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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

IN THE COUNTY COURT sitting at
10 Alfred Place, London WC1E 7LR

Case reference	:	**LON/00AP/LSC/2016/0351**
Court claim number	:	**C4AY3M63**
Property	:	**Flat 9, The Coliseum, 10 Salisbury Promenade, London N8 0RX**
Applicants/claimants	:	**(1) The Coliseum RTM Company Limited;** **(2) Magic Homes Limited**
Representative	:	**Mr Charles Sinclair of counsel, instructed by Bradys, solicitors**
Respondent/defendant	:	**Mr Rajesh Kumar Dhir**
Representative	:	**Mr David Sawtell of counsel, instructed by A J Angelo, solicitors**
Type of application	:	**Liability to pay service charges**
Tribunal members	:	**Judge Timothy Powell** **Mr Michael Mathews FRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of hearing	:	**8 May 2017**
Date of decision		**31 May 2017**

DECISION

Numbers in square brackets refer to pages in the hearing bundle

Decisions of the tribunal

The tribunal determines that:

(1) There should be no award of contractual costs under the lease;

(2) An award of costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules") should be made in the first applicant's favour in the sum of £750 plus VAT (i.e. £900 in total), payable by the respondent within 28 days of the date of this decision;

(3) There should be no award in respect of the respondent's rule 13 costs claim; and

(4) There should be no order under section 20C of the Landlord and Tenant Act 1985.

Reasons for the decisions

Background

1. The Coliseum is a building at 10-11 Salisbury Promenade, London N8 0RX ("the Building") comprising some 15 flats, all of which, it appears, are held on long leases. The first applicant (and claimant in the county court) is The Coliseum RTM Company Limited ("CRTM"), being a right to manage company that has taken over responsibility for the provision of services to the Building and the collection of service charges arising from the costs of those services. The second applicant (added later in the proceedings) is Magic Homes Limited ("Magic"), the freeholder of the Building.

2. The respondent (and defendant in the county court) is Mr Rajesh Kumar Dhir, who is the registered owner of the leasehold interest in the property known as Flat 9, The Coliseum, 10 Salisbury Promenade, London N8 0RX ("the Flat"). Mr Dhir was the original lessee of the flat, having acquired it in August 2004. Magic is his current landlord.

3. This matter began life as a claim by CRTM for unpaid service charges of £856.24, which, according to the statement of account for Flat 9 dated 17 May 2016, comprised two on-account demands of £428.12, invoiced on 19 June 2015 and 5 January 2016. Mr Dhir had not paid these advance charges, because he had an unresolved dispute about how the budget figures were calculated. While the papers showed a number of historic disputes about service charges, the statement of account also showed that Mr Dhir was up-to-date with his service charge payments, as at 29 September 2014.

4. The original proceedings were issued in the county court on 20 July 2016, under claim number C4AY3M63; and were transferred to the tribunal by District Judge Holmes sitting at the County Court at Edmonton, by order dated 26 September 2016. The tribunal issued directions on the papers, without a hearing, on 26 January 2017, and also fixing a hearing on Monday, 8 May 2017. The directions noted that the matter transferred included a counterclaim, which was a claim by Mr Dhir challenging some £1,170.28 of service charges and administration charges, charged in previous years. While no particulars were given, such a counterclaim, insofar as it related to the reasonableness and payability of such charges, fell squarely within the tribunal's jurisdiction.

5. In prior correspondence with the parties, the tribunal had suggested that it should deal with all of the issues that were before the county court (including the issues of contractual costs pursuant to the lease and statutory interest), under the tribunal's deployment of judges pilot, being run under the auspices of the Civil Justice Council (something which is possible by amendments to the County Court Act 1984, by which all tribunal judges were made judges of the county court; and vice versa). Although Mr Dhir was in favour, CRTM did not give its consent until much later.

6. The directions noted that CRTM sought to recover legal costs on a contractual basis through the forfeiture clause in the lease, but expressed doubt as to whether it could do so, not being a landlord seeking to forfeit the lease, nor having capacity itself, as an RTM company, to forfeit the lease.

7. As a result of these observations, Bradys solicitors, acting for CRTM, applied for the freeholder, Magic, to be joined as second applicant/ claimant. By further directions dated 24 March 2017, the tribunal, with the agreement of both parties, allocated the matter to the deployment of judges pilot, so that the eventual tribunal would determine all the issues raised by the parties in the claim number C4AY3M63, including the issue of contractual costs. Magic was then joined as second applicant to the proceedings and "the question of whether and, if so, to what extent, there can be cost recovery under the lease will be determined by the eventual tribunal hearing the case; and the parties should address this issue in their statements of case."

8. The parties then made use of the tribunal's mediation scheme and, on 26 April 2017, settled the service charge dispute "without any admission" and in order to reach "a commercial agreement", so that "the service charge arrears in these proceedings [are] no longer in issue" [229]. Although the underlying dispute had settled, it proved impossible to settle the question of legal costs, as they had then reached such a level as to dwarf the service charge claim. The matter therefore proceeded to the hearing already fixed on 8 May 2017, which dealt with

the applicants' application for legal costs on a contractual basis, alternatively under rule 13 of the Tribunal Procedure Rules. The applicants' application to the debar Mr Dhir from taking part in the proceedings (for his non-compliance with earlier directions) fell away, following settlement of the underlying dispute.

9. At the end of the hearing, Mr Dhir made his own application for costs under rule 13 and an application for an order under section 20C of the Landlord and Tenant Act 1985.

The hearing

10. At the hearing, the applicants were represented by Mr Charles Sinclair of counsel, supported by Mr Cooke as representative of the management company. Mr Dhir was represented by Mr David Sawtell of counsel, but also appeared in person.

11. The tribunal had the benefit of two lever arch files of documents, which constituted the hearing bundle prepared by Bradys solicitors. These contained a "Skeleton Argument for Costs on behalf of the Applicants" [484-490], a detailed witness of Lydia Potter, a solicitor employed by Bradys [228-242] and numerous other documents in support. There was also a costs schedule [597-601], which totalled some £13,582.60, including VAT and disbursements.

12. Mr Sawtell provided the tribunal with a "Respondent's Note for Hearing", opposing both limbs of the applicants' claim for costs.

13. Through Mr Sawtell, Mr Dhir complained about the very late service of the bundles of documents. Although the tribunal had directed these to be served by Tuesday, 2 May 2017 (in the event that mediation did not resolve all outstanding issues), the bundles were not received by Mr Dhir's solicitors until Friday, 5 May; and not by Mr Sawtell himself until a copy was delivered to his home address at 8.15pm that day. Although Mr Sawtell's preparation for the hearing was somewhat hampered by the late arrival of the bundles and although Mr Sinclair, on behalf of the applicants, complained that Mr Dhir's rule 13 application and application for an order under section 20C had only been made at the hearing itself, both counsel confirmed to the tribunal that they wished for the matter to proceed without an adjournment, so that all issues could be resolved, once and for all.

The applicants' claim for costs

14. The sole basis on which the applicants sought payment of their legal costs on a contractual basis related to the landlord's ability to recover its costs of preparing and serving a notice under sections 146 and 147 of the Law of Property Act 1925, preparatory to forfeiture of the lease.

This was confirmed by the Particulars of Claim [50-51], the witness statement of the applicants' solicitor Lydia Potter [228, 230-231, 236-237], the applicants' skeleton argument [484-490] and counsel at the hearing.

15. Clause 3(17) of the lease [20-21] is the lessee's covenants to pay his share of the landlord's total expenditure. By clause 6(1) of the lease [27-28], the landlord was permitted re-enter the demised premises if any covenant on the lessee's part was not performed or observed.

16. By clause 3(12) of the lease [19], the lessee covenanted:

> "To pay all proper expenses including Solicitors costs and Surveyors fees incurred by the Landlord of and incidental to the preparation and service of a notice under sections 146 and 147 of the Law of Property Act 1925 (or any other notice hereunder) notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court."

17. The applicants relied upon the Court of Appeal decision in *Chaplair Ltd v Kumari* [2015] EWCA Civ 798 to say that a lessor can recover contractual costs under such a clause, which is not limited either by the provisions limiting costs on the small claims track in the county court, or by the "no costs" nature of the tribunal's jurisdiction.

18. Thereafter, relying upon *Gomba Holdings (UK) Ltd v Minories Finance Ltd (2)* [1993] Ch 171 and also upon *Church Commissioners v Ibrahim* [1997] EGLR 13, it was submitted that where parties under a contract had prescribed a method of taxation, the court should respect that unless there was a good reason not to do so. It followed that the tribunal was invited to assess the amount of costs in this case on the indemnity basis, relying upon CPR rules 44.3(1)(b), 44.3(3) and 44.5.

19. Before forfeiture may be considered by the landlord, it was submitted that an application had to be made to the tribunal, in accordance with section 81 of the Housing Act 1996, for a determination of the amount of service charge payable, but that following the Court of Appeal decision in the case of *Freeholders of 69 Marina, St Leonards-on-Sea v Oram and Others* [2011] EWCA Civ 1258, such an application was necessary pre-condition to the exercise of a right of forfeiture and the costs involved therefore fell within the standard section 146 charging clause.

20. At the hearing, the tribunal raised several concerns with Mr Sinclair as to whether either of the applicants in the present case could claim contractual costs under clause 3(12) of the lease; and, for the reasons given below, the tribunal is driven to the conclusion that neither applicant/claimant is able to do so.

The position of CRTM

21. Following its acquisition of the right to manage from the freeholder, CRTM took over all the "management functions" which the landlord had under the lease of the premises, which then became instead functions of the RTM company: see section 96(2) of the Commonhold and Leasehold Reform, Act 2002 ("CLRA"). Those management functions are "functions with respect to services, repairs, maintenance, improvements, insurance and management": see section 96(5).

22. It follows, therefore, that the CRTM has sole responsibility for providing services to leaseholders under the lease; and sole responsibility for recovering service charges in respect of the costs of providing those services. The freeholder, Magic, no longer has any function in relation to these matters.

23. In order to recover costs under clause 3(12), the party concerned must have contemplated or intended serving a notice under section 146 of the 1925 Act. As Martin Rodger QC, Deputy President, stated in *Barrett v Robinson* [2014] UKUT 322 (LC), at paragraph 52:

> "Costs will only be incurred in contemplation of proceedings, or the service of a notice under section 146, if, at the time the expenditure is incurred, the landlord has such proceedings or notice in mind as part of the reason for the expenditure. A landlord which does not *in fact* contemplate the service of a statutory notice when expenditure is incurred, will not be able to rely on a clause such as clause 4(14) as providing a contractual right to recover its costs."

24. In the present instance, the CRTM cannot have had any contemplation or intention to serve a section 146 notice because, by statute, the management functions transferred to it by section 96 of CLRA do not apply in relation to "functions relating to re-entry or forfeiture": see section 96(6)(b) and section 100(3).

25. Simply put, an RTM company has no ability to forfeit a lease and acquires no functions at all relating to re-entry or forfeiture. Those matters are reserved to the original landlord. That is made even clearer by the statutory duty on the RTM company to report to any person who is landlord under a lease any failure to comply with any tenant covenant of the lease: see section 101(2)(b). But, even than, the RTM company need not report a failure to comply with a tenant covenant, if the failure has been remedied: see section 101(4)(a).

26. Even if an RTM company had some function in relation to forfeiture and re-entry, at least to the extent of obtaining a determination of service charges under section 81 of the Housing Act 1996, it still could not claim costs under clause 3(12) of the lease, because that clause is

limited to the costs and fees "incurred by the landlord", rather than by the RTM company.

27. The question arises, then, whether Bradys solicitors were acting for both the RTM company and the landlord during the proceedings. There is no evidence of their doing so, at any time before the tribunal's directions of 24 January 2017, when the question as to the recovery of contractual costs was first raised. Prior to the proceedings all of the correspondence sent to Mr Dhir was on behalf of CRTM. The particulars of claim themselves [49-52] are not only drafted on behalf of CRTM alone, as claimant, but they also draw a distinction between "the landlord and the claimant", for example in paragraphs 6 and 7 [50].

28. The inability of an RTM company such as CRTM to claim section 146 costs may appear to be a lacuna in the law. However, the most likely explanation for this inability is that an RTM company only acquires management functions under the 2002 Act and is not intended to acquire any proprietary rights. Another reason may be to prevent the potential abuse (not suggested in this case) of one group of leaseholders in an RTM company seeking to oust their neighbours through forfeiture. Whatever the reason, in our judgment, the wording of the statute is clear and it prevents the recovery of costs by CRTM through clause 3(12) of this lease.

The position of Magic

29. It follows from the above that the landlord, Magic, has no standing in the proceedings. All of the service charge obligations under the lease are now in the hands of CRTM, including the right and duty to enforce such obligations, except for taking steps to re-enter and forfeit the lease. In our judgment, the landlord has no interest in any proceedings relating to the non-payment of service charges, until such time as a determination is made under section 81 of the Housing Act 1996; whereupon, if the breach is not remedied (by payment of the arrears), the landlord may then exercise its right to serve a section 146 notice under the lease.

30. The landlord does not even need to be a party to the proceedings under section 81 of the 1996 Act, since this section merely limits a landlord's exercise of a right of re-entry or forfeiture for failure by a tenant to pay a service charge or administration charge unless "(a) it is finally determined by (or on appeal from) the appropriate tribunal or by a court ... that the amount of the service charge or administration charge is payable by him, or (b) the tenant has admitted that it so payable." Therefore, on the wording of section 81, once CRTM has obtained the tribunal's determination, the landlord can make use of it.

31. It follows from this that the landlord/freeholder can have no fees and expenses *itself* in relation to the court proceedings or tribunal proceedings seeking such determination; it is purely a matter for CRTM. Since there are no costs and fees "incurred by the landlord" there is nothing for the landlord - Magic - to claim as against the tenant under clause 3(12) of the lease.

Was forfeiture in fact contemplated?

32. In any event, in the tribunal's judgment, it is fanciful to suppose that either applicant genuinely contemplated forfeiture of the lease, bearing in mind the very modest amount in dispute, the previous good payment record of the respondent tenant (between 2004 and 2014) and the not very long-lived, but nonetheless live, dispute about the disclosure of documents requested by him.

33. The only reason mentioned for the landlord to join the proceedings as second applicant was to enable there to be a recovery of contractual costs under clause 3(12) of the lease. The tribunal therefore joined Magic to the proceedings, so that all issues could be determined as to whether and, if so, to what extent contractual costs may be recovered under the lease. As Mr Sawtell put it, there was no "colourable intention" to forfeit.

34. The tribunal therefore comes to the conclusion that neither applicant *in fact* contemplated forfeiture of the lease for these arrears; and this is another reason why neither can recover contractual costs against the respondent through clause 3(12) of the lease.

The applicants' rule 13 costs claim

35. Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chambers) Rules 2013 states:

> "**13.**—(1) The Tribunal may make an order in respect of costs only—
> (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
> (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
> (i) an agricultural land and drainage case,
> (ii) a residential property case, or
> (iii) a leasehold case; or
> (c) in a land registration case."

36. Relying upon the three-stage process set out in the *Willow Court Management Company [1985] Ltd v Mrs Ratner Alexander*, and associated appeals, [2016] UKUT 0290 (LC), the applicants sought to claim costs against Mr Dhir, under rule 13(1)(b) of the 2013 Rules, for

having acted unreasonably in defending or conducting the proceedings. Detailed grounds for the application appear in the witness statement of Lydia Potter [237-242], which, in essence, relate to the repeated failure by Mr Dhir, when represented by solicitors, to comply with the tribunal's directions.

Stage one

37. Having considered the stage one test in *Willow Court*, the tribunal is satisfied that Mr Dhir did act unreasonably in defending and conducting the proceedings. The conduct which the tribunal finds unreasonable is the accumulation of the following:

(i) Mr Dhir failed to comply with the tribunal's directions dated 26 January 2017, in which he was required by 27 February 2017 to file and serve: a schedule of the items in dispute (in the format of a schedule attached to the directions); copies of alternative quotes or other documents upon which he sought to rely; a statement setting out the relevant service charge provisions in the lease and any legal submissions in support of his challenge to the service charges; and any signed witness statements of fact;

(ii) As a result of complaints about Mr Dhir's failure to comply with directions, the tribunal issued further directions on 24 March 2017, which provided him with further time to comply with the original directions, i.e. by no later than 5 April 2017. Instead of doing so, Mr Dhir's solicitors claimed that a letter of 12 December 2016 constituted compliance with the directions of the 26 January 2017 - which it patently did not;

(iii) Following further complaints, the tribunal had cause to write to Mr Dhir's solicitors on 11 April 2017, requesting them to provide an explanation as to why they had not complied with further directions, what remedial action they proposed to take to remedy the breach and why Mr Dhir should not be barred from taking further part in the proceedings;

(iv) On 12 April 2017, Mr Dhir's solicitors filed a witness statement citing "work commitments" as his reasons for non-compliance. Once again, he maintained that his solicitor's letter of 12 December 2016 was sufficient compliance with the tribunal's directions;

(v) The tribunal replied to Mr Dhir's solicitors by letter dated 19 April 2017, stating that:

> "The tribunal judge has considered your letter of 12 April 2017 and enclosures. He notes that your client Mr. Dhir is still in breach of directions by failing to submit his disputes in schedule format. He will allow mediation to go ahead on 26 April, but will deal with the application to debar Mr. Dhir

immediately thereafter (unless the case settles in the meantime). The format of listing disputes in an unfocussed way in the letter of 12 December 2016 is unacceptable."

(vi) When, on 20 April 2017, Mr Dhir's solicitors finally complied with the directions, it was merely by lifting text from the letter of 12 December 2016 into a schedule, but they did not comply with any of the other requirements of the original directions.

38. Cumulatively, the tribunal is satisfied that Mr Dhir, through his solicitors, wilfully failed to comply with directions and wilfully ignored opportunities and extensions of time to enable him to comply. As a result, he created work for both the applicants and the tribunal dealing with his non-compliance. The purpose of a schedule, and the proper particularisation of the issues in dispute, is to facilitate not only the eventual determination by the tribunal, but also, if at all possible, to encourage the earlier settlement of the dispute by the parties. Mr Dhir's actions constituted an obstacle to these aims and it was only on the point of a threat of his being debarred, that he finally co-operated; and then only in part.

Stage two

39. Having satisfied itself that there was unreasonable conduct, the tribunal decides that it will make an order for costs against Mr Dhir under stage two of the *Willow Court* procedure. This is on the basis that the wilful obstruction by Mr Dhir caused extra work and expense to the applicants and to the tribunal and, in the tribunal's judgment, most likely extended the dispute longer than it needed to have lasted.

Stage three

40. Stage three of the *Willow Court* procedure is to determine the amount of the costs that Mr Dhir should pay. While there was some material in the Mr Dhir's solicitor's letter of 12 December 2016 that outlined his disputes with the service charges, given that the tribunal had made the directions requiring him to properly particularise and substantiate these challenges, there is no reasonable explanation for his failing to do so; and particularly not after March 2017, when the applicants responded to the points in that letter.

41. Once a tribunal has decided to make an order of costs under rule 13, it is not constrained by the need to establish a causal link between any additional costs that have been incurred and the behaviour to be sanctioned: see paragraphs 40 and 41 of *Willow Court*. However, in the present case, the tribunal considers that it is appropriate to make a link between the extra costs likely to have been incurred by Mr Dhir's unreasonable conduct and the costs that ought to be awarded under rule 13.

42. Given that Mr Dhir's unreasonable conduct delayed the resolution of this matter and caused extra costs to be incurred by the applicants, the tribunal considers that £750 plus VAT (i.e. £900 in total) is an appropriate award of costs, for Mr Dhir to pay to The Coliseum RTM Company Limited, within 28 days of the date of this decision.

Mr Dhir's rule 13 costs claim

43. The tribunal did not consider that the decision to bring proceedings in this case amounted to "unreasonable conduct" on the part of CRTM; nor was the company's delay in responding to the letter of 12 December 2016 unreasonable, for the following reasons.

44. At the point of issue of the proceedings in July 2016, half of the advance service charges were already more than a year old. There had been a considerable amount of correspondence between the parties, and CRTM had provided a considerable number of documents, prior to issue. Although the amounts concerned were modest, the tribunal accepts that, in the face of continuing non-payment by Mr Dhir, the time had come when the RTM company was justified in bringing a small claim to recover the sums owed.

45. Some of the issues raised in the letter of 12 December 2016 were new and it took time for the applicants to obtain the information sought. These were issues that Mr Dhir could and should have raised earlier. The response by the applicants in March 2017 may have been a bit slow, but it was not "unreasonable", especially where the parties were working towards a hearing date and where the applicants had a legitimate expectation that Mr Dhir would comply with the tribunal's directions to amplify and particularise his case.

46. Not having found unreasonable conduct on the part of the applicants, the tribunal therefore declines to make a rule 13 costs order in favour of Mr Dhir.

Application under 20C

47. By Clause 3(17) of the lease, the tenant covenants to pay his share of the landlord's total expenditure, which is defined in paragraph 1(i) of the Third Schedule as being "all reasonable and proper costs and expenses whatsoever incurred by the Landlord in any accounting period in carrying out its obligations under Clause 4 and Clause 5 of this Lease..."

48. Clause 4 of the lease contains the landlord's covenants with the lessee, for example, to repair and maintain and to insure the Building, including, by clause 4(g) [25]:

> "The Landlord will itself or alternatively (at its discretion) employ a firm of Managing Agents:

(i) To manage The Building and will discharge all proper fees salaries charges and expenses payable to itself or to such agent or such other person who may be managing the Building including the cost of computing and collecting the rents and service charge and undertaking the obligations of the Landlord under the terms of this Lease and all ancillary costs in connection therewith.

(ii) To employ all such surveyors builder architects engineers tradesmen accountants solicitors or other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the Building."

49. This clause appears wide enough enable the landlord, and now CRTM, to recover its expenses of enforcing covenants under the lease, including the payment of service charges, through the service charge.

50. Mr Dhir claimed it would be "unfair" if the landlord's and/or CRTM's costs were to be passed through the service charge. However, at the end of the day, the proceedings had been brought about by his own non-payment of service charge demands; and, had he wished to avoid the risk of proceedings and the costs associated with them, it would have been open to him to pay those service charges, under the protest, and then to challenge them separately before the First-tier Tribunal.

51. Although Mr Dhir said there was no evidence that CRTM was "impoverished", the tribunal does not require such evidence. This is an RTM company with no obvious income of its own. Any surplus of service charges recovered is held in reserve against future charges, on behalf of the leaseholders and subject to the usual statutory trust. These are not monies available to CRTM to fund litigation.

52. When considering whether or not to make an order under section 20C of the 1985 Act, the tribunal is bound to take into account "what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make": per Martin Rodger QC, Deputy President, in paragraph 75 of the Upper Tribunal decision in *Conway v Jam Factory Freehold Limited* [2013] UKUT 0592 (LC). In the present case, to prevent the recovery of service charges would have a potentially serious adverse affect on CRTM.

53. The tribunal therefore declines to make an order under section 20C.

Name: Timothy Powell **Date:** 31 May 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) or to a Circuit Judge at the County Court, as appropriate, then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber), or to the County Court, as appropriate.