



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

Case Reference : CHI/43UC/LDC/2018/0040

Property : Homewater House, 30 Upper High Street,
Epsom KT17 4QJ

Applicant : Homewater House Residents Association
Limited

Representative : Warwick Estates Property Management
Limited

Respondent : Mrs. Hemmat Darwish (Flat 23)
Mr. Ron Martin (Flat 18)
Mrs. June Marlow (Flat 15)
Mr. Robin Maghoo (Flat 17)

Type of Application : Dispensation from consultation
requirements

Tribunal Member(s) : Judge D. R. Whitney

Date of Determination : 26th July 2018

DETERMINATION

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.



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8. The tribunal comments that it has seen an email from the now managing agents which appears to indicate part of this refund was received although not the full £4000.
9. The Company has now made application for dispensation in respect of the three areas of work which had been challenged being internal redecorations, electrical works and carpet replacement.
10. Some 12 leaseholders have responded to the tribunal directions indicating they positively agree the application. The 4 named Respondents have objected. Nothing further has been received from any of the remaining leaseholders.
11. The Respondents have filed a detailed statement of case in opposition which this tribunal has considered. The Respondents suggest that as a result of the failure to consult strictly in accordance with the Act they have been prejudiced.
12. The tribunal comments that much of the statement of case focuses upon the standard of the works undertaken and the reasonableness of the costs of the same. The tribunal reminds the parties this is not a matter for this tribunal to determine, in fact these elements have already been decided in the earlier decision which ultimately gave rise to this application.
13. Plainly there is acrimony between the Company, acting by its directors and the Respondents. The tribunal notes that snagging lists and emails are produced from the former managing agent. Much of this the tribunal finds not to be relevant to the issues we must determine.
14. The earlier decision has found consultation had not been properly undertaken under the Act. The question is whether or not it is reasonable in all the circumstances to grant dispensation and as part of this the tribunal must consider if the Respondents have suffered prejudice.
15. Leaving aside the challenges as to the standard of work and the reasonableness of the costs of the various items essentially the Respondents overall case is that they could not engage in the process. The Respondents submission refers to the Notices which were served and a meeting which ended acrimoniously in September 2014. In terms they say as a result they did not actively take any further part as it was believed the Applicant had made up its mind and would proceed irrespective.
16. It certainly appears as if this assertion is correct. In fact the Applicant went further and in respect of certain of the works instructed entirely different contractors. The Respondents also allege they did not have an opportunity to properly consider the estimates received to compare these and to make observations.

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