



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

Case reference : **CAM/22UN/OCE/2019/0021**

Property : **Mill Court
Saville Street
Walton-on-the-Naze
Essex CO14 8PW**

Applicant : **Mill Court Walton Ltd**

Respondent : **Patricia Ashford**

Type of application : **Permission to appeal**

Tribunal member(s) : **Tribunal Judge S Evans
Regional Judge R Wayte
Mrs M Hardman FRICS IRRV
(Hons)**

Date of original decision : **2nd January 2020**

Date of decision : **13 February 2020.**

DECISION

DECISION OF THE TRIBUNAL

1. The Tribunal has considered the Respondent's request for permission to appeal (received on 29th January 2020) and determines that:
 - (a) it will not review its decision; and
 - (b) the application for reinstatement of the part of the Respondent's case which has been struck out is refused;
 - (c) permission to appeal is refused.
2. 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.

3. The Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710); or by email: lands@hmcts.gsi.gov.uk .

REASONS FOR THE DECISION

4. For the benefit of the parties and of the Upper Tribunal (Lands Chamber) (assuming that further application for permission to appeal is made), the Tribunal gives its reasons as follows:
5. The First-tier Tribunal in CAM/22UN/LSC/2019/0030 refused the Respondent's application for a review and for permission to appeal the decision dated 5th November 2019: see decision dated 13th December 2019.
6. The Respondent then sought to appeal to the Upper Tribunal (Lands Chamber). The grounds of appeal at paragraph 26 included an argument that the Tribunal's decision dated 5th November 2019 went beyond the remit of section 27A of the Landlord and Tenant Act 1985 and beyond Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
7. The Upper Tribunal has refused the Respondent permission to appeal: see decision of Judge Elizabeth Cooke in LRX/2/2020, dated 24th January 2020.
8. Permission to appeal was refused by the Upper Tribunal on the ground that the appeal was out of time and an extension of time should not be granted (see paragraphs 1 and 2). Any comments made thereafter by the Judge (in paragraphs 4 and 5) were comments which were not essential to the Upper Tribunal's decision and were incidental remarks which do not bind this Tribunal.
9. The decision of the First-tier Tribunal in CAM/22UN/LSC/2019/0030 therefore stands.
10. An appeal lies on a point of law only, pursuant to section 11 of the Tribunals, Courts and Enforcement Act 2007. The Tribunal may only review its decision if it is satisfied that a ground of appeal is likely to be successful: see rule 55 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
11. The Tribunal considers that no ground of appeal is likely to be successful. This Tribunal found that the proceedings in 0021 were essentially between the same parties and arose out of facts which were

similar or substantially the same as those contained in 0030, and struck out that part of the Respondent's case on that basis. It is not a question as to whether the decision in 0030 was binding on this Tribunal or not.

12. Further, whilst an application to strike out a claim for abuse of process is not considered to be a classic exercise of discretion (as opposed to decision involving the assessment and balance of a large number of factors to which there can be only one correct answer as to whether there is or is not an abuse of process), an appellate body will be reluctant to interfere where the decision rests on balancing those factors; it will generally only interfere where immaterial factors have been taken into account, or material factors omitted, or there has been an error in principle, or where a conclusion has been reached which was impermissible or not open to the decision-maker below: see in the civil context *Aldi Stores Ltd v WSP Group Plc and others* [2008] 1 WLR 748.
13. The Respondent's application for permission to appeal does not identify any such errors of law.
14. In so far as it may be said that the Tribunal in 0030 went beyond its jurisdiction, such that this Tribunal should have determined the issue of parking spaces for itself, the Respondent's argument did not find favour with the Upper Tribunal.
15. Moreover, on an application under s27A of the Landlord and Tenant Act 1985 a Tribunal may determine such matters as it considers necessary to reach a decision as to whether a service charge is payable (and by analogy any administration charge under Schedule 11 of CLARA 2002): see *Continental Properties v White* [2007] L&TR 4; LRX/60/2005.
16. Finally, this Tribunal declines to reinstate the part of the Respondent's case which was struck out, because the power under rule 9(5) to reinstate only applies where proceedings have been struck out as a result of a party's failure to comply with an "unless" or debarring order.



Name: Tribunal Judge Evans

Date: 13th February 2020