



**Decision of the Homeowner Housing Committee issued under the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012**

**In Application**

**by**

**Aylmer Millen, 30/5 Eyre Crescent, Edinburgh EH3 5EU (“the Applicant”)**

**Property Factor: James Gibb Residential Factors, 4 Atholl Place, Edinburgh EH3 8HT (“the Respondent”)**

**hohp Ref: HOHP/PF/15/0090**

**Re: Property at 30/5 Eyre Crescent, Edinburgh EH3 5EU (“the Property”)**

**Committee Members:**

John McHugh (Chairman) and Sara Hesp (Surveyor Member).

**This document should be read in conjunction with the Committee’s Decision of 3 October 2015.**

**DECISION**

We are of the view that we should make a property factor enforcement order in the terms originally proposed by us.

Our decision is unanimous.

**REASONS FOR DECISION**

In our decision we indicated that we proposed to make a property factor enforcement order (“PFEO”).

We indicated that prior to making a property factor enforcement order, we would provide the parties with a period of fourteen days within which to make representations under section 19(2)(b) of the Act.

Our decision was intimated to the parties on 6 October 2015.

We have had regard to an email by the Applicant dated 15 October 2015. The majority of the content of that email addresses the content of the Decision as opposed to the PFEO and, accordingly, may not be considered at this stage of the proceedings. We have given consideration to the part which relates to the content of the proposed PFEO.

The Applicant is concerned that the proposed PFEO embodies no method for the measurement of compliance. The parties and the Respondent will however be required, after the expiry of the period of 28 days, to confirm its compliance. It is correct to state that if such confirmation were to be provided, there would then be no further procedure in this application to monitor the situation further. However, if an issue regarding the Respondent and tendering were to arise in future, then any Committee dealing with the matter would be aware of the existence of the current PFEO and would take it into account in making its decision.

No representations have been received from the Respondent on the content of the PFEO.

We consider that, having decided that there has been a failure to carry out the section 14 duty, we are obliged by section 19(3) of the Act to make a property factor enforcement order.

Nothing in the Applicant's email of 15 October 2015 has persuaded us that the proposed property factor enforcement order ought to be amended.

### **Property Factor Enforcement Order**

We hereby make the following Property Factor Enforcement Order ("PFEO"):

Within 28 days of the date of the communication to the Respondent of this property factor enforcement order, the Respondent must ensure that it puts in place adequate measures to ensure that records are kept of all documents provided to third parties in the course of inviting tenders for works in relation to the Development such that it will be able to comply with its duties under Paragraph 6.6 of the Code of Conduct for Property Factors.

**Failure to comply with a property factor enforcement order may have serious consequences and may constitute an offence.**

## APPEALS

The parties' attention is drawn to the terms of section 22 of the 2011 Act regarding their right to appeal and the time limit for doing so. It provides:

“(1) An appeal on a point of law only may be made by summary application to the sheriff against a decision of the president of the homeowner housing panel or a homeowner housing committee.

(2) An appeal under subsection (1) must be made within the period of 21 days beginning with the day on which the decision appealed against is made...”

John McHugh

Signed :

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Date 2 November 2015

JOHN M MCHUGH

Chairperson