FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	LON/00BE/LBC/2015/0002
Property	:	Unit 6, 2 Archie Street, London, SE1 3JT
Applicant	:	AHGR Limited
Representative	:	George Ide LLP
Appearances for Applicant:	:	(1) Mr Nathaniel Duckworth, counsel (2) Mr Christopher Case, Property Manager at London Bridge Estates (witness)
Respondent	:	Mr Craig Derrick Hamer
Representative	:	Child & Child
Appearances for Respondent	:	(1) Mr Daniel Dovar, counsel (2) Mr Hamer (witness) (3) Ms. Sarah Cole (witness) (4) Mr C J Mascarenhas, solicitor

Type of Application	:	Application for a determination that a breach of covenant of a lease has occurred

Tribunal Members	:	(1) Tribunal Judge Vance (2) Mr P Tobin FRICS MCIArb
Date and venue of Hearing	:	18 March 2015 at 10 Alfred Place, London WC1E 7LR

DECISION

Decision of the Tribunal

1. The tribunal determines that the Respondent has not breached the covenants set out in clauses 2.4 and 3.5 of the subject lease and nor is there a subsisting breach of those covenants.

Introduction

2. The Applicant seeks a determination pursuant to s.168 of the Commonhold and Leasehold Reform Act 2002 that the Respondent has breached clauses 2.4 and 3.5 of a lease of Unit 6, 2 Archie Street, London, SE11 3JT ("the Unit") assigned to him on 13 July 2012 **[A78]**.
3. The relevant legal provisions are set out in the Appendix to this decision.
4. Numbers appearing in square brackets below refer to pages in the hearing bundle.
5. The Applicant is the freehold owner of property at 1-5 Archie Street and 165 Tower Bridge Road, London, SE1 ("the Building") **[A17]**. The Building is managed on behalf of the Applicant by London Bridge Estates ("LBE").
6. The Building is a former industrial building that in about 2001 was converted into 14 residential flats and 10 live/work units with commercial premises at ground floor level. The Unit is one of the 10 live/work units.
7. Two planning permissions were obtained. The first dated 7 June 2000 ("the 2000 Planning Permission") **[A80]** included the following conditions:

> *"3. The residential use within the live/work units hereby permitted is ancillary to the work use and shall not be occupied independently and should a unit cease to be used for live work purposes the unit should be used for business purposes falling within Class B1.*
>
> *4. In the event that a live/work unit hereby approved ceases to be used for live/work purposes the whole of the unit may be used for purposes falling within Class B1 (Business Purposes) of the Town and Country Planning (Use Classes) Order 1987 provided:*
>
> *(a) no part of the unit shall be used for any purpose other than Class B1; and*
>
> *(b) in the event that the use of a unit changes from live/work to wholly Class B1 use pursuant to this condition the unit may not return to use as a live/work unit without the prior written approval of the Local Planning Authority."*

8. The second planning permission is dated 28 June 2001 ("the 2001 Planning Permission" **[A91]**. As well as containing a condition that mirrors condition 4 in the 2000 Planning Permission it also contains the following condition:

> *"2. The residential parts of the live/work units hereby approved and shown on the attached drawing number 02/03pa and 02/04pa shall only be used for residential purposes in association with the Work part of the live/work units and shall not be used for any other purpose.*

9. One of the reasons for the conditions imposed in the two Planning Permissions is stated as being to protect the employment element of the Building which it seems was located in a designated employment area for the purposes of the Southwark Unitary Development Plan.

10. The Respondent's lease is dated 23 July 2003 entered into by (1) Baseland Limited and (2) Acorn Homes (Highgate) Limited ("the Lease"). The lessees' covenants include the following:

> *Clause 2.4*
>
> *"Not to use or permit the use of the Demised Premises or any part thereof otherwise than as a live-work unit in accordance with the terms and conditions set forth in the Planning Permission dated 7th June 2000 issued by the London Borough of Southwark under reference TP1 165-163/DH nor to do or permit to be done anything which may cause the Landlord to be in breach of its obligations under any statutory enactment or regulation"*
>
> *Clause 3.5*
>
> *"Not at any time to do or permit to be done any act matter or thing on or in respect of the Demised Premises which contravenes the provisions of the Town and Country Planning Acts or any enactment amending or replacing the same and to keep the Landlord indemnified against all claims demands and liabilities in respect thereof"*

11. The Lease plan **[A74]** designates one area in the Unit as a 'Workspace'. There are two rooms that the Tribunal were told were used as bedrooms; a kitchen/diner and a bath/WC. The kitchen/diner is separated from the Workspace by a partition.

12. The Respondent was, until his retirement in late 2014, an Australian partner at accountants, Price Waterhouse Cooper ("PWC"). He is married to a US citizen and owns a house in the US where he lives with his wife and two sons. He purchased that house on 31 August 2012 **[B23]**. He acquired the lease for the Unit on 13 July 2012 after being seconded by PWC to work in the UK. It is his case that from the time he first occupied the Unit to the date he left the UK on 20 October 2014 he carried out a very substantial amount of work for PWC at the Unit.

13. The following facts were agreed or not in dispute:

(a) that at all material times the Respondent had a family home in the US as well as having the Lease of the Unit;

(b) the Unit is located close to a London office of PWC. The Respondent states it is about 800 yards away;

(c) at all material times the Respondent paid Council Tax for his occupation of the Unit to the local authority and not business rates;

(d) that from June 2014 onwards, following his decision to retire, the Respondent returned any work-related files to PWC. Also, from that date he started to move his personal possessions in the Unit to the US. Work or office equipment was sent to the US or to his son in Australia in June and early October 2014 **[B26-34]**;

(e) the Respondent left the UK on 20 October 2014 and has not used or occupied the Unit since that date;

(f) prior to leaving the UK the Respondent had attempted to assign the lease to a work colleague but on 20 January 2015 the Respondent's solicitors informed the Applicants' solicitors that the intended purchaser had withdrawn from the sale.

14. Directions were issued by the Tribunal on 8 January 2015 which required the Respondent to file and serve its' Statement of Case by 30 January 2015 and for exchange of witness statements by no later than 20 February 2015 **[A94]**.

15. A request by the Applicants' solicitors for sequential exchange of witness statements and for a direction that any relevant documents (whether supportive or adverse to each party's case) to be exhibited to the witness evidence **[C5]** was refused on 18 February 2015. In doing so a Tribunal Judge stated that:

> *"The burden of proof rests on the applicant's shoulders and it must have considered the factual evidence on which it intended to rely before launching these proceedings."*

Inspection

16. Neither party requested that the tribunal inspect the Unit and the tribunal did not consider this to be necessary or proportionate given that it was no longer occupied by the Respondent.

The Applicants' Case

17. In its application notice and its Statement of Case the Applicant asserted that the Respondent was in breach of the user covenant at clause 2.4 of the Lease by using the Unit for purely residential purposes. It also asserted that this amounted to a breach of clause 3.5 which required the Respondent to use the Unit in a manner that complied with the current planning permission, namely, the 2001 Planning Permission.

18. However, in his skeleton argument and before the Tribunal Mr Duckworth expanded the Applicant's case to include the following:

(a) that any work carried out by the Respondent at the Unit fell within Class A2 (financial and professional services which was outside the scope of live/work for the purposes of the 2000 and 2001 Planning Permissions;

(b) that, in any event, from the date on which the Respondent either ceased his business use of the Property, or when he ceased to live there, clauses 2.4 and 3.5 have been breached as the is no longer using the Unit as a live/work unit; and

(c) that the work that the Respondent states he carried out in the Unit for PWC amounts to home working which is insufficient to meet the live/work requirements imposed upon him. Instead, what is needed is for a business to be carried out from the Unit.

(d) That the Respondent's residential use of the Unit was not ancillary to the commercial use. Rather than using the room identified as the "Workspace" on the Lease plan for purely work purposes he instead used the room as a living room in which he may also have chosen to carry out some home working. In Mr Duckworth's submission there needed to be a complete and physical separation of the residential and work areas or, if that was incorrect, that any material overlap would be a breach of the user covenant.

The Respondent's Case

19. The Respondent's Statement of Case addresses the only issue raised by the Applicant in its' Statement of Case namely that the Respondent was using the Unit for *"purely residential purposes"*.

20. He accepts that pure residential use would amount to a breach of covenant but asserts that this was not how he used the Unit. His case was that he purchased the Lease in order to facilitate his work with PWC and that throughout the time he lived there he did little else but work and sleep in the Unit.

21. As such the Unit had been used for live/work purposes and no breach of covenant has occurred.

22. Mr Dovar responded to the additional points raised by Mr Duckworth in his skeleton argument by way of oral submissions and, where necessary, his response is referred to below.

The Law

23. The relevant parts of s.168 of the Commonhold and Leasehold Reform Act 2002 Act are annexed to this decision.

The Evidence

Mr Hamer's Evidence

24. The Respondent's evidence was that he bought the lease of the Unit as he wanted a place to live in and also to work in. It had the advantage that it was close to the PWC offices and the workspace allowed him to spread out his files and papers.

25. He described how he previously held a number of global roles in PWC and that he was out of the country on business for about 40-50% of the time he was living at the Unit. When he was at the Unit he stated that he worked a nearly 24/7 a week and that most of his work-related activities took place in the Unit. This included answering emails, reading reports, answering telephone calls, carrying out research, and holding conference calls and meetings with colleagues. He had to respond to communications at all hours of the day. Most nights and weekends were, he said, devoted to reading technical articles, financial services legislation and regulation reports.

26. In cross-examination he described how he used the workspace area for work purposes. He had a desk in an alcove and had a computer connected to the Internet together with bookshelves and space on the floor for his files. The kitchen was sometimes used for meetings. Whilst he agreed that he had a television in the workspace area he did not accept that he also used the room as a living room. In his view the workspace contained furniture that you would expect in an office of a senior executive such as a sofa, a coffee table and a television screen for watching the news.

He conceded that sometimes there might have been be an hour at the end of a day when he fell asleep on the couch but the vast majority of the time it was used for business purposes. He confirmed that his wife and step sons had stayed in the Unit

on three occasions, whilst visiting from the US and that they used the workspace as a living room during these visits. He had also allowed some friends from Australia to stay for a weekend on a couple of occasions. Other than that he did not entertain at the Unit.

27. The Respondent confirmed that he had the use of a hot desk hat the nearby offices of PWC and that he visited there most days to have lunch with colleagues, print reports and pick up mail. However, the office did not suit his working style which involved a lot of working at night and at the weekends.

28. He explained that he believed it was appropriate for him to pay Council Tax rather than business rates for his occupation of the Unit as it was a live/work unit.

29. He described the inspection carried out by Mr Case at paragraphs 14 and 15 of his witness statement. He believed that the inspection was triggered by his intended sale of the Unit and that the purpose was to check that it was going to be left in good condition. He states that the inspection lasted less than five minutes and at no time was he asked to explain how he used the Unit for residential or work purposes. He points out that the inspection took place three days before he left the UK and that all his belongings had already been shipped out.

30. It is his view that the Applicant has tried to delay the sale of the Unit for as long as possible and that they are trying to obtain a premium from him for a variation of the user covenant in the Lease when no breach of covenant has occurred.

Ms Grace McCauley's witness statement

31. A witness statement from the Respondent's wife was included in the hearing bundle **[B67]** in which she confirms that she was visiting her husband in October 2014 and that she was in the Unit during the inspection on 17 October 2014.

32. She states that the inspection lasted less than five minutes and that at no point was her husband asked to explain how he used the Unit for work purposes.

33. As Ms McCauley was not present at the hearing and could not be cross-examined on her evidence the Tribunal attached little evidential weight to the contents of her statement except where the salient points were confirmed by Mr Case and the Respondent in cross examination.

Ms Sarah Cole's Evidence

34. Ms Cole was the Respondent's PA whilst he was seconded to PWC in London. She confirmed that between 15 July 2014 and 12 October 2014 she moved work documents and files from the Unit to help with the Respondent's relocation. Some files were sent files to Australia and others archived in the London office.

35. She also stated that she had regular meetings with the Respondent in the Unit, sometimes working there for a few hours at a time and that she took documents back and forth between the office and the Unit.

36. In cross-examination she said that the Respondent held business meetings with colleagues in the Unit and these were on average about a couple of times a week.

Mr Case's Evidence

37. Mr Case describes himself in his witness statement as having nearly 20 years' experience of managing blocks of converted former industrial and commercial premises and that LBE has been retained to manage a number of blocks which include live/work units whose leases incorporate user restrictions.

38. He states that part of LBE's management brief requires them from time to time to inspect properties to ensure that user covenants were being observed. However, in cross-examination he confirmed that the 17 October 2014 inspection of the Unit was prompted by the Respondent's notification that he wanted to sell the Unit. He could not recall being put on notice of any particular breach before that inspection.

39. Prior to the 17 October 2014 inspection he had made enquiries that had established the Respondent was paying Council Tax for the Unit and not business rates. He examined Land Registry records and believed that the price that the Respondent had paid for the Unit was in excess of what he would expect a live/work unit to command. Further, sales particulars at the time made no mention of the Unit being a live/work property.

40. He indicates in his witness statement that his inspection of the Unit on 17 October 2014 revealed a property that was laid out purely as a residential unit and that there was no evidence of the workspace being used for work purposes. He saw a dining table, chairs, sofas and occasional tables but no dedicated servers or IT equipment or business-related paperwork.

41. In cross examination he confirmed that the inspection lasted no more than 5-10 minutes and that goods could have been removed before his visit.

Decision and Reasons

42. The Tribunal is not satisfied, on the evidence before it, that the Respondent has breached the covenants in either clause 2.4 or clause 3.5 of the Lease.

43. Clause 2.4 contains a user covenant that prohibits the Respondent from using the Unit, or any part of it, otherwise than as a live-work unit in accordance with the terms and conditions in the 2000 Planning Permission

44. Clause 3.5 amounts to a covenant not to use or allow the Unit to be used in a way that breaches the provisions of the Town and Country Planning Acts or any amending or replacement legislation. We agree with Mr Duckworth that this obliges the Respondent not to use the Unit in such a way as to contravene the 2001 Planning Permission.

45. What amounts to a live/work unit is not defined in the Lease. Nor is there a statutory definition. Mr Duckworth submitted that in construing the meaning of a live/work unit the Tribunal should have regard to the definition set out in the glossary to the 2007 Southwark Plan.

46. The Plan defines a live/work unit as *"a dual use unit comprising separate but interconnected B1 use class and a residential dwelling. Both units must be able to operate in isolation. The concept of live-work units does not extend to home-working, which can be carried out from any residential dwelling within the C3 Use class.*

47. Mr Duckworth also referred the Tribunal to Policy 1.6 in the Plan which states that live/work units will only be permitted where there is at least 40sqm of useable workspace (B1 use class) separately defined within the unit and that it must be capable of accommodating a range of business activities and a number of staff in isolation from the living space.

48. The Tribunal does not consider it helpful or appropriate for it to construe the meaning of a live/work unit with reference to the glossary in the Southwark Plan or Policy 1.6. Firstly, the Plan was adopted in 2007, seven years after the first grant of planning permission for the development containing the Unit. It is therefore of no real use in in construing the intention of the local authority at the time of the 2000 and 2001 Planning Permissions including and how it defined a live/work unit.

49. Secondly, the purpose of the Plan is to set out the planning policies followed by the local authority when determining applications for planning permission. Its contents do not amount to planning requirements or conditions.

50. The Tribunal agrees with Mr Dovar that the term live/work needs to be construed in accordance with the ordinary and natural meaning of the words.

51. Construing the two covenants and the two Planning Permissions together the Tribunal considers that the covenants require:

(a) that the Unit must be occupied for both residential and work use (as per condition 3 in the 2000 Planning Permission). In other words the Respondent needed to both live and work there;

(b) that the residential use must be *ancillary* to the work use (as per condition 3 in the 2000 Planning Permission) which we interpret as meaning that the residential use needed to be in order to support the work activities carried out in the Unit; and

(c) that the residential parts are only to be used for residential purposes in association with the work parts of the Unit and not for any other purpose (as per condition 2 in the 2001 Planning Permission).

52. In the Tribunal's view the evidence is clear that the Respondent both lived and worked in the Unit from the date he first occupied it until he left the UK on 20

October 2014. There is no obligation on him to occupy it as his only home and so the fact that he also had a home in the US is irrelevant.

53. The Tribunal found the Respondent's evidence to be credible and persuasive. We accept that the work he carried out in the Unit was as described in his evidence and as summarised above.

54. We also consider that his residential use of the Unit was ancillary to his work use in that he resided in the Unit in order to support his work activities. The only reason the Respondent was living in the London at the material time was because he had been seconded to the London offices of PWC for work purposes. We accept the Respondent's evidence that when not sleeping he spent the vast majority of his time in the Unit working and that this involved liaising with colleagues in different time zones. In our view such usage indicates that work was the principal or dominant use of the Unit and that the residential use was ancillary to such use.

55. Condition 2 in the 2001 Planning Permission requires that the residential parts of the Unit shown on an attached drawing number 02/03pa and 02/04pa shall only be used for residential purposes in association with the work part of the Unit. It was not part of the Applicant's case that the Respondent used any of the residential parts of the Unit for work purposes in contravention of this requirement. Nor, in any event, has the Tribunal been provided with a copy of drawing number 02/03pa and 02/04pa and it is therefore unable to identify which areas of the Unit were identified as residential parts.

56. Mr Duckworth submitted that the obligations imposed by the two covenants require there to be a complete and physical separation of the residential and work area and that the Workspace must only be used for work purposes. The Tribunal disagrees. There is no such requirement in the lease or the two Planning Permissions. Mr Duckworth seeks to draw support for this contention from Policy 1.6 in the 2007 Southwark Plan. However, neither the lease nor the 2000 or the 2001 Planning Permissions impose a condition that the Workspace is only to be used for work purposes. In any event, Policy 1.6 only requires a unit to be *capable* of accommodating business activities and staff in isolation from the living space. The Policy does not state that such separation should be a condition of granting planning permission.

57. What is required is as far as this Unit is concerned is that the residential parts are to only be used for residential purposes and that the residential use must be ancillary to the work use. Neither of those obligations have been breached in this case.

58. The Tribunal rejects Mr Duckworth's categorisation of the work the Respondent carried out in the Unit as falling within Class A2. This class concerns the provision of financial or other professional services where the services are provided principally to visiting members of the public. There is no evidence at all that services were provided to members of the public. It is also important to note that nowhere in the lease or the two Planning Permissions is there a condition that the work carried out must fall within Class B1. All that is required is that residential use

must be ancillary to work use. The restriction to Class B1 use only applies in the event that the Unit ceases to be used for live/work purposes.

59. The Tribunal does not consider the enquiries made by Mr Case prior to the 17 October 2014 inspection to establish that the Respondent only used the Unit for residential purposes. We accept that the Respondent's evidence that he paid Council Tax for the Unit and not business rates due to a mistake on his part. In any event, non-payment of business rates is not in itself indicative of a non-work use of the Unit. Mr Case's assertion that the price that the Respondent paid for the Unit was in excess of what he would expect a live/work unit to command is of no real evidential value especially where we have no evidence of sales of comparative properties. As to the sales particulars making no mention of the Unit being a live/work property this is readily apparent from a perusal of the Lease and should have been drawn to the Respondent's attention by any competent conveyancer. There is no evidence to the contrary.

60. Nor does the Tribunal accept that clauses 2.4 and 3.5 have been breached from the date that the Respondent ceased his business use of the Property, or from the date he ceased to live there. Mr Duckworth argued that as that the Respondent is no longer living or working in the Unit the default provisions in the 2001 Planning Permission either have or are likely to take effect in the near future. The default provision in question provides for allowed use in the event that a Unit ceases to be used for live/work purposes. If that occurs then the whole of the unit can only be used for purposes falling within Class B1. Mr Duckworth contends that if the Unit has lapsed to Class B1 that this amounts to a breach of both clauses 2.4 and 3.5 of the Lease.

61. The Tribunal considers that the Respondent was both living and working in the Unit until he left the UK on 20 October 2014. We accept his evidence that even after he started to move files and work equipment out of his office from June 2014 onwards that he continued to work in the Workspace. At paragraph 4 of his witness statement he refers to his last role at PWC being to organise a global conference for 500 people in New York which occurred on 6 and 7 November which involved a lot of work in the Unit due to the different time zones involved. We accept that this would involve substantial work being carried out in the Unit up to 20 October 2014.

62. It is also clear that before and after vacating the Unit on 20 October 2014 the Respondent was making efforts to assign the lease. The chronology, as it appears from the documents before us, was as follows:

(i) Contracts were sent by the Respondent's conveyancing solicitors to the intended purchaser's solicitors on 4 September 2014 **[B36]** and Leasehold Enquiries sent to LBE on the same day **[B38]**. LBE did not reply until 22 September 2014 when they asked for an administration fee of £395 before providing a response **[B40]** which was apparently paid the same day. By letter dated 30 September 2014 LBE then requested access to the Unit in order to carry out an inspection **[B43]** which resulted in the inspection on 17 October 2014.

(ii) On 20 October 2014 LBE sent an email to the Respondent stating that they were "almost ready" to respond to the enquiries raised but that in order to finalise those replies they needed him to *"confirm that the unit is currently used exclusively for residential purposes"* **[B47]**. The Respondent's replied on the same date stating the he used the apartment *"as a live work residence"* **[B49]**. Replies to the Leasehold Enquiries were finally provided dated 13 November 2014 **[B51]** in which it was stated there had been a breach of the user covenant in the Lease.

(iii) Full details to support the alleged breach of covenant were requested by the Respondent's conveyancing solicitors on 20 November 2014 **[B54]**. This request does not appear to have received a response and Mr Case confirmed in cross examination that he did not believe that one had been sent, perhaps because by this point the matter had been referred to the Applicant's solicitors.

(iv) On 18 December 2014 the Respondent's solicitors wrote to the Applicant's solicitors denying that any beach of a user covenant had taken place and stating that the intended purchaser was aware of the user provisions in the lease which he intended to abide by **[B56]**.

(v) In their letter in response dated 19 December 2014 **[B58]** the Applicant's solicitors stated that a recent inspection had *"found clear evidence that the premises were not being used in accordance with the user covenant in the lease and we have today taken steps to lodge on our client's behalf, an application under section 168 of the Commonhold and Leasehold Reform Act 2002"*.

(vi) On 20 January 2015 the Respondent's solicitors informed the Applicants' solicitors that the intended purchaser had withdrawn from the sale as a direct consequence of the application to this Tribunal **[B60]**. In that letter they asked whether the Applicant would withdraw the application on a purchaser confirming that the property would be used in accordance with the provisions of the Lease which would at least allow the Respondent to re-market the Unit.

(vii) In their response of 26 January 2015 **[B62]** the Applicant's solicitors asserted that this tribunal application was made following an inspection of the premises and that the evidence that would be provided to this Tribunal was that the premises were being used exclusively for residential purposes. They state that without a deed of variation to regularise the Respondent's use of the Unit and to *"dispose of these difficulties once and for all"* that it was the Applicant's intention to proceed with this s.168 application.

63. In the Tribunal's view the situation since 20 October 2014 is that there has been a temporary cessation of live/work use in the Unit. There is no evidence before us to suggest that the previous use cannot be resumed once the lease has been assigned without the need for any further planning permission to be obtained. There is, for example, no evidence that the local authority considers the planning conditions to have been breached or that it is considering enforcement action.

64. There is no suggestion that the Respondent did not intend to assign the Lease on the basis that it was to be used as a live/work unit. In fact, the contrary is evident from his solicitor's letter of 18 December 2014. Whilst it is true that a considerable period of time has elapsed since 20 October 2014 we agree with Mr Dovar that as well as length of time it is appropriate to look at the reasons for the cessation of live/work use.

65. In the Tribunal's view the evidence indicates that there was considerable delay in the Applicant responding to the Leasehold Property enquiries raised by the Respondent's solicitors. These were requested on 4 September 2014 and replies were not sent until 13 November 2014. Full details to support the alleged breach of covenant were requested by the Respondent's conveyancing solicitors on 20 November 2014 but went unanswered. Instead, the Applicant proceeded to issue this s.168 application asserting that the property had been used for purely residential use.

66. The decision to proceed with this application appears to have been very largely based on the inspection of Mr Case on 17 October 2014. However, it is unsurprising that Mr Case saw no evidence of dedicated servers or IT equipment or business-related paperwork given that all files and work equipment had been gradually moved out of the Unit and the Respondent was due to leave the UK three days later.

67. In the Tribunal's view it is unfortunate that the Applicant did not make adequate direct enquires of the Respondent as to his compliance with the covenants under his lease prior to issuing this application. The only enquiry made was the request on 20 October 2014 that he *"confirm that the unit is currently used exclusively for residential purposes"*. The Respondent's response, that he used the apartment "as a live work residence" was a rebuttal of that suggestion. Despite this, no further enquiries were raised by the Applicant before issuing this application.

68. Several enquiries were made by the Applicant's solicitors as to the manner in which the Respondent used the Unit in a letter to the Respondent's dated 4 February 2015 **[C7]** but this was *after* the issue of the application and *after* provision of the Respondent's Statement of Case. Such enquiries should have been made before the issue of this application. As the Tribunal stated in its letter of 18 February 2015 the burden of proof in this application rests on the Applicants shoulders and they must have considered the factual evidence on which it intended to rely before launching these proceedings.

69. In the Tribunal's view the factual evidence fails to establish a breach of covenant. The Applicant appears to have been convinced on a 5-10 minute inspection of the Unit and some not very useful enquiries made by Mr Case that the Unit had been used for purely residential purposes and then launched this application without making any enquiries of the Respondent. In the Tribunal's view to do so was premature.

Name: Amran Vance **Date: 15 April 2015**

Annex

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

The relevant parts of s.168 Commonhold and Leasehold Reform Act 2002 ("the Act" provide as follows:-

(1) 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.

(2) 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, or

(c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

(3) .....

(4) A landlord under a long lease of a dwelling may make an application to the appropriate tribunal for a determination that a breach of a covenant or condition in the lease has occurred.