LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/OOAZ/LBC/2009/0019

DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 168(4) of the Commonhold and Leasehold Reform Act 2002

Applicants Newton House (Blackheath) Management Company Limited

Respondents Mr Alexander Scott and Ms Tracy Yain Ney Lam

Premises: Flat 2 Newton House, Granville Park, London SE13 7EA

Date of Application: 25 February 2009

Date of Pre-Trial Review: 3 March 2009

Appearances for Applicants: Mr M Burgoyne (Flat 1) Director
Mrs F Gudgin (Flat 4) Director

Appearances for Respondents; Mr A. Scott (Flat 2)

Leasehold Valuation Tribunal: Mrs B. M. Hindley LL.B
Mr P. S Roberts Dip Arch RIBA

Date of Tribunal's Determination : 7 May 2009

1. This is an application under Section 168 (4) of the Commonhold and Leasehold Reform Act 2002 for a determination that breaches of covenants in the lease have occurred.
2. The applicants are the management company of a block of four flats in a converted house built circa 1850.
3. The respondents are the leaseholders of ground floor flat 2 which they purchased in July 2007. In May 2008 they removed the existing fitted carpets from the flat and subsequently installed wood flooring on an acoustic underlay.
4. It was not disputed that the respondents had continued with the installation despite having been informed that this amounted to a breach of the terms of the lease.
5. A pre trial review took place on 3 March 2009 and a paper hearing was listed for the week beginning 13 April 2009
6. At the request of the respondents the Directions were altered on10 March 2009 to allow for an oral hearing on 7 May 2009.
7. At the hearing Mr Burgoyne, on behalf of the applicants, said that clause 12 of the Fifth Schedule of the lease contained regulations to be observed by the lessee

   'not to reside or use or permit any other person to reside in or use the Demised Premises unless the floors thereof (including the passages) are close covered with carpet and underfelt or (in the bathroom lavatory and kitchen only) linoleum or sound absorbing tiles except while the same shall be removed for cleaning, repairing or decorating the Demised Premises or for some temporary purpose.'.
8. Mr Burgoyne also alleged that the respondents were in breach of clause 14(ii) of the lease since they had not entered into a direct covenant, in the form set out in the Sixth Schedule, to observe and perform the conditions thereof.
9. Mr Scott maintained that clause 12 was included in the lease to limit noise transference to other flats and that it had not been established that his wooden flooring meant that more noise was being transmitted than had been the case when there had been thin carpets and underlay.
10. He also contended that the clause was ambiguous as there was no express exclusion of wooden flooring since the omission of 'only' after 'carpet and underfelt' appeared to suggest that other types of flooring were allowed.
11. Additionally, he argued that the inclusion of 'or sound absorbing tiles' enabled them to be considered as an option in their own right for the whole of the demise. He considered these to be similar to acoustic underlay since their purpose was to limit noise.
12. Mr Scott accepted that the respondents were in breach of clause 14(ii) of the lease and explained that this was as a result of 'a comedy of errors'. Pressed to explain he said that his solicitors had not sent the required document at the time of purchase and had later sent the wrong document. However, he admitted that he had been in possession of the correct document from November 2008 and had not signed it because of the on going dispute.
13. The Tribunal determines that the respondents are in breach of the two covenants in their lease.
14. The Tribunal does not accept Mr Scott's view that without noise transference having been established there can be no breach of covenant. The paragraph

definitively states that the floor covering, other than in the bathroom, lavatory and kitchen is to be carpet and underfelt.

15. The Tribunal does not accept that the clause is ambiguous and that the addition of the word 'only' after carpet and underfelt would add anything to its interpretation.
16. The Tribunal does not accept Mr Scott's opinion that the word 'or' before 'sound absorbing tiles' allows such tiles to be used throughout. In the Tribunal's view this option could only apply to the bathroom, lavatory and kitchen.
17. Accordingly, the Tribunal determines the respondents to be in breach of clause 12 of the Fifth Schedule as contended by the applicants and, as admitted by the respondents, also to be in breach of clause 14(ii).

Chairman R T Shotliday Date 12/5/09.