

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**DECISION WITH STATEMENT OF REASONS FOR VARIATION OF PFEO:
Property Factors (Scotland) Act 2011, Section 21**

Chamber Ref: FTS/HPC/LM/19/1850

**Common Ground, Belvedere Village, Parkhead, Glasgow, G31 4QD
("The Property")**

The Parties:-

**Mr Lewis Cole, 65 Springbank Gardens, Parkhead, Glasgow, G31 4QD
("the Applicant")**

**SG Property Management Limited, 272 Bath Street, Glasgow, G2 4JR
("the Respondent")**

**Tribunal Members:
Ms. Susanne L M Tanner QC (Legal Member)
Ms. Mary Lyden (Ordinary Member)**

DECISION

1. The tribunal, having taken account of the parties' written submissions, varies the Property Factor Enforcement Order (PFEO) dated 18 February 2020, in terms of section 21 of the 2011 Act, to the effect of varying orders 3.2 and 3.3.5 as shown in the attached variation of PFEO; and by extending the period of time allowed for compliance with all orders specified therein to 16 November 2020.
2. The decision of the tribunal was unanimous.

Reasons

3. Reference is made to the decision of the tribunal dated 18 February 2020 and the PFEO of the same date, ordering that the matters specified therein had to be completed within 30 days of intimation of the PFEO. The PFEO was

intimated on 21 February 2020. The date for compliance with the PFEO was 22 March 2020.

4. On 19 February 2020, the Property Factor submitted written submissions, in which it stated that the Written Statement of Services would be revised; advising that a circular had been issued to the 418 housing units in the development proposing a Special General Meeting of the residents' association; that only 17 out of 418 had returned pro forma forms, with one of the forms being from a Housing Association with 40 units, so a total of 56 votes in favour of a meeting were received; that that was short of the 139 required for a quorate meeting; and requesting that the tribunal note the Respondent's view that it will not be possible to formally constitute a residents' association at this time; that they had recently sent a proposal to residents to place 21 more rocks on an area of common ground in Belvedere Terrace; that a letter was issued to the 418 owners about the proposal; that only 10 objections were received and that they had responded to the objectors; that they considered that they had a clear mandate to place the rocks "on a majority non-objectionable basis"; they requested advice from the tribunal as to whether the works could go ahead; that the Applicant approved of the process.
5. On 26 February 2020, the Respondent submitted a request for variation of the PFEO. It was considered by the tribunal to be lacking in specification and the Respondent was asked to provide further specification of which orders they wished to be varied (with reference to the numbers in the PFEO) and to specify in what way they are seeking variation. They were asked to respond within 7 days and told that the variation request would then be sent to the Homeowner for his views and thereafter the tribunal would make a decision on the variation request.
6. On 27 February 2020, the Applicant wrote to the tribunal stating that things had moved on considerably from the initial complaint and that the Respondent had been working constructively towards the parties' common goal. He stated that he knows that there are multiple requirements in the PFEO and that these will take time to address but that Mr O'Hara has shown good faith in attempting to resolve these to date. He noted that the problem with parking at the Development had deteriorated. He stated that the Respondent had written to all residents and sought permission to place additional rocks on the common ground, in an area which both parties considered to be a key problem area. The Applicant stated that he had heard no complaints with regard to these works. He requested that the tribunal "give the go ahead" to the Respondent to carry out the works and defer consideration of the consultation process until a later stage. The Applicant stated that he was disappointed that there had not been more interest from other proprietors in

an active residents' association but considered that the Respondent had tried to call a meeting and set up the association.

7. On 6 March 2020, the Respondent submitted an email requesting variation of the PFEO, as follows:

- 3.2 – Further to their email dated 19 February 2020, as stated they issued a letter to all owners on 07 February 2020 (copy attached) to establish whether there would be sufficient interest from the development owners to attend a General Meeting and in view of the response noted in their email we do not believe that this is a worthwhile exercise as a quorum of owners will not be achieved. They will therefore be unable to take the formal instructions of those in attendance or set up a formal Association and this is a view shared by those owners who responded positively. Also as referred to in their email dated 19 February 2020 they consider that they already have a mandate to proceed with the installation of additional rocks per their letter dated 12 December 2019 (copy attached). The reason this exercise was not done previously is due to the time constraints placed on them by the developer and in view of an imminent football match at Celtic Park. Ironically the area where the rocks are situated is the only landscaped area within the development which has not suffered horrendous damage as shown in the attached emails from two concerned owners who are again very supportive of their actions. The emails have been sent to the Authorities who have a responsibility in this respect however have failed to assist in the management of the rogue parking and to date have not responded to either owner. Obviously the damaged areas will need to be reinstated and the cost involved unfortunately will fall to be paid the owners of the development. This is exactly the reason why they took the proactive steps in December 2018.
- 3.3.2 – At the time and after the installation of the rocks as far as they are aware all owners with the exception of the Applicant seem to have accepted that they acted in good faith by installing the rocks. The Applicant as stated in his email dated 27 February 2020 now fully supports the efforts taken by the Respondent and contrary to the tribunal's Decision 12.3 the applicant made payment of his share of the works on 08 July 2019.
- 3.3.3 – As stated they do not believe that they will achieve a quorum at a general meeting and therefore will be unable to seek a formal agreement from the owners with regard to setting a limit of delegated authority without consulting them in advance. It is therefore their intention to obtain agreement by issuing a letter in advance seeking agreement on a majority non-objectional basis. They consider that this

has already been accepted by the owners as a legitimate form of seeking agreement in view of the certainty of not receiving a majority agreement in writing.

- 3.3.4 – In their experience of managing the development for some 12 years it is unfortunate but the only way to ensure works of this nature are carried out is by writing to the owners and seeking their approval on a non-objectional basis.
- 3.3.5 – They do not consider this is a workable solution and those owners who do take an interest agree that it is a waste of time and money to call a meeting of all owners and this is backed up by the poor response to our recent poll of owners. They therefore seek the permission/agreement of the tribunal to waive the order to call a meeting in view of the extremely poor response to their letter regarding holding an owners' meeting as this will only prolong the delay in us instructing the work to install the additional rocks which they believe they already have a mandate from the owners to do. They asked the Tribunal to carefully consider the above and the content of their email dated 19 February 2020, which is based on fact and their vast experience in managing the development. They and the interested owners are extremely keen to progress the issue of rogue parking and have been actively doing so since the original hearing as already stated in their submissions and that sent by the Applicant (Applicant's email attached).

8. On 14 May 2020, the Respondent wrote to the tribunal, referring to their previous email and stating that they have concluded their workings to update their Written Statement of Services, taking into account the terms of the PFEO in the process. In doing so, they stated that they had duly consulted with the Applicant and that he had given his approval of the finalised document ahead of them forwarding it to the tribunal's administration for the tribunal's perusal. A revised Written Statement of Services was attached and the Respondent apologised for the delay in submitting it, stating that the Covid-19 pandemic had resulted in staff shortages which meant that it was not possible to complete it in the time period specified.
9. On 18 June 2020, the tribunal wrote to the parties, requesting their views by 2 July 2020 as to whether, the Respondent had complied with the PFEO. A response form was attached for completion and return by parties.
10. On 18 June 2020, the Respondent returned the response form stating that the Respondent stated that as advised in their earlier submissions, they consider that they have complied with the conditions of the PFEO; and requested that the tribunal consider variation or revocation of the PFEO.

11. On 26 June 2020, the Applicant responded stating that he was happy with the response from the Respondent and that while he is aware that there is still some discussion ongoing about their written statement of services, he has seen the draft of the statement and it looks good to him so he is happy to say the issues are resolved as far as he is concerned. He returned the response form stating that the actions in the PFEO have been completed and that he would like the tribunal to consider a variation or revocation of the PFEO.

12. Section 21 of the 2011 Act provides:

“(1) Where the First-tier Tribunal has made a property factor enforcement order it may, at any time—

(a) vary the order in such manner as it considers reasonable, ...

(4) References in this Act to a property factor enforcement order or to action required by such an order are, where the order has been varied under this section, to be treated as references to the order as so varied or, as the case may be, to action required by the order as so varied.”

13. In light of the information submitted by the parties, the tribunal decided in terms of Section 21 of the 2011 Act to vary the orders in the PFEO and to allow the time period for works to be extended to 16 November 2020. In relation to the overall time period, the tribunal considered that it was reasonable to extend the time period given that the Covid-19 pandemic has had an affect on staffing levels in the respondent's organisation and to their management of the Development. In relation to order 3.2, the tribunal has considered the parties' views on trying to arrange a meeting of the residents' association, as well as the current Government restrictions on large scale gatherings and has therefore considers it reasonable to remove the requirement for the Respondent to hold a meeting of the residents' association for the development (which already exists in terms of the Deed of Conditions) and the associated requirement to write to the owners about this in order 3.3.5. However, the Respondent will have to consider how it obtains majority consent for works in the Development, in accordance with the Deed of Conditions and in order to produce a procedure for consultation in terms of order 3.1.2.

14. The wording of order 3.2 is varied so that it reads:

“Consult with the owners in the Development in accordance with the written procedure for consultation in order 3.1.2 about proposals for possible additional measures to prevent rogue parking in other areas of Common Ground in the Development.”

15. The wording in order 3.3.5 is varied so that it reads:

“that the Respondent will consult with the Proprietors in the Development in accordance with the written procedure on consultation on proposals for possible additional measures to prevent rogue parking in other areas of Common Ground in the Development.”

16. The orders in the varied PFEO require to be complied with within the varied timescale. In relation to order 3.1.1, the tribunal does not consider that the Written Statement of Services which has been produced in draft form by the Respondent complies with the order, in that it does not contain a statement of any level of delegated authority, for example financial thresholds for instructing works, and situations in which the property factor may act without further consultation. The Respondent is ordered to submit a version which does so comply within the revised timescale. In relation to order 3.1.2, the Respondent has not produced a written procedure to consult with homeowners in the Development as ordered; and is ordered to do so within the revised timescale. In relation to order 3.2, as varied, the Respondent has not produced a letter in the terms ordered and must produce a letter in the revised terms ordered within the revised timescale.

17. An order so varying the PFEO will be intimated to parties.

18. The tribunal noted that in its various submissions the Respondent had asked for advice from the tribunal in relation to whether it can do certain things, including whether it has a mandate for placement of additional rocks on the common ground at the Development on the basis of “non-objectionable majority” and/or how it should obtain majority consent from the proprietors in the absence of a quorate meeting of proprietors or without proceeding on the basis of a “non-objectionable majority”. The tribunal is a judicial body and cannot give such advice to parties. Any such advice may be sought from a solicitor or other suitably qualified or experienced person.

Right of Appeal

19. A party aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

Effect of section 63

20. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed

Ms. Susanne L. M. Tanner, Queen's Counsel, Legal Member and Chair of the tribunal

Date 4 August 2020