



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

Case Reference : **MAN/30UF/LAC/2021/0004**

Property : **18 Holly Wood Way, Blackpool, FY4 5FQ**

Applicant : **Ms Bonnie Whiteside and Mr Samuel Bury**

Respondent : **Whitehill Meadow Management Company Limited**
Represented by **Residential Management Solutions Limited**

Type of Application : **Administration Charges, Commonhold and Leasehold Reform Act 2002, Paragraph 5 and 5A of schedule 11 and section 20C of the Landlord and Tenant Act 1985.**

Tribunal Members : **Judge C. P. Tonge, LLB, BA.
Mr A. Hossain, BSc, MRICS.**

Date of Decision : **10 January 2022**

Date of Determination : **14 January 2022**

DECISION

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Application and background

1. This case comes before the Tribunal by means of an application dated 15 March 2021. Ms Bonnie Whiteside and Mr Samuel Bury, “the Applicants” challenge one administration charge of £165 relating to the parking of their goods vehicle on the street in Holly Wood Way, Blackpool.
2. “The Respondent”, Whitehill Meadow Management Company Limited is the management company and is a party to the lease, represented by their management agents, Residential Management Solutions Limited.
3. The Applicants hold “the property”, 18 Holly Wood Way, Blackpool, FY4 5FQ, on the remainder of a 999 year lease that commenced on 17 December 2013.
4. Judge Bennett held a Case Management Hearing on 28 October 2021 via a video platform and Directed the Parties to submit position statements to the Tribunal, within 7 days. The Parties complied with this Direction.
5. On 6 December 2021, Judge Bennett issued further Directions.
6. The Applicants’ have served a copy of the letter notifying them that the administration charge had been charged to their account “the letter of 12 March 2021”, a copy of the lease, a position statement and a bundle of evidence. The Respondent has served a position statement and a response to the Directions of 6 December 2021.
7. It is clear that no inspection of the street involved in this case is required.
8. Neither party requested a hearing. The Tribunal arranged for the issues in the case to be determined on 10 January 2022, by means of this Tribunal considering the written evidence in the case.

The law

The Commonhold and Leasehold Reform Act 2002

SCHEDULE 11

ADMINISTRATION CHARGES

PART 1

Meaning of "administration charge"

Paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Paragraph 4

(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

(2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

(4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

Relevant Provisions of the lease

9. This lease is a development lease, the landlord Redrow Homes Limited (who plays no part in this case) was to develop an area of land that contains the property and the road on which the property has been built, Holly Wood Way, Blackpool, this road being an estate road. There are provisions that permit service charges and administration charges to be charged.
10. The lease has a definitions section in clause 2. Common parts do not include areas that become adopted.
11. Estate roads include roads that are intended to become adopted.
12. Shared access areas do not include areas that are intended to become a public highway.
13. The first schedule grants the Applicants a right of way over estate roads, until they become maintainable at public expense.
14. The third schedule contains covenants that are binding upon the Applicants. Paragraph 15 requires the Applicants not to do anything likely to prejudice or hinder the adoption of any estate road. Paragraph 9 (b) is the operative paragraph in relation to this issue relating to parking and it reads as follows, “Not to park any commercial vehicle exceeding 1000 Kg GVW on the Property or on any part of the estate road (including any unadopted estate roads).
15. It is clear that it was the intention of all parties to this lease that the estate roads would be adopted by the local Highways Authority. Holly Wood Way was adopted by the Highways Authority in 2013 and as of that happening the Respondent could not enforce this parking restriction in relation to vehicles parked on the public highway. Parking restrictions then became the responsibility of the Highways Authority.

The Deliberations

16. The Respondent’s letter of 12 March 2021 is entitled ‘letter of claim’ and refers to the Applicants parking a commercial vehicle on Holly Wood Way in breach of the covenant not to do so, contained in the lease at schedule three, paragraph 9 (b). Earlier correspondence is referred to between the management agent and the Applicants. The letter states that the commercial vehicle was seen to be parked on the ‘estate road’ of Holly Wood Way during the night of 11 March 2021. The letter informs the Applicants that the Respondent has charged their account with a payment of £165 that will attach to the property.

The Tribunal determines that this is notification that the Applicants' have been charged an administration charge of £165, whilst it is clear that there has been no demand for payment that complies with paragraph 4 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

17. The Respondent makes it clear in this letter that it accepts that Holly Wood Way has been adopted by the local Highways Authority.
18. The Respondent's statement of position, dated 29 October 2021 states that the Respondents, "...do not consider it to be proportionate to pursue the administration charge of £165". Further, the Respondent indicates that he now understands that the application will be struck out.
19. In light of this statement from the Respondent, the Tribunal contacted the Applicants to ask if they wished to withdraw their application. The Applicants' indicated that they did not wish to withdraw their application since they are of the opinion that the administration charge could not be charged and that the Respondent's position statement indicates that the Respondent does not share that view. The Applicant's therefore seek a determination that the Respondent is not able to charge an administration charge in these circumstances.
20. The Tribunal agrees with the Applicants that the Respondent is indicating that it is perfectly proper for them to attempt to control parking of commercial vehicles on the roadway of Holly Wood Way, despite the fact that it is clear that the lease does not permit this to happen. As a result the Tribunal determines that it would not be fair or just to strike out the Applicants' case as that might wrongly be seen as the Tribunal agreeing with the Respondent's actions in this case. It is a matter of importance to all users of Holly Wood Way that the Tribunal make it clear that it is now for the Highways Authority to control parking on this public highway and not a matter for the Respondent. The Tribunal relies upon its overriding objective to be fair and just, rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
21. The Tribunal notes the Respondent's Response to Directions Dated 6 December 2021, paragraph 1, in which the Respondent seeks to advance the submission that their letter of 12 March 2021 was only indicative of an intention to charge an administration charge, which was not charged. The Tribunal does not accept that submission. The Tribunal accepts that some parts of the letter refer to an action for injunctive relief, to take place in the future. However, the Tribunal determines that the letter also indicates that a charge had been charged to the Applicants' account, being an administration charge of

£165, although that charge had not been demanded in the prescribed manner pursuant to paragraph 4 of schedule 11 of the Commonhold and Leasehold Reform Act 2002.

22. The Tribunal notes that Applicants rely upon letters from the Highways Authority confirming that Holly Wood Way was adopted on 20 June 2013 as a public highway and state that the lease, schedule three, paragraph 9 (b) does not apply to vehicles parked on that highway.

23. The Applicants request orders pursuant to section 20C of the Landlord and Tenant Act 1985 and the Commonhold and Leasehold Reform Act 2002, paragraph 5A of schedule 11, restricting the landlord in charging the costs of these proceedings against the Applicants as part of a service charge or as an administration charge. The Tribunal notes that the Respondent has sought to charge an administration charge pursuant to a breach of covenant that did not take place and could not take place under the terms of the lease. Further, the Tribunal notes that in the letter of 12 March 2021, indicating that an administration charge had been charged, the Respondent makes it clear that it is aware that Holly Wood Way has been adopted by the Highways Authority. As such the Tribunal considers it to be fair, just, reasonable and equitable to make these orders.

Decision

24. The Tribunal decides that the administration charge of £165 is not payable by the Applicants as they were not in breach of covenant 9 (b) as detailed in the lease, schedule 3.

25. The Tribunal decides that it is just and equitable to order that the landlord shall not take any costs with regard to these proceedings into account when determining the service charges payable by the Applicants, pursuant to section 20c of the Landlord and Tenant Act 1985.

26. The Tribunal decides that it is fair and just to order that the landlord shall not charge any litigation costs in relation to these proceedings as an administration charge against the Applicants, pursuant to the Commonhold and Leasehold Reform Act 2002, paragraph 5A of schedule 11.

27. Appeal against this Decision is to the Upper Tribunal. Should either party wish to appeal against this Decision they must do so within 28 days of the Decision being sent to the Parties, by delivering to this First-tier Tribunal's office an application asking for permission to

appeal, stating the grounds for the appeal, particulars of the appeal, the paragraphs of the Decision that are challenged and the result that the appellant seeks as a result of making the appeal.

Judge Tonge
10 January 2022

Date this Decision sent to the Parties 14 January 2022.