



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

**Case reference** : **CAM/00MG/LBC/2022/0004**  
**HMCTS Code** : **P: Paper Remote**

**Property** : **36 Amethyst House, 602 South  
Fifth Street, Milton Keynes,  
Buckinghamshire MK9 2DG**

**Applicant** : **Avon Ground Rents Limited**

**Representative** : **Scott Cohen Solicitors Limited**

**Respondent** : **Kirstie Ann Ward**

**Representative** : **Clyde & Co LLP**

**Type of application** : **Application for permission to  
appeal**

**Tribunal member(s)** : **Regional Judge Ruth Wayte  
Regional Surveyor Mary Hardman  
FRICS**

**Date of decision** : **31 October 2022**

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**DECISION**

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**Covid-19 pandemic: description of determination**

This has been a determination on the papers. A face-to-face hearing was not held because no-one requested one and all issues could be determined on paper in accordance with the usual practice for dealing with applications for permission to appeal.

**DECISION OF THE TRIBUNAL**

1. The tribunal has considered the respondent's request for permission to appeal dated 18 October 2022 and determines that:

- (a) it will not review its decision; and
  - (b) permission be 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 respondent 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. Where possible, you should send your further application for permission to appeal **by email** to [Lands@justice.gov.uk](mailto:Lands@justice.gov.uk), as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently.
  4. Alternatively, 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).

#### **REASONS FOR THE DECISION**

5. The test for whether to grant permission to appeal is whether there is a realistic prospect of success.
6. For the benefit of the parties and the Upper Tribunal (Lands Chamber), the tribunal records below its comments on the grounds of appeal and any procedural points raised, adopting where appropriate the paragraph numbering of the original request for permission. References in square brackets are to those paragraphs in the main body of the original tribunal decision.
7. Two grounds of appeal have been raised in respect of the tribunal's decision to make orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 effectively preventing the respondent from passing on their costs of the proceedings to the applicant by way of a service or administration charge. The relevant paragraphs of the decision are [9] and [43-47], although of course all of the circumstances of the case were taken into account in reaching that decision.
8. The first ground is that the FTT was wrong to consider that "*the proceedings were misguided and the costs unreasonably incurred*" [47]. In particular, the respondent claims that they had no choice but to bring the proceedings in order to unlock their range of potential remedies under the lease. This is clearly incorrect. If the real motivation was to recover the cost of the remedial works, the applicant pointed out that proceedings in the County Court would have been the most appropriate, not least as Glenco could have been joined as a third party. The role of the tribunal under section 168 of the 2002 Act is to

allow the service of a section 146 notice and it was that procedure which the tribunal confirmed was unlikely to result in any benefit to the respondent for the reasons given in the decision.

9. As to ground 2, that the tribunal took into account irrelevant considerations; it is clear that the tribunal's discretion to make an order under section 20C (and by analogy paragraph 5A) is wide and unfettered, having regard to what is just and equitable in all the circumstances. That must include consideration of the parties' conduct, particularly in a breach of covenant case. As stated in [44], the tribunal considered that the respondent was not responsible for the damage and that was a relevant consideration in the exercise of its discretion as to costs, together with the other factors listed in the decision.
10. In the circumstances, the tribunal does not consider that either ground of appeal has a realistic prospect of success.

**Name: Judge Wayte**