



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

Case Reference : **CHI/29UC/LIS/2018/0026**

Property : **Flat 2, Bridge Hill House,
Higham Lane, Bridge
Canterbury CT4 5AY**

Applicant : **Bridge Hill House Management
Company Limited**

Representative : **Mr Wales (Managing Agent)**

Respondent : **Mr Timothy Stewart**

Representative : **Mr Dyke**

Type of Application : **s.168 2002 Act**

Tribunal Members : **Judge D Dovar
Mr R Athow FRICS MIRPM**

**Date and venue of
Hearing** : **21st January 2019, Canterbury**

Date of Decision : **24th January 2019**

DECISION

1. This is an application for the determination of breach of covenant under s.168 of the Commonhold and Leasehold Reform Act 2002.
2. The application alleges various breaches arising out of three facts, being:
 - a. A BMW motorcar, owned by the Respondent, which had been left for a number of years on part of the common parts;
 - b. A failure to allow access to the Respondent's flat on 7th September 2018; and
 - c. A Failure to pay interim service charges.
3. In the course of the hearing, after a discussion over whether the Tribunal had jurisdiction to determine a breach in relation to a failure to pay interim service charges under s.168 of the 2002 Act (as opposed to under s.81 of the Housing Act 1996) and whether or not the Applicant had fully taken into account a previous determination of the County Court in relation to the Respondent's statement of account, the Applicant sought permission to withdraw that part of its case. The Respondent did not object and the Tribunal gave permission to withdraw.
4. Therefore only two factual scenarios remained, the BMW and access.

Inspection and Site

5. The Tribunal inspected the premises on the morning of the hearing.
6. Bridge Hill House is a large imposing period country residence built about 150 years ago with rendered and colourwashed elevations, sliding sash windows, all under a slate roof, and there are many distinctive ornamental

features. The property was converted into seven self-contained residential units in more recent years. It is situated in a quiet cul-de-sac on the outskirts of the village of Bridge, about 3 miles from Canterbury city centre.

7. Overall, the grounds are extensive and mainly to the rear of the property with a large lawn and many mature trees. Flat 2 is situated on the first floor.
8. The approach to the property is via a private gravel driveway (which is part of the freehold title). Vehicular and pedestrian access is shared with all lessees of the property and some adjoining premises. In the centre of the driveway is an island ('the Round'), which on the day of the inspection, on the far side from the main building, had three cars parked; the Respondent's BMW, a fiat and Mr Wales's vehicle. To one side of the Round is a block of four garages which are demised to some of the leaseholders. Immediately in front of the main building is an area which has been allocated to car parking spaces.

Lease terms

9. The relevant lease provisions relied on by the Applicant on the BMW issue are:
 - a. Clause 12.9 - Second Schedule – *“The right for the Tenant in common with all others entitled to the like right to park one private motor vehicle on the front area in front of the Building subject to there being available space ...”*;

- b. Regulation 14.1 *'Not at any time to use or occupy or permit the Demised Premises to be used or occupied except as a private residential flat and garage for the purpose of parking one private motor vehicle only.'*;
- c. Regulation 14.2 *'Not at any time to use or permit the use of either the Demised Premises or any part thereof for business purposes.'*
Although the Applicant notified the Respondent and the Tribunal at the hearing that it was no longer asserting a breach of this regulation;
- d. Regulation 14.3 *'Not to do or permit or suffer in or upon the Demised Premises or any part thereof any sale by auction or any illegal or immoral act or any act or thing which may become a nuisance or annoyance or cause damage to the Lessors or the Management Company or the tenants of the Lessors or the occupiers of any part of the Building or of any adjoining or neighbouring premises.'*;
- e. Regulation 14.12 *'Not to leave or park or permit to be left or parked so as to cause any obstruction in or on any approach roads or passageways adjacent or leading to the Building any motor car ... belonging to or used by the Tenant or occupier of the Demised Premises ... and to observe all regulations made by the Management Company from time to time relating to the parking of such vehicles.'*;

- f. Regulation 14.16.2 *'To remove forthwith upon being so required by the Management Company or their Managing Agents any object of or obstruction by the Tenant ... in the Common Parts.'*;
- g. Regulation 14.25 *'At all times to observe and perform all such variations or modifications of the foregoing regulations and all such further or other regulations as the Management Company may from time to time in their absolute discretion think fit to make for the management care and cleanliness of the Building and the comfort safety and convenience of all the occupiers thereof.'*
10. In respect of the access issue, Clause 3.3 is relied upon
- 'To permit the Management Company and their duly authorised Surveyors or Agents with or without workmen at all reasonable times by appointment (but in any time in case of emergency) to enter into and upon the Demised Premises or any part thereof for the purpose of viewing and examining **the state of repair thereof***
- (emphasis added)

Factual background

11. The Tribunal was provided with witness statements from Ms Westendarp and Mr Mason for the Applicant, as well as, in the form of a Statement of Case, signed with a statement of truth, from the Applicant's managing agent, Mr Wales. Ms Westendarp and Mr Wales were questioned both by the Respondent's representative and the Tribunal. Mr Stewart also provided a witness statement and was questioned.

12. The following evidence was given in respect of the BMW issue and was not contentious:

- a. Mr Stewart owned the BMW as well as an Alfa Romeo. The Latter was parked outside his garage and another car, belonging to a friend of his, was parked inside the garage;
- b. On 10th April 2013, at a Bridge Hill House management meeting (being a meeting of the Applicant company), it was agreed that leaseholders would be allocated one parking space in front of either their own garage, or if they did not have a garage, in front of the house. Further, it was said that “*Residents requiring further space and visitors will use the spaces available on the round or park on the road*”.
- c. The BMW was parked, as described above, on the Round and had not been moved for at least three years;
- d. It did not cause an obstruction (Ms Westendarp stated so expressly in her oral evidence);
- e. On 13th August 2018, Mr Wales emailed Mr Stewart requiring him to move the BMW, but he had not done so.

13. In respect of the access issue, the following is common ground:

- a. On 3rd September 2018 Mr Wales emailed all the residents, including the Respondent in the following terms

*“As part of the preparations for proposed major works, we would like to make an inspection of all flats – so we can assess how the exterior condition of the building has affected individual flats; e.g. roof leaks, rising damp, rotted windows, et cetera. It would be useful if we could inspect all flats on the same day. Therefore **please arrange access this Thursday; 6th September, from 10.00am.** Obviously we can’t inspect all 7 flats at 10:00am, so access through to 12 noon will be needed.*

...

*Lastly, there will also be a full **Fire, Health & Safety Risk Assessment** completed on Thursday from 10:00am. This will mainly be looking at communal areas (stairway, gardens, driveway, etc) but if you have any specific Health & Safety concerns, please let me know as soon as possible.’;*

- b. On the day in question, Mr Wales attended with a Health and Safety professional and met Mr Stewart in the hallway. Mr Wales introduced Mr Stewart as the man “who didn’t pay his bills”. Mr Stewart somewhat incensed at this remark left shortly after this exchange. Mr Wales did not ask Mr Stewart for access and when Mr Stewart headed to go outside, he did not follow after him to request access;
 - c. Access was not provided on 6th September.
14. What was a little more contentious were the following assertions:

- a. Mr Stewart said that Mr Wales had not attended with a roofer and therefore did not need access.
 - b. Mr Wales disputed that he had ever said that he would attend with a roofer and that he intended to carry out a survey himself in line with the letter of 3rd September;
 - c. Mr Wales required access for the purpose of the Fire Risk Assessment.
15. Initially Mr Wales said in evidence that he had not attended to inspect for repairs, but just the condition and for the purpose of the health & safety inspection. He maintained that access was required for that purpose to see if there were any issues on the threshold between flat and common parts that required attention. When he was asked to confirm this, he did so. When he was asked how he thought this came within clause 3.3 he said it was due to the provision in that clause to inspect the condition of the flat. When it was pointed out to him that it was only inspection in respect of 'repairs' and not 'condition', he then changed his evidence to assert that he was also inspecting for repairs. He was taken to the Statement of Case, where he had also set out that access was required for the Health & Safety inspection and maintained that he had also meant he required access to inspect for any repairs.
16. In assessing the evidence on this point, the Tribunal prefers that of Mr Stewart and indeed, that originally put forward by Mr Wales. In that Mr Wales did not require access on the day to inspect repairs, but at best only for health and safety and in that regard, only potentially in respect of

looking at the condition of the flat, but not in order to see if it was in disrepair, but to determine whether there were any fire precautions that were needed due to the construction of the flat. Mr Stewart's recollection that he was told that the roofer had not attended, was consistent with the impression given by Mr Wales's statement, the letter of 3rd September and his initial oral evidence.

Issue 1: BMW Motorcar

17. The Applicant relied on a number of covenants, set out above, that it said had been breached as a result of the Respondent leaving his BMW on the Round. Taking them in turn.
18. Clause 12.9. The Applicant contends that having three cars is a breach of this provision which only allows the parking of one car. The Applicant accepted that there was some conflict with regulation 14.1 as that also envisaged another car being parked in the garage. However, the Applicant contended that even allowing for that, three cars was a breach.
19. The Applicant also clarified that the 'front area' referred to was the area immediately in front of the Building and did not include the Round.
20. The Tribunal does not consider that this has been breached in that this provision is only regulating the use of that specific area in front of the Building and not the Round or the area in front of the garages or indeed in the garages. It is stretching the meaning of the clause too far to say that it is regulating parking across the entirety of the common parts. That is particularly so when one bears in mind regulation 14.1.

21. In any event, the right to park was supplemented by the statement of the Applicant in April 2013 to allocate spaces in the front and in front of the garages and to permit additional parking on the Round. Mr Wales sought to construe that document as providing only for additional parking when all the other spaces were taken. However, that is not the impression that the document gives. It is if residents require further space, which is wider than limiting it to when all other spaces are taken.
22. Regulation 14.1. It was said by the Applicant that the implication from this clause is that any motor vehicle should be *in* the garage and accordingly a leaseholder cannot park *outside* of the garage. Again it was accepted by the Applicant that there was therefore some contradiction with clause 12.9.
23. If possible, clause 12.9 and 14.1 need to be read together in a manner which does not cause conflict. The more natural interpretation of clause 14.1 is that it is governing use of the garage and not limiting parking outside the garage.
24. Regulation 14.3 It is alleged by the Applicant that the BMW causes a nuisance and an annoyance and is therefore a breach of this regulation. The Tribunal has some sympathy with the Applicant on this issue. It must be frustrating, annoying and a nuisance to have a car blocking a space, particularly on common parts where parking is becoming more and more difficult. It shows little appreciation of neighbours to take up effectively three spaces with cars, two of which are out of action. However, the Tribunal does not consider that this regulation is engaged given that the

nuisance or annoyance must emanate from the Demised Premises. It does not, it emanates from common parts.

25. Regulation 14.12 requires the BMW to be an obstruction. It clearly was not as confirmed by Ms Westerndarp. That was also the Tribunal's impression on the site view. The Applicant contended that the meaning of obstruction could stretch to the situation when it reduced the availability of parking, but that is not the plain and natural meaning of the word.
26. Regulation 14.16.2 The Applicant relied on its email of 13th August 2018 in which it required the Respondent to remove the BMW. The Tribunal does not consider that this is an obstruction, for the reasons already given and that is what is required before this regulation is engaged. The Tribunal also doubted that this was directed at cars.
27. Regulation 14.25 The Applicant relied on its email of 13th August 2018 as being evidence of a further regulation made for the Respondent to move the BMW. It accepted that no formal board resolution had been passed or circulated in this regard. The Tribunal does not consider that this regulation applies. It permits the Applicant to make further regulations, but they must be evidenced at least at board level, be circulated and more importantly should be of a more general nature and a higher level of specificity. They cannot be directed specifically at one incident such as the Respondent leaving his BMW on the Round.

Issue 2: Access

28. The Tribunal does not consider that this breach is made out as:
- a. It does not appear that any appointment, for the purposes of clause 3.3 was ever agreed. An appointment is when the two parties have mutually agreed a time and date. This did not occur here;
 - b. In any event, at no point was Mr Wales refused access for the purpose of inspecting the state of repair of the Respondent's flat. As set out above the Tribunal does not consider that Mr Wales intended to inspect for that purpose on 6th September. Indeed the impression that Mr Stewart formed was that as the roofer had not attended, no access was required.

Conclusion

29. Accordingly, the application is dismissed. At the end of the hearing, the Applicant requested reimbursement of the application and hearing fee from the Respondent. Given the outcome of this application, that request is refused.
30. If either party wishes to make any further applications in respect of costs, then they may do so within by 5pm on 22nd February 2019.

Judge Dovar

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.