



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

**Case Reference** : **BIR/31UD/LBC/2024/0002**

**Property** : **24 Wallis Green, Hunters Close  
Thurcaston, LE7 7JS**

**Applicant** : **Longhurst Group Limited**

**Respondents** : **Personal Representative of Mabel Dawson**

**Type of Application** : **Application under S168(4) Commonhold  
And Leasehold Reform Act 2002 for a  
Determination that a breach of covenant  
in a lease has occurred**

**Tribunal** : **Tribunal Judge P. J. Ellis.  
Tribunal Member Mr G.S. Freckelton FRICS**

**Date of Hearing** : **15 August 2024**

**Date of Decision** : **4 September 2024**

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**DECISION**

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***A. The Respondent is in breach of obligations under the lease to pay the rent and service charges contrary to clause 2(1) and failed to use the premises as a single private residential dwelling house for occupation by a qualifying person contrary to clause 2(7).***

***B. The Applicant has done all that is reasonably required of it to bring these proceedings to the attention of the Respondent, but pursuant to Rule 6(2) Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, this Decision is suspended for a period of fourteen (days) from the date hereof pending service of the Decision upon the Respondent by email and by post at 7 Old Hall Close, Warsop, Nottinghamshire NG20 0QS as well 24 Wallis Green, Hunters Close Thurcaston LE7 7JS.***

### **Introduction and Background**

1. On 16 April 2024 the Applicant, Longhurst Group Limited, issued an application for an order that a breach of covenant or a condition in the lease had occurred pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 (the Act).
2. The Respondent is the personal representative of Mabel Dawson deceased, Elizabeth Dawson. The Respondent has taken no part in these proceedings.
3. The property, 24 Wallis Green is an end terrace single storey dwelling forming part of an estate of similar properties constructed in the late 1980s or early 1990s by the Applicant, a Registered Social Landlord. A lease of the property was made between Mabel Dawson and the Applicant on 5 November 1993.
4. On 16 November 2019 Mabel Dawson passed away, The Applicant produced a copy of her death certificate to the Tribunal. In or about May 2020 Elizabeth Dawson contacted the Applicant and stated she was the daughter and next of

kin of Mabel Dawson. Ms Dawson advised the Applicant she was in the process of applying for a Grant of Probate. By the time of the hearing the Applicant had not seen a Grant.

5. On 10 December 2021 the gas supply was capped because the Applicant had not had access to the property to carry out the yearly gas safety inspection. At that time the property was unoccupied. The gas has remained capped since then. The Applicant produced no access certificates dated 23 November 2022 and 13 September 2023 confirming the gas meter remained capped. However, service charges in respect of the property were paid throughout this period.
6. On 11 July 2023 the Applicant wrote to Ms Dawson by email asking for information about the proposed use of the property. On 1 September 2023 payment of service charges ceased. The direct debit was cancelled.
7. The Applicant took steps to ascertain whether the service charges would be paid. An employee of the Applicant visited the property and established it was unoccupied. Letters and emails were sent to Elizabeth Dawson at the address given as her address at 7 Old Hall Close, Warsop, Nottinghamshire NG20 0QS as well as to the property. Emails and letters were not returned to the Applicant. On 16 November 2023 the Applicant asked to see the Grant of Probate. On 10 January 2024 the Applicant wrote to Ms Dawson stating that action to recover possession of the property would be taken. On 13 February 2024 a further letter was sent notifying the Respondent of the commencement of these proceedings. On 28 March 2024 another employee of the Applicant made a further visit to the property to confirm it was still unoccupied.
8. There was no reply to any emails or letters from the Respondent. By 5 April 2024 the service charge account was in arrear of £1,741.00. The Applicant sent a copy of this application to the Respondent's address in Warsop. The Respondent has made no appearance in these proceedings.

## **The Statutory Framework**

9. This is an application pursuant to s168(4) Commonhold and Leasehold Reform Act which provides “A landlord under a long lease of a dwelling may make an application to the appropriate tribunal for a determination that a breach of a covenant or condition in the lease has occurred.
10. The Tribunal’s decision is preliminary to the application for an order of forfeiture of the lease by reason of breach of covenant or condition in the lease.

### **The Lease**

11. The relevant provisions of the lease are:

At 2 *“the Lessee hereby covenants with the Lessor as follows*

*(1) to pay the said yearly rent and the set annual service charge in accordance with the provisions of the 4th and 5th schedules hereto*

*(7) use the premises as a single private residential dwelling house occupied by a qualifying person or qualifying persons and for no other purpose*

*(8)(a) not at anytime during the term hereby granted to divide the possession of the demised premises by an assignment or underletting or parting with possession of or charging of part only or to underlet or share possession of the whole*

*(8)(d)(A) not to assign the whole of the lessee’s interest or any part thereof to any person who shall be under the age of 60 years at the date of such assignment unless at the date of such assignment the premises will be continuously occupied by a person or persons older than that age.*

At clause 3 there are covenants to maintain the structure of the premises (3a) and keep it in repair (3b)

Schedule four relates to yearly rent which is a peppercorn.

Schedule 5 prescribes the calculation of the annual service charge.

### **The Applicant's Submissions**

12. The Applicant submitted a statement by Susan Wells the Home Ownership Officer. It relied upon lessees covenants of the lease relating to use of the property (cl 2(7)), prohibition on parting with possession (cl 2(8(a) & (d)), prohibition on assignment or subletting (c 2(d)), as well as covenants to maintain and repair the property (cl3) in addition to the covenant to pay yearly rent and service charge (cl2(1)) in accordance with the Fourth and Fifth Schedules.
  
13. There had been efforts made to ascertain the intentions of Ms Dawson in relation to the property without success or any meaningful correspondence or communication. Throughout the period following the death of Mabel Dawson until the present the property has remained unoccupied. Eventually when the service charge account fell into arrear these proceedings were issued as necessary preliminary steps to forfeiture of the lease.
  
14. At the date of issue of these proceedings the service charges outstanding were £1,741.00.

### **Discussion and Decision**

15. The Tribunal attended Wallis Grove on the morning of the hearing with the Applicant's representative. It was apparent the property was unoccupied. The Tribunal spoke to an occupier of the neighbouring property who had seen the Tribunal viewing the external aspect of the property. The Tribunal learned from this discussion that the property had been empty and without visitors for over twelve months. Elizabeth Dawson who was known to the neighbour had not been seen for over twelve months. The neighbour believed Ms Dawson had placed furniture in the property from another apartment or property owned by her.
  
16. The Applicant presented evidence of its attempts to reach Ms Dawson being the only person with an interest in the property. Emails and correspondence were exhibited to the statement of Ms Wells. There was nothing to suggest the

Respondent had failed to receive them. It appears that after correspondence with the Respondent of 11 July 2023 asking for an update about the property that effectively the Respondent abandoned the Property. Payments of service charges ceased and significantly, the direct debit was cancelled.

17. The Tribunal was unable to make any findings of breaches of clauses 2(8)(a) &(d) relating to assignment or underletting, nor could it determine whether or not there had been a failure to maintain the structure of the bungalow pursuant to clause 3.
18. However, the Tribunal is satisfied and accordingly determines that the Respondent is in breach of obligations under the lease to pay the rent and service charges contrary to clause 2(1) and failure to use the premises as a single private residential dwelling house for occupation by a qualifying person contrary to clause 2(7).
19. Moreover, the Tribunal is satisfied the Applicant has done all that is reasonably required of it to bring these proceedings to the attention of the Respondent.

### **Appeal**

20. If either of the parties is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber) on a point of law. Any such application must be received within 28 days after these written reasons have been sent to them rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Tribunal Judge Peter Ellis