FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/22UN/LSC/2019/0030**
Property	**:**	3 & 4 Mill Court, Saville Street, Walton on the Naze, Essex CO14 8PW
Applicants	**3** **4**	Siobhan Kielty Trevor & Carolyn Wood
Respondent	**:**	Patricia Ashford
Type of Application	**A**	to determine reasonableness and payability of service charges for the years 2018–2019 [LTA 1985, s.27A]
	B	to determine liability to pay an administration charge or for the variation of a fixed administration charge [CLRA 2002, Sch 11]
	C	for an order limiting payment of landlord's costs by way of an administration charge [CLRA 2002, Sch 11, para 5A]
	D	for an order that the landlord's costs are not to be included in the amount of any service charge payable by the tenants [LTA 1985, s.20C]
Tribunal Members	**:**	G K Sinclair, S E Moll FRICS & J Francis
Date and venue of Hearing	**:**	Tuesday 13th August 2019 at Lifehouse Spa & Hotel, Thorpe-le-Soken, Essex
Consideration following receipt of accounts		Monday 30th September 2019 at Cambridge
Date of substantive decision	**:**	5th November 2019
Date of this Decision	**:**	13th December 2019

DECISION REFUSING PERMISSION TO APPEAL

Decision of the tribunal

1. The tribunal has received an application by the lessor dated 7th December 2019 (received in the office by email only at 00:22 on Sunday 8th December 2019 and seen on Monday 9th December) that the tribunal's decision dated 5th November 2019 be set aside under rule 51(1) on the ground of procedural irregularity. The tribunal notes that :
   a. The tribunal's decision was sent out by the tribunal office by first class post on Thursday 7th November 2019;
   b. By rule 16(1)(a) & (5) any document to be provided under these Rules, a practice direction or a direction must be sent by prepaid post or by document exchange, or delivered by hand to… the address of the office of the tribunal;
   c. By rule 51(3)(a) a party applying for a decision, or part of a decision, to be set aside under paragraph (1) must make a written application to the Tribunal so that it is received within 28 days after the date on which the Tribunal sent notice of the decision to the party;
   d. The 28 day time limit from the tribunal office sending out notice of the tribunal's decision expired on Thursday 5th December 2019; and

   determines that, consequently, the respondent lessor's application is not only not in writing but out of time.

2. By a further email sent at 19:30 on Monday 9th December 2019 (received in the tribunal office on Tuesday 10th December) the lessor gave as her explanation why she had not submitted her application in time :

   > The reason I did not submit my application sooner was owing to work required for an enfranchisement hearing today (case reference: CAM/22UN/OCE/2019/0021). I could not have predicted the work required as the Applicants changed their stance late, following advice from their Counsel, in an attempt to claim rights to park were acquired by prescription (for information this route was not advanced at the enfranchisement hearing).

3. The tribunal does not accept this as a valid reason for not complying with the 28 day deadline imposed by the rules. The respondent lessor, who has in the past instructed solicitors, could have submitted her application much earlier.

4. However, even were the tribunal to consider the respondent lessor's application out of time, its alleged merits do not justify the setting aside of the decision for the following reasons :
   a. The respondent alleges that serious bundle irregularities meant that "the freeholder's case and supporting evidence (over 100 pages) was not known to" the tribunal; and that the administration charges imposed with respect to parking were only a small proportion of the total of such charges
   b. While not included in the bundle, the tribunal had received separately by email a letter dated 8th August 2019 from Tolhurst Fisher (the solicitors instructed by the lessor), a 13 page "freeholder's case", 37 pages of demands for payment of administration charges, 36 pages of service charge demands, a 27 page document entitled "supporting items", appendices 17 & 18, and an email from the respondent to the applicants dated 10th July concerning the content of the bundle
   c. The tribunal made clear that it had seen them, so no point could be taken

about any failure on her part to serve the prescribed summaries of tenant's rights concerning service and/or administration charges;

d. The decision explained, although at the hearing Ms Ashford refused to accept, that Schedule 11 to the Commonhold and Leasehold Reform Act 2002 did not create a freestanding entitlement to impose administration charges where none were provided for in the lease itself (whether for parking or otherwise); and

e. Insofar as the respondent sought to claim the cost of issuing a section 146 notice against a lessee she ignores the fact, as explained in the decision, that pursuant to section 168 of the Commonhold and Leasehold Reform Act 2002 the lessor must before serving any such section 146 notice obtain a declaration from the appropriate tribunal that the lessee has breached a covenant or obligation of the lease. All of her claims with respect to administration charges were therefore rejected.

5. Further, were the tribunal to consider the above application under section 51 also to be an application for permission to appeal under section 52 and to extend time for seeking permission to appeal, and were it to extend time to consider that, it would nonetheless determine :
   a. not to review its decision in accordance with rule 55; and
   b. that permission to appeal be refused.

6. Having considered its decision dated 5th November 2019 and for the reasons set out in paragraph 4 above the tribunal is satisfied that, in accordance with the criteria adopted by the Upper Tribunal, there are no reasonable grounds for arguing :
   a. That the tribunal wrongly interpreted or applied the relevant law, or
   b. That it took account of irrelevant considerations, or failed to take account of a relevant consideration or evidence, or that there was a substantial procedural defect.

7. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the applicant may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.

Dated 13th December 2019

Graham Sinclair
First-tier Tribunal Judge