



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 26 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.**

Case reference FTS/HPC/LM/22/2686

**Parties**

**Mr Lewis McGhee (Applicant)**

**Speirs Gumley (Respondent)**

**Drumpellier Lawns, Oakridge Road, Bargeddie (Property)**

**Tribunal Member: Jacqui Taylor (Legal Member)**

The Tribunal rejects the application by the applicant dated 19 July 2022, being an application under section 17(1) of the Property Factors (Scotland) Act 2011.

The Tribunal sent the Applicant an email dated 9<sup>th</sup> September 2022 in the following terms:

*'Applications to the Tribunal for determination of whether a property factor has failed to carry out the property factor's duties or to comply with the Code can be made by a homeowner.*

*Section 10 of the Property Factors (Scotland) Act 2011 provides as follows: (5) In this Act, "homeowner" means—*

*(a) an owner of land used to any extent for residential purposes the common parts of which are managed by a property factor, or*

*(b) an owner of residential property adjoining or neighbouring land which is — (i) managed or maintained by a property factor, and (ii) available for use by the owner.*

*You have stated that the ground in question is not part of your housing estate and that Speirs Gumley is not your property factor.*

*It is not clear from your application if the land in question is “available for use “ by you. Please clarify the position. You have been asked to provide a copy of your title and have not done so. This may assist in determining whether or not you have rights in respect of the area of ground in question.’*

The Homeowner sent the Tribunal Administration an email in response dated 11<sup>th</sup> September 2022 in the following terms:

*‘I’m not entirely sure what you mean by available for use. The area in question is a tree area within the title deeds of Drumpellier lawns. I have no access to the land, the issue I am having is that the tree is overhanging my garden and they won’t maintain it. I have been unable to build decking for my garden due to this. I can get a copy of my title deeds but I don’t think it would help with your query’*

As the Applicant does not have access to the ground in dispute and therefore the ground is not available for his use the Applicant is not a Homeowner as defined in Section 10(5) of the Property Factors (Scotland) Act 2011.

Accordingly the Tribunal have good reason to believe that it would not be appropriate to accept the application and reject the application in terms of rule 8 (1)(c) of the Tribunal Rules.

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them**

Legal Member

Date: 23 September 2022