FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HE/LBC/2017/26 and CHI/00HE/LBC/2017/27
Property	:	Flat 3 Beach House Portmellon Cove Mevagissey St Austell Cornwall PL26 6PN and Flat 2 Beach House Portmellon Cove Mevagissey St Austell Cornwall PL26 6PN
Applicant	:	Alma Margaret Scholes
Respondent	:	Glen Adam Hellings (Flat 3) and Thomas David Hellings (Flat 2)
Type of Application	:	Application for an order that a breach has occurred Section 168(4) Commonhold and Leasehold Reform Act 2002 (the Act)
Tribunal Members	:	Judge C. A. Rai Michael Woodrow MRICS (Chartered Surveyor)
Date and venue of Hearing	:	16 August 2017 Bodmin Law Courts Launceston Road Bodmin Cornwall PL31 2AL
Date of Decision	:	7 November 2017

DECISION

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1. The Tribunal determines that the Respondent Glen Hellings has not breached any of the covenants in his lease of Flat 3 Beach House Portmellon.

2. The Tribunal determines that the Respondent Tom Hellings has breached the covenant in his lease of Flat 2 Beach House Portmellon not to obstruct the "Common Parts" of the Property used in common with other occupiers and owners of the flats. It records that an offer has been made to the Applicant, by Tom Hellings, to remedy this breach but that it appears that the parties cannot reach agreement with regard to the terms of the proposed remedy.

3. The reasons for its decision are set out below.

Background

4. The Applicant is the freeholder of the Beach House at Portmellon Cove Mevagissey St Austell Cornwall. The Respondents are leaseholders of Flat 2 (Tom Hellings) and Flat 3 (Glen Hellings).

5. The Applicant made applications, both dated 10 April 2017, alleging various breaches of the leases of Flats 2 & 3 and non payment of administration charges by Tom Hellings.

6. Directions were issued by Judge Whitney on 19 May 2017 which struck out the claim for non-payment of administration charges.

7. A timescale was set out for the parties to exchange statements of case supply title information and for the Applicant to supply Hearing Bundles.

8. The Directions clearly stated what the Hearing Bundle should contain and that it should be indexed and all the pages should be numbered consecutively.

9. The Directions confirmed that an inspection of the property would be made by the Tribunal before the Applications were heard.

10. Separate bundles were produced by each party which were put together, presumably by the Applicant, without clear numbering and in a somewhat haphazard order. Much of the information provided by the parties was duplicated.

The inspection

11. The Beach House is an end terrace property which, at some time, has been converted into four flats. Flat 4 a maisonette, on part of the ground floor and first floor of the building, is occupied by the Applicant. It remains part of the freehold. The primary access to Flat 4 is at ground floor level at the front of the building with a secondary access from the first floor balcony at the back of the building. The Applicant has erected a wooden shed on part of this first floor balcony.

12. Flat 3, which is on the ground floor of the building, has been sold as long leasehold flat and is owned by Glen Hellings and his wife. The access is at ground floor level from the front of the building with a door also at the rear. Flat 2, which is also a long leasehold first floor flat, is owned by Tom Hellings and his wife. Tom Hellings is Glen Hellings father. Flat 2 is accessed via the shared stairs and first floor balcony at the back of the building which also lead to the rear entrance of Flat 4.

13. Flat 1 located on the top floor of the Beach House is retained by the Applicant but not occupied by her. It has its own access via external

spiral stairs at the rear of the building which lead up off the shared rear balcony.

14. A yard at the front of the Beach House separates it from the road which is directly adjacent to the beach and sea. At some time the yard has been divided by a stone wall so that the access to Flats 3 & 4 is through their respective parts of the yard. A gate has been constructed in the wall separating the yard in front of Flat 3 from the adjoining terraced property, known as March. March appears to be owned by a member or members of the Hellings family.

15. A yard behind Beach House contains four allocated parking spaces, one for each of the flats. That yard is reached via a gate in the front wall leading to an access way, said to be approximately 7 feet in width, which runs underneath the end of part of the first floor of Flat 4.

16. The Tribunal were told that the Applicant usually parks her car in the yard in front of Flat 4 although that area is shown as visitor parking on the plans attached to the leases of Flats 2 & 3.

17. The parking spaces designated for use by the owners of Flats 2 & 3 are the last two spaces in the rear yard with the space allocated to Flat 4 being the first space in the yard directly in front of the access leading to it and behind Flat 4. Presumably the space in between is used by the occupier of Flat 1. The allocation of parking spaces currently used is not that which is shown on the lease plans of Flats 2 & 3. On those plans the spaces are numbered 1 - 4. Spaces 2 & 4 are demised to the tenants of Flats 2 & 3.

18. Behind Flat 3, almost adjacent to the boundary wall of March, is a single storey "lean to" boiler room. Two wooden sheds have been erected in front of the back boundary of the parking spaces now used by Flats 2 & 3. Two oil tanks which serve or are intended to serve Flat 4 are located at the back of the car parking space allocated for use by Flat 1. One is protected by a wall. The Tribunal were told that neither tank is currently connected.

19. The boiler room houses a boiler which serves Flat 4. It also contains a washing machine which both Flats 2 & 3 have rights to use.

20. Flats 2 & 3 also have the right to use the boiler room for storage in common with the freeholder, albeit the right is subject to the availability of space.

21. The adjoining property March has a right of access from the road across the front yard of Beach House, underneath the first floor of Flat 4, across the rear yard and through gates situate in the boundary fence separating the Property from March.

The Hearing

22. The Applicant did not present her statement in support of the Applications with any clarity. The Tribunal asked her to explain which of the tenant covenants in the leases of the two flats owned by the

Respondent she claimed had been breached and suggested that these should be considered in the numerical order in which the clauses appear in the leases.

23. It asked that the Applicant explain by referring to her bundle why she claimed that the covenants had been breached by the Respondents and thereafter that the Respondents each be given an opportunity to respond and comment.

24. However the Applicant did not accept that the content of the Leases of Flats 2 & 3 are a starting point for her complaints, as she alleged that the Leases that had been granted to the Respondents were not in a form with which she had agreed.

25. Despite the best efforts of the Tribunal to progress the Hearing by considering each alleged breach in turn, it was sometimes impossible to deal with the alleged breaches or even find the evidence to support the presentation of the respective parties cases because none of the pages of the bundles were clearly numbered and many documents were duplicated.

26. Although it was possible to discuss some of the alleged breaches and review some of the documentary evidence, all the parties agreed and accepted that allocating a further hearing day would not facilitate the Tribunal's determination.

27. Instead it was agreed that the Tribunal would issue Further Directions which all hoped might narrow the issues remaining disputed and clarify whether some or all of the alleged breaches are breaches of the tenant covenants in the Leases of Flats 2 & 3. In these Directions the Tribunal would record all the evidence it had already heard with relevant evidence extracted from the Hearing Bundle.

28. A time scale was agreed for the parties to respond to the Further Directions and for the Tribunal to make its written decision which took into account that one of the Respondents would be on holiday until after the 4 September.

29. Further Directions were issued by the Tribunal dated 7 September 2017 attached to which was a schedule setting out each of the covenants in the Leases of both flats allegedly breached by the respective Respondents, with a summary of any discussions which had taken place at the Hearing and with space for the Applicant and Respondents to insert written comments and return these to the Tribunal on or before the 7 October 2017.

30. The Further Directions specified that the parties should provide up to a single A4 page of comments and that no additional evidence, save for reference to anything provided in compliance with those Directions, or already contained in the Hearing Bundle, would be considered by the Tribunal.

31. Despite the content of the Further Directions, the Applicant supplied additional documents and correspondence with her comments. The Tribunal has not been influenced by any of this information when making this determination as it had already made it clear to the Applicant, both at the Hearing and in the Further Directions that it would not. It also explained the basis on which it would consider the parties written evidence and the oral evidence submitted at the Hearing.

The Law

32. Section 168(1) of CLARA provides that no landlord may forfeit a long lease of a dwelling without a final determination following an application under subsection (4) that a breach of covenant has occurred or admission by the tenant of the breach.

33. Subsection 168 (4) states that; - "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 covenant has occurred".

34. The First-tier Tribunal now has jurisdiction to determine an application under section 168(4) above.

Alleged Breaches

35. The Applicant alleges breach of the following covenants which have been listed and considered in the order in which these are listed in the Leases of Flats 2 & 3. The evidence and submissions of the parties have been summarised together the conclusions of the Tribunal.

Clause 3.7
Not to make any structural or external alterations or any additions to the Premises without the prior written consent of the Landlord (such consent not to be unreasonably withheld or delayed).

Parties evidence

36. The Applicant alleged that the installation of a cowl/pot to the chimney is a structural alteration as is the alleged unblocking of what the Applicant claims to have been a "previously blocked chimney".

37. She also alleged that the Respondents had interfered with the locking mechanism to her garden gate.

38. Thirdly she complained about the removal of beams from an internal ceiling within Flat 3.

39. At the Hearing the Applicant said that her bedroom is behind the wall in which the log burning stove in Flat 2, (Tom Hellings), is located and the wall became hot. She also claimed that the stove is dangerous and that smoke from it had escaped into the adjoining flats.

40. The Respondent Tom Hellings claimed it was possible to look up through the chimney in Flat 2 & see daylight; despite the Applicant's

evidence (in the Hearing Bundles) he claims the chimney was not completely blocked.

41. Contrary to his express wishes, the Applicant gained access to his property and her workman, acting on her instructions, removed the chimney pot/cowl. This work was undertaken despite written notice from him that the Applicant did not have the right to instruct anyone to carry out this work.

42. The Respondent's evidence is that even if the alteration was structural, which Tom Hellings refutes, he did not request consent from the Applicant because she would have refused it.

43. The Respondent also provided evidence that the wood burner in Flat 2 had been properly installed but the Applicant disputes this. The Applicant's rebuttal evidence is unconvincing; in particular the letter produced from Just Chimneys dated 2 January 2013, the "Just Chimneys Letter", appears to have been written to support the Applicant's allegations because it refers to the log burner as located within a sleeping area. At the date of the inspection neither of the log burners in Flats 2 or 3 is located in a sleeping area. Both are located in the living/sitting rooms of those Flats.

44. The Just Chimneys Letter also refers to the chimney liner not reaching the chimney pot and the absence of a chimney pot or cowl but was written after the Applicant had arranged for the cowl/pot to be removed.

Tribunal Comment

45. The definition of Premises in each lease only includes the Flat. The roof is not part of the Premises.

46. The chimneys are original to the construction of the building and therefore can only be part of the Premises in so far as these are within the "envelope" of the Flat. The Applicant alleges that the chimneys were unsuitable for use.

47. At the Hearing the Applicant complained that her bedroom was behind the wall in which the stove in Flat 2 is located and the wall became hot. She also claimed that the burner is dangerous and that smoke had escaped into adjoining flats.

48. It is not disputed that the Applicant has installed a similar wood burning stove in Flat 4 despite suggesting that the chimneys serving Flats 2 & 3 are unsuitable for use.

49. Nothing which could be seen from the external visual inspection made or from the inspection of the interior of Flats 2 & 3 indicated differences between the two chimneys serving the building which would prevent one from being used and the other being unsuitable to vent a wood burning stove.

50. When responding to the Further Directions the Applicant suggested for the very first time, and in direct contravention of those Directions which had stated that neither party could introduce further evidence not included in their original bundles, that the end of the original Terrace had been extended and that the dividing wall between Flat 4 and Flats 2 & 3 was originally an external wall and that an "extra house" was added approximately 90 + years ago.

51. This evidence seems to lack any material relevance to the issue in dispute. She also refers to what she termed "fireman's heat seeking equipment" being able to establish that the chimney was "kinked" but no such written evidence is contained in the bundle; neither does the Tribunal recollect that this mentioned by her during the Hearing.

52. The Applicant said that prior to the day of the Hearing she had not entered Flat 2 since she "put the key in Tom Hellings hand", but claimed that there was a double bed 2 feet in front of the wood burner without explaining how she could have known that to be the case.

53. Some of the original ceilings within the flats had been embellished with decorative beams and one of the Respondents has replaced a ceiling in his flat, without reinstating the beams, which the Applicant alleged is a structural alteration. The Tribunal are satisfied that the replacement of the ceiling and removal of beams would not have required Landlord's consent under the terms of this covenant because the alteration is not structural.

54. From the inspection it was established that the garden gate referred to in one of the Applicant's alleged breaches was on the rear boundary of the Property and not included within the definition of Premises in the leases of Flat 2 or Flat 3. Therefore any interference with it could not have constituted a breach of this covenant.

Clause 3.8
Not to make any connection with the Pipes serving the Premises otherwise than in accordance with plans and specifications approved by the Landlord (such consent not to be unreasonably withheld or delayed.

Parties evidence

55. The Applicants case is that an alteration to the plumbing in the Flat made by Glen Hellings has affected the water supply to Flat 4. There is evidence that all the four flats originally shared a common water supply which the Applicant claims was sub metered. In her last comments she refers to a single water supply with a meter for Flat 3 and states that the costs of water supplied to Flats 1, 2 & 4 was shared equally between these flats.

56. The Applicant alleges that Glen Hellings connected the water supplies to Flats 2 & 3 together and that her plumber found some defect with the rearrangement of the pipes. She says that her water supply to Flat 4 had not been capped off. She also suggested that there had been

flooding although this does seem to refer to the flooding which affected the whole terrace when weather conditions were adverse. In oral evidence at the Hearing, and in correspondence in the Bundle, the Applicant claims that the Respondents could not alter their bathrooms without her consent.

57. Glen Hellings states that Flat 3 has its own water meter and this was inspected by the Tribunal.

Tribunal Comment

58. The County Court Order made by Deputy District Judge Healey dated 27 October 2009 referred to the water supply. In paragraph 16 it is stated that: - "the structure of the water supply to the building is a follows. Flat 3 which belongs to the Defendant's son) has its own water meter. Flat 4 (retained by the Claimant) has a water meter. Water supplied to flats 1 and 2 flows through that meter. The Claimant is therefore charged by the water board with the cost of water consumed by the occupants not only of her flat but also the occupants of flats 1 and 2..."

59. Later it was stated in that decision that the water supply paid for by Glen Hellings, owner of Flat 3 also served Flat 4. The water supply to Flat 3 also supplied both the boiler and the washing machine located in the boiler room. The boiler solely provided water to Flat 4 and the washing machine was for communal use. There is no evidence that the Applicant ever contributed towards the cost of the water supplied to her boiler. She sought to claim that only a minimal amount of water was actually used. The County Court application, made by Tom Hellings sought to claim a "set off", which claim was not determined because the water was paid for by Glen Hellings who was not party to those proceedings. It is understandable that, following that County Court Decision, arrangements would be made by the owner of Flat 3 to ensure that the water supply be altered to provide an independent supply to that Flat.

60. Although the Applicant alleges that this work resulted in leakage or "flooding" to her flat no actual evidence of damage was provided to the Tribunal to support of her allegations. Since the boiler and laundry room is located at the back of Flat 3, it is difficult to understand why a separation or capping off of the water supply to the boiler would flood Flat 4.

61. The Tribunal wonders if in fact, the flooding to which the Applicant refers was the flooding which affected Portmellon generally during winter storms occurring over several past years.

62. The Tribunal determines that a rearrangement or modernisation of the bathrooms within the Respondents' flats would not be a breach of this covenant. Neither would the isolation of the water supply to Flat 3 to exclusively serve that property.

63. It also determines that the Applicant has no right as "landlord" to enter either flat to inspect such works. Such rights of entry contained within the leases are referred to later in this decision.

Covenant 3.10
Not to do in or near the Premises any act or thing by reason of which the Landlord may under any statute incur have imposed upon him or become liable to pay any penalty damages compensation costs charges or expenses.

Parties evidence

64. The Applicant stated that she instructed her contractors to relocate her oil tank but was prevented from doing so by Tom Hellings (Flat 2). As a result of this she had to pay her contractors compensation. She also said that the right of way enjoyed for the benefit of March is limited to being 7 feet in width because that is the measurement between the house and the river wall.

65. Her complaints are clearly connected with her expressed wish to relocate the oil tank serving Flat 4 behind the existing boiler room. She relies upon the fact that she is acting on advice from her solicitor who has advised her that her oil tank could be located where she wants to put it. When responding to the Further Directions she states that the solicitor who drew up the leases, Richard Merrick of Merricks, Cross Street, Wadebridge advised her to place the tank next to the Boiler House.

Tribunal's comments

66. The Tribunal determines that even if the Applicant incurred the stated costs this was not as the result of a statutory obligation. Given that the facts surrounding the alleged interference with the Applicant re-siting her oil tank impact on other alleged breaches of covenants in respect of which all parties have supplied evidence it has taken these into account later in this decision when considering these allegations.

67. An examination of the Lease plans shows a very small area between the boiler house and boundary of March which is not within the orange edging. It is not clear if this area is big enough to locate an oil tank but it is not within the Common Parts, neither does it interfere with the access to March. The Tribunal does not know what advice the Applicant received from her solicitor. It suspects that she may not have clearly explained the advice she received. Had she wanted the Tribunal to consider this, she could have included written evidence of the advice in the Hearing bundle, but she has not.

Covenant 3.13
Not to do on the Premises or bring or allow to remain upon the Premises anything that may be or become or cause a nuisance annoyance disturbance or inconvenience injury or damage to the Landlord his tenants or the owners or occupiers of adjacent property or any Neighbouring Property.

Parties evidence

68. There is written and photographic evidence demonstrating that vehicle/vehicles have been left adjacent to the boundary between Beach House and March. The Respondents accept that the vehicles were left there by Tom Hellings to prevent the Applicant blocking the right of way to March.

69. Connected with this alleged obstruction of the Common Parts, (defined in the leases of Flats 2 & 3) is the removal of one of the Respondent's sheds by the Applicant.

70. The Applicant accepts that she arranged for the removal of the shed without any reference to its owner Tom Hellings. This action seems to be connected with her desire to relocate her oil tank. This shed was located behind the parking area demised by the Flat 3 lease.

71. It is alleged that the Glen Hellings' tenant of Flat 3 tried to use a barbecue in the area of yard annexed to that Flat at the front of the Property, to which the Applicant objected.

72. The Applicant has stated that she was entitled to prevent this and that the lessee could not use this area and should have used the rear yard.

73. Glen Hellings also stated that it was unreasonable to prevent his tenant using a barbecue at the front of Flat 3 when this area is now designated for the excusive use and enjoyment of that Flat.

74. The Applicant also alleges that Tom Hellings removed a catch or fastening from her self locking gate prior to a storm and that the car park at the back of the properties had only been tidied on a temporary basis and for the benefit of the Tribunal prior to its inspection.

75. Tom and Glen Hellings said that various "itinerant builders" have tried to build a brick wall alongside the boundary to block the right of way. Such a wall would also interfere with the use of their parking spaces.

76. The Applicant claimed that none of her builders, all of whom were local and reputable, could be described as "itinerant builders".

77. At the Hearing the Respondent claimed that if she relocated her boiler against the boundary between the Beach House and March it would not interfere with the right of way which the owner of that Property enjoyed to enter its rear yard through a gate in the boundary fence.

78. Evidence was also supplied in the Applicant's Bundle of negotiation between the parties of a proposed solution to this problem which would require the Applicant to sign an affidavit that she would not block the access to March. She admitted at the Hearing that she was not willing to sign such an affidavit.

Tribunal Comment

79. Neighbouring Property is defined in both leases as, "any neighbouring or adjoining land or premises in which the Landlord has a freehold or leasehold interest or in which during the Term the Landlord shall acquire a freehold or leasehold interest". There is no suggestion that the complaint of breach relates to any property other than the freehold of Beach House.

80. The Tribunal advised the parties that whilst it accepts that evidence has been provided relating to the removal of the sheds; the desire of the Applicant to relocate her oil tank and the retention of a number of cars owned or controlled by one or other respondent adjacent to the boundary of March, it is clear that both parties have acted wrongly and are in breach of their respective obligations contained in the leases of Flats 2 & 3.

81. The leases grant rights to the tenants to use the Accessway shown edged orange on the Plan and the Common Parts, as the same are shown hatched yellow. The Accessway edged orange includes all the rear yard and part of the front yard. The entire area is shown hatched yellow but the yellow hatching also extends over the rest of the land in front of the building including the areas annexed for the exclusive use of Flats 3 & 4. [See paragraph 4 of Third Schedule to leases of Flats 2 & 3].

82. The parking space demised with Flat 3 is the space adjacent to the boundary between Beach House and March, numbered 4 on the lease plan, but is now used by Tom Hellings (Flat 2). The parking space demised with Flat 2 is numbered 2 on the plan and is not the space now used by Tom Hellings. Instead there has been a rearrangement and Glen Hellings uses the space numbered 3. It is assumed that the Applicant uses spaces 1 and 2 as her oil tanks are located at the back of space 1.

83. Two sheds, belonging to the Respondents are currently located at the back of each of the spaces shown numbered 3 and 4 on the lease plans.

84. At the date of its inspection it noted that:-

    a. A vehicle apparently placed adjacent to the boundary between March and the Property by Tom Hellings.

    b. A shed apparently located there by the Applicant has been placed on the common part of the first floor balcony.

    c. The communal car parking spaces shown on the lease plans within the area hatched yellow at the front of the Property have been annexed for the sole use of the Applicant. Part of the same areas has been separated by a stone wall and is used exclusively by Flat 3 and also as an access to March as there is

a gate in the wall separating that area from the front garden of March.

85. The Applicant has stated that she was entitled to prevent the use of a barbecue at the front of Flat 3 and that the tenant could not use this area and should have used the rear yard. That is a common part and such use would potentially be a breach of the tenant's covenants in the lease.

86. Given that the front garden/yard in front of Beach House is no longer used as was apparently intended when the Leases were granted and that the area adjacent to Flat 3 has been separated permanently, it seems unfair to suggest that the Applicant should suggest that use of a barbecue within that area is a breach of this covenant. The enclosure of the area in front of Flat 3 by stone walls and the accepted exclusive use of the yard at the front of Flat 4 demonstrate that the parties accept that neither of these areas are now used as "Common Parts".

87. The Applicant's suggestion that the tenants should have used the rear yard for their barbecues is equally odd given that is a common part the use of which she is already objecting to and clearly had this also been used for the purposes of barbecuing she could and probably would have objected.

88. The gate which the Respondent is alleged to have interfered with is located on the rear boundary and is not part of the "Premises" which are broadly defined in the Lease as being the flats as shown edged red on the respective plans and the additions to them.

89. The covenant refers to the tenant bringing or allowing to remain on the Premises anything that is or may become a nuisance. The definition of Premises does not include the rear yard which is within the definition of Accessway and Common Parts. Therefore the Tribunal does not find that either Respondent is in breach of this covenant.

Clause 3.16
Not to affix or exhibit on the outside of the Building or display anywhere on the Premises any placard sign notices or board or advertisement except a notice advertising the Premises for sale

Parties evidence

90. It is alleged by the Applicant that notices were left within windows of cars parked in the rear yard and also on the front door of Flats 2 & 3 and on the boiler room door

91. The Respondents state that this was done to deter the Applicant from gaining access to the Boiler room, on the pretext it belonged to her, when the leases of Flats 2 & 3 gave them the right to use it. The notices on the front door were to prevent the Applicant gaining access to their flats.

92. The Applicant has stated that she considers "the notices detrimental to the ambiance of my property and my personal reputation; but quite in keeping with the general degradation of the car park the Hellings intended to impart."

Tribunal Comment

93. Any notice displayed in or on a car within the car park would not breach this covenant. Temporary notices of the type described as having been displayed on the doors to the Flats and the boiler room could be removed and no notices were displayed on the day of the inspection so the Tribunal determines that there is no continuing breach of this covenant.

Clause 3.17
To permit the Landlord and all persons authorised by the Landlord with or without workmen and equipment and materials on prior notice to the Tenant except in case of emergency;

3.17.1
to enter upon the Premises for the purpose of ascertaining that the covenants and conditions of this lease have been observed and performed

3.17.2
to view (and to open up floors and other parts of the Premises where such opening-up is required in order to view) the state of repair and condition of the Premises and

3.17.3
to give to the Tenant (or leave upon the Premises) a notice specifying any repairs cleaning or painting that the Tenant has failed to execute in breach of the terms of this lease and requesting the Tenant immediately to execute the same including the making good of such opening-up (if any) as mentioned in clause 3.17.2 PROVIDED that the Landlord shall make good any opening-up if it reveals no breaches of the terms of this lease

Parties evidence

94. The Applicant claims that she has the right to inspect Flats 2 & 3 which has been denied by both Respondents. However in explaining her reasons she has identified that she wishes to ensure that internal alterations are made good even where these are not structural and that internal plumbing works required her prior consent. At the Hearing she did not clarify why she wanted access to Flats 2 & 3. In her response to the Further Directions she has stated she tried to gain access to Flat 2 during a chimney fire but was assaulted by the Tenant. No further evidence was supplied in connection with this statement.

95. The Respondent's suggest that if the Applicant had given prior notice of her intention to inspect the flats they would have allowed her to do so.

Tribunal Comment

96. The Tribunal makes no finding of breach of this covenant. It is impossible for it to verify whether or not the Applicant was physically prevented from gaining access to either flat. She has not suggested that she gave the Respondents prior notice of her intention to inspect either flat.

Clause 3 25
To take all reasonable steps to prevent any new right of light way or passage or any other easement or right whatsoever being acquired over or any encroachment being made on the Premises or the Building and to inform the Landlord immediately of any easement acquired or encroachment made or of any attempt to acquire an easement or make an encroachment and at the request of the Landlord to adopt such means as shall be required to prevent the making of such encroachment or any such easement.

Parties evidence

97. The Applicant offered no evidence of breach of this covenant.

Covenant 3.31
Not to play or use or permit the playing or use of any musical instrument television radio loudspeaker or mechanical or other noise making instrument of any kind or practice any signing or permit the practising of any singing in the Premises between the hours of 11 pm and 7 am or at any other time or times so as to cause any nuisance or annoyance to any of the occupants of the other parts of the Building or any Neighbouring Property and for these purposes the decision of the Landlord as to what constitutes a nuisance or annoyance shall be final and binding on the parties

Parties evidence

98. This allegation of breach related to a former tenant of Flat 2 playing loud music. The tenant is no longer in residence and the Applicant made no further comment.

Tribunal Comment

99. All parties appear to accept that there is no continuation of this alleged breach.

Covenant 3.33
Not to keep any dog or other animal bird or pet whatsoever in the Premises without the previous consent in writing of the Landlord (which may be withdrawn).

Parties evidence

100. A former tenant living in Flat 2 kept a dog. The Respondent had not requested consent from the Applicant. That tenant is no longer in occupation of the Flat. The Applicant has since acknowledged that and confirmed that the tenant's dog was not a nuisance.

Tribunal Comment

101. Whilst there is evidence of a past potential breach of this covenant the parties appear to now accept that there is no continuing breach.

Clause 3.35
Not to obstruct the Common Parts or cause or permit them to be obstructed and to pay the cost of making good any damage at the time done by the Tenant or any person claiming through the Tenant or his servants agents licensees or visitors to any part of the Building or to the person or property of the tenants or the occupiers of any other flat in the Building by the carrying of furniture or other goods into or removal of furniture or other goods from the Premises or otherwise.

Parties evidence

102. Both parties had previously provided ample evidence of the breach of this covenant in connection with earlier allegations particularly those relating to clauses 3.10 and 3.13.

103. At the time of the inspection a vehicle remained parked behind the boiler house. Photographic evidence of other parked vehicles has been supplied to the Tribunal.

Tribunal Comment

104. From the evidence provided at the Hearing and contained within the bundles it is clear that Tom Hellings has been obstructing the common parts of the yard adjacent to the entrance to March for some time. He describes this as passive resistance to prevent the Applicant from blocking the access to March.

105. The Applicant refuses to accept that she is not entitled to relocate the oil tank serving Flat 4 within the Common Parts over which she has granted the Respondents rights of access to their car parking spaces.

106. There is written evidence that the parties have sought to agree to a documented solution which would enable Tom Hellings to remove the vehicle from the yard but the Applicant refuses to accept that she cannot interfere with the Respondents rights to use the common parts.

107. Unfortunately the Respondents appear to have accommodated the Applicants wishes in relation to the separation of the front yard of Beach House without any documented variation of the leases. This may have established a precedent in the Applicant's mind as she cannot accept that by selling the Respondents long leases of Flats 2 & 3, she has fettered her right to do as she wishes with Beach House.

108. Regardless of the background, the Tribunal is satisfied that there is a continuing breach of this covenant by Tom Hellings.

Clause 3.36
At all times to observe and perform all regulations that the Landlord may from time to time in his absolute discretion think fit to make for the management care and cleanliness of the Building and the comfort safety and convenience of all its occupants.

Parties evidence

109. No evidence that the Applicant has made regulations was provided by the Applicant. She appears to rely upon this covenant being breached to allege that the Respondents have demonstrated that they are unwilling to pay towards the resurfacing of the car park. She attributes the deterioration to the use of the car park in an inappropriate way by various tenants of the Respondents flats.

110. The Respondents are unwilling to pay for works which are improvements rather than repairs as was discussed during the County Court hearing. The Respondent has refused to consult them with regard to such costs.

Tribunal Comment

111. There is no evidence that the Applicant has imposed any regulations for the management of the Building, shown edged blue on the Lease plans. The car park is not within this delineation so does not fall within the definition of the Building. The Tribunal determines that there is no breach of this covenant.

Reasons for the Decision

112. The background to this Application is a continuing dispute between the parties as to their rights and obligations under the long leases of Flats 2 & 3, both granted by the Applicant to each of the Respondents in June and December 2005.

113. It is clear from what she said at the Hearing that the Applicant either does not understand or refuses to accept that the leasehold flats are now owned by the Respondents and that the common parts of the Building are subject to the rights contained in and granted by those leases.

114. Since 2005 she has sought to interfere with the tenant's rights by annexing part of the yard and rearranging the parking spaces to suit

her own requirements. She also built a shed for her own use on part of the communal balcony at the rear.

115. She has claimed that the sheds built by the Respondents on their parking spaces are illegal because no planning permission was obtained. She has removed one shed. She has arranged for various builders employed by her to remove chimney pots/cowls serving log burners in Flat 2 & 3. She has annexed the communal parking area in the front yard for her own use. She has sought to relocate her oil tank on communal parts of the rear yard and in locations where it would interfere with the parking spaces for Flats 2 & 3 and potentially obstruct the access to the adjoining property March. She has claimed that the works her plumber has done to connect her boiler are in breach of the tenant covenants in Flats 2 & 3, alleging, it appears mistakenly, that they undertook these works. She has failed to comply with landlord obligations in the leases. She was party to a previous Tribunal determination and a County Court judgement neither of which she has accepted or complied with. She also participated in mediation.

116. Neither the Applicants nor the Respondents have been able to manage the occupation of the flats for holiday use notwithstanding that the Property appears to be suitable for such use. Instead both parties have let their flats to long term tenants whose use of Flats 1, 2, & 3 seems to have aggravated the dispute between the parties.

117. All of this has led to a number of confrontations between the parties and some police involvement. Builders have been brought in by the Applicant to carry out works in Flats 2 & 3 which she had no right to undertake and the Respondents, in an effort to protect the right of way to March, have resorted to obstructing the rear yard which they claim has been necessary to protect the right of access to the adjacent property and the parking spaces now used by Flats 2 & 3.

118. It is undisputed that one of the Respondent's sheds was removed by or on the command of the Applicant and the contents left in the yard to enable the Applicant to relocate her oil tank on a parking space which she had already sold to one of the Respondents.

119. The building has two chimney stacks. The Applicant has installed a wood burning stove in Flat 4. The Respondents claim to have installed similar wood burners in each of Flats 2 & 3. The Applicant sought to interfere with this by instructing her builders on at least two occasions to remove chimney pots/cowls. She claimed that the wood burners were unsafe but produced no evidence. She obtained a letter from "Just Chimneys" which simply reflected her inaccurate allegations that the wood burning stoves were in bedrooms. This statement was not substantiated by the inspection. The Applicant offered no evidence apart from this letter demonstrating that the stoves were unsafe; thereafter she complained that they were a fire risk but again provided no tangible evidence.

120. The Applicant has sought to relocate her oil tank which is currently located at the back of the parking space allocated to Flat 4. It is clear from the evidence that she has tried to locate it behind the boiler house which one of the Respondents claims would interfere with the right of access to the adjacent property and the use of and access to the parking space used with Flat 3.

121. The conduct of the Respondents has not been helpful either. There is evidence that the Respondents posted notices on their vehicles in the car park to prevent the Applicant doing this. It is apparent, and not disputed, that abandoned cars were located in the rear yard by Tom Hellings. On their own admission they sought tenants to occupy the Flats who were able to stand up to the Applicant. Allegations that some of the Respondents tenants caused nuisance to the Applicant have not been rebutted. The photographic evidence in the Hearing Bundle shows the rear yard to have been in a very untidy condition and its current general condition is not in keeping with the location of the Property which must have the potential to be a very desirable location for residential or holiday use.

Judge C A Rai (Chairman)

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case which application must:-

    a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

    b. identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

2. If the application is not received within the 28-day time limit, it must include a request for an extension of time and the reason for it not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.