

Y Tribiwnlys Eiddo Preswyl
Residential Property Tribunal Service (Wales)

Leasehold Valuation Tribunal

Reference LVT/0045/02/19 AND LVT/0046/02/19

In the Matter of Premises at Flat 1, 73 Cardiff Road, Llandaff, Cardiff, CF5 2AA

And in the matter of Applications under s27A of the Landlord Tenant Act 1985 and s.168(4) of the Commonhold and Leasehold Reform Act 2002

Applicant: Marguerite Anne Edmunds

Respondent: Bryan John Newell

Tribunal: Jim Shepherd
Roger Baynham FRICS
Kerry Watkins FRICS
Angie Ash

**DECISION ON APPLICATION FOR PERMISSION TO APPEAL MADE BY
APPLICANT**

Decision

Permission to appeal is refused.

Reasons

1. Permission to appeal will only be granted where:
 - (a) The Tribunal has wrongly interpreted or applied the law;
 - (b) The Tribunal has wrongly applied or misinterpreted or disregarded a principle of valuation or professional practice;
 - (c) The Tribunal has taken account of irrelevant considerations or failed to take account of relevant considerations or evidence or there was a substantial procedural defect
 - (d) The point or points at issue is/are of potentially wide implication.

2. The Applicant's "Grounds of Appeal" represent further submissions on the substantive case rather than proper appeal grounds. In any event the appeal has no merit - using the same paragraph numbers used by the Applicant:
4. The decision was clear that no substantive works were carried out. Paragraph 13 and 82 must be read together.
- 5/6. The Tribunal were entitled to interpret the instruction from Chris Johns as a reduction in the scale of the works proposed. The Tribunal's attention was not drawn to the minutes of 17th September 2015 and the Applicant is making a new submission. At the hearing the Applicant sought to argue that the works proposed in Mr Johns' email were an addition to the existing proposed works. In any event the substantive decision of the Tribunal is unaffected - there was no genuine intention at the date of the service charge demand to carry out the works in the original Litespeed quote. This is a finding of fact which the Tribunal is entitled to make.
7. The Tribunal has no record of both surveyors agreeing that the Litespeed quote was reasonable, and in any event it is the written decision of the Tribunal that constitutes its definitive findings and is subject to potential appeal, not one party's recollection of oral comments said to have been made during the hearing. The Litespeed Quote at page 195 (July 2017) contains works including the installation of balconies and lifts which was part of the development works and was separate from the Litespeed quote in 2015. The timing of the second quote was significant as indicated in the decision. In any event the Applicant withdrew its claim for the 2017 sums during the Tribunal hearing. The finding of the Tribunal was a finding of fact which cannot be described as perverse.
8. Whilst Mr North was wrongly described as a structural surveyor in the decision his evidence was considered much more reliable than that of Mr Varma for the reasons given. Mr North is an experienced Chartered Building Surveyor. The Tribunal was impressed by his evidence. They were not impressed by the evidence of Mr Varma. The Tribunal has no record of Mr Varma saying that cutting could be made into the wall for the planning permission to be completed. The Tribunal had two surveyors sitting one of whom is a building surveyor.
9. The Tribunal made it clear at the start of the hearing that Mr North would be giving evidence by telephone because he had prior commitments. Neither the Respondent nor her Counsel raised any issue about this before or after the evidence was given. The Respondent's counsel was able to cross examine Mr North on all relevant issues. There was no prejudice.
10. Mr Varma said that the Applicant's husband was carrying out stripping out works as a prelude to the planning works. This is the Tribunal's record of his evidence.
11. These points were all made at the Tribunal save that there was no challenge with regard to "hearsay evidence from Roger North". In fact both surveyors

made statements about what Ian Newsham had told them. There was no prejudice. The Tribunal preferred Roger North's evidence. They were entitled to do this.

12. The Tribunal made it clear at paragraph 82 that Chris Hyatt's report was not taken into account.
13. For the reasons given, Mr North's evidence was preferred. This is an entirely invalid and unsubstantiated criticism.
14. This is not an appeal ground (neither are most of the submissions in the appeal).
15. Mr and Mrs Edmunds did not ask for permission to be excused. They told the Tribunal they were leaving for family reasons. They offered no such reasons. The Chair of the Tribunal noted in their presence the time that they were leaving and that they had not provided any evidence of the reason for leaving. They have still not provided such evidence. In leaving in this manner they patently put themselves at risk of an adverse finding as to their credibility and the Tribunal has no doubt that their counsel would have advised them of this.
- 16/17. These are merely a repeat of the arguments put forward during the hearing which were not accepted. The Respondent's counsel confirmed that the relevant date was the date of the demand. The Tribunal were entitled to infer from the evidence what the state of the Applicant's intention was at this date. This is a finding of fact which the Tribunal was entitled to make.

Dated this 2nd day of December 2019

J Shepherd
Chairman