FIRST - TIER TRIBUNAL

**PROPERTY CHAMBER (RESIDENTIAL PROPERTY)**



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| **Case Reference:**  | CHI/OOHH/LSC/2019/0044 |
| **Property:**  | Flat 5, Waldon House, St Lukes Road South, Torquay, Devon, TQ25YQ        |
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| **Applicant:**  | Mr Stephen Bell |

**Representative:** Mr David Bell

**Respondent:** Walden House Management Limited

**Representative:** Mr D Riley and Mr M Whitehouse

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| **Type of Application:** | Part 6 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 – Rules 52 and 55- application for permission to appeal |

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| **Tribunal Member:** | Judge A Cresswell (Chairman) |

 Mr W H Gater FRICS MCIArb

V**enue of** On the Papers

**Hearing:**

**Date of Decision:** 26 November 2019

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# DECISION

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**Application by the Applicant for Permission to Appeal**

By application of 7 November 2019, the Applicant has sought permission to appeal, under Part 6 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 (“the Rules”), against the Decision of this Tribunal of    15 October 2019 (“the Decision”).

The Tribunal does not give permission to the Applicant to appeal. The reasons for refusing permission follow:

1. The Tribunal has a duty to give effect to the overriding objective within the Rules when exercising any power under the Rules. The Tribunal is required to deal with a case fairly and justly, which includes seeking flexibility and dealing with cases in a way which is proportionate to the anticipated costs and resources of the parties and of the Tribunal.

2. The Tribunal first considered, under Rule 55 of the Rules, whether to review its decision. It determined not to review its decision because it was not satisfied that any of the grounds of appeal was likely to be successful for the reasons detailed within the Decision.

3. The Applicant raised a number of issues in his application to appeal and 4 results that he wishes to achieve by appealing.

4. The Applicant seeks a direction by the Tribunal for the landlord to disclose all relevant accounts, receipts and other documentation relating to the qualifying works contracted to Ellis Roofing and to consequent damage to individual flats. The Tribunal does not, however, have jurisdiction to make such a direction as part of its Decision. By Section 22 Landlord and Tenant Act 1985, a tenant can, by notice in writing, require the landlord to provide him with access to such documents. A failure by the landlord to comply, without reasonable excuse, with such a request can, in accordance with Section 25 of the Act, constitute a criminal offence. This Tribunal has no jurisdiction to deal with an allegation that a criminal offence has been committed. There is nothing to prevent a leaseholder bringing a further application before the Tribunal challenging the reasonableness of the Ellis Roofing costs. The leaseholder could ask the Tribunal to direct disclosure of the relevant documentation as part of the preparation for the hearing.

5. The Applicant asks also that the Tribunal does make a finding as to the reasonableness of both the annual reserve fund contributions and the Ellis Roofing works, but neither discrete issue formed part of the Applicant’s case and the Tribunal heard no discrete evidence about those issues. Accordingly, the Tribunal is unable to make findings sought for the first time only in the application to appeal. There is nothing to prevent a leaseholder bringing a further application before the Tribunal challenging the reasonableness of the annual reserve fund contributions or the Ellis Roofing costs.

6. The Applicant complains that the application for dispensation of the consultation requirements was not circulated to at least 20 of the 28 leaseholders, but the Tribunal notes that the Applicant was the only party and that he did get notice of the application; he spoke only for himself at the hearing. The Tribunal is satisfied that it acted in accordance with the Rules.

In any event, the Tribunal heard evidence from the Respondents that notice had been given to all leaseholders and the Applicant’s representative had told the Tribunal in a letter of 2 October 2019 in advance of the hearing that the letter giving notice to the leaseholders “*appears to have been sent to all leaseholders*”. The Tribunal specifically took account of the views of those leaseholders in attendance at the hearing and not one (other than the Applicant) spoke against the dispensation sought by the Respondent. Other leaseholders can make their own applications that the sum of the Ellis Roofing bill is not payable by reason of “there should be no dispensation” if they can show prejudice or on the grounds of reasonableness.

7. The issues raised by the Applicant, whilst clearly of personal importance, are not of general public importance such as to justify the cost of an appeal hearing where there is no realistic prospect of the appeal being successful.

8. The Tribunal does not accept that there is a reasonable prospect that the Upper Tribunal will find that the Tribunal has wrongly interpreted or applied the relevant law (**Fairhold Mercury Limited v HQ (Block 1) Action Management Company Limited** (2013) UKUT 0487 (LC)) or that the Decision is fairly open to challenge.

9. The Tribunal concluded that the Applicant ought not to be given permission to appeal to the Upper Tribunal.

10. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 the Applicant/Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber. Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.

A Cresswell (Judge)