



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

Case Reference : **CHI/00HN/LBC/2016/0026**

Property : **Flat 6 and Garage 6, Staunton House,
5 Exeter Park Road, Bournemouth,
BH2 5BA**

Applicant : **Staunton Management Limited**

Representative : **Bonallack & Bishop, Solicitors**

Respondent : **Mr Stanley Reeves and Mrs Deborah
Reeves**

Representative : **Coles Miller Solicitors LLP**

Type of Application : **Covenants compliance : Section
168(4) Commonhold and Leasehold
Reform Act 2002 ("the 2002 Act")**

Tribunal Members : **Judge P R Boardman (Chairman) and
Mr P Turner-Powell FRICS**

**Date and venue of
Hearing** : **Decided on the papers**

Date of Decision : **11 January 2017**

DECISION

Introduction

1. This application, dated 11 October 2016, is for an order that a breach of covenant has occurred, because the Applicants allege that the Respondents have :
 - a. let the Property as a holiday let
 - b. left two vehicles on the estate forecourt causing an obstruction and nuisance to other residents of the estate
 - c. used their garage as part of their business

2. The application states that the Respondents are in breach of the following covenants of their lease dated 5 June 1987 :
 - a. clause 5(b)(xii) : not to assign underlet or part with possession of part only of the Property
 - b. clause 5(b)(xv)(1) : not to do or suffer to be done on the Property anything which shall be or grow to be an annoyance to the estate lessees and the owners or occupiers of any property on the estate
 - c. clause 5(b)(xv)(2)(ii) : not to leave any motor vehicle on any part of the estate so as to cause an obstruction or a nuisance to any other tenant or occupier
 - d. clause 5(b)(xvi)(1) : not to use the Property for any purposes save that of a private residence for a single household in the occupation of one family
 - e. clause 5(b)(xvi)(2) : not to use the garage save for the garaging of a single motor car only
 - f. clause 5(b)(xx) : at all times hereafter to perform and observe the covenants restrictions and stipulations set forth in the fifth schedule, and, in particular :
 - 1(a) : not to cause congestion or obstruct permit or suffer to be obstructed by vehicles machines implement deposit or materials or otherwise whatsoever any footpath on the estate the forecourts any driveways of the estate or the community areas
 - 5 : not to take in lodgers to the Property
 - 6 : not to use the Property or any part thereof for any trade or business or profession nor for any illegal or immoral purposes

3. The Tribunal has decided the application on the papers before it, without an oral hearing, pursuant to rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”), and the Tribunal’s directions dated 14 October 2016, no party having requested a hearing in the meantime

Documents

4. The documents before the Tribunal are in a bundle paginated from 1 to 172. References in this decision to page numbers are to page numbers in the bundle unless the context otherwise requires

Respondent's Response 25 November 2016

5. The Respondents admitted a historic breach of clause 5(b)(xvi)(1) of the lease, but confirmed that they had refrained, and would continue to refrain, from using the Property as a holiday let
6. The Respondents also admitted a historic breach of clause 5(b)(xvi)(1) of the lease, but confirmed that they had refrained, and would continue to refrain from, using their garage for commercial storage as part of their business. The Respondents understood that the Applicant's application did not include an application for a determination that a breach of covenant had occurred concerning a general use of the garage for storage, other than storage for commercial purposes. All other leaseholders within the development used their garages for storage, outside the remit of clause 5(b)(xvi)(2) of the lease
7. In relation to the use of the forecourt area for parking, other provisions of the lease on which the Respondents relied included the following :
 - a. recital (1)(vi) : "the Estate" means the land at Staunton House shown on the plan and edged with a red line
 - b. recital (1)(xi) : "the Community Areas" means the land shown pink on the site plan other than and excluding garages and the parts shown yellow
 - c. recital (1)(xiii) : "the Forecourts" means the areas shown on the plan edged yellow hatched black leading from the main road to the garages shown on the site plan
 - d. clause 5(xv)(2)(i) : not habitually to park any motor vehicle on any part of the estate except in the garage comprised within the Property
 - e. clause 5(xvii)(5) : not to drive or ride any vehicle on the community areas of the forecourt other than on the forecourt only and than only for the purpose of access to and egress from the garage
 - f. clause 7 : the landlord covenants with the tenant (i) that every lease of a dwelling on the estate granted by the landlord shall contain a covenant by the tenant substantially in the terms of clauses 2 and 5 of this lease and (ii) that the landlord will at the written request of the tenant enforce by all reasonable and proper means available to the landlord the covenants entered into by any tenant in the terms of clauses 2 and 5 of this lease
 - g. third schedule paragraph 1 : the right of way with or without vehicles over that part of the forecourts serving the garage
 - h. third schedule paragraph 2 : the right of way on foot only over and

along (a) the footpaths steps and accessways on the estate

- i. fifth schedule paragraph 15 : not to park any caravan house on wheels trailer boat or other similar vehicle or craft on the estate
 - j. fifth schedule paragraph 17 : to perform and observe such rules and regulations as the landlord may from time to time make
8. Mr Reeves's statement referred to the fact that isolated incidents referred to in the current witness statements before the Tribunal excluded further isolated incidents whereby other leaseholders had obstructed the parking area. Dr Salib had blocked in Mr Reeves's car for a week
9. The Respondents believed that their use of the forecourt was no different from that of the other leaseholders within the estate, and were concerned by, and objected to, the Applicant's approach and consistency toward actioning conduct amounting to breaches of covenant by other leaseholders
10. Mr Reeves's statement made it clear that :
- a. parking spaces within the estate were not allocated and all leaseholders used the forecourt for parking numerous cars
 - b. all other leaseholders were using the forecourt in the same way
 - c. the Respondents had moved their cars several times, and, in that sense, their "conduct" might be capable of description in a similar category to that of all other leaseholders within the estate
 - d. the Respondents had removed their cars from the forecourt and would refrain from using the forecourt for parking until the Tribunal made a determination
 - e. immediately they had removed their cars from the forecourt other leaseholders had placed their cars in exactly the same spaces
 - f. there was no regulation about the use of the forecourt, notwithstanding the Applicant's ability under paragraph 17 of the fifth schedule to the lease
 - g. the historic positioning of the Respondents' cars had not obstructed any other leaseholders from accessing their garages or any other part of the estate, even with larger items such as Mr Lester's RIB on a trailer
11. The facts were not sufficient to illustrate any nuisance or obstruction, as the cars had not physically obstructed any other leaseholder accessing their demised premises or any other part of the estate, save for the space where the car was parked. The cars had been kept within the same area used by the other leaseholders to park their cars, albeit for longer periods of time, which the Applicants had failed to demonstrate by itself amounted to an obstruction and/or nuisance
12. The Applicant had varied the covenants of the lease by its conduct, as the cars had been kept within the same area used by other leaseholders to park their cars, and the Applicant had accepted that position and had not

actioned, and continued not to action, any such conduct against any other leaseholder

13. The Applicant was estopped from bringing such an action against the Respondents, as the cars had been kept within the same area used by other leaseholders to park their cars, the Applicant had accepted that position, and the Applicant had not actioned, and continued not to action, any such conduct against any other leaseholder within the estate, notwithstanding clause 7 of the lease and the Respondent's persistent requests evidenced by Mr Reeves's statement
14. The estoppel relied on did not need to be described. The Respondents referred to **Taylor Fashions Limited v Liverpool Victoria Trustees Co Limited** [1981] 2 WLR 576, where Oliver LJ explained that a wider approach should be directed at ascertaining whether, in particular individual circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly or unknowingly, he had allowed or encouraged another to assume to his detriment. The Applicant's conduct was unconscionable and inequitable. The Applicant, formed of the leaseholders, was allowing conduct of a similar nature, and other conduct in breach of covenant, to continue without implication, whereas commencing these proceedings was presumably part of an overall scheme to forfeit the Respondents' lease

Applicant's reply to Respondent's response 16 December 2016

15. The Applicant stated that the Applicant had asked the Tribunal to determine whether the Respondents had left the two vehicles on the forecourt, and whether doing so had caused an obstruction and/or nuisance
16. The two vehicles had been parked in the same position, without being moved, for well over a year, and four owners had provided witness statements that this had caused both an obstruction and a nuisance
17. The Applicant had considerable CCTV footage recording the position of the two vehicles twenty-four hours a day from January 2015 to 20 November 2016, when the two vehicles were removed from the forecourt, showing that they had never moved during that time. Sample images from the CCTV footage were in the bundle (pages 159 to 172)
18. If the Respondents had thought that the two vehicles were not causing an obstruction, they would not have removed them. The Applicant believed that the Respondents had removed them only in preparation for the Tribunal's visit, and that they had every intention of returning them after that visit
19. Mr Reeves claimed to use both vehicles when in the Bournemouth area. There was evidence that one vehicle was untaxed from March to August

2016 and had no MOT test certificate from March to June 2016, and that the other vehicle was untaxed from December 2015 to August 2016 and had no MOT test certificate from March to August 2016

20. The Respondents lived in Manchester, and, when in Bournemouth, Mr Reeves drove a red Mercedes, registration 1 SSR, and Mrs Reeves drove a silver 4 x 4 Mercedes, registration 70 DR, as evidenced by the CCTV footage

Statement by Dean Grant Ashbee 31 October 2016

21. Mr Ashbee stated that he was a director of the Applicant and a resident and leaseholder of Flat 3 Staunton House
22. In relation to the Respondents' cars, on 14 December 2015 Mr Reeves had apologised to Mr Ashbee and Mr Lester (Flat 4) about the old Vauxhall Astra, registration number Y569 ADH which Mr Reeves had left parked at the main entrance. It had been parked there since March 2015, and was still there today. Mr Reeves apologised because neither Mr Ashbee nor Mr Lester had done anything to him. Mr Reeves said that he had left the Astra parked at the main entrance because Dr Salib and his wife Dr Mikhail (both of Flat 5) had complained about Mr Reeves to their MP and to Bournemouth Council. Mr Reeves said that the Astra would be left there until it fell apart, and would then be replaced by another vehicle
23. On 19 December 2015 Mr Reeves left an old Citroen Picasso, registration number HD54 VDA on the other side of the main entrance, and it still remained in the same position today
24. To the best of Mr Ashbee's knowledge both vehicles had been moved only once. Mr Ashbee believed that that was for an MOT test to be carried out. During that time Mr Reeves had asked an employee to park his own vehicle at the main entrance. Mr Ashbee believed that that was to ensure that there would still be an obstruction
25. Mr Ashbee was firmly of the opinion, and always had been, that the Respondent's were causing, and, certainly in Mr Reeves's case, intended to cause, an obstruction
26. The leaving of the vehicles was, and always had been, a nuisance. Again, Mr Ashbee was of the opinion that that was the Respondents' intention

Statement by James Lionel Lester 28 October 2016

27. Mr Lester stated that he was a director of the Applicant and a resident and leaseholder of Flat 4 Staunton House
28. In relation to the cars, Mr Lester agreed with what Mr Ashbee had said in

his statement about Mr Reeves, as Mr Lester had been present at the time

29. Mr Lester confirmed that the two vehicles remained parked at the property, and that he considered them to cause an obstruction as well as a nuisance

Statement by Dr Emad Salib 1 November 2016

30. Dr Salib stated that he was a director of the Applicant and a resident and leaseholder of Flat 5 Staunton House
31. In relation to the cars, Dr Salib stated that the way that the cars were parked at the main entrance meant that access to the garages owned by Dr Salib and Mr Lester was very narrow, particularly when other vehicles were parked near the garage. Dr Salib also believed that there had been other occasions when the two vehicles, together with other vehicles, had caused serious obstruction to other residents. Dr Salib referred to photographs at pages 78 to 82
32. Dr Salib had only ever seen the Respondents driving two Mercedes. In Dr Salib's opinion that confirmed that the Respondent never intended to use the two parked vehicles, and had parked them for the sole purpose of causing an obstruction and nuisance to other residents

Statement by Tamara Denise Speidel 4 November 2016

33. Mrs Speidel stated that she was a director of the Applicant and a leaseholder of Flat 2 Staunton House
34. She had read the statements for Mr Ashbee, Mr Lester, and Dr Salib, and fully agreed with all they had said
35. During her last visit in September 2016 she had witnessed for herself the disruption caused by having the two vehicles left at the main entrance. They had caused an obstruction and a nuisance during her visit, and she could only imagine how much aggravation had been caused to the residents

Statement by Mr Reeves 25 November 2016

36. Mr Reeves stated that he was a director of the Applicant
37. He and his wife had been leaseholders since 13 November 2009. During that time there had never been any regulations regarding use of the forecourt for parking, and there had never been any markings or signs. It had always been the case that any leaseholder could park anywhere

38. Mr Reeves did not consider that the positioning of the two vehicles had obstructed anyone within the development or that they could be said to have caused a nuisance. Indeed, Mr Salib referred to access being "very narrow", not to there being an obstruction or a nuisance
39. Mr Reeves referred to photographs at pages 123 and 124
40. Dr Salib had blocked Mr Reeves's vehicle. Mr Reeves referred to photographs at pages 126 and 127
41. Dr Salib's photographs showed the general scheme adopted by the leaseholders, with nine parked vehicles. Mr Lester had been able to access his garage whilst the cars were parked, even with a RIB on a trailer attached to his vehicle
42. Mr Reeves had not abandoned the cars. He had moved both of them on numerous occasions, using them within the Bournemouth area. They were, and had been, roadworthy during that time
43. Mr Reeves had moved them this week, and immediately other leaseholders had parked their cars in exactly the same position
44. Mr Reeves had always been of the opinion that the Applicant and the other leaseholders did not observe the provisions in the lease about parking, but parked on the forecourt as they pleased
45. Mr Reeves, through his solicitors, had asked the Applicant to enforce the leases within the development on numerous occasions. An example was at pages 129 to 131. The Applicant had not responded, but had instead instructed its solicitors to write on 12 August 2016 about proposed action against Mr Reeves and his wife (pages 133 to 136). Mr Reeves felt victimised

Inspection

46. The Tribunal carried out an inspection on the morning of 11 January 2011. Also present were Mr N Adams and a colleague, both of Bonallack & Bishop, Mr Ashbee, Dr Salib and Dr A Mikhail, Mr M Lewis of Coles Miller, and Mr and Mrs Reeves
47. The Property was on the top floor of a large building of Edwardian appearance. Access from Exeter Park Road was via a gateway leading to a tarmac forecourt at the front of the building. There were three garages on the left of the building, and three, including Garage 6, on the right
48. The Tribunal inspected the Property, accompanied by Mr Adams, Mr Lewis, and Mr and Mrs Reeves. The Tribunal found no evidence of the flat being currently occupied for a holiday let, although there were notices by

Bournecoast Property Agents on two of the windows in the kitchen, and some notes stuck to the walls warning that the laminate floors might be “slippy”

49. The Tribunal then inspected Garage 6. It was empty, apart from a stepladder. There was a shelf in the corner at the back on the left

50. The Tribunal noted 12 vehicles parked around the edge of the forecourt, including at the front of the building, on either side of the main entrance

The Tribunal’s findings

51. The Tribunal makes the following findings in relation to the three matters referred to in the Applicant’s application

52. Holiday let

53. The Respondents admit a breach of covenant in this respect, and the Tribunal accordingly finds that a breach has occurred

54. However, the Respondents have stated that they have refrained, and will continue to refrain, from using the Property as a holiday let, which the Tribunal finds to be consistent with the appearance of the Property on inspection

55. Two vehicles on the forecourt

56. The Applicant in its application has :

a. referred in this respect to the following clauses in the lease :

- clause 5(b)(xv)(2)(ii) : not to leave any motor vehicle on any part of the estate so as to cause an obstruction or a nuisance to any other tenant or occupier
- paragraph 1(a) of the fifth schedule : not to cause congestion or obstruct permit or suffer to be obstructed by vehicles machines implement deposit or materials or otherwise whatsoever any footpath on the estate the forecourts any driveways of the estate or the community areas

b. alleged that the Respondents have left two vehicles on the estate forecourt causing an obstruction and nuisance to other residents of the estate

57. In their response dated 25 November 2016 the Respondents have also referred to other clauses in the lease, including clause 5(xv)(2)(i) : not habitually to park any motor vehicle on any part of the estate except in the garage comprised within the Property

58. In its reply dated 16 December 2016 the Applicant affirmed that the

Applicant had asked the Tribunal to determine whether the Respondents had left the two vehicles on the forecourt, and whether doing so had caused an obstruction and/or nuisance

59. The Tribunal is not persuaded that the two vehicles caused an obstruction or a nuisance, because :
- a. by its ordinary meaning “obstruction” means a blocking up or a hindrance to passage
 - b. the evidence before the Tribunal is that the two vehicles were parked on either side of the main entrance to the building, and that, for all material purposes, they remained parked in those positions until recently removed altogether
 - c. as such, they did not cause an obstruction, in that :
 - they were too far away from the gateway to Exeter Park Road and the three right-hand garages to cause an obstruction in that respect
 - they were either side of the main entrance to the building, and accordingly were not causing an obstruction in that respect
 - they did not of themselves cause an obstruction to the right-hand garages, but only when other vehicles were also parked, in that the only specific evidence before the Tribunal about obstructions, as distinct from the mere assertions by Mr Ashbee, Mr Lester and Mrs Speidel, is from Dr Salib, who refers to a narrowing of access “**particularly when other vehicles were parked near the garage**”, and refers to photographs showing :
 - page 80 : “**the silver Merc is Mr Reeves’s car; blue car : holiday maker in Mr Reeves’s flat; grey Citroen : Mr Reeves’s dumped car; neither myself nor James could get our cars to our garages**”
 - page 81 : “the dumped cars on the left corner is placed to ensure inconvenience to flats 4 and 5 garages **once another car is parked like the photo clearly shows.....the two dumped cars are strategically placed so that in the presence of another vehicle the access to our garages is obstructed.....**”
 - page 82 : “**The silver Merc belongs to SD Leisure Manager; the Vauxhall is the other dumper car belongs to Mr Reeves; between them it made it impossible for the ambulance to get nearer the front door to take a 90-year old lady who had to walk assisted to the ambulance.....**”
 - d. by its ordinary meaning “nuisance” means a source of annoyance
 - e. however, whilst the Tribunal accepts that Mr Ashbee, Mr Lester, Dr Salib and Mrs Speidel have all expressed annoyance about the holiday letting, the commercial storage in the garage, and the parking of the two cars, there is no evidence before the Tribunal that the parking of the two cars of itself was a nuisance, in that, for example, there is no evidence that they were parked in a position

which had caused a nuisance, or that the fact of their being parked on the forecourt prevented anyone else from parking on the forecourt, and the Tribunal has already found that the parking of the vehicles did not of itself cause an obstruction

60. The Tribunal nevertheless finds that the parking of the two vehicles was indeed a breach of clause 5(xv)(2)(i) of the lease : not habitually to park any motor vehicle on any part of the estate except in the garage comprised within the Property, in that it is clear from the evidence before the Tribunal that the two vehicles were parked on the forecourt on either side of the main entrance to the building, and that, for all material purposes, they remained parked in those positions for a considerable period. The Tribunal therefore finds that a breach of covenant has occurred

61. However, in their response dated 25 November 2016 the Respondents confirmed that they had removed the two vehicles from the forecourt and would refrain from using the forecourt for parking until the Tribunal made a determination, which the Tribunal finds to be consistent with the fact that neither vehicle was parked on the forecourt at the time of inspection

62. The Tribunal also finds that the question whether general parking on the forecourt, (as distinct from the long-term parking of the two vehicles concerned), is itself a breach of clause 5(xv)(2)(i) of the lease (not habitually to park any motor vehicle on any part of the estate except in the garage comprised within the Property), is not before the Tribunal, and the Tribunal therefore makes no findings in that respect

63. Garage used as part of business

64. The Respondents admit a breach of covenant in this respect, and the Tribunal accordingly finds that a breach has occurred

65. However, the Respondents have stated that they have refrained, and will continue to refrain, from using the garage for commercial storage, which the Tribunal finds to be consistent with the appearance of the garage on inspection

66. The Tribunal also finds that :

- a. the allegation in the Application in that respect is that the Respondents “use their garage as part of their business”
- b. the Respondents stated in their response dated 25 November 2016 that they understood that the Applicant’s application did not include an application for a determination that a breach of covenant had occurred concerning a general use of the garage for storage, other than storage for commercial purposes, and that all other leaseholders within the development used their garages for storage, outside the remit of clause 5(b)(xvi)(2) of the lease
- c. the Applicant did not respond to that statement in its reply dated

16 December 2016

- d. the question whether storage in the garage of items other than commercial items is, or would be, a breach of covenant is accordingly not before the Tribunal, and the Tribunal therefore makes no findings in that respect

67. The Applicant's conduct

68. The Respondents have asserted that by its conduct in allowing other leaseholders to park cars on the forecourt the Applicant has varied the covenants in the lease by its conduct and is estopped from bringing an action against the Respondents in that respect

69. Those matters are not matters for the Tribunal in this application, which is an application solely for a determination that breaches of covenant have occurred, but will no doubt be assertions which a court will take into account in any action for enforcement

Appeals

70. A person wishing to appeal against this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case

71. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision

72. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to admit the application for permission to appeal

73. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result which the person is seeking

Dated 11 January 2017

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Judge P R Boardman