FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/33UE/LBC/2017/0002**
Property	:	Flat H, 6 Cliff Parade, Hunstanton, Norfolk PE36 6DX
Applicant	:	Congden Court Ltd
Representative	:	Charles Nevick, lessee
Respondent	:	James Oliver
Representative	:	Elizabeth White, counsel, instructed by Edmondson Hall
Type of Application	:	for a determination that the respondent tenant is in breach of a covenant or condition in a lease between the parties [CLRA 2002, s.168(4)]
Tribunal Members	:	G K Sinclair, R Thomas MRICS & C Gowman BSc MCIEH MCMI
Date and venue of Hearing	:	Monday 8th May 2017 at King's Lynn Magistrates Ct
Date of Decision	:	21st June 2017

DECISION

Summary

1. In early 2016 the respondent, Mr Oliver, purchased the long lease of a second floor flat in a large mid-terraced building that may once have been a hotel on the seafront at Hunstanton in Norfolk. At the AGM of the resident-owned landlord company he informed those present that he would be carrying out renovations and later said that he would need a skip, scaffolding and chute to take away the contents of the flat. In late May/early June his builder moved in and carried out extensive renovations which included the removal of some non-load bearing walls separating the main living room from the kitchen and a small lobby that led to the bathroom. A further section of non-load bearing wall between living room and bedroom was removed and a new structure created. This was intended as a new *en suite* bathroom but, after protest from the landlord, the bathroom was retained in its original position.

2. The applicant landlord company considered that these actions amount to a breach of covenant not to make any alteration in the internal plan or construction of the demised premises. Believing that the respondent had admitted such a breach the applicant's solicitors served a section 146 notice upon him but, upon reading the tone of the respondent's solicitors' reply, the applicant considers it to be equivocal and therefore applied to this tribunal for a determination that the respondent was in breach.

3. While the applicant had engaged solicitors to prepare and serve the section 146 notice it chose to act as a litigant in person in bringing this application, one of the other lessees (who is not a director) acting as both spokesman and point of contact. While the section 146 notice drafted by solicitors alleged one breach this application, drafted by Mr Nevick, alleges no fewer than seven.

4. For the reasons which are set out in detail later in this decision the tribunal makes the following findings on each of the allegations, the precise terms of the covenants in question being set out in the next section of the decision.

No.	*Provision concerned*	*Finding*
1	6th Sch, para 20	A breach, but an improvement. No structural harm caused to building
2	6th Sch, para 18	Dismissed
3	6th Sch, para 10	Dismissed
4	6th Sch, para 17(a)	A breach, but only if someone were residing in the demised premises – no such evidence being provided

5	6th Sch, para 27	Dismissed. Rules & regs cannot derogate from the grant, or add to the burden of existing covenants
6	6th Sch, para 2	Dismissed
7	6th Sch, para 17(e)	Dismissed

5. Whether, upon receipt of this determination, the applicant landlord chooses to serve a section 146 notice and bring forfeiture proceedings in the County Court is a matter for it to decide. If court proceedings are issued then the question whether relief should be granted, and upon what terms, is a matter for the discretion of the court and not this tribunal. For the assistance of the court the tribunal would, however, wish to record the following matters which might be regarded as significant :

a. The leases were recently extended by a term of 90 years and will not now expire until 24th June 2162, 145 years into the future

b. What would be regarded as acceptable internal domestic arrangements or requirements so far in the future can only be guessed at

c. The fact that a notice was posted warning leaseholders against altering the interior of the flats, and that this was mentioned at the AGM attended by the respondent – months prior to his carrying out any work, indicates that such alterations were already perceived to be a problem by directors of the landlord company

d. By deleting a small, cramped kitchen which relied upon a combination of borrowed light (via the bathroom lobby, at high level) and light through a large open serving hatch and doorway, rewiring, increasing the fire resistance of the ceilings throughout and installing smoke detectors the respondent has brought the flat up-to-date, made the whole far more attractive and enhanced its value on the current market

e. No damage has been caused to the structure of the building or the flat, as demonstrated by the report of the jointly instructed surveyor; nor to the value of the freehold reversion

f. Reinstatement of the *status quo ante*, viz cramped kitchen and bathroom lobby areas with no direct access to natural light, would involve needless expense and be practically pointless, devaluing the flat just for the sake of preserving its non-structural internal layout in aspic – potentially for a further 145 years

g. The respondent admitted his naïvety in proceeding with the works without first bothering to inform the landlord company of their extent

h. While the covenant in paragraph 20 of the 6th Schedule is expressed in absolute terms (i.e. it does not refer to alterations being permitted with the landlord's consent, such consent not to be unreasonably withheld) it became clear both in written submissions and during the hearing that if the respondent had given the applicant notice "then we would not be here today, because we would have had notice, discussion could have taken place and it could have been agreed." A proposed alteration to flat B was specifically referred to at the hearing, the applicant having requested copies of plans from the lessee for its approval.

Relevant lease provisions

6. The material lease was originally granted on 13 July 1979, commencing on the same date and due to expire on 24th June 2072. By a deed of surrender and lease dated 8th October 2014 the term is extended by a period of 90 years, during which the rent was reduced to a peppercorn. Apart from the provisions as to rent the terms, conditions and covenants of the original lease continue to apply.

7. The lease as granted was a tripartite lease involving the lessor, the applicant as management company, and the lessee. On a date unknown the management company purchased the freehold and therefore also took over the responsibilities of the lessor. It was subsequent to this that the leases of all nine flats were then extended.

8. The demised premises are defined in the second schedule as follows :

> All that flat situated on the second floor of the building known as Flat H Congden Court 6 Cliff Parade Hunstanton aforesaid all which the said premises are for the purposes of identification only more particularly edged red on the plans attached hereto together with the ceilings walls and interior faces of such exterior walls as bound the flats and floors of the flat and the joists and beams on which the floors are laid (but not the joists and beams to which the ceilings are attached)...

9. The lessee's covenants appear in clause 2 of and the sixth schedule to the lease. Those provisions relied upon by the applicant are paragraphs 2, 10, 17(a), 17(e), 18, 20 and 27. The material parts read as follows :

> 2 The lessee shall during the continuance of the said term keep the demised premises and all parts thereof and all landlord's fixtures and fittings and all additions thereto including the window and doors the heating system (if any) and sanitary and water apparatus and the pipes wires drains cables and conduits exclusively serving the demised premises well and substantially repaired maintained renewed amended and cleansed...
>
> 10 That the lessee will not do or permit or suffer any act matter or thing in upon the demised premises which may render any increased or extra premium to be payable for the insurance of the building or which may make void or voidable any policy for such insurance and to indemnify the lessor against any increased or additional premium which by reason of any such act or default of the lessee may be required...
>
> 17 That the lessee will not permit or suffer in or upon the demised premises or any part thereof
>
> (a) any person to reside there unless the floors thereof (including the passages) are covered with carpet felt or other adequate sound insulating material (except whilst the same shall be removed for cleaning repairing or decorating the demised premises or from some other temporary purpose) ...
>
> (e) any act matter or thing whatsoever including in particular but without limiting the generality thereof piano playing singing and music of any kind and the use of wireless and television

loudspeakers and gramophones or other reproducers of sound which shall or may be or become or cause a nuisance damage annoyance or disturbance to the lessor or any of its lessees or tenants...

18 The lessee shall do all such works as are required by any Act of Parliament rule of law or local bylaw or are directed or necessary to be done or in respect of the demised premises (whether by landlord tenant or occupier) and shall keep the lessor indemnified against all claims demands and liabilities in respect thereof

20 That the lessee will not cut or maim or make or permit or suffer to be made any alteration or addition in or to the external or internal plan or construction or in or to the height of the ceilings principal or bearing or partition walls timbers girders or in or to the elevation or architectural appearance of the demised premises or any part thereof

27 That the lessee will at all times observe and perform such rules and regulations as the lessor or the management company shall from time to time reasonably make in the interests of good management and conduct of the building.

10. Finally, clause 5 of the lease provides for the forfeiture of the lease if any part of the yearly rent shall be in arrear and unpaid for twenty-one days after the same shall become due or if default shall be made in the performance or observance of any of the covenants obligations or provisions therein contained or referred to on the part of the lessee.

Material statutory provisions

11. Section 168 of the Commonhold and Leasehold Reform Act 2002 provides :

(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 (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) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

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

(5) ...

12. Section 169 contains supplementary provisions, none of which are material to

this decision.

13. The question whether a lease is forfeit remains one for the court, as is the exercise of its discretion to grant relief against forfeiture; an issue which in the context of a long lease is usually of considerable concern to any mortgagee of the tenant's leasehold interest.

Inspection and hearing

14. The tribunal inspected the front exterior of 6 Cliff Parade, Hunstanton, the main staircase and the interior of flat H at 10:00 on the morning of the hearing. Also present were the respondent, his counsel (Ms White), and Mr Nevick. At the time of inspection the sky was overcast and there was a strong cold wind blowing off the sea. Externally, the tribunal's attention was drawn to a small waste pipe emerging from the front wall flat in the area of the bathroom and feeding into a rainwater hopper on a downpipe.

15. Internally, the tribunal inspected the flat and noted the large kitchen/diner/living area which now replaced the formerly separate living room, kitchen and a small lobby immediately in front of the bathroom. A wood laminate floor covered the whole of the main room, including behind the new island/breakfast bar in the kitchen area. The bathroom, now with a shower instead of a bath, had a more waterproof floor covering. The small corner wash hand basin in the former lobby had now been replaced by a new wash hand basin in the corner of the bathroom, just inside the door. Near the entrance to the flat an obvious box-like structure had been created which straddled the line of the former wall between living room and bedroom. This was originally intended to be a new en suite bathroom but, after a change of plan, was now simply a large cupboard.

16. New electric wiring and fire resistant plasterboard ceilings had been installed throughout, the latter with recessed LED lighting. The boiler had been replaced. A brand-new smoke detector was fitted in the ceiling near the breakfast bar.

17. The overall impression was of a bright, modern one-bedroom flat commanding excellent views of the sea from two large double glazed windows. It was also much less of a fire risk than before, when the combination of an open doorway and large serving hatch and the absence of any smoke or heat detector would have made the kitchen a far greater fire hazard. With the possible exception of the large new cupboard the work that had been undertaken was, compared with the photographs showing the dark and cramped kitchen with large open serving hatch and doorway, a considerable improvement and likely greatly to enhance the value of the flat on the open market.

18. Due to abnormally slow traffic on the A149 between Hunstanton and King's Lynn the hearing was unable to start before 11:50. On behalf of the applicant Mr Nevick began by objecting to late service of some documents by the applicant. As these had been served well before the hearing date and no prejudice was demonstrated the tribunal dismissed the objection.

19. The tribunal therefore had before it a main bundle comprising the application, the leases, correspondence, a report from Mr J Goddard on the application of the Party Wall, etc Act 1996, photographs, the applicant's submissions and those by

the respondent. A second bundle contained the witness statements of four witnesses for the applicant, two for the respondent, and a statement and report by the joint expert surveyor, Mr Russen. A third bundle, submitted by the respondent, contained company documents and other matters going essentially to the regularity in company law of the application when it had never properly been voted upon and approved by the directors.

20. The tribunal had read the various witness statements and heard oral evidence from Josephine Cope, a director and shareholder of the applicant company, the respondent and the respondent's builder, Mr Bryan. Detailed submissions were made by Mr Nevick, lessee of the flat immediately below the demised premises, on behalf of the applicant and by Ms White, counsel, on behalf of the respondent.

21. Mr Nevick began by going through in some detail each of the alleged breaches of covenant by Mr Oliver. The exact nature of these alleged breaches shall be dealt with in the discussion section of this decision. Despite robust argument with the tribunal about the meaning of paragraph 18 in the sixth schedule Mr Nevick was convinced that it meant that a breach of covenant took place if the lessee did not comply with the general law, and specifically by failing to give notice to both the landlord and the lessee of the flat above in respect of works to the ceilings under the Party Wall, etc Act 1996. Failure to notify under the Building Regulations was also claimed to be a breach.

22. Mr Nevick also drew the tribunal's attention to two cases which he said were binding on the tribunal. First, *Vine Housing Co-operative v Mark Smith*[1], where HHJ Gerald declared that the landlord's motive in bringing proceedings under section 168 is not of any concern to the tribunal. Whatever the reasons behind this application, they are not relevant. Secondly, *Roadrunner Properties Ltd v Dean & anor*[2]; a claim in nuisance and negligence where non-compliance with the Party Wall, etc Act became an issue. Ms White argued that the question in the latter case was one of causation. In this case the tribunal had the benefit of the joint report by Mr Russen, which dismissed the possibility of serious damage having been caused by the works.

23. Much of the content of the applicant's statements concerned lack of advance knowledge of the works planned and undertaken, criticism of the respondent's attitude and some vague allegations concerning a dropped work tool and rubbish on ledges. In view of the nature of the work undertaken the tribunal did not find this to be of particular assistance in determining whether or not the respondent was in breach of covenant.

24. Mr Bryan explained the work that he had done and insisted that he had at a late stage checked with CNC Building Control, which confirmed his view that it had not been necessary for him to have notified Building Control. While he had worked on a few flats before it was not his business to consult leases. All that concerned him was whether he was being asked to demolish any walls that were structural, or load-bearing.

1 [2015] UKUT 0501 (LC)

2 [2003] EWCA Civ 1816, at [28 & 29], per Chadwick LJ

25. Mr Oliver was the last to give evidence. He described the work that he had intended to do and had authorised Mr Bryan to undertake. He accepted that he had little experience of renovating leasehold premises and that he had been rather naïve in his approach. He accepted that in some respects he may have breached the strict wording of the lease but he denied many of the allegations being put to him by Mr Nevick.

26. Ms White summed up on behalf of her client but was stopped by the tribunal from going into too much detail about the regularity in company law of the decision to bring this application; she having obtained evidence through cross-examination that while 8 shareholder lessees had been e-mailed about granting the respondent retrospective permission 3 had not replied and a majority of those voting had voted against, but no vote had been taken on service of the section 146 notice. This tribunal is concerned solely with whether there has been a breach of covenant; not with regularity of process, waiver of breach, etc. Those are issues for the court, if matters get that far.

Discussion and findings

27. Having read the relevant documentation, listened to the oral evidence and the submissions by both parties, and having drawn to Mr Nevick's attention that the tribunal considered that his understanding of the nature of the covenant set out in paragraph 18 of the six schedule was wrong and far too extensive in nature, the tribunal sets out its findings on each of the alleged breaches. It shall do so in the order in which they appear in the application notice, which is not the same as following the sixth schedule in strict paragraph order.

28. *1. Sixth schedule, para 20* — the applicant says this is an absolute prohibition – not one expressly qualified by a power of the lessor to give consent – and that the respondent has deliberately or recklessly breached his covenant by demolition of an internal masonry wall, internal wall between kitchen and living room, and of walls between bathroom and the original lobby and from the lobby and lounge. The applicant also relies upon his demolition of all the ceilings in the flat and replacing them in a new configuration after carrying out works to install downlights and other materials in the ceiling voids which are not demised to the respondent and are part of the reserved property. The applicant also relies upon the respondent's creation of additional walls to form what was intended to be a new internal windowless bathroom and cutting through an external wall not demised to the respondent for the purpose of passing a new waste pipe over a new route into an open hopper. By carrying out the above respondent has made significant alterations the internal plan.

29. While the lease plan is stated to be for identification purposes only the "plan" referred to here is the footprint of the flat, i.e. its internal configuration of walls and doors. The respondent does not dispute, nor can he, that walls were removed and new ones created. That is enough to establish a breach of covenant.

30. So far as drilling a hole to insert a new waste pipe is concerned, the applicant argues that "to cut" is a simple word, and "to maim" means to injure. The tribunal disagrees. The covenant is not to "cut or maim", so the tribunal applies the *sui generis* rule and therefore regards each as meaning something serious. The only definitions for "maim" in *Stroud's Legal Dictionary* refer to bodily injury, and to

injury to a limb that is so severe as to render it useless in battle. Drilling a hole for a small pipe does not "maim" the wall. One might "cut" into a wall by, for example, creating a serving hatch – as seems to have happened at some stage in the past, because the lease plan shows no such hatch in the wall between kitchen and living room.

31. *2. Sixth schedule, para 18* — the applicant says that the respondent has breached this covenant by failing to give formal notices, as required by the Party Wall, etc Act 1996, to both the company and to various lessees of flats in respect of his intention to demolish the ceilings and a masonry wall. Mr Nevick also relies upon the respondents alleged failure to obtain proper consents under the Building Regulations in respect of Part B (Fire alarms and fire doors) and Part H (changes to kitchen and bathroom pipework, etc). He also relied upon the respondent allegedly trespassing in the ceiling voids, which she said were not demised to flat H, by installing downlights and associated cables and other materials.

32. The tribunal rejects these allegations. The covenant concerned requires a lessee to do all such **works** as required by any act of Parliament, rule of law, or local bylaw or are directed or necessary to be done on in respect of the demised premises. That is a covenant which requires works to be done in order to comply with the law, an example given by the tribunal in argument being the installation of a fire escape at the direction of the local fire authority. Another is compliance with the terms of an improvement notice served under Part 1 of the Housing Act 2004. It does not concern mere compliance with legislation. If it did then why need the lease include at paragraph 19 a covenant to comply in all respects with the provisions and requirements of the Planning Acts?

33. As stated in *Ross : Commercial Leases*[3]

> Having ensured that the tenant will be responsible for all payments due in respect of the demised premises, the landlord will require the tenant to carry out all work called for by the local or any other authority pursuant to a statute. Such a covenant is not limited to circumstances where the tenant is in breach of a statutory requirement, but would extend to any new requirements. Therefore, if a sprinkler system or other fire fighting or alarm equipment became compulsory in properties such as the premises, it would fall to the tenant to install it.[4]

34. The allegation of trespass to the voids is irrelevant to this covenant, but for the avoidance of doubt the tribunal disagrees with the applicant's argument that, if the ceilings are demised to the flat below and the joists to which they are attached are demised to the flat above, on the wording of this lease the voids are reserved property, i.e. retained by the landlord as "common parts". If the argument by the applicant were correct then the respondent would be trespassing simply by using screws or nails to fix the ceiling to his neighbour's joists. Further, all cabling for ceiling lights (and possibly even more heavy duty cable for wall sockets that drop

[3] At Division H, Chapter 4, para [356]

[4] At the time of writing, just after multiple deaths were caused by the conflagration at the Grenfell Tower in London, such examples have acquired a terrible relevance not contemplated at the date of the hearing

vertically in concealed conduits) would pass through the voids or even notches and joists. If the respondent is entitled to place electric cable in the voids then he cannot be trespassing.

35. *3. Sixth schedule, para 10* — The applicant alleges that due to these unauthorised works the insurance policy for the building may have been adversely affected. In the application Mr Nevick states that :

> "The insurer is currently considering this matter; it may be that its decision will depend on the actions to be taken by the applicant in defence of the lease."

He went on to suggest that so many significant breaches of the lease "may make" the insurance policy void or voidable or lead to increased premiums.

36. This is entirely speculative. No evidence was adduced from an insurer to confirm that the buildings insurance would be affected in any way whatever by work that, even if technically in breach of covenant, has been carried out in a workmanlike manner and to a reasonable standard. Mr Nevick had ample time in which to obtain such evidence. He did not. This allegation is rejected out of hand.

37. *4. Sixth schedule, para 17(a)* — The applicant alleges that the flat has been re-floored with some sort of fixed solid flooring, and it is not "covered" as required by the lease. Even had a sound insulating layer been placed beneath the wood laminate flooring (which the respondent had mistakenly understood was the case) such layer would not "cover" the floor, in the ordinary sense of the word.

38. This is a problem which is addressed in most residential leases, although unlike in this case there is usually an exception for kitchens and bathrooms where a hard wearing but waterproof and hygienic surface is required. The tribunal noted at the inspection that the respondent was explaining to all present that he was aware of the potential noise problem and had already arranged for carpet to be fitted as soon as practicable. The tribunal presumes that the applicant would not take issue with the fitting of rubber mats or something similar in the kitchen area.

39. This work was carried out last summer. The flat does not appear to be Mr Oliver's residence and indeed no evidence was given about whether the flat is currently occupied. The covenant is breached only if someone is residing there while the floor is not appropriately covered. With no such evidence before the tribunal all it can say is that **if someone resides there while the floor is in its current condition** then a breach will have occurred. The tribunal cannot say that as at the date of the hearing there has been such a breach.

40. *5. Sixth schedule, para 27* — This covenant concerns compliance with such rules and regulations as the lessor or management company shall from time to time reasonably make in the interests of good management and conduct of the building. This alleged breach concerns non-compliance with rules set out in a leaflet, including the line :

> No alterations of any kind are to be made to any part of the building.

Insofar as that statement goes further than the covenant in paragraph 20 then it is not the place of rules and regulations for the management of the building to seek to amend, by a simple majority of those shareholder lessees who bother to reply to your proposal, the covenants set out in the lease which, one hopes, have been considered carefully by the prospective lessee and his/her professional advisers before taking an assignment. This alleged rule or regulation would, for example, prevent the lessee from replacing single glazing with double glazing.

41. Insofar as a rule goes no further than the covenant then this alleged breach is mere surplusage. In any case, having heard evidence of how the notice was posted in the front hallway on the ground floor, the tribunal is not satisfied on the balance of probabilities that it came to the respondent's attention; he stating that he always uses the rear entrance because that is the way out to the car park. The tribunal is not satisfied that this alleged breach is made out.

42. *6. Sixth schedule, para 2* — The applicant alleges that, having demolished virtually every demised wall, the respondent is no longer able to maintain them.

43. The respondent lessee's obligation under this covenant is to maintain, etc the demised premises; not every original part of the flat if later amended. As seen by the tribunal on its inspection, less than a year after works were finished, the flat is in excellent physical condition – and well decorated as well. The essence of the applicant's real complaint is that the respondent is in breach of paragraph 20, as recognised by its solicitors when drafting a section 146 notice containing one alleged breach only. This argument is a case of *reductio ad absurdam.* The allegation is dismissed.

44. *7. Sixth schedule, para 17(e)* — The applicant alleges breach of this covenant by the renovation works causing excessive dust and mess, excessive noise, minor damage to two ceilings of the flat below (Mr & Mrs Nevick's flat), demolition debris being deposited on balconies and parapets, a heavy crowbar or other tool falling and landing on a gas pipe (a later investigation not finding any damage), the storage of some insulation panels out of the rain one night in the ground floor corridor of one of several escape routes, and very significantly increasing the workload, cost and stress on a small residential management company.

45. Ignoring for now the fact that most examples of nuisance given in this covenant concern noise caused by playing music, etc the following points must be made :
    a. First, nuisance is a tort affecting the use and enjoyment of property. The claim that the company has been caused extra work is irrelevant.
    b. Secondly, while some dust and noise will almost inevitably be caused by building works, if such work is carried out competently, with steps taken to ensure that neighbours are being caused no undue inconvenience, without undue delay, and during usual working hours, then no action will lie in nuisance. Here the respondent arranged for scaffolding and a chute to a skip to minimise dust and escape of debris. That deposited on balconies, etc was brushed away. Corridors and stairs were protected.
    c. If a tool is dropped accidentally and no harm ensues then there is no cause of action.
    d. The report by the jointly appointed surveyor rules out any responsibility by the respondent for any more than some minor "popping" of a few fixing

nails in the ceiling of the flat below.

e. In the absence of external storage (e.g a container) in the car park it was sensible to store some insulation panels out of the rain for one night only. No harm was done, and the applicant seems to be clutching at straws.

46. This final allegation of breach is therefore dismissed.

47. In conclusion, the tribunal determines that the respondent is guilty of one breach of covenant by remodelling the interior of the flat, and there is potentially a further breach if anyone chooses to reside in the flat while the laminate floor is not insulated against the transmission of noise by a suitable covering - which could include rugs on traffic routes.

48. As HHJ Gerald stated in *Vine*, the applicant landlord's motive in bringing these proceedings is irrelevant to the tribunal's enquiry. In the instant case Mr Nevick observed that the company had little by way of liquid assets and that it had only been able to bring the application because a lessee (whom he did not identify) had agreed to indemnify it. The degree to which the application has been successful is set out above. Whether that indemnity will extend to the service of a section 146 notice and then forfeiture proceedings remains to be seen, but it is for the applicant to decide what outcome it realistically hopes to achieve thereby, and how a rigidity of approach may affect the value and ability to assign shareholders' flats over the unexpired 145 year terms of the their respective leases.

Dated 21st June 2017

Graham Sinclair

Graham Sinclair
Tribunal Judge