costs, each leaseholder would be liable to pay £325.05 which exceeds the s.20 threshold.

6. A consultation letter was issued to all the leaseholders on 15 July 2019 advising them of the need to carry out works. The applicant wishes to dispense with the second and third stages of the process because the need to carry out the works is urgent.
7. On 29 July 2019, the Tribunal 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 therefore convened on the date of this decision to consider the application in the absence of the parties. In response to directions, the applicant's representative provided written submissions and documentary evidence in support of the application. Copies of these were provided to each respondent and no submissions or objections were received from the respondents.
8. The Tribunal did not inspect the Property.

#### Grounds for the application

9. The applicant's case is that, it is necessary to undertake these works quickly to adequately protect the residents of the adjoining property. The applicant wishes to proceed with the works as soon as possible. It asks the Tribunal to grant dispensation in respect of the works, which it considers to be so urgent as to warrant avoiding the additional delay that compliance with the consultation requirements would have entailed.

#### The 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 proceed without the applicant first complying in full with the s.20 consultation requirements. These requirements ensure that tenants are provided with the opportunity to know about the works, the reason for the works being

undertaken, and the estimated cost of those works. Importantly, it also provides tenants with the opportunity to provide general observations and nominations for possible contractors. The landlord must have regard to those observations and nominations.

16. The consultation requirements are intended to ensure a degree of transparency and accountability when a landlord (or management company) decides to undertake qualifying works. 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.
17. It follows that, for the Tribunal to decide whether it was reasonable to dispense with the consultation requirements, there needs to be a good reason why the works should not be delayed. In considering this, the Tribunal must consider the prejudice that may be caused to tenants by not undertaking the full consultation while balancing this against the risks posed to tenants by not taking swift remedial action. The balance is likely to be tipped in favour of dispensation in a case in which there was an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation.
18. In the present case, there has only been partial compliance with the consultation requirements but by reference to the photographic evidence provided there is no doubt that the works are necessary and pressing. We find that it is reasonable for these works to proceed without the applicant first complying with the s.20 consultation requirements in full. The balance of prejudice favours permitting such works to proceed without delay.
19. In deciding to grant a dispensation, we have had regard to the fact that no objections were raised by the respondent leaseholders in compliance with the Tribunals Directions of 29 July 2019.
20. We would emphasise the fact that the Tribunal has solely determined the matter of whether or not it is reasonable to grant a dispensation from the consultation requirements. The Tribunal has not had sight of any leases and its decision 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.

**Judge P Forster**  
**7 October 2019**

## Annex

Mrs D C Goodwin	1 Bywell View, Stocksfield, NE43 7LG
Mrs A E Elliott	2 Bywell View, Stocksfield, NE43 7LG
Mrs R Mahoney	3 Bywell View, Stocksfield, NE43 7LG
Mrs J Brown	4 Bywell View, Stocksfield, NE43 7LG
Mrs S Steele	5 Bywell View, Stocksfield, NE43 7LG
Mrs E Simpson	6 Bywell View, Stocksfield, NE43 7LG
Mr Kenneth George Paton Muir	7 Bywell View, Stocksfield, NE43 7LG
Mr & Mrs W Jewers	8 Bywell View, Stocksfield, NE43 7LG
Mr D J Bennett	9 Bywell View, Stocksfield, NE43 7LG
Mr P Muir & Ms C Elliott	10 Bywell View, Stocksfield, NE43 7LG
Mrs D Wanless	11 Bywell View, Stocksfield, NE43 7LG
Mr & Mrs K M Docherty	12 Bywell View, Stocksfield, NE43 7LG
Ms L Forster	14 Bywell View, Stocksfield, NE43 7LG
Ms J S Slater	15 Bywell View, Stocksfield, NE43 7LG
Mr & Mrs R Todd	16 Bywell View, Stocksfield, NE43 7LG
Mr M Horan & Ms K T Martinez	17 Bywell View, Stocksfield, NE43 7LG