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

**Case Reference** : **MAN/30UK/LBC/2013/0017 &  
MAN/30UN/LBC/2013/0019**

**Properties** : **Flats at Bairstow Street, Preston PR1 3TM  
Flats at Smithy Court, Smithy Lane,  
Preston PR4 4HJ**

**Applicant** : **G & O Securities Ltd**

**Respondents** : **Leaseholders of the Flats**

**Type of Application** : **Commonhold & Leasehold Reform Act 2002  
Section 168(4)**

**Tribunal Members** : **Laurence Bennett (Tribunal Judge)  
Elizabeth Thornton-Firkin BSc MRICS**

**Date of determination** : **28 October 2013**

**Date of Decision** : **4 November 2013**

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**DECISION**

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## **Application**

1. G & O Securities Ltd apply for determinations under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that breaches of covenant have occurred of covenants contained in the leases relating to individual flats at the properties.

## **Background**

2. The applications were made in August 2013. Similar directions were made in respect of each application by a Judge of the Tribunal included "The Tribunal considers it appropriate for the matter to be determined by way of a paper determination....." The directions gave opportunity for the parties to request a hearing. No request was made.
3. Some Respondents have provided a response to the application.
4. The Tribunal convened on 28 October 2013 without the parties to determine the application. Having noted the common Applicant and the identical nature of the applications the Tribunal considers it appropriate that both applications be considered together.

## **The Lease**

5. The relevant flat leases contain similar covenants which include the Lessees covenant "To use the demised premises a private residence for the occupation of the Lessee and his family and not to underlet the same."

## **Law**

6. Section 168(1) of the Commonhold and Leasehold Reform Act 2002 (the Act) states: "A landlord under a long Lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the Lease unless subsection (2) is satisfied."
7. Section 168(2)(a) states: "This subsection is satisfied if-
  - (a) it has been finally determined on an application under subsection (4) that the breach has occurred,
  - (b) the tenant has admitted the breach"
8. Section 168(4)(a) states: "A landlord under a long Lease of a dwelling may make an application to the First-Tier Tribunal for a determination that a breach of a covenant or condition in the Lease has occurred."

## **Evidence and submissions**

9. The Applicant stated in the applications that subleases appear to have been granted in breach of covenant.
10. The copy application in the Applicant's bundle in respect of Smithy Lane differs from the Tribunal's file copy which identifies alleged breaches of covenants to register assignments charges transfers and underleases.

11. In the light of responses the Applicants have withdrawn their application in respect of an individual lease (Flat 10 Smithy Court) and have commented upon letters from former freeholders providing consent to sub-letting in respect of certain flats. They now seek to withdraw consent in respect of any continued or future subletting.
12. Mr Christopher O'Dell has made a witness statement with statement of truth that the Applicant arranged for agents to attend at the subject flats. Save in respect of Flat 2 Bairstow House and Flat 10 Smithy Court the agents provided occupancy reports. The occupancy reports show that the properties were sublet. In respect of Flats 2 and 10 it was stated that as the proprietors address does not match the address of the property they are likely to be sublet.

### **Tribunal's conclusions with reasons**

Our conclusions are:

13. We note that the covenant specified by the Applicant. In that the Applicant seeks to amend the original application relating to Smithy Lane by including an amended application within its response to directions permission is given for that amendment. We accept the withdrawal of the application in respect of Flat 10 Smithy Court.
14. The evidence of sub-letting is not definite but on balance of probability indicates that the various Respondents sub-let their flats at least at the time of the Applicants agents visit. This is also admitted in responses in respect of some flats which also comment on the lack of objection by the previous freeholder. The fact that the registered proprietors address is not that of the property is not determinative this could be the case for many reasons.
15. In respect of Flats 5 and 9 Smithy Court and Flat 7 Bairstow House and Flat 34a Bairstow Street letters of consent or waiver to subletting by the former freeholder have been produced. Whilst the Applicant has written withdrawing this consent, this consent or waiver of breach cannot operate to immediately render an existing sub-letting unlawful as such waiver will have related to the creation of that particular sub-letting. We conclude in respect of those flats a breach of covenant has not occurred.
16. Whilst in other cases leaseholders may not have been conscious of the restrictions within their lease and have not previously received an objection the covenants and restrictions are present within their leases and by subletting they are in breach. We determine that the restriction and stipulation in respect of underletting has not been observed and that a breach of covenant has occurred.

### **Order**

17. That a breach of covenant has occurred by a failure to observe a stipulation against underletting contained in the respective leases relating to Flats 3 and 7 Smithy Court, Smithy Lane, Preston PR4 4HJ.
18. That a breach of covenant has occurred by a failure to observe a stipulation against underletting contained in the respective leases relating to Flats 2 and 4 Bairstow House and 34 Bairstow Street, Preston PR1 3TN.