FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/12UE/LSC/2024/0030**
Property	**:**	**Abbotsley Country Homes** **Drewels Lane** **St Neots** **Cambridgeshire PE19 6XF**
Applicants	**:**	**Robert Charles Verdier (No. 10)** **Virginia Lynn Melesi (No.9)** **Paul Brennan (No.2)** **Laurence Antony Honeywill (No. 12)** **Carol Berwick (No.15)** **Valerie Anne Holliman (No. 22)**
Respondent	**:**	**Pheasantland Ltd**
Type of application	**:**	**Application for permission to appeal**
Tribunal member(s)	**:**	**Judge David Wyatt** **Judge A Arul** **Mr G F Smith MRICS FAAV REV**

DECISION REFUSING PERMISSION TO APPEAL

DECISION OF THE TRIBUNAL

1. The tribunal has considered the Respondent's request for permission to appeal and determines that:
   (a) it will not review its decision; and
   (b) permission is refused.

2. You may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made 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 make your further application for permission to appeal on-line using the Upper Tribunal's on-line document filing system, called CE-File. This will enable the Upper Tribunal to deal with it more efficiently and will enable you to follow the

progress of your application and submit any additional documents quickly and easily. Information about how to register to use CE-File can be found by going to this web address: https://www.judiciary.uk/wp-content/uploads/2023/09/20230927-PD-UT-Lands-Chamber-CE-File.pdf

4. Alternatively, you can submit your application for permission to appeal by email to: Lands@justice.gov.uk. The Upper Tribunal can also be contacted by post or by telephone at: Upper Tribunal (Lands Chamber), 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (Tel: 020 7612 9710).

REASONS FOR THE DECISION

5. On 25 July 2025, the tribunal made its substantive decision in these proceedings (the "**Decision**"). References below in square brackets are to those paragraphs in the Decision. On 21 August 2025, the Respondent (through a new representative, Glenn Stevenson, a solicitor) made an application for permission to appeal by letter attaching grounds of appeal.

6. On 1 September 2025, a letter dated 28 August 2025 arrived from Robert Verdier enclosing objections. Objections were also sent on behalf of the other Applicants by e-mail and referred to us. Beyond noting that the Applicants all oppose the application and object to new argument being raised on appeal, we have with respect disregarded these. We can make our decision without reference to these objections and it is not clear whether the Respondent might need the opportunity to respond to them.

7. The test for whether to grant permission to appeal is whether there is a realistic prospect of success. For the following reasons, we are not satisfied that the grounds of appeal have any realistic prospect of success.

Covenant for quiet enjoyment/costs of High Court proceedings

8. The grounds rely solely on paragraph (9) of the Fifth Schedule to the extent that it provides for the reasonable and proper expense incurred in carrying out the obligations in clause 6(i), which is the Respondent's covenant for quiet enjoyment.

9. The grounds seem to have been prepared by reference to a different underlease to that included in the bundles and referred to at the hearing, with slightly different clause references/wording. However, the relevant parts of the wording are substantially the same: "*6(i) The Lessee paying the Yearly Ground Rent … Service Charge [etc] … hereby reserved and performing and observing the several covenants on his part and the conditions herein contained shall peaceably hold and enjoy the Plot during the term hereby granted subject to the Estate 'Rules and Regulations' as issued from time to time without any interruption by the Lessor or any person or body rightfully claiming under or in trust for him.*"

10. Paragraphs [51] and [53] of the Decision may have been misread. We certainly did not decide "*that the costs in the High Court proceedings were incurred in complying with the covenant for quiet enjoyment*".

11. The grounds recognise, referring to Westminster (Duke) v Guild [1985] Q.B. 688, that a mere omission on the part of the landlord can only constitute breach of a covenant for quiet enjoyment if it is a breach of a positive legal duty owed to the tenant.

12. The grounds do not pursue the arguments made at the hearing. Instead, the grounds make a new argument, which seems to be that a duty to supply water from outside the Estate can be implied from:

    (a) the tenant's right to uninterrupted passage of water through, and the landlord's obligation to repair, the pipes (etc) in under or upon/passing through the Estate;

    (b) the tenant's obligation to pay for the costs of supply of water and electricity services; and

    (c) the obligation under the Superior Lease to indemnify the superior landlord for all costs in respect of the supply of water to the Estate (and a management charge of 10% if demanded).

13. The grounds do not make a cogent argument that these could be enough to create a positive obligation to take some steps in respect of supply of water from outside the Estate. However, we prefer not to express a view on that because this does not seem necessary, it was not argued at the hearing and it might be one of the many issues to be decided in the High Court proceedings (we do not know).

14. It seems sufficient to say that the grounds of appeal do not make an arguable case that these provisions could be enough to create a positive duty to defend the trespass and forfeiture proceedings brought by the superior landlord (even if the result of not defending part of them would be losing any right to the existing water supply with or without everything else). We say that particularly in view of the matters noted below.

15. In the usual way, this covenant for quiet enjoyment is confined to interruptions by the landlord or anyone rightfully claiming under the landlord (not the superior landlord).

16. It is well established that a claim against the landlord is not a claim under the landlord (Woodfall at 11.274) and such a covenant for quiet enjoyment does not import any positive obligation to stop others intruding "*much less an absolute obligation regardless of the practicalities*" (Woodfall at 11.286 and Brem v Murray & Anor [2022] EWHC 1479 (QB) at 26. In that case, where an intermediate landlord stood by while a superior landlord evicted a sub-tenant, the intermediate landlord was not liable for breach of the covenant for quiet enjoyment.

17. The service charge provision relied upon, paragraph (9) of the Fifth Schedule, provides for reasonable and proper expense incurred in carrying out the obligations in clause 6, which includes the covenant for quiet enjoyment at 6(i). The only reference in clause 6 to the superior landlord/lease is in clause 6(ix), which is the Respondent's covenant to pay the sums payable under and perform and observe the tenant's covenants and obligations contained in the Superior Lease. The only reference to enforcement is in clause 6(viii), which is the usual provision for enforcement against lessees of other plots if the sublessee so requires and provides an indemnity/security.

18. Similarly, as noted at [52], the categories of cost in the Fifth Schedule are rather limited and paragraph (8), providing specifically for costs/fees in relation to any proceedings between subtenants of plots, suggests the parties would have referred to costs of other proceedings if they had intended to include these in the service charge.

19. This leaves no room for an argument for a positive duty to defend the proceedings brought by the superior landlord (or that the costs of doing so are payable through the service charge).

Judge David Wyatt **18 September 2025**