



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

**Case Reference** : **MAN/00EE/LBC/2018/0009**

**Property** : **12 Wilton Castle, Wilton, Redcar, Cleveland,  
TS10 4FB**

**Applicant** : **Wilton Castle (Wilton) Management Co  
Ltd**

**Respondent** : **Bernadette Anne Sowa-Smith**

**Type of Application** : **Commonhold and Leasehold Reform Act 2002  
Section 168(4)**

**Tribunal Members** : **Judge W.L. Brown  
Mr I D Jefferson FRICS**

**Date of Decision** : **11 December 2018**

**Date Decision issued** : **23 January 2019**

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**DECISION**

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The Application is refused. No order as to costs.

**Background**

1. The Applicant is the proprietor of the freehold and successors to the Lessor's interest created by a lease of the Property. The Respondent is the successor to the Lessee's interest.
2. By Application dated 15 June 2018 (the "Application") the Tribunal was requested to make a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 (the "Act") that a breach of covenant has occurred in the lease dated 25 October 2002 relating to the Property

3. Directions were made by the Tribunal on 9 July 2018.
4. On 3 September 2018 the Tribunal inspected the exterior and part of the ground floor internal common parts of Wilton Castle. Present was Ms Susan Johnson of Town & City Management Limited, managing agent of the Applicant.
5. The Property is an apartment on the first floor of the Wilton Castle building conversion to residential accommodation. Of relevance are the external areas, in particular for parking. These were observed by the Tribunal at inspection, including numbered bays designated to apartments, parking spaces for visitors both close to the main building and in a separate car park adjacent to the nearby golf club and the access roads.
6. No party having requested a hearing, after requesting information about the content of the Lease the Tribunal convened on 11 December 2018 in Newcastle upon Tyne to make its determination.

### **The Lease**

7. The lease of the Property is dated 25 October 2002 and is between George Wimpey UK Limited (1), George Wimpey North Limited (2), the Applicant (3) and Margaret Gallagher (4). It is for a term of 150 years (less one day) from 1 August 2002 at a commencing ground rent of £150p.a.
8. Of relevance to the Application:

In the Definitions section of the Lease:

*“Parking Space” “the parking space or spaces the position whereof is shown coloured purple and numbered 15P in the Plan.”*

The Second Schedule Part 1 (Rights Granted) Parking (k) states:

*“(i) The exclusive right to use the parking space or spaces coloured purple for the use of the owners or occupiers of the property or their guests for the parking of one private motor car or motor cycle in each of the parking spaces which shall be in a roadworthy condition.*

*(ii) the right to use the visitor parking spaces (subject to availability) for the use of the owners occupiers of the Property or their guests for the parking of one private motor car or motor cycle in each car parking space which shall be in a roadworthy condition.”*

The Third Schedule (Covenants by Buyer) clause 16 Parking states:

*“Not to use any car parking space for any purpose other than the parking of one private motor car or one private motor cycle which shall be in a roadworthy condition and shall exhibit a current Road Fund Licence.”*

### **The Law**

9. Section 168(1) of the Act states:

*“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 in respect of a breach by a tenants of a covenant or condition in the Lease unless subsection (2) is satisfied”.*

Section 168(2)(a) states:

*“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”*

Section 168(4)(a) states:

*“A landlord under a long Lease of a dwelling may make an application to the First-Tier Tribunal for a determination that a breach of a covenant or condition in the Lease has occurred”.*

### **The Evidence and Submissions**

- 10. The Applicant’s allegation of breach of covenant is *“The Respondent constantly parks a commercial vehicle registration number H11 RRP in a visitor space despite numerous requests to park this vehicle off site.”* Further, *“The Respondent is parking in a way that not only breaches a covenant in the lease but is taking up a visitor space.”*
- 11. In support, the Applicant provided an undated photograph showing this vehicle parked in an unnumbered marked parking bay on the roadway outside of the building in which the Property is situated.
- 12. Although the Respondent did not reply to the Application her partner Mr Mark Harrop made written submissions. He indicated that the vehicle is his *“...private vehicle, used for social, domestic and pleasure and commuting to and from a permanent place of work, is insured as such, is not used for financial gain in connection with any business and is registered in my name.”*
- 13. Mr Harrop challenged the allegation that the vehicle is “commercial” in nature and contested that there have been a number of requests to refrain from the parking. In addition he stated that he parked in an unallocated visitor space.

## **THE TRIBUNAL'S FINDINGS AND DECISION**

14. The Tribunal first had to interpret the Lease. While the restriction in clause 16 of the Third Schedule describes the type of vehicle which may be parked ("private motor car or motor cycle") the location of such parking is less clear. The Property has a parking space allocated by the Lease, but the vehicle alleged to be infringing the parking restriction (due to being "commercial") has not been parked in that allocated space. It is alleged to have been parked in a visitor space. The Tribunal found in the Lease no written definition of "visitor parking space" despite use of that description in Second Schedule (k) (ii). We observed on the plan incorporated into the Lease, showing the estate around the Wilton Castle building, a number of parking spaces marked "vp", which we understood as denoting visitor parking.
15. We learned from the Applicant's photograph of the alleged offending parking and from Mr Harrop's representations, that the marked parking space he has used, causing the allegation, is one amongst others created on the estate roadway some time after the date of the Lease. At the inspection Ms Johnson also pointed this out to the Tribunal. Hence that space (and others) does not appear marked on the Lease plan.
16. The parking spaces marked on the Lease plan "vp" show only those near the golf club. The one in question does not appear on the plan and nor would it, having been one of a number apparently marked out for visitor use after the date of the Lease.
17. The Tribunal found that the estate areas subject to the parking restriction in the Third Schedule clause 16 are those identified by the Lease. While the allocated parking space for the Property is clearly identifiable, other areas affected are not defined. At best it can be said that they are the spaces marked "vp" on the Lease plan. However, even on that interpretation the area does not include various new spaces nor the space being used by Mr Harrop. If the Applicant wished to create a parking restriction concerning areas not identified within the Lease it would have to effect a variation to the Lease so as to incorporate those locations, which has not occurred.
18. There is no disagreement between the parties as to the position of the parking at issue alleged to be in breach of the Lease covenant. As the Tribunal has found that this parking area is not affected by the Lease restriction it must follow that the Tribunal must determine there is no breach of Lease covenant arising from the Application and therefore the Application is refused.

### **As to Costs**

19. Neither party made application regarding costs and no order is made.

Judge Leslie Brown