



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

Case Reference : CAM/00MX/LSC/2023/0017

Property : 23 Millgate, Wycombe Retail Park, High Wycombe HP11 1GL

Applicant : Richard Pierce

Respondent : Metropolitan Thames Valley Housing Association

Application : Application for permission to appeal the decision of the First-tier tribunal

Tribunal Members : Judge Stephen Reeder

Date of Decision : 17 July 2024

DECISION

© CROWN COPYRIGHT

DECISION

1. The tribunal has determined to treat the application sent to the tribunal office by the appellant as an attachment to an email dated 28 June 2024 as an in-time application for permission to appeal the decision of the First-tier tribunal dated 3 January 2024 and accordingly grants any necessary extension of time pursuant to rule 6(3)(a) of the Tribunal Procedure (First-tier tribunal) (Property Chamber) Rules 2013.
2. The tribunal has determined that it will not review its decision either in whole or part.

3. The tribunal has determined that permission to appeal the decision to the Upper Tribunal (Lands Chamber) be refused.
4. 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 a 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 refusal to the party applying for permission. The address of the Upper Tribunal (Lands Chamber) is 5th Floor, Rolls Building, 7 Fetter Lane, London EC4A 1NL. Where possible you should send your further application for permission to appeal by email to Lands@justice.gov.uk, as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently.

REASONS

5. The tribunal heard this matter by remote CVP hearing on 3 June 2024. The written decision with reasons was drafted the same day. The decision makes clear that –
 - a. The tribunal determined that the assured periodic tenancy granted to the applicant expressly imposes a liability to pay a variable service charge which itself expressly includes a charge in respect of management costs described as “the [respondent’s] costs of administering and supervising the provision of services to your estate and are calculated as a percentage of the actual service charge costs”.
 - b. The tribunal determined that the tenancy imposes liability to pay a management charge.
 - c. The tribunal did not make any determination as to the reasonableness of the charge of £245.30 for the accounting year 2023/2024 as this charge was withdrawn by the respondent prior to the hearing and the applicant confirmed at the hearing that he accepted that outcome.
 - d. During the hearing the respondent’s representative stated that he understood why the applicant may be confused by the service charge documents provided, that the respondent could and should provide more detailed explanatory information to the applicant as a precursor to serving a service charge demand (including the management charge) and would ensure this was provided within 2 weeks of the tribunal hearing.
6. The applicant has filed a pro forma RP PTA form dated 28 June 2024 seeking permission to appeal. The grounds stated are –

“Although it came to light that I have been treated as a fixed service charge tenant we have never had this charge levied against us not last year or 15 years ago not ever.

This has been confused with the 2015 case where although about the service charge was not management charge specific where as I had successfully challenged it by conventional means in 2009 when it had first appeared without any consultation or agreement

The fact of the matter remains that the housing association has on three occasions failed to enter into the above consultation period in order to reach agreement and create a budgeting period for tenants as stated in the tenancy agreement and must explain this as directed by the tribunal

The solicitor present for the hearing has missed this whole point in response and ends with stating the 2024/25 charge has been removed which it has not”.

7. The tribunal has received a written reply from the respondent by letter dated 12 July 2024. This states that the respondent has complied with the decision of 3 June 2024 in that the 2023/24 management charge was withdrawn prior to the hearing, the tribunal fees were reimbursed to the applicant on 19 June 2024, and a letter was sent to the applicant on 18 June 2024 confirming that the 2024/2025 service charge was being withdrawn and will be re-served with better information about the charges.
8. The tribunal has applied rules 3, 53 & 55 of the Tribunal Procedure (First-tier tribunal) (Property Chamber) Rules 2013 in determining whether to review its decision and whether to give permission to appeal its decision whether in whole or in part.
9. The tribunal has regard to the decision of the Deputy President in *Fairhold Mercury v HQ (Block 1) Action Management Co [2013] UKUT 487 (LC)* such that permission to appeal to the Upper Tribunal should be given in any case where there is a reasonable prospect of the applicant demonstrating that the tribunal has wrongly interpreted or applied the relevant law, and that the test is generally whether the appeal has a real or realistic prospect of success, as opposed to only a fanciful prospect, although the tribunal should be slower to grant permission in the case of appeals on purely technical points than in cases of more substance.
10. The tribunal has regard to the decision of the Deputy President in *Scriven v Calthorp Estate [2013] UKUT 469 (LT)* which addressed the discretionary power of the first-tier tribunal to review its decision pursuant to Rule 55 of the Tribunal Procedure (First-tier tribunal) (Property Chamber) Rules 2013, rather than giving permission to appeal, if it satisfied that a ground of appeal is likely to be successful.
11. The tribunal determines that the application does not disclose any grounds for appeal with any real or realistic prospect of success.
12. The application does not specify and does not disclose any reasonable prospect of establishing that—
 - a. the decision shows that the First-tier tribunal wrongly interpreted or wrongly applied the relevant law, and/or
 - b. the decision shows that the First-tier tribunal wrongly applied or misinterpreted or disregarded a relevant principle of valuation or other professional practice, and/or
 - c. the First-tier tribunal took account of irrelevant considerations, or failed to take account of relevant considerations of evidence, or that there was a substantial procedural defect, and/or
 - d. The point or points at issue is or are of potentially wide implication.
13. In the circumstances, the tribunal has determined that it will not review its decision either in whole or part.
14. In the circumstances, the tribunal has determined that permission to appeal the decision to the Upper Tribunal (Lands Chamber) be refused.

Stephen Reeder
Judge of the First-tier tribunal (property chamber)
17 July 2024

