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

**Case Reference** : **MAN/00CJ/LSC/2015/0099**

**Property** : **44 Pink Lane, Newcastle upon Tyne  
NE1 5DY.**

**Applicant** : **Miss Sarah Armstrong Kerr**

**Representatives** : **(unrepresented)**

**Respondent** : **Places for People**

**Representatives** : **Whiteheads Solicitors Limited**

**Type of Application** : **Application for permission to appeal**

**Tribunal Members** : **Judge S Moorhouse LLB  
Mr IR Harris BSc FRICS**

**Date of Decision** : **14 July 2016**

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**PERMISSION TO APPEAL DECISION**

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## DECISION

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The Tribunal has considered the Respondent's request for permission to appeal dated 24 June 2016 and determines that:

- (a) permission to rely on fresh evidence is refused;
- (b) the Tribunal will not review its decision;
- (c) permission to appeal is granted on a point of law concerning the interpretation of Section 196 of the Law of Property Act 1925; and
- (d) permission to appeal on the ground that the Tribunal took into account irrelevant considerations and failed to take into account relevant evidence is refused.

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## REASONS

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1. On receiving an application for permission to appeal the Tribunal must first consider whether to review the decision in accordance with Rule 55 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules"). Having decided this, the Tribunal then proceeds to consider whether to give permission to appeal in whole or in part.
2. The Tribunal may only undertake a review if it is satisfied that a ground of appeal is likely to be successful (Section 55(1)(b) of the Rules).
3. A decision of a Tribunal may be appealed to the Upper Tribunal (Lands Chamber) if:
  - a. the decision shows that the Tribunal wrongly interpreted or wrongly applied the relevant law;
  - b. the decision shows that the Tribunal wrongly applied or misinterpreted or disregarded a relevant principle of valuation or other professional practice;
  - c. the Tribunal took account of irrelevant considerations, or failed to take account of relevant considerations or evidence, or if there was a substantial procedural defect; or
  - d. the point or points at issue is or are of potentially wide implication.
4. In the present case the Respondent has submitted, as a preliminary matter, a request for permission to rely on fresh evidence and has given two grounds for its application for permission to appeal. The issues raised

by the Respondent and the Tribunal's reasons for its decision are set out below, along with a note of the overall position that has been reached in the proceedings.

### **Permission to rely on fresh evidence**

5. The Tribunal reached a finding on fact that consultation notices had not been served by ordinary post by the Respondent upon the Applicant at her home address. The Respondent seeks permission to introduce fresh evidence in the form of a witness statement, contending that the Respondent had adduced good evidence to deal with the Applicant's claim that consultation notices had not been received and that it was only in the final decision that the absence of personal witness testimony was criticised by the Tribunal, even then with the caveat that it might be unrealistic to expect personal recollections in a national consultation exercise.
6. The Tribunal refuses permission to introduce fresh evidence because it was clear within the Application, at the Case Management Conference and within the Applicant's statement of case that the Applicant denied receiving consultation notices and that the Respondent would therefore need to establish that they had indeed been served. It was open to the Respondent to adduce within its statement of case whatever evidence was available, including any relevant witness testimony. The Tribunal does not accept that witness testimony by an individual with responsibility for the process of issuing notices could not have been obtained with reasonable diligence for use at the hearing.

### **Error on point of law**

7. The Respondent seeks permission to appeal the Tribunal's finding that the requirement to 'give notice in writing' ... 'to each tenant' within Schedules 2 and 3 of the Service Charges (Consultation etc.) (England) Regulations 2003 cannot be met by sending notice in the ordinary course of post to the property comprised in the lease where this differs from the last known place of abode.
8. The Tribunal issued further directions inviting written submissions on this point of law since neither party was in a position to make a detailed submission on the issue at the hearing. In its application for permission to appeal the Respondent cites the case of *Kinch and Another -v- Bullard and Another* [1998] 4 All ER 650, a case which was cited by neither party in response to further directions nor referred to by the Tribunal within its decision.
9. The Respondent submits that the Tribunal's interpretation of Section 196 of the Law of Property Act 1925 conflicts with that of Neuberger J in *Kinch*. Neuberger J finds that the reference within Section 196(3) to notice being left at the last known place of abode could be achieved via ordinary post. The Respondent contends that the option later in Section 196(3) (applicable in the case of a lessee) of notice being affixed or left 'on the land' would also allow for service by ordinary post.

10. Within its decision, the Tribunal made reference to the Upper Tribunal case of *Rita Akorita -v- 36 Gensing Road Limited [2009] LRX/16/2008*, stating that this case supports the Tribunal's conclusion. The Respondent contends that the decision of His Honour Judge Huskinson in *Rita Akorita* must, in the light of *Kinch* be wrong insofar as it referred (at paragraph 24 of the decision) by analogy to the means by which Section 196 might be satisfied.
11. The Tribunal considers that the Respondent's challenge on this point of law might helpfully be considered by the Upper Tribunal and that there is sufficient merit in the Respondent's arguments to warrant the grant of permission to appeal.

### **Irrelevant Considerations / Relevant Evidence**

12. The Respondent submits that the Tribunal's finding on the facts that the Respondent had not served consultation notices by ordinary post at the Applicant's home address took into account irrelevant considerations and failed to attach sufficient weight to the evidence that was adduced.
13. The Respondent does not challenge the Tribunal's finding that the onus was upon the Respondent to prove (on the balance of probabilities) that the consultation letters were properly addressed, pre-paid and posted. The Tribunal considered that the evidence adduced by the Respondent fell short of proving these matters and the Tribunal therefore considered whether it could infer that the notices had indeed been properly addressed, pre-paid and posted notwithstanding the lack of evidence before it.
14. In considering whether it could be inferred that the Respondent's staff would have properly addressed, pre-paid and posted the letters to the Applicant's home address it was right to consider all of the circumstances including unreliability on the part of the Respondent in corresponding with the Applicant in the past and the Respondent's belief that it was not in fact necessary (from a legal perspective) to send notices to that particular address.
15. Having reviewed the Respondent's submissions headed 'irrelevant considerations / relevant evidence' the Tribunal does not consider that there is a reasonable prospect of an appeal succeeding on this ground.

### **Overall position**

16. Application for permission to appeal relates to interim decisions issued by the Tribunal, which then stayed the proceedings in order to ascertain whether the Respondent intends to seek dispensation of consultation requirements.
17. Having determined as a point of law that service of consultation notices by ordinary post to the address of the property comprised in the lease would not have been sufficient to meet the requirements of the Regulations, the Tribunal has not continued its deliberations to consider, on the facts, whether consultation notices were served by ordinary post at such address.

Having determined that consultation requirements have not been adhered to, the Tribunal has not gone on within its deliberations to determine the remaining issues raised by the Applicant concerning liability for and the reasonableness of service charges.

18. Should the Respondent appeal successfully to the Upper Tribunal pursuant to the permission granted in this document or apply successfully to the First-tier Tribunal for dispensation of consultation requirements then (unless directed otherwise by the Upper Tribunal) the Tribunal will re-open its deliberations to decide the relevant outstanding matters.