

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

CHI/00HP/LBC/2007/0012

Decision of the Leasehold Valuation Tribunal on application made under Section 168
of the Commonhold and Leasehold Reform Act 2002

Applicant:	Mrs Carole Ann Cluett
Respondent:	Martin Homes Limited
Re:	Garage, workshop and forecourt formerly part of 54b Shillito Road, Parkstone, Poole
Date of Application	26 th February 2007
Date of Inspection	16th April 2007
Date of Hearing	16th April 2007
Venue	The Lighthouse, Poole
Appearances for Applicant	Mr Lake, Solicitor, Dickinson Manser
Appearances for Respondent	Mr Stagg of Counsel

Members of the Leasehold Valuation Tribunal

M J Greenleaves	Lawyer Chairman
T Dickinson BSc FRICS	Valuer Member
J Mills	Lay member

Date of Tribunal's Decision: 24th April 2007

Decision

1. The Tribunal determined that for the purposes of Section 168 of the Commonhold and Leasehold Reform Act 2002 (the Act) breaches of covenant on the part of the Lessee, Martin Homes Limited (the Respondent), have occurred in respect of the Garage, workshop and forecourt ("the premises") being part of the Flat as defined in the lease for 54B Shillito Road, Parkstone
2. The covenants in respect of which breaches have occurred are contained in a Lease ("the lease") dated 30th January 2004 and made between Adrian Carl Anthony Cluett, Joanne Ellen Cluett and the Applicant (1) and the Respondent (2).

3. The breaches of covenant found to have occurred within the meaning of Section 168 of the Act are as follows:
- a. Alterations. The Respondent has made a structural alteration to the garage and workshop in contravention of Clause 4.7(b) of the lease in that an internal structural wall previously separating the garage from the adjoining workshop was removed prior to 1st December 2006 and has not been reinstated.
 - b. Trade or business. The Respondent has since August 2006 up to and including 16th April 2007 exercised or carried on a trade or business at the premises in breach of Paragraph 2 of the Third Schedule to the lease. The extent to which the Tribunal found the Respondent to have so exercised or carried on a trade or business at the premises is that in August 2006 and on about five separate dates since then the Respondent has carried out tradesman's work in the garage/workshop.
 - c. Obstruction. The Respondent has since August 2006 up to 16th April 2007 obstructed the forecourt of the premises in breach of Clause 4.12 of the lease whereby the Respondent covenanted to observe the regulations contained in the Third Schedule, of which Paragraph 2 excepted to the Applicant and others "All rights to light and air and other rights and easements and benefits now enjoyed or intended to be enjoyed by any other part of [54 Shillito Road, Parkstone] over the Flat".

The extent to which the Tribunal found the Respondent to have obstructed the forecourt is that:

- i. From August 2006 until 6th April 2007, the Respondent parked a caravan in the north- eastern half of the forecourt protruding into the immediate access to the public highway.
- ii. From August 2007 and continuing until 16th April 2007 the Respondent deposited a large number of wooden pallets in the north-eastern half of the forecourt thereby adversely affecting the Applicant's right of access over the forecourt.
- iii. A lorry was parked on the south-western half of the forecourt In August 2006 and remained there, continuously or otherwise until November 2006.

Reasons.

Introduction.

4. This was an application by the Applicant under Section 168 of the Act for a determination that breaches of covenant had occurred in respect of the premises.
5. The premises and a flat had been leased to the Respondent by the lease. The Respondent subsequently assigned the flat to a third party, while retaining the premises on the terms of the lease.

6. On 7th March 2007 the Tribunal made directions which, inter alia, provided for a target date for the hearing of 16th April 2007 and requiring the parties within 14 days of receipt of the directions to inform the Tribunal of dates to be avoided 5 working days either side of that date. No such information having been received, the Tribunal fixed 16th April as the hearing date and notified the parties on 26th March 2007 by letter accordingly.
7. On 12th April 2007 the Respondent's solicitors applied for an adjournment on the basis that Mr Wybrow, Director of the Respondent, was out of the country, but that if the Tribunal refused the adjournment, the Respondent would be represented by Counsel.
8. The Tribunal was satisfied that both parties had been given due notice of the hearing and the Respondent had not availed itself of the opportunity to indicate dates to avoid and that as the Respondent would be represented, it was in the interests of the just, convenient and economical disposal of the case that the hearing should continue as arranged.

Inspection.

9. The Tribunal inspected the premises in the presence of the Applicant and Mr Stagg.
10. The premises are situated in a residential area and comprise a garage and workshop fronting on to a forecourt (about the same length as the garage/workshop) from which access is gained from the public highway. The Applicant's vehicular access is across the forecourt through double gates on the south-east end of the forecourt.
11. To the rear of the garage/workshop is a small area partly used for storing some items. In the south-east wall of the garage are windows through which the Tribunal was able to obtain some view of the interior and its contents. It appeared that the interior photographs taken by the Applicant had been taken through these windows.
12. Looking through the garage, to the workshop at the other end, the Tribunal noted a brick supporting pillar lying roughly along the west-east line of the garage, and beyond that what appeared to be kitchen units. In the foreground were various building materials and equipment e.g. doors, tubing, door frames, wheelbarrow, scaffolding frame, door frames, plaster, cornice, tiles, loft insulation material
13. On the north-western half of the forecourt were a quantity of pallets stacked very much as shown in the photograph taken in August 2006 (which shows no other potential obstructions).

Hearing.

14. The Tribunal had received written statements of the Applicant and of Mr Martin Wybrow on behalf of the Respondent.
15. The Applicant also gave evidence which may be summarised as follows:

- a. Prior to July 2006 the Respondent was engaged in planning applications and appeals for development of the premises and had endeavoured to purchase adjoining garden land from the Applicant. His applications and appeal had failed. It was since then she had experienced the problems on which she relied.
- b. She had taken the photographs in August 2006.
- c. That Bank Holiday weekend she had experienced noise from power tools in the garage/workshop on both the Sunday (from 10.30am to 5.45pm) and Monday (10.30am to 5.30pm). She had contacted the Council and noise ceased, although the buildings had been used for working in about once every six weeks since then.
- d. The buildings had been used for storage of building materials since July 2006 and was continuing.
- e. She was concerned that the pallets on the forecourt and paint in the buildings was flammable.
- f. The Respondent had ignored her requests since December 2006 to re-instate the wall. Even if the Respondent agreed to re-instate, she did not believe he would do so.
- g. The caravan was on the forecourt as shown in her photographs from August 2006 until it was removed on 6th April 2007.
- h. The lorry, the caravan and the pallets had, while each was present (as referred to in the Decision), each obstructed her access (all the properties at 54 Shillito Road are entitled to access over it) into her double gates. The lorry had physically blocked it. The pallets and the caravan had made it extremely difficult to manoeuvre a car into her property.

Agreed matters.

16. Mr Stagg accepted that the premises are within the definition of the Flat contained in the lease.
17. It was common ground that the removal of the wall was a breach of Clause 4.7(b) of the lease.
18. It was accepted by the Applicant that mere storage of building materials would not constitute a breach of Paragraph 2 of the Third Schedule to the lease.
19. It was accepted that the Applicant had a right to drive over the forecourt,
20. Mr Stagg submitted:.
21. Covenant re trade or business.

- a. Relying on "Woodfall" that a restrictive covenant which was ambiguous was to be construed against the landlord ;
- b. Contending that the Respondent was not "exercising or carrying on a trade or business at the premises, referring again to Woodfall and the case of Westripp v Baldock [1939] 1 All E.R. 279 where it was found that a breach of covenant had been committed where the tenant was a jobbing builder and kept materials in his garden (i.e. that he was living where he carried on his business);
- c. That the Respondent could not be said actually to be exercising or carrying on business at the premises.

22. Obstruction.

23. Mr Stagg submitted:

- a. that right has to be exercised reasonably
- b. that any obstruction had been of a transient nature

24. Mr Lake made submissions to re-iterate his client's case as set out above.

Consideration

25. The Tribunal considered all of the case papers, including the lease, the photographs, the written statements for each of the parties, the oral evidence and the submissions made for both parties. It also took into account its inspection of the premises as above.

26. Alterations. The Tribunal noted that it was accepted by the Respondent that this constituted a breach of covenant. Taking also into account its inspection, the Tribunal so found.

27. Trade or business.


- a. The Tribunal noted the Applicant accepted that use only for storage would not constitute the exercising or carrying on of a business at the premises.
- b. The Tribunal did not accept that simply because the Respondent was not living on the premises, he could not be said to be exercising or carrying on business there.
- c. The Tribunal found that to be exercising or carrying on business there, it had to be satisfied that at some time there had been business activity there – not simply storing materials. On that basis the Tribunal did not find any remaining ambiguity in the provision in the Third Schedule.
- d. The Tribunal considered that although the presence of materials was not of itself exercising or carrying on business, their presence formed part of a picture. The picture was built up with the Applicant's evidence, which the Tribunal accepted on this issue.

- e. The Tribunal also noted from one of the photographs of the interior of the building (page 50) two saws and mastic guns hanging on the wall, a glue container, bottled water and wood shavings on a worktop, what appeared to be a mains power socket on the brick wall, an extension power lead as well as the kitchen unit. Towards the centre of that photograph are two sets of constructed staircase sections and the tools present were consistent with those items having been made in the building in or about August 2006.
- f. The Tribunal was accordingly satisfied there has been a breach of this covenant as set out in the Decision.

28. Obstruction.

- a. The Tribunal, accepting the Applicant's evidence, found that obstruction to the access was far from transient.
- b. The Tribunal considered that the only reasonable way of manoeuvring a car through the right angle into the Applicant's property would almost necessarily require use of the north-eastern half of the forecourt for reversing purposes.
- c. As the configuration of the access into the Applicant's property formed a tight right angle, the Tribunal found that it would have been virtually impossible to negotiate the bend while the caravan was in situ from August 2006 until 6th April 2007 as the length also of its tow bar extended substantially across the access on to the road. That would have been so even with a small car.
- d. While the lorry was in position, it would have been impossible to gain vehicular access at all.
- e. While only the pallets were, and are, present, they would form some obstruction when negotiating the bend for all but small cars.
- f. Accordingly for the periods set out in the Decision, the Tribunal found the Applicant's right of way was obstructed to the extent set out here in breach of the Respondent's covenant.

29. The Tribunal made its decisions accordingly.



Chairman
A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor