FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BU/LBC/2019/0002**
Property	**:**	**13, Village Court, 1, Carrington Road Urmston, Manchester M41 6HT**
Applicant	**:**	**Village Court (Flixton) Limited**
Respondent	**:**	**Thomas Maddocks and Pamela Maddocks**
Type of Application	**:**	**Determination under Section 168 Commonhold and Leasehold reform Act 2002**
Tribunal Members	**:**	**Mr J R Rimmer** **Ms S D Latham**
Determination Date	**:**	**28th May 2019**
Date of Decision	**:**	**27 June 2019**

Order **The Tribunal finds that there has been a breach of covenant committed by the Respondents, as alleged by the Applicant, in respect of the lease of 13, Village Court, Urmston and dated 26th May 2006**

Introduction

1 This is an application under Section 168 Commonhold and Leasehold Reform Act 2015 to determine whether or not there have been breaches of a number of covenants relating to a lease of 13, Village Court, 1, Carrington Road, Urmston, Manchester. The Applicant is the Management Company having responsibility for the management of the development at 1, Carrington Road. The application is dated 26th February 2019 and contains an outline of the alleged breaches of covenant, subsequently expanded in the Applicant's statement of case.

2 The Respondents to these proceedings are the assignees of the lease of the flat number 13, being one dated 26th May 2006 for a period of 999 years from 1st January 2005 at an annual rent of £250.00 per year.

3 The Applicants make a number of allegations relating to what may be considered one matter. The Respondents are the owners of what, for now, may neutrally be called a Volkswagen camper van. They have habitually parked the vehicle in their allocated parking space at the development.

4 The Applicants allege that the parking of such a vehicle is in breach of 3 terms of the lease which are considered below.

5 In view of the nature of the allegations and the information provided by both parties to the proceedings it was not considered necessary for the Tribunal to inspect the premises, vehicle, or parking space.

The Law

6 Section 168 Commonhold and Leasehold Reform Act provides as follows:

(1) A landlord under a long lease of a dwelling may not serve a notice under Section 146(1) of the Law of Property Act 1925… (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in a lease unless subsection (2) is satisfied.

(2) This subsection is satisfied if –
(a) It has been finally determined on an application under subsection (4) that the breach has occurred,
(b) The tenant has admitted the breach, or
(c) A court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.
(3)…
(4) A landlord under a long lease of a dwelling may make an application to (the First-tier Property Tribunal) for a determination that a breach of covenant or condition in the lease has occurred
(5) But a landlord may not make an application under subsection (4) respect of a matter which-
(a) has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,
(b) has been the subject of a determination by a court, or
(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

7 Section 169(5) gives the expression "landlord" the same meaning as in the whole of Part 2 of the Commonhold and Leasehold Reform Act, the significance of which is reflected below.

The alleged breaches

8 Clause 4.8 of the lease provides a right to the exclusion of all others to park a taxed private motor car only on the car parking space edged green on the plan no2 annexed to the lease. The Applicant alleges the vehicle in question is not a private motor car.

9 Clause 7.2 contains a covenant by the lessees with the lessor and separately with the management company and with the owners and lessees of the other apartments to perform and observe the restrictions set out in Schedule 1 to the lease so far as they are relevant to the lease of the apartment. The Applicant refers specifically to:
(1) Schedule 1 paragraph 18: Not to park any caravan or boat on the property. It alleges the camper van is a caravan
(2) Schedule 2 paragraph 19: Not to allow any vehicle having an unladen weight in excess of 2.5t to be parked on the property or any part of the estate. It alleges the vehicle exceeds that limit.

Submissions, hearing and determination

Parking a private motor car only

10 Although the parties devoted some considerable effort to this issue in their respective submissions the Tribunal pointed out at the commencement of the hearing that Clause 4.8 of the lease was not concerned with any covenant; particularly there was no covenant not to park anything other than a private motor car. Rather, it related to a right granted to the lessees in relation to what could legitimately be parked in the relevant space.

11 Accordingly there was no covenant in relation to which the Tribunal could make any determination.

A vehicle having an unladen weight in excess of 2.5t

12 The Applicant had conducted considerable research into the weight of a VW California vehicle and obtained information from a number of websites to obtain information that might assist.

13 It was clear to the Applicant that for the purposes of revenue and vehicle excise duty that the vehicle is placed in the 3000kg category. It is also clear that the maximum vehicle weight is 3000kg and the payload 524kg. It had not been able to find any declaration as to the unladen weight of the vehicle.

14 The Respondents had taken the vehicle to a public weighbridge and received a ticket showing the vehicle weighing 2260kg. They similarly had been unable to find a clear declaration as to what the unladen weight was, but suggested the ticket obtained was for a vehicle which satisfied the definition of "unladen weight" within section 190 Road traffic Act 1988. (a copy of which was supplied to the Applicant.

15 For its deliberations the Tribunal took note of the very close approximation of an imperial ton (2240lbs) and a metric tonne (1000kg). It was satisfied that if a Respondent could drive it, with no suggestion otherwise than legally, to a weighbridge and receive an indication of a weight of 2260kg this must indicate an unladen weight below 2.5t. To the Tribunal this was more compelling evidence than that produced by the Applicant, despite its best endeavours.

A caravan?

16 The Tribunal was addressed by the Applicant in relation the issue it had raised in its submissions as to the definition of a caravan contained in Section 29(1) Caravan Sites and Control Act 1960.

"A caravan is defined as any structure designed or adapted for human habitation which is capable of being moved from one place to another and… any motor vehicle so designed or adapted…"

and suggests this is the only statutory definition of a caravan and would include a vehicle such as that owned by the Respondents.

17 The Applicant suggests that the vehicle exhibits all of the characteristics of a caravan and had been used for the provision of overnight accommodation within the allocated parking space. (whist not denying that it provided such accommodation the Respondents strongly denied its use for such at Village Court and the Applicant had no direct or cogent evidence upon the point).

18 The Applicant supported this by reference to the brochure for the conversion of such a Volkswagen vehicle to a "motor home" and the DVLA guidance as to what constitutes a "motor caravan", together with photographs of use of the particular vehicle in what it suggested was such a manner.

19 The Respondents contend that it is not a caravan, providing a number of dictionary definitions of such, and outlining its use from day to day as a private motor car and performing all the functions thereof whilst providing additional facilities for longer journeys.

20 They also refer to section 185 Road Traffic Act 1988 and the meaning of "motor car" as being a mechanically propelled vehicle, not being a motor cycle or invalid carriage, with an unladen weight not exceeding 2540 kgs. The vehicle in question therefore qualifies as a motor car.

21 The Tribunal did not feel greatly assisted by the Applicant's reference to the definition of caravan within section 29(1) caravan Sites and Control Act 1960. The Tribunal saw from the source of the Applicant's information that it filed to make reference to the fact that the meaning of caravan, as set out is limited to being for the purposes of the Act

22 Equally one of the definitions provided by the Respondent appears to contemplate the possibility that a caravan need not be a towed trailer, presumably capable of moving under its own power.

23 The term “motor caravan” itself envisages a vehicle that can indeed move under its own power, and notwithstanding the other purposes to which the Respondents put it, this vehicle has the characteristic commonly found in any type of caravan, towed or independently powered.

24 It is not a large vehicle, but it is capable of providing an inhabitable environment, even if perhaps only for relatively short periods. Having regard to all that the parties have provided to the Tribunal it concludes that the vehicle falls to be described as a caravan and within the ambit of the restriction in paragraph 1 of Schedule 1 to the lease, which specifically refers to “any caravan”.

25 Although Section 185 Road traffic Act 1988 refers to a vehicle under 2540kgs being a “motor car” envisages the vehicle constituting a car for purposes of that Act, it does not preclude it from being also a caravan.

26 The Tribunal suspects that the parking of a camper van, capable of being, and actually being used regularly in the role of a car, and fitting the appropriate parking space, was not within the contemplation of the drafter of the lease, but that is not what the lease provides. It is brief in its restriction and the vehicle falls within it.

J R Rimmer (Judge)
28 May 2019