



First-tier Tribunal for Scotland (Housing and Property Chamber)

Property Factor Enforcement Order (“PFEO”): Property Factors (Scotland) Act 2011 Section 19(3)

Chamber Ref: FTS/HPC/LM/19/1376

Re: Hillpark Brae Development, Craigcrook Road, Edinburgh, EH4 7AP (“the Development”)

The Parties:-

Mrs Irene Hamilton, 11 Hillpark Grove, Edinburgh, EH4 7AP (“the Homeowner”)

Charles White Limited, Citypoint, 65 Haymarket Terrace, Edinburgh, EH12 5HD (“the Factor”)

Decision

The Tribunal has decided that it should make a PFEO in the terms originally proposed by it. The decision of the Tribunal is unanimous

Reasons for Decision

In the Tribunal’s decision of 12th July 2019, it proposed to make a PFEO as follows:

“The Property Factor is required to pay to the Homeowner within 21 days of intimation to them of the PFEO the sum of £350 from their own funds and at no cost to the development homeowners, in order to compensate the Homeowner for the distress, frustration and inconvenience caused as a result of the Factor’s failure to comply with the Property Factors Code of Conduct and to carry out its property factor duties.”

The Tribunal indicated that, prior to making a PFEO, it would provide the parties with a period of fourteen days within which to make representations under section 19(2)(b) of the Act.

The Tribunal’s decision was intimated to the parties on 29th July 2019.

On 30th July 2019, the Homeowner emailed the Tribunal to request that the decision be amended as follows:

Item 10 The issue of an unconnected pipe in 2012, rectified by Developer and Council, occurred at the Northern boundary. The new flooding occurs at the Western boundary. Please Clarify this because these properties are not "adjacent" - they are about 40 metres apart.

Item 14 The spreadsheet was altered 5 months after the meeting.

Item 16 Please delete "does not drain away" because the water in the manhole is flowing away. The manhole is 2/3rds full of mud, or to be technically correct - silt. Our civil engineer expert says this is because the manhole (silt trap) has never been maintained.

The Factor did not make any representations.

The Tribunal confirmed its decision made on 12th July 2019 in terms of Section 19(1)(a) of the Act. The Tribunal agreed that it would be appropriate to amend the decision as requested by the Homeowner in terms of Rule 36 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Tribunal agreed that it would be appropriate to make a PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

The Property Factor is required to pay to the Homeowner within 21 days of intimation to them of the PFEO the sum of £350 from their own funds and at no cost to the development homeowners, in order to compensate the Homeowner for the distress, frustration and inconvenience caused as a result of the Factor's failure to comply with the Property Factors Code of Conduct and to carry out its property factor duties.

Failure to comply with a PFEO may have serious consequences and may constitute an offence.

Right of Appeal

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Helen Forbes

Legal Member and Chairperson
20th August 2019