



On 13 February 2019, Aster

Communities applied to the FTT for dispensation from the requirement to consult in relation to work to replace asphalt on balconies. It had failed to mention those works in its notice of intention.



The FTT granted dispensation on three conditions:

- 1) Aster must pay the reasonable costs of an expert nominated to consider and advise the lessees on the necessity of the works.
- 2) Aster must pay the lessees' reasonable costs of the responding to the dispensation application.
- 3) Aster must not charge the costs of the dispensation application to the lessees through the service charge

The Upper Tribunal (Judge Stuart Bridge) dismissed Aster's appeal against conditions (1) and (2). The Court of Appeal (Newey LJ giving the lead judgment) held that:

"Condition (i) could not be faulted. It was a condition which the FTT was entitled to impose in the specific circumstances of the case.

"As to condition (ii), in seeking dispensation, Aster was asking for an indulgence and so could fairly be expected to bear the tenants' costs of the application".

Newey LJ determined that:

"Consultation ... is a group process ... [A] landlord seeks dispensation against tenants generally. If all tenants suffer prejudice because a defect in the consultation process meant that one of their number did not persuade the landlord to limit the scope or cost of works in some respect, I cannot see why the FTT should be unable to make dispensation conditional on every tenant being compensated. The reduction in the scope or cost of works would have accrued to the benefit of each of them, and so, if dispensation is to be granted against them all, the totality of the prejudice should be addressed."

The question of prejudice remained to be addressed.