



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

Case Reference : **MAN/00CJ/LDC/2016/0008**

Property : **1 & 2 The Coach House and 30 – 47 Leazes
Terrace, Newcastle upon Tyne NE1 4LZ**

Applicant : **Home Group Limited**

Respondent : **The Leaseholders of the Property
– See Attached List**

Type of Application : **Landlord and Tenant Act 1985 – s 20ZA**

Tribunal Members : **Judge W.L. Brown
Mr I D Jefferson FRICS**

Date of Decision : **29 June 2016**

DECISION

DECISION

The Tribunal declines to dispense with the consultation requirements as sought by the Applicant.

Background

1. An application dated 14 March 2016 (the "Application") was made by the Applicant for dispensation from the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 ("the Act") with regard to the appointment of RNJ Partnership as a project manager for repair works to be carried out at the Property, principally regarding the roof.
2. Following a case management hearing directions were made by the Tribunal on 24 May 2016. No party requested a hearing or requested that the Tribunal inspect the Property and the Tribunal convened on 29 June 2016 at SSCS Manors Newcastle upon Tyne to make its determination.
3. The Application extends to that part of the Property known as 1 and 2 The Coach House. The Tribunal was informed that a right to manage has been agreed regarding those premises, effective from early August 2016. A letter had been received by the Tribunal dated 30 May 2016 from the leaseholder of Number 2, indicating that he did not want to be included as a Respondent in these proceedings. However no similar request had been received from the leaseholder of Number 1 nor was there agreement from the Applicant and as the Tribunal is making its determination before the right to manage becomes effective and the determination is relevant to them, the leaseholders of both Numbers 1 and 2 The Coach House remain as Respondents.
4. The Application is expressed to be for dispensation from the consultation requirements concerning qualifying works. It does not refer to a qualifying long-term agreement. (See paragraph 9). There was no dispute between the parties that the matter for determination concerned qualifying works for the purposes of the relevant legislation, although the Application relates to the appointment of a project manager for repair works and not physical works to the Property.
5. The Tribunal was informed that the Property comprises part of a Grade I Listed Building situated in Newcastle City Centre adjacent to St James Park football ground. The Property was originally constructed as a number of terraced houses, and a Coach House within the curtilage of the grounds. By the late 1980s the Property was being used as a babies' hospital and student accommodation; it was converted to provide 54 private residential dwellings, comprising both flats and maisonettes, of between one and four bedrooms. The Applicant holds the Property on a 99 year lease from Newcastle University, which commenced on 23 December 1983. The Applicant sub-lets each flat/maisonette on a 99 year lease from 23 December 1983, less three days. There are 54 leaseholders.

6. The Applicant informed the Tribunal that water ingress at the Property had occurred. In February 2013 the Applicant engaged a roofing contractor to carry out routine gutter clearance using a cherry picker. It requested that the contractor undertake a photographic survey of the roofs from the same cherry picker. The subsequent photographs showed "...major problems with the roof, skylights, lead gutters, lead work generally, render, chimney stacks etc. It also showed a section of chimney stack cornice lying in the front lead gutter, which was removed by the contractor during the works."

The Leases

7. A sample lease for the Respondents' various properties was provided to the Tribunal. The Tribunal understood that each lease provided similar obligations upon the Applicant as landlord in the following terms:

to ".....maintain repair, renew.....the Reserved Property....."

The Reserved Property is defined as including ".....the main structural parts of the Building including the roofs.....and all drain pipes.....not used solely for the purpose of any one flat".

The leases record an obligation to pay service charge in respect of expenses of the landlord for the above (and other matters).

The Law

8. Section 20 of the Act states:

"Limitation of service charges: consultation requirements

- (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.

The relevant contribution is limited to £250.00."

The Section 20 consultation process generally has three stages:

A notice of intention

Notification of estimates

Notification of award of contract

9. Section 20ZA states:

“Consultation requirements: supplementary

- (1) 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) In section 20 and this section—
“qualifying works” means works on a building or any other premises, and
“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.”

The Issue

10. Whether the Tribunal was satisfied that it was reasonable to dispense with Section 20 Consultation in respect of the appointment of RNJ Partnership (“RNJ”) as project manager. The Tribunal noted that the Applicant has entered into a framework agreement with RNJ (see paragraph 18). That agreement was not before the Tribunal, which is not asked to consider that agreement in these proceedings and only the specific appointment of RNJ for particular works to be planned to be undertaken at the Property.

The Applicant’s Case

11. The findings of the photographic survey (see paragraph 6) were discussed with Simon Nesti (BSc MRICS) a partner in RNJ. RNJ is a multi-disciplinary construction consultancy which is an existing (procured) consultant of the Applicant. Simon Nesti is an accredited RICS conservation surveyor who had previously been engaged on other major projects on Home Group’s listed stock.
12. The Applicant believes that the roof was replaced in about 1980. The photographic survey found that the natural slate roof coverings were in a defective condition, having been poorly constructed with poor materials, and should be replaced. The Applicant’s maintenance team requested that RNJ carry out a more comprehensive survey of the roof of the Property and also requested details of RNJ’s costs to project manage any subsequent works depending on the findings. RNJ initially proposed 7½% of the contract value for the subsequent works, exclusive of VAT, Party Wall / CDM issues and any Listed Building Approvals. The Applicant’s Senior Procurement Manager then re-negotiated with RNJ and a new rate was agreed of 5% of contract value plus other items such as Party Wall, CDM, asbestos issues and similar. This was agreed by the Applicant and RNJ. The sum involved for each leaseholder will substantially exceed section 20 limits.

13. The RNJ survey was carried out in March 2013. The cost of the actual survey itself (£5,760) was not (and will not be) recharged to leaseholders. The reason being that the Applicant had recently carried out a stock condition survey and had already recharged the cost of that survey. The stock condition survey was a ground level survey and no obvious defects were noted with the roof. However due to the height of the building, visibility of the roof is limited.
14. The RNJ survey confirmed the overall impression of the initial photographic survey – the roof required replacing as well as other major works. The survey indicated damage to the chimney stacks. A further decision was then made to hammer test all chimney stacks and render for health and safety reasons. This was carried out in February 2014 using a cherry picker with RNJ accompanying the operator/roofer. It was during these works that a large section of chimney stack cornice broke away. Due to its extreme weight it could not be held by the operators and fell into a rear cast-iron gutter, directly above the rear entrance of 37 Leazes Terrace. A protective scaffold was immediately erected to this area as well as the area fenced off. Upon further inspection, other stacks were found to be in a similar condition. At that stage the Applicant agreed to take further measures on health and safety grounds and reduce the obvious and imminent danger to both the leaseholders and the general public.
15. Immediately following this incident, a full scaffold with bridges and saddles was erected between 30-38 Leazes Terrace and all loose cornice members were removed. Due to the health and safety implications of this, no consultation was instigated and the Applicant paid for these works at a cost of £17,362.80. The Applicant states that it would have been justified in recharging those works to leaseholder under the leases and could have made an urgent dispensation application.
16. In addition, a fire risk assessment has revealed that the Property does not comply with The Housing Act 2004 and the regulatory Reform (Fire Safety) Order 2005. Repairs are also required to remedy damp and replace external timber walkways. There is also a need to re-decorate and re-carpet the communal areas, which has not been undertaken for a number of years.
17. The Applicant conceded that it has not consulted with the Respondents regarding the appointment of RNJ as project managers. It already utilises RNJ to provide specialist professional and reasoned advice on various repairing issues at Leazes Terrace, Newcastle upon Tyne.

18. RNJ is engaged by the Applicant as consultant surveyors under a 4 year framework agreement that was entered into on the 8th October 2012. (expiring 7th October 2016). The appointment was following a competitive tendering process to recruit suitably qualified and experienced building consultancy partners for (development and) refurbishment works. The procurement was entered into following a Contract Notice to the Official Journal of the European Union (OJEU) on 23rd March 2012. The Applicant followed a Restricted Procedure as outlined in the EU Procurement Directive. Five firms were appointed to the framework agreement and of those five firms RNJ was the firm with the most experience of working on listed buildings. Under the Framework agreement, RNJ agree to focus on client needs and work towards generating real year on year costs reductions for clients without impinging on quality. There are financial safeguards built in to the agreement, which enabled the Applicant to negotiate reductions on the initial proposed charges (see paragraph 12).
19. A further detailed survey was conducted by RNJ of the Coach House in December 2014. Several section 20 consultations had been commenced in relation to individual projects until it was decided in early 2015 that it would be more cost effective and less disruptive to leaseholders to carry out all of the required works in once project.
20. When the most recent consultation regarding the cost of the actual repair works was started, the total costs of the project were not firmly established. However the Applicant was aware at that point that it would have been prudent to consult over RNJ's appointment. It was the Applicant's intention to undertake section 20 consultation with the leaseholders for the appointment of a project manager; however it became apparent that the commitment had already been made to utilise RNJ Partnership on the individual items of repair/work. It therefore was not cost effective to consult, as a significant proportion of the fees had already been incurred. RNJ had already carried out a substantial amount of work which, had another contractor been appointed would need to be repeated, incurring further costs. The roof continued to deteriorate and the fire risk assessment work remained outstanding. Fees have been incurred in RNJ submitting planning applications, drawing up specifications and the like. Therefore the Applicant felt that it had no option but to continue with RNJ, given the work they had already carried out and the time that had elapsed.
21. The Applicant does not have the relevant expertise to prepare the specification of work and to project manage the major works in-house from inception to completion due to the scale and complexity of the works within a listed building.

22. The first stage of the consultation for the repair works as a whole project started in April 2015. A Section 20, Stage 1 notice was served on 30 April 2015. Five tenders were submitted. The tender prices varied between £847,342.91 and £1,611,268.73. The Applicant wishes to proceed with the repair works as soon as practicable. The Applicant was satisfied that it has undertaken appropriate Section 20 consultation for placing of the contract for the major works and advised the leaseholders of the awarding of the contract by letter dated 19 May 2016.
23. It is not untypical for the project to be overseen by one project manager who scopes the works and charges on the basis of the value of the contract rather than a set price. Further consultation for the appointment of RNJ would delay commencement of the works.
24. With regard to the RNJ fees to project manage, where the Applicant manages smaller projects in-house, but when major works and/or future maintenance works and/or works that fall outside the scope of day to day repairs are required, the Applicant's maintenance team generally will prepare the specification of works, tender the works, appoint the chosen contractor and project manage the works for the full duration. For these services, the Applicant charges a fee of 10.25% of the contact value. That figure was originally derived from a benchmarking exercise. A benchmarking report prepared by the Housing Quality Network in 2012/13 in relation to Leasehold service charges indicates that Housing Associations were charging between 5 and 15% for these services. Home Group has agreed a preferential rate with RNJ of 5%. Home Group proposes to recharge the leaseholders this sum. The RNJ costs are dependent upon which contractor is appointed. In addition, there will be additional costs associated with:

CDM Regulations – approx. £2,000

Party Wall Act – approx. £800

Asbestos - £2,400

(also, VAT)

It will also be necessary for the Applicant's in-house maintenance surveyor to oversee RNJ's appointment to attend site meetings, agree any amendments of the contract/works and ensure the cost and progress of works are being managed to Home Group and the Leaseholders requirements. The Applicant proposes to charge a fixed fee of £25 per hour for its surveyor's time. It anticipates the likely time spent to be in the region of 3 hours per week, the works are likely to extend over 42 weeks. It intends to cap any charges associated with its surveyor's time at £3,150 as detailed in the enclosed stage 2 notice.

25. The Applicant submitted that the leaseholders have suffered/will suffer no prejudice as a result of the lack of consultation over the appointment of a project manager due to the preferential rate offered by RNJ. The overall costs of both RNJ and the Applicant's own capped internal costs will be less than if Home Group charged for management at its benchmark rate of 10.25%. RNJ being a procured consultant already has provided favourable market rates, which the Applicant has negotiated downwards for this contact for the benefit of the leaseholders. There are a very limited number of RICS accredited conservation surveyors in the north east from which to appoint an alternative. RNJ has been involved from the outset and has provided the Applicant with assistance during the consultation exercise for the major works. Preparation of a heritage statement and application for listed building consent has been necessary, undertaken by RNJ because of its expertise and knowledge of the Property. Part of this assistance has not been charged to the leaseholders by the Applicant.
26. Leaseholders have the statutory protection of Section 19 Landlord and Tenant Act 1985 (to ask the tribunal to determine payability and reasonableness of charges) and the Respondents have made it clear they will be applying to the Tribunal, which will give them the opportunity to ask the tribunal to determine payability of all costs, including those of RNJ in the light of completed works, but the Applicant seeks a dispensation order at this stage, in the absence of any evidence that lower fees are available. The Respondents have failed to provide any documentary evidence to support their representation as to what the basis for charging for project management should be in the alternative.
27. The Applicant's maintenance team is satisfied that the RNJ roof survey is accurate realistic and reliable, that the roof is at the end of its useful life and it would not be a good use of leaseholder's monies to survey the roof again, and it would also delay the overall consultation process.
28. Regarding the Respondents' representation (see paragraph 30), the Applicant does not agree with the conclusions of Wakefield's Survey referred to, but has no further interest in that survey, given that the Coach House to which it relates is undertaking a right to manage exercise.

The Respondents' Case

29. Various Respondents made submissions individually and there were submissions from the Leazes Terrace Leaseholders Association which had been accorded recognised status on 16 May 2016 by the Tribunal under Section 29 of the Landlord and Tenant Act 1985. This section is a summary of the relevant points.
30. A survey of the Coach House part of the Property had been by Heather Butterfield, Chartered Surveyor of Wakefields Chartered Building Surveyors as set out in a report dated 11 March 2016.

The surveyor noted as the purpose of instruction:

“ 1.0 Understanding

- 1.1 You have informed me that the freeholder proposes to replace the slated roof covering at the Coach House and these works are managed and procured by Home Group Limited.
- 1.2 I understand you would like to obtain independent advice from a Chartered Building Surveyor to determine if replacement of the slated roof covering is required at this stage”

The surveyor identifies:

“ 3.0 Recommendations

- 3.1 Patch repairs and upgrading works are required to the roof covering the Coach House and these should be completed as part of a programme of repair works. Generally the slate covering remains in a reasonable condition.
- 3.2 As a rule of thumb, re-roofing is only usually considered necessary when more than twenty-five percent of the slates require repair. At present, only a small proportion of the roof slates require localised repair therefore replacement of the covering at this stage is considered extremely uneconomical.”

The Respondent's believed this supported the view that the roof repairs being contemplated to the Property did not need to be as extensive as were being recommended by RNJ and that patch repairs ought to be sufficient.

31. There was little evidence of previous repair; full replacement of the roof was very uneconomic.
32. In failing to tender for the engagement of a project manager RNJ was undertaking multiple tasks and duties as surveyor and author of the specification and also as project manager. Mr Fallon identified the concerns arising on behalf of the Leazes Terrace Leaseholders Association in a letter to the Tribunal dated 2 June 2016 in which he stated, “Our case is based on the conflict of interest created by commissioning RNJ to complete the surveys and recommendations which established the extent and consequent cost of works whilst also placing them in a position to financially benefit from these costs. As RNJ's fees are directly proportionate to the final construction costs there is a clear motivation to inflate the costs by overstating work required to the property. Lack of transparency at every stage of the process underlines our contention.”
33. The Applicant was unable to provide evidence that the RNJ fee is the best lowest possible. There has been no costs benefit analysis by RNJ. The fee agreed with RNJ of 5% of works contract price is high; internet research suggests likely fees of 1% - 2.25% would be appropriate.

34. The Applicant should have had more than one survey carried out to assess what works genuinely were necessary. Due to the absence of a comparative survey, there was no evidence available that RNJ had exaggerated the works needed – generally or specifically. However, as beneficiary of fees based on extent of works linking to price of works it was an obvious suspicion that RNJ would inflate the extent of those works. Therefore the Respondents were prejudiced in not having an opportunity to make representations during a consultation exercise about RNJ’s appointment as project manager. Therefore dispensation from the consultation requirements should not be granted.

THE TRIBUNAL’S FINDINGS AND DECISION

35. The Tribunal was presented with conflicting evidence as to the current state of repair of the roof of the Property. There were the 2012 Wakefield’s findings regarding the Coach House and the photographic survey and that of RNJ of 2013 regarding the whole roof. It was apparent however that some repairs were needed.
36. The Tribunal was satisfied that the cost to each leaseholder of the appointment of RNJ to project manage the repair works would exceed the sum of £250.00 per flat. The Tribunal accepted that the Applicant acknowledged that there was a need for compliance with consultation requirements set out in Section 20 of the Act.
37. In this case the Applicant has not attempted section 20 consultation regarding the appointment of RNJ. The only issue for the Tribunal to consider is whether or not it is reasonable to dispense with the consultation requirements. The Application does not concern the issue of whether any service charge costs resulting from any such appointment, or the works which are the subject of the appointment, are reasonable or indeed payable and it will be open to leaseholders to challenge any such costs charged by the Applicant.
38. Of assistance to the Tribunal in its determination is the guidance of the Supreme Court in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14. The Court stressed that statutory consultation should not be regarded as an end in itself but looked at in the context of the 1985 Act, which is directed towards ensuring that leaseholders of flats are not required:

to pay for unnecessary services or services which are provided to a defective standard, and

to pay more than they should for services which are necessary and are provided to an acceptable standard.

The obligation to consult in advance about proposed works addresses the issue of the appropriateness of those works, and the obligations to obtain more than one estimate and to consult about them address both the quality and the cost of the proposed works.

The Court determined that the correct legal test for a Tribunal to focus on in an application for dispensation is whether leaseholders would suffer any relevant prejudice with regard to the above purposes of the consultation requirements and if so, what is the relevant prejudice as a result of the landlord's failure to comply with the requirements?

39. Dispensation is not "all or nothing". The Tribunal is able to consider awarding dispensation on terms which could include a financial penalty against the landlord.
40. The Tribunal found that the principal issue in this matter is whether leaseholder prejudice arises from RNJ being in a possible conflict of interest position. The leaseholders believe that RNJ might be influenced to make recommendations for works that would be more extensive than necessary so that its consequential remuneration based on the cost of those works would be greater.
41. The Tribunal, within this application, does not have to decide whether or not the specification is correct. However, given that there is an alternative survey report in respect of the main roof of the Coach House which can be compared like for like with that of the Applicant's surveyors and that the findings are quite different, it is clear that the cost to the Respondents if the Applicant's surveyor's recommendations are accepted in full will be much higher than if the recommendations of Wakefields were followed. The Tribunal does not have like for like surveys on the remainder of the Property however there is no indication that the roofs are of different ages, quite the contrary. The quantum of possible prejudice flows from the specification. The Respondents have shown clearly that if denied the ability to influence that appointment of the project manager then significant monetary prejudice flows if a lesser specification was found to be satisfactory, given that RNJs fees are percentage based.

42. The point at issue is whether through being denied the opportunity to make representations during a consultation exercise the Respondents have suffered relevant prejudice. The Tribunal is satisfied from the Respondents' submissions that many of them would have raised justifiable issues during consultation in that they feared RNJ acting as both surveyor and project manager could lead to unnecessary works to the roof which would increase the cost to them. Had they received comparative estimates for the cost of project management, as would have had to occur during consultation, they would have been able to assess whether the terms for payment of RNJ were reasonable in principle and make representations. That opportunity was denied to them by the failure to consult. A section 20 consultation would not have delayed the roof repairs significantly. Section 20 consultation on the appointment of RNJ could be undertaken within a matter of months, certainly less than 6 months and in comparison the ruminations by the Applicants have been ongoing for about 3½ years to date. The Respondents were denied the opportunity to make observations on the need for repairs, extent of the works and their cost, all of which may be relevant to the fees to be charged by the project manager and therefore who that is to be. Therefore the Tribunal finds that the Respondents have suffered relevant prejudice. Had there been appropriate consultation, the decision on whom to appoint as project manager could have been different.
43. The consequential prejudice suffered flows directly from the specification. RNJ is clearly specifying a far greater degree of work in respect of the main roof than Wakefields consider appropriate or reasonable for the roof on the Coach House. Further, the Applicant has added in further significant work in respect of fire precautions, new carpets etc. without any real justification as to why this should be undertaken at the same time. It is not for this Tribunal to debate here whether or not the Applicant's specification is reasonable. It is however entirely right and proper that the Respondents are given the opportunity to challenge the appointment of RNJ and this must be done now prior to the commencement of the major works, otherwise any prejudice that might be caused will already have occurred. The Tribunal accepts that there may be a route for the leaseholders to have actual expenditure considered under Section 19 of the 1985 Act (reasonableness of service charge). However, the facts of this case persuade the Tribunal that dispensation with the consultation requirements should not be granted. It does not find that the situation justifies in the alternative awarding dispensation on terms which could include a financial penalty against the landlord. It is entirely reasonable for the Respondents to have the opportunity to challenge the appointment of RNJ first of all and only when further evidence regarding the extent of repairs is available in respect of the whole of the Property should the specification be finalised and agreed.
44. In the circumstances the Tribunal declines to dispense with the consultation requirements as sought by the Applicant.

ANNEX

LEASEHOLDER

Mr R N Gauntlett
Mr S Rigby
Mr D J Tovey
Mr S A Fielding
Ms C Bennett
Ms J Preston
Ms K Simpson and Mr J Keyte
Mr D Pritchard and Ms J Lain
Ms C M F Prospert
Mr and Mrs M Joyce
Mr and Mrs T Flood
Professor O F W James
Mr A P Morrison and Ms T Wilson
Mrs A Stamper
Mr D Taylor
Mr and Mrs S Williams
Ms G E Usher
Mr D J Smith
Mrs S D Oliver
Mr C Dennison and Ms Han
Miss S Wilson
Mrs J M Chisholm
Mr and Mrs P V Fallon
Mr and Mrs G Smith
Ms D Stainsby
Mr Ogle and Miss McIver
Mr and Mrs J Birkett
Mr P G Flynn
Mrs S Cave (Miss Harrison)
Dr and Mrs T L Shrestha
Mr and Mrs Birch
Mr and Mrs H Birch

PROPERTY

1 The Coach House
2 The Coach House
30A Leazes Terrace
30B Leazes Terrace
31A Leazes Terrace
31B Leazes Terrace
31C Leazes Terrace
32A Leazes Terrace
32B Leazes Terrace
32C Leazes Terrace
33A Leazes Terrace
33B Leazes Terrace
33C Leazes Terrace
34A Leazes Terrace
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36A Leazes Terrace
36B Leazes Terrace
36C Leazes Terrace
37A Leazes Terrace
37B Leazes Terrace
37C Leazes Terrace
38A Leazes Terrace
38B Leazes Terrace
38C Leazes Terrace
39A Leazes Terrace
39B Leazes Terrace
39C Leazes Terrace
39D Leazes Terrace

ANNEX (cont'd)

LEASEHOLDER

Mr R Doonan
Mrs C M Ross
Mr R Wall
Mr S M Ward
Ms J Potts
Mr and Mrs Saunders
Mr and Mrs P Jones
Mr and Mrs Gunning
Mr and Mrs S Ray
Mr and Mrs S Ray
Mr R J Hassall
Mr and Mrs C Vallis
Mr and Mrs C Vallis
Mr S J Corlett
Mr K C P Wu
Dr M E Dobing
Dr and Ms N Van't Klooster
Mr D Wilson
Mr P G Griffiths
Mr M Sargent
Mr J P Gunn
Mrs Jewson

PROPERTY

40A Leazes Terrace
40B Leazes Terrace
40C Leazes Terrace
40D Leazes Terrace
41A Leazes Terrace
41B Leazes Terrace
41C Leazes Terrace
41D Leazes Terrace
42A Leazes Terrace
42B Leazes Terrace
42C Leazes Terrace
43A Leazes Terrace
43B Leazes Terrace
44A Leazes Terrace
44B Leazes Terrace
45A Leazes Terrace
45B Leazes Terrace
46A Leazes Terrace
46B Leazes Terrace
47A Leazes Terrace
47B Leazes Terrace
47C Leazes Terrace

First-tier Tribunal, Property Chamber Residential Property

GUIDANCE ON APPEAL

- 1) An appeal to the Upper Tribunal against a decision of a First-tier Tribunal (Property Chamber) can be pursued only if **permission to appeal** has been given. Permission must initially be sought from the First-tier Tribunal. If you are refused permission to appeal by the First-tier Tribunal then you may go on to ask for permission from the Upper Tribunal (Lands Chamber).
- 2) An application to the First-Tier Tribunal for permission to appeal must be made **so that it is received by the Tribunal within 28 days after the date on which the Tribunal sends its reasons for the decision.**
- 3) If made after the 28 days, the application for permission may include a request for an extension of time with the reason why it was not made within time. Unless the application is made in time or within granted extended time, the tribunal must reject the application and refuse permission.
- 4) You must apply for the permission **in writing**, and you must:
 - identify the case by giving the address of the property concerned and the Tribunal's reference number;
 - give the name and address of the applicant and any representative;
 - give the name and address of every respondent and any representative
 - identify the decision or the part of the decision that you want to appeal;
 - state the grounds of appeal and state the result that you are seeking;
 - sign and date the application
 - send a copy of the application to the other party/parties and in the application record that this has been done

The tribunal may give permission on limited grounds.

- 5) When the tribunal receives the application for permission, the tribunal will first consider whether to review the decision. In doing so, it will take into account the overriding objective of dealing with cases fairly and justly; but it cannot review the decision unless it is satisfied that a ground of appeal is likely to be successful.
- 6) On a review the tribunal can
 - correct accidental errors in the decision or in a record of the decision;
 - amend the reasons given for the decision;
 - set aside and re-decide the decision or refer the matter to the Upper Tribunal;
 - decide to take no action in relation to the decision.

If it decides not to review the decision or, upon review, to take no action, the tribunal will then decide whether to give permission to appeal.

- 7) The Tribunal will give the parties written notification of its decision. **If permission to appeal to the Upper Tribunal (Lands Chamber) is granted**, the applicant's notice of intention to appeal must be sent to the registrar of the Upper Tribunal (Lands Chamber) so that it is received by the registrar within **28 days** of the date on which notice of the grant of permission was sent to the parties.
- 8) **If the application to the Property Chamber for permission to appeal is refused**, an application for permission to appeal may be made to the Upper Tribunal. An application to the Upper Tribunal (Lands Chamber) for permission must be made within **14 days** of the date on which you were sent the refusal of permission by the First-tier Tribunal.
- 9) The tribunal can **suspend the effect of its own decision**. If you want to apply for a stay of the implementation of the whole or part of a decision pending the outcome of an appeal, you must make the application for the stay at the same time as applying for permission to appeal and must include reasons for the stay. You must give notice of the application to stay to the other parties.

These notes are for guidance only. Full details of the relevant procedural provisions are mainly in:

- the Tribunals, Courts and Enforcement Act 2007;
- the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013;
- The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010.

You can get these from the Property Chamber or Lands Chamber web pages or from the Government's official website for legislation or you can buy them from HMSO.

The Upper Tribunal (Lands Chamber) may be contacted at:

*5th Floor, Rolls Building, 7 Rolls Buildings
Fetter Lane, London EC4A 1NL*

Tel: 0207 612 9710

Goldfax: 0870 761 7751

Email: lands@hmcts.gsi.gov.uk

The Upper Tribunal (Lands Chamber) form (T601 or T602), Explanatory leaflet and information regarding fees can be found on www.justice.gov.uk/tribunals/lands.