

12848



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)**

**Case Reference** : **MAN/30UH/LAC/2017/0013**

**Property** : **3, 5, 7, 8, 12, 15, 17 and 23 Royal Court,  
Henry Street, Lancaster, Lancashire,  
LA1 1BW**

**Applicants** : **Mr Ian Burden and Mrs Angela Burden  
Mrs Kay Taylor  
Mrs Angela Burden  
Mr Aditya Vadali  
Mr Richard Cooper**

**Representative** : **In person**

**Respondent** : **Fairclough Holdings (2005) Limited**

**Representative** : **Estates and Management Limited**

**Type of Application** : **Commonhold and Leasehold Reform  
Act 2002 - Schedule 11, Paragraph 5 –  
administration charges  
Landlord & Tenant Act 1985 -Section  
20C**

**Tribunal Members** : **Judge J. E. Oliver  
P. Mountain (Valuer)**

**Date of  
Determination** : **26<sup>th</sup> April 2018**

**Date of Decision** : **1<sup>st</sup> June 2018**

**Decision Issued** : **19<sup>th</sup> June 2018**

---

**DECISION**

---

## Decision

1. No consent is required, nor is any administration charge payable under Clause 28 of the Lease where an Assured Shorthold Tenancy is granted in respect of the Properties for a term not exceeding two years.
2. Where an Assured Shorthold Tenancy continues beyond the original term it is not a new tenancy that requires either consent or the payment of a fee as provided for by Clause 28 of the Lease.
3. An order pursuant to Section 20C of the 1985 Act is made.

## Reasons

### Introduction

4. This is an application originally made by Mr Ian Burden and Mrs Angela Burden (“the Applicants”) relating to administration charges made in respect of 3, Royal Court, Henry Street, Lancaster. Mrs Kay Taylor, Mr Aditya Vadali, Mr Richard Cooper and Mrs Angela Burden (“the Applicants”) were subsequently joined in the application in relation to other properties within Royal Court (“the Development”), namely 5, 7, 8, 12, 15, 17 and 23 Royal Court in respect of the same issues (“the Properties”).
5. The Respondent to the application is Fairclough Holdings (2005) Limited (“the Respondent”), the Landlord of the Development. Estates and Management Limited (“the Managing Agents”) represent the Respondent and manage the Development on its behalf.
6. The Applicants have applied to the First-tier Tribunal for the determination of their liability to pay and the reasonableness of an administration charge in respect of the Properties, pursuant to Paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”). The Applicants also seek an order pursuant to Section 20C of the Landlord & Tenant Act 1985 (“the 1985 Act”).
7. On 30<sup>th</sup> January 2018 the Tribunal issued directions in respect of the application, providing for the filing of statements and for the matter to be listed for determination without an inspection or hearing, unless the parties requested one.
8. The matter was listed for determination without an inspection or hearing on 26<sup>th</sup> April 2018

### The Lease

9. The Lease under which 3 Royal Court is held is dated 24<sup>th</sup> June 2002 and is made between the Respondent (1) Lancaster Gate Management Company Limited (2) and Brian Peter Threlfall and Judith Elizabeth Threlfall (3 (“the Lease”). Mr And Mrs Burden acquired their interest on 4<sup>th</sup> October 2006. All the Properties are held under similar leases containing the same provisions.

10. Clause 23 of the Eighth Schedule of the Lease provides:

*“ Not at any time during the Term separately to assign transfer underlet or part with the possession or occupation of any part or parts of the Property but only to assign transfer underlet or part with the possession thereof as a whole and not to so assign transfer or underlet or part with possession or occupation of the Property without the prior consent of the Landlord or its agents (not to be unreasonably withheld or delayed). Provided that the tenant will be permitted to let the whole of the Property by way of an Assured Shorthold Tenancy (for a term not exceeding 2 years in accordance with the provisions of the Housing Act 1988 or any statutory modification or re-enactment thereof without the previous consent of the Landlord (“the Permitted Underletting”) Provided that the Undertenant covenants to comply with the Tenants Covenants under the Lease and the Tenant provides the Landlord and/or the Management Company with a contact address for the Tenant”*

11. Clause 28 of the Eighth Schedule provides:

*“Within one month after the date of any and every assignment transfer mortgage charge underlease or tenancy agreement.....(save in the case of an Assured Shorthold Tenancy for a term not exceeding two years) and to pay or cause to be paid at the same time to the Landlord and to the Management Company such reasonable fee appropriate at the time of registration (but not being less than £50 plus Value Added Tax in each case) in respect of any such notice perusal of documents and registration affecting the Property”.*

### The Issues

12. On 6<sup>th</sup> July 2017 Mr and Mrs Burden received a demand from the Managing Agents for the sum of £240, together with an application form to sublet in respect of 3 Royal Court. The fee comprised a charge to register a new tenancy (£130), a fee to renew an existing tenancy (£65), and a retrospective consent surcharge (£45).
13. Mr & Mrs Burden returned the application form, but paid no fee and have subsequently had arrears of £50 charged to their account.
14. The remaining Applicants have the same issue relating to the payment of an administration charge when subletting their properties.
15. The issues for determination are the payability of the administration charges, together with an application for an order pursuant to Section 20C of the 1985 Act.

## The Law

16. Paragraph 1 of Schedule 11 of the 2002 Act contains the definition of an administration charge for the purposes of the Schedule:

*1 (1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly-*

- (a) for or in connection with the grant of approvals under his lease, or in applications for such approvals,*
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord as a person who is party to his lease otherwise than as landlord and tenant,*
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant,*
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease*

*(1) In this part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither-*

- (a) specified in his lease, nor*
- (b) calculated in accordance with a formula specified in his lease.*

*2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.*

17. Paragraph 5 of Schedule 11 of the 2002 Act provides:

*(1) An application may be made to [the appropriate tribunal] for a determination whether an administration charge is payable and, if it is, as to-*

- (a) the person by whom it is payable,*
- (b) the person to whom it is payable,*
- (c) the amount which is payable,*
- (d) the date at or by which it is payable, and*
- (f) the manner in which it is payable.*

18. Section 20C of the 1985 Act provides that a tenant may apply for an order that any costs incurred by a landlord in connection with proceedings before a First-tier tribunal are not to be regarded as relevant costs when determining the service charge. If such an order is made the Landlord cannot recover those costs within the service charge.

## Submissions

19. Mr & Mrs Burden confirmed they had let their property on 21<sup>st</sup> July 2007 for a term of 18 months under an Assured Shorthold Tenancy. It was therefore for a period of less than 2 years as referred to in Clause 23 of the Eighth Schedule of the Lease and consequently did not require consent. The tenancy had thereafter continued and it was still the same tenant at the time of the demand for the administration charges and the application. Clause 23 is subject to the Respondent being provided with a contact address for any tenant and for any tenant to covenant to comply with their Landlord's covenants contained in the Lease.
20. When they had first received correspondence from the Managing Agents asking for a payment of £50 to register their tenancy they had stated their agreement to this and had returned the necessary form, but had not agreed to pay the charge until confirmation was given that no other charges would be made. This was confirmed by e-mail on 28<sup>th</sup> November 2017. At that point Mr & Mrs Burden, having further considered the terms of the Lease then determined that no fee was payable. They notified this to the Managing Agents but then found the charge had been added to their account.
21. Mrs Taylor advised of similar circumstances in relation to her property, 5 Royal Court, where her tenants had all had an Assured Shorthold Tenancy of less than 2 years. In July 2002 she had notified the then management company of her intention to sublet her property and had provided it with the necessary addresses as required by Clause 23. Mrs Taylor referred the Tribunal to *Proxima GR Properties v Dr Thomas D McGhee* and comments by Martin Rodger QC that "*there is no occasion for a renewal fee to be charged where the same tenant remains in occupation*"
22. The Managing Agents responded to the application and accepted that whilst no consent is required to sublet, a registration fee is payable. Further, under the terms of the Lease, the fee payable is £50 and consequently is not a variable administration fee and therefore falls outside the Tribunal's jurisdiction. The Managing Agents stated, in the alternative, the charge of £50 to comply with Clause 28 was reasonable and provided details of the work involved in registering a tenancy.
23. The Managing Agents submitted that, pursuant to Clause 28 of the Lease it "*should be notified of any and every tenancy agreement regardless of the length of the term and a minimum registration fee of £50 plus VAT should be paid to register the same*".
24. The Managing Agents referred the Tribunal to *Freehold Managers (Nominees) Ltd v Martina Piatti and Polo Piatti [2012] UKUT 241 (LC)*, *Crosspite Limited (1) v Mahesh Sachdev, Seema Sachdev (2) and Kamlesh Sachdev (3) [2012] UKUT 321 (LC)* and *Proxima GR Properties Limited and Dr Thomas D McGhee UKUT 0059*
25. Neither party made any further submissions relating to the application for an order pursuant to Section 20C of the 1985 Act.

## Determination

26. The Tribunal firstly considered the submissions made by the Managing Agents that it did not have the jurisdiction to deal with the application because the administration charge was not a variable charge. The Tribunal did not accept this submission. Clause 28 of the Eighth Schedule of the Lease clearly states that the registration fee is to be reasonable, “*but not being less than £50 plus Value Added Tax in each case*”. The Lease therefore does not fix the fee at £50 plus VAT, but stipulates this as a minimum and that any charge must be reasonable. It is therefore a variable administration charge, within Paragraph 1, Schedule 11 of the 2002 Act. Consequently, the Tribunal has the jurisdiction to deal with the application.
27. The Tribunal thereafter considered whether, under the terms of the Lease, the Applicants were obliged to pay an administration charge when letting their properties. Here, the terms of the lease are clear. No consent is required for any Assured Shorthold Tenancy that is granted for a period of less than two years.
28. The Applicants are obliged to comply with the covenant given in Clause 23, regarding any tenancy, but this does not attract any fee. Clause 28 confirms a fee is payable for the registration of other dispositions of title, but again an Assured Shorthold Tenancy of less than 2 years is specifically excluded from this.
29. The Tribunal then considered the circumstances relating to 3 Royal Court where a tenancy had been granted for 18 months but had then continued up to at least the date of the application. In *Proxima GR Properties Ltd v McGhee* the Upper Tribunal considered the issue of both obtaining the Landlord’s consent and the payment of a fee. Here Martin Rodger QC said at paragraph 42:  
*“Where a tenant is simply permitted to remain in occupation following the expiry of an assured shorthold tenancy, without the grant of a new tenancy, no new underletting would be involved, there would be no need to seek consent of the landlord and no occasion for any fee to be charged.”*
- These are the circumstance pertaining to 3 Royal Court. Therefore, no consent is required in respect of the tenancy and no fees are payable. In respect of the remaining Applicants, the same principles apply.
30. The Applicants have applied for an order pursuant to Section 20C of the 1985 Act to prevent the Respondent recovering the costs of this application through the service charge. Upon the basis the Applicants have wholly succeeded in their application, such an order is made.

Judge J E Oliver  
1<sup>st</sup> June 2018