FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HH/LBC/2021/0004
Property	:	154a Torquay Road, Paignton TQ3 2AH
Applicant	:	Rebecca Gale
Representative	:	
Respondent	:	Mrs E J and Miss J Edworthy
Representative	:	Dunn and Baker Solicitors
Type of Application	:	Breach of covenant
Tribunal Member	:	D Banfield FRICS Regional Surveyor
Date of Decision	:	28 June 2021

DECISION

Background

1. The Applicant seeks the Tribunal's determination that the lessees have breached one or more covenants contained within the lease by carrying out unauthorised alterations. The grounds of the application were "FAILURE TO SUPPLY OWNERSHIP/ BUILDING DOCUMENTS AND SAFETY CERTIFICATES TO MY SOLICITOR OR MYSELF, DAMAGES FOR CONTINUED COST OF REPAIR AND STRUCTURAL REMEDIAL WORKS, FAILURE TO PAY INSURANCE, FAILURE TO SUPPLY ROOF REPLACEMENT QUOTES"

2. The Tribunal made Directions on 4 February 2021 setting out a timetable for the disposal of the dispute and providing dates for each party to serve statements of case on the other followed by the preparation by the Applicant of an agreed hearing bundle containing all of the documents for consideration by the Tribunal.

3. On 9 March 2021 a bundle was received from the Applicant which, although not complying with the pdf guidance was nevertheless capable, with some difficulty, of navigation. On examination however, it was discovered that the Respondent's documents had not been included, reference being made to including "truncated witness statements" from the Respondents.

4. Before the opportunity to return the bundle arose the Tribunal received a communication from Dunn and Baker Solicitors advising they were instructed to act for the Respondents and a request from Ms Gale that the application be "paused" as she was unwell due to a Covid vaccination reaction.

5. In a letter from Dunn and Baker LLP somewhat confusingly dated 21 January 2021 the breaches of covenant referred to in the Application were said not to have been sufficiently substantiated or particularised in that the grounds of application in box 13 do not correlate with the Covenants referred to in box 5 and irrelevant issues had been referred to.

6. The Tribunal made further directions on 18 March 2021 requiring the Applicant to send to the Respondent's Solicitor and electronically to the Tribunal a statement identifying which of the lease covenants are alleged to have been breached and identifying the evidence upon which she relies.

7. The Respondents were then to reply to the Applicant who was then invited to provide a short response.

8. The Applicant has not complied with the Tribunal's requirements in respect of the form of hearing bundle but, as it is in the interest of all parties for this matter to be determined without further delay the Tribunal will do its best with the materials available.

9. The issues that the Tribunal will determine are those referred to in the

undated Witness statement from the Applicant identified both as "witness directions 2.pdf" and "witness statement 2.pdf"

10. The Tribunal's sole jurisdiction is to determine whether, on the evidence presented, it can be reasonably satisfied that which, if any of the lease clauses have been breached. Many other matters not relevant to the Tribunal's jurisdiction have been referred to by the Applicant and subsequently responded to by the Respondent. For the purpose of this determination only evidence relevant to whether a breach of a lease clause has occurred will be referred to.

The Law

11. The relevant sections of the Commonhold and Leasehold Reform Act 2002 are appended to this decision. In brief however the Act requires a Lessor who wishes to serve a S.164 Notice in respect of a breach by the tenant may not do so until this tribunal has determined that a breach has occurred.

The Lease

12. **Demise**; The lease is dated 6 September 1984 between Mr N Prestwood and Ms S Hellier for a term of 999 years at a yearly rent of £5.00 plus "one half of the amount which the Lessor may expend in effecting or maintaining the insurance of the Property….in accordance with the provisions of Clause 7(e) hereof such last-mentioned rent to be paid without any deduction on demand after the expenditure thereof"

13. Schedule 1 defines the flat as "including the ceilings of the Flat (but not the floors of the Upper Flat or beams) and the internal and external walls of the Flat up to the same level"

14. Schedule 1 of the lease for the upper flat contains the definition "including the whole of the solid beams upon which the floors of the said suite of rooms rest (but excluding the ceilings of the rooms below which are attached to the lower side of the said beams) and subject to clause 1(c) hereof the structure of the said part of the Building above the level of the lower side of the said beams and (subject to 1(c)) hereof the external walls of the said part of the Property above such level and the ceiling roof void roof and structure over the said suite of rooms…."

15. The **Lessee covenants to:**

    - 3. Observe the restrictions set forth in Schedule 4.
    - 4.(a) and 6(b) Pay one half of the costs mentioned in Schedule 5
    - 5.(a) Pay the rent without deduction
    - 5.(b) To pay rates, taxes etc. imposed upon the Flat
    - 5.(c) "Not make any structural alterations or structural additions to the flat nor to erect any new buildings thereon or remove any

of the landlord's fixtures without the previous consent in writing of the lessor"

- 5.(d) To pay S.146 costs
- 5.(e) To provide a copy of any notice affecting the flat to the Lessor
- 5.(g) Within one calendar month after execution to produce to the Lessor's solicitor any document in relation to every transfer mortgage or legal charge……
- 5.(h) To pay Lessor's legal and Surveyor' fees in connection with all applications for Lessor's consent
- 6.(a) To keep the flat in good repair (save the parts referred to in Clause 7(f)) and all walls Services ..exclusively serving the same in good and substantial repair …to give support shelter and protection to all parts of the Property [7(f) refers to external decoration]
- 6.(d) "Not to do or permit to be done any act or thing which may render void or voidable the policy of insurance of the Property effected by the Lessor or which may cause any increased premium to be paid.."
- 6.(e) "To permit the Lessor and all other authorised by him at all reasonable times on notice (except in the case of emergency) to enter upon the Flat to inspect the state and condition of the Flat and to give notice to the Lessee specifying any repairs or other works required to be done for which the Lessee is liable and that the Lessee will within three months after the giving of such notice well and sufficiently execute all such works and repairs accordingly AND. if the Lessee shall not within such period after service of such notice commence and proceed diligently with the execution of the works and repairs specified in such notice or shall at any time make default in the performance of any of the covenants herein contained relating to the repair or decoration of the Flat it shall be lawful for the Lessor (but without prejudice to the right of re-entry under the proviso hereinafter contained or to any other rights of the Lessor with regard thereto) to enter upon the Flat and repair amend and decorate the same at the expense of the Lessee in accordance with the covenants and provisions of this Lease and the expenses thereof shall be repayable by the Lessee to the Lessor on demand and if not so repaid shall be recoverable by him as rent in arrear or forthwith by action"

- <u>Schedule 3</u>

- 3 The right for the Lessor …to enter the Flat for the purpose of carrying out the Lessor's obligations under Clause 7

- <u>Schedule 4</u>

- 4. not to do or permit to be done upon or in connection with the Flat anything which shall be or tend to be a nuisance annoyance

or cause of damage to the Lessor or the Lessee or Lessees or occupiers of the Upper Flat or neighbouring property_

- 6. Not to submit the floors of the Upper Flat to an excessive weight load so as to cause danger or concern to the lessees or occupiers of the Lower Flat.

- Schedule 5 – Costs to the Lessee is to contribute under Clause 4(a) and 6(b)

- 1. Maintaining the structure and services listed in clause 7(e) namely Services serving both flats, main roof timbers, roofs, chimneys external walls, party walls and foundations.
- 2. External decoration as specified in 7(f)
- 3. Insurance
- 4. All other expenses (if any) incurred in the maintenance and management of the property

The Dispute(s)

16. As referred to in paragraph 10 above the Applicant has raised a large number of issues some of which are outside the Tribunal's jurisdiction being a determination as to whether a lease clause has been breached. I therefore propose to consider each of the alleged breaches referred to in the Witness Statement of Rebecca Gale (witness statement 2.pdf), in the order in which they appear in the lease reviewing the evidence and then giving the Tribunal's determination.

17. The majority of the breaches referred to are in respect of matters that took place before the Respondents acquired the property in April 2018 and their ability to assist in determining the facts is therefore limited.

4.(a) and 6(b) Pay one half of the costs mentioned in Schedule 5

Schedule 5 – Costs to the Lessee is to contribute under Clause 4(a) and 6(b)

1. Maintaining the structure and services listed in clause 7(e)
2. External decoration as specified in 7(f)
3. Insurance
4.All other expenses (if any) incurred in the maintenance and management of the property

18. The lease is quite clear that the Respondents are obliged to contribute one half of the costs listed in Schedule 5. This obligation is however subject to certain pre-conditions. With regard to insurance the lease provides at clause 7(d) that the Lessor must if required produce to the Lessee the policy of insurance and receipt for the last premium. The respondent says that such requirement has not been met.

19. There are however further requirements imposed by statute upon Lessors. The Landlord and Tenant Act 1985 requires all demands for service charges to meet certain requirements which only become payable once those requirements are met.

20. I have been unable to discover in the various bundles a copy of a demand meeting the requirements of the Landlord and Tenant Act 1985, and as such **I find that no breach has occurred**.

5.(c) Not make any structural alterations or structural additions to the flat nor to erect any new buildings thereon or remove any of the landlord's fixtures without the previous consent in writing of the Lessor

Breach 1

21. The Applicant's point is simply that alterations carried out by a previous Lessee were "structural" and that written consent had not been obtained. What efforts the current Lessee did or did not carry out in establishing the position prior to her purchase are irrelevant to the issue and will not be referred to.

22. The works alleged to be unauthorised are "Roof repairs, new flat roof to flat and refurbishment of flat" The Applicant says that the works went beyond refurbishment, that 154a was structurally altered and, relying on Expert reports, requires structural strengthening.

23. To establish whether alterations have been carried out it would be of assistance to establish the flat's layout when the lease was granted in 1984, whether any alterations have been carried out which received consent and, whether any alterations were "structural"

24. Taking the lease as the starting point Schedule 1 refers to a plan for identification only with the flat edged in red and the front garden edged brown. The plan, identified by Title Number DN 166962 is to a scale of 1/1250 only, is not of the interior and is of no assistance.

25. The Applicant relies on the Drew Pearce report to show that structural alterations have been carried out. A copy of the report dated August 2014 is at section 10 of the bundle and is described as a Single Joint Expert Report carried out by L M W Smale FRICS.

26. Mr Smale described his instructions as to report on "the open market rental value of the flat let on an assured short-hold tenancy basis and to provide my best assessment as to the period of time it would have taken the Defendant to let the flat from the date upon which it was marketed to rent." His report was to be on the basis of its original unimproved condition as existed at the date of valuation.

27. Mr Smale inspected the property on 15 August 2014 when it was undergoing "a programme of repair, modernisation and redecoration"

28. At para 2.3 of his report he described the ground floor accommodation as comprising Living Room (12.58sq.m.) Inner Hall, Bedroom (9.96 sq.m.) Dining Room (8.86 sq.m.) Shower/WC, Kitchen (3.88 sq.m.)Conservatory/Porch (5.54sq.m.)

29. He then provides estimated rental values in both unimproved and on the assumption that any modernisation works are completed in compliance with any relevant Building Regulations.

30. Attached to his report is the Title Plan referred to above and poorly copied photos of the interior and exterior. The interior photos show part of a sink unit with window beyond, a small cupboard on which there is a toaster and with a bathroom type cupboard above and full length curtain which may or may not conceal a shower cubicle, part of what may be the living room with an old sofa visible and looking past the toaster cupboard to the "shower" curtain beyond and a picture of what appears to be a small room with white WC, green wall hung basin and what may be a shower type curtain next to the WC. The external photos are of the front and rear elevations with location marked "CCTV".

31. At tab 36 of Bundle 1 are two plans; one from Torbay Council dated 22 November 1983 showing both ground and first floors the other being what appears to be an enlarged copy of the ground floor section of the same plan but with manuscript notes apparently added by the Applicant indicating that walls highlighted in pink separating the original shower room and kitchen have been removed and other walls highlighted in green have been added.

32. At tab 13 of the Bundle 1 is a photograph of the underside of what appears to be an upper floor showing two joists supporting floorboards above. The two joists have marks on them with the annotation "ceiling was attached to beam"

33. At tab 16 in a report to identify structural defects at 154B Torquay Road dated May 2017 Barry Honeysett Consulting Structural & Civil Engineers (BHC) referred to an inspection of both upper and lower flats on 20 April 2017 when the lower flat had recently been renovated in readiness for sale.

34. The property was described as originally constructed as a two-storey property subsequently converted to separate ground and first floor flats together with a room constructed in the roof space connected to the first floor by a staircase.

35. At para 3.01 of the report reference is made to the property having "undergone extensive alterations in the past which may have included converting the loft into second floor accommodation as well as the creation of separate habitation at ground floor which it is understood

may have been carried out in 1983. It is evident a considerable amount of movement had occurred in the southern part of the building. 100 mm deep floor joists have been added to the side of the existing floor joists in this part of the building to allow the ground floor ceiling to be levelled. .....However, there rare no signs of cracking or current movement of this section of the building to indicate settlement is continuing. This may indicate that remedial works such as underpinning may have been undertaken in the past"

36. At para 3.02 the report continues referring to a timber studwork wall being removed which, according to the previous owner of the ground floor flat had not reached the underside of the ceiling or floor joists. It comments that the studwork wall may have replaced an earlier masonry wall removed as part of earlier works and whilst of minimal construction "may have provided some support to the first floor joists" Reference is then made to a previous report commissioned by Mr Gale from Nickolls Baker Partners Consulting Structural and Civil Engineers to carry out a check on the adequacy of the existing floor joists. In their calculations they incorrectly assumed that the load from the partition would be carried by two joists, however this was not the case and in BHC's calculations the likely deflection would exceed that recommended in the Code of Practice. In conclusion they state, "It is therefore likely that the removal of the ground floor partitions, even though they were of relatively flimsy construction may have allowed further deflection to occur."

37. At 3.03 reference is made to the deterioration to the first-floor boarding being caused by spillage from the kitchen and bathroom.

38. Amongst the series of recommendations made at section 4 are to strengthen the floor in the southern part of the building by adding timbers or a beam, to replace the bathroom floor, overhaul the roof, check floor to ground floor lobby and bay window for decay and to repair brickwork.

39. At tab 18 is a Party Wall Award between Ms Gale as building owner and Mr Roger Hammond the adjoining owner of 156A Torquay Road to "Cut into the party wall and insert a structural steel angle for the purpose of installing a new steel beam to support the first-floor joists." In an email from one of the surveyors concerned stating "Please note I have no knowledge whether the work authorised under the party wall award served by Mr Peter Croft and myself was required as a consequence of any action or inaction by a third party"

40. At section 7 of bundle 2 is correspondence from a further expert relied upon, Barry Honeysett Consulting Structural & Civil Engineers. Mr McCarthy of that firm wrote on 28 February 2019 referring to a meeting held with Ms Gale in respect of "the proposed strengthening works to the first-floor tenement at the rear of the property". Further letters on 16 May and 5 September 2019 referred to the need for Party Wall and other administrative matters.

41. A letter from Torbay Council dated 1 July 2020 at section 8 gives details of its Inspection Service Plan.

Determination

42. No evidence has been submitted that consent to make alterations has been given and I am satisfied the works carried out by the previous lessees in removing partitions did not receive written consent in accordance with Clause 5. (c) should it have been required.

43. The next step is to decide whether or not those works were "structural". Whether the works caused or contributed to any structural defect is not a matter to be determined by this tribunal, but the evidence provided in the expert reports of remedial action required will be examined as an aid to establishing whether any alterations were structural.

44. Two reports have been included in the bundle. That from Drew Pearce is to assess the rental value in 2014 and provides no assistance.

45. The report from Barry Honeysett in May 2017 is however relevant. From the recommendations at section 4 it is clear that extensive work is required to return the property to a good state of repair some of which is in the area where partitions have been removed. If the removal of those partitions was a factor in the need for strengthening the floor it may assist in determining whether they were structural or not.

46. From Mr Honeysett's reference to a previous report by Nickolls Baker, although a copy of the report or its date of commission has not been provided, it seems likely that the need for strengthening of the joists is not recent and may indeed have existed from the time of the conversion works in 1983.

47. I now turn to Mr Honeysett's references to the walls in question. The references made in section 3.02. are that the partitions were either of "minimal construction" or "flimsy" and that they "**may** have caused deflections to occur". (the tribunal's emphasis).

48. Given that it is for the Applicant to satisfy the tribunal that this breach has occurred, Mr Honeysett's references to the partitions as flimsy and minimal together with his uncertainty as to whether they caused deflection is not persuasive. **The Tribunal therefore determines that there has been no breach of Clause 5 (c).**

Breaches 2,3,4&5

49. With regard to the main complaint in respect of the removal of partitions see the determination above. Additional complaints are however made referred to as Breaches 2,3,4 &5.

50. Breach 2 appears to refer to the discovery, as recorded in Honeysett's letter of 29 July 2020, that during opening up works for the installation of the new steel beam it was established that the existing ceiling to the lower flat does not satisfy Building Regulation requirements with respect to fire separation. It was stated that "the previous conversion of the lower flat was not in accordance with the Building Regulations"

51. Breaches 3 & 4 appear to refer to concealed electric wiring and the location of a gas meter and the failure of the Respondent to provide safety certificates for the same.

52. Breach 5 refers to the cutting of a hole in the "main wall structure" to insert a pipe to feed water to the relocated bathroom.

53. With regard to breach 2 failing to meet Building Regulations is not in itself a breach of covenant, it is the carrying out of "structural alterations" which have caused such a failure that may be the breach. However, whether the "previous conversion" referred to is that carried out in 1983 or in 2017 is open to conjecture and given that lack of certainty finds that there is insufficient proof for a breach to be determined.

54. Wiring and gas pipes the subject of breaches 3 & 4 cannot be classified as structural and as such any alterations that may have occurred are not determined as breaches.

55. Referring to breach 5, the cutting of a hole in the external structural wall for whatever purpose is likely to breach Clause 5(c). The evidence of the installation of a water pipe seems to be a photograph dated 25 October 2015 marked with a manuscript circle and described as Pipe hole to feed new bathroom. Whilst the quality of the photo is so poor as to be of no assistance, given that it has been acknowledged that the bathroom has been relocated and therefore required an alteration to the water supply the tribunal determines that on the balance of probability a breach of Clause 5(c) has occurred.

56. With regard to the Applicant's repeated demands for "papers" to be provided by the Respondent the Tribunal confirms that there is no obligation upon them to provide the same. If, however the provision of such information was able to assist in bringing the property into repair it would be in the interest of both parties for them to comply.

Determination

57. In respect of breaches 2,3,4 & 5 the tribunal determines that **the installation of a water pipe was in breach of Clause 5(c)**

6(e) and or Schedule 3.3 (Right to enter flat for various purposes)

58. At paragraph 41 of her statement the Applicant refers to receiving a text on 4 June 2018 refusing access to the Lessor from entering the flat not believing works were necessary. Further occasions are referred to at paragraph 43 and the text message of 4 June 2018 displayed at section 29 indicating that no further access was considered necessary.

59. Various text messages and letters requesting access are displayed.

60. In her witness statement Mrs R Edworthy said that "I have tried to accommodate all requests for access however between Mrs Edworthy's shifts and my self-employed taxi work, it has been difficult" On 14th October 2019 there was a letter requesting meeting on 1st November 2019. "Told there was this one and only appointment and it had to happen but threatened with court if we refused to be flexible."

Determination

61. On the evidence submitted **I determine that access was denied on 4 June 2018 in breach of Schedule 3.3.**

NOT TO VITIATE INSURANCE
6.(d) Not to do or permit to be done any act or thing which may render void or voidable the policy of insurance of the Property effected by the Lessor or which may cause any increased premium to be payable in respect of such policy.

62. The Applicant refers to the need to take out additional insurance cover due to "To cover the rectification of the breach of the lease". Evidence of the cover is provided in sections 25 and 26 of her first bundle and comprises;
    a. An insurance renewal letter dated 11 August 2016 for a premium of £231.27
    b. A renewal letter dated 8 August 2017 for a premium of £300.85
    c. A renewal letter dated 17 August 2018 for a premium of £756.17 for "Accidental Buildings cover only"
    d. A Schedule of Insurance issued 8/10/2019 headed "Renovation Unoccupied" at a premium of £500.76 for the period 18/8/2019 to 17/2/2020. The property is described as unoccupied"
    e. A similar Schedule issued 28/1/2020 for the period 18/2/2020 to 17/8/2020 at a premium of £500.76.
    f. A further similar schedule dated 14/09/2020 for 12 months from 17/08/2020 for a premium of £950. The cover included contract works and referred to "Structural strengthening of foundation beam between top and bottom flat."

63. The Applicant explains that the reference to the building being unoccupied is due to the need to vacate due to contractors preparing to install the beam and will continue until "the plumbing electrics and gas safety is established"

64. From the Applicant's evidence it seems clear that the increase in premium is in respect of the preparation for and the installation of a beam to strengthen the first floor. To determine a breach of this covenant it will be necessary to establish a connection between these strengthening works and the alterations made by the previous lessee.

Determination

65. As already found in paragraph 45 above, the tribunal does not find such a connection and as such determines that there **has been no breach of Clause 6(d).**

PROVISO FOR RE-ENTRY

66. This is not one of the Lessees' covenants and as such is not capable of being breached by them.

SCHEDULE 2 (Rights granted to the Lessee)
4.(a) & (b)

67. Again, these are rights granted to the Lessees and cannot therefore be breached by them.

Schedule 4
(Restrictions imposed in respect of the Flat)

4. Not to do or permit to be done upon or in connection with the Flat anything which shall be or tend to be a nuisance annoyance or cause of damage to the Lessor or the Lessee or Lessees or occupiers of the Upper Flat or neighbouring property_

68. The Applicant says that the removal of any fixtures and fittings without consent is a breach resulting in "154b falling into 154a without engaging additional structural support" as referred to in Torbay Council's letter of 1 July 2020.

Determination

69. This appears to refer to the defects in the structure identified in Honeysett's report many of which are extensive and of long standing. Responsibility for the maintenance of the structure lies solely with the Applicant as freeholder, with the lessee meeting half of the cost and as such the Respondent has not committed a breach.

(UPPER FLATS ONLY)
6. Not to submit the floors of the Upper Flat to an excessive load so as to cause danger or concern to the lessees or occupiers of the Lower Flat.

70. This would appear to be a drafting error as the restriction is in respect of the upper flat and cannot therefore be breached by the lessees of the lower flat.

REGISTER ASSIGNMENTS ETC

5.(g) Within one calendar month after execution to produce to the Lessor's solicitor any document in relation to every transfer mortgage or legal charge……

71. The witness statement of Miss J Edworthy refers to her mother's purchase of the flat completing on 19 April 2018 and a subsequent transfer of part to her on 25 February 2020. A letter from Allens Conveyancing dated 9 March 2020 and addressed to Mr M Gale gives notification that the property is now held in joint names.

Determination

72. Given that no evidence of registering the assignment to Mrs Elizabeth Jayne Edworthy has been produced **the Tribunal determines that a breach of clause 5(g) did occur in respect of that transfer.**

REPAIRS (e) and (i)

73. These are Lessors covenants and as such cannot be breached by the Lessees.

(Exceptions and Reservations in favour of the Lessor)

74. These are not Lessees' covenants and as such cannot be breached by them.

REPAIRS

6.(a) To keep the whole of the flat and every part thereof (save and except the parts referred to in Clause 7(f) hereof) and all walls services and other appurtanances (sic) thereto belonging or exclusively serving the same in good and substantial repair and condition so as to give support shelter and protection to all parts of the property other than the flat.

75. The Applicant refers to issues with low water pressure due to alterations to the supply system and "whiffs of gas" potentially from the gas meter and pipes in 154a being concealed under the stairs. The works have had a detrimental effect on the structure of the building.

76. The electrics are concealed in the ceiling space between 154a's kitchen and 154b's bathroom and could cause a fire. The Respondents have refused to supply relevant safety certificates for the Building Structure etc.

77. The lessees' obligation extends to the demise and includes services solely serving the flat. This will include the electricity supply and gas should there be one. The Applicant's evidence is that the wiring in the ceiling void could cause a fire and that there was a "whiff of gas".

78. For a breach to have occurred with respect to the matters raised the wiring must be shown to be in disrepair and the gas supply not only to be serving the flat but also to be in disrepair.

79. No evidence has been presented that the wiring is in disrepair and no breach has therefore occurred. The evidence regarding gas is an undated photograph showing parts of two pipes both with stop cocks and one clearly capped. No indication is provided as to which flat the pipes belong to.

Determination

80. Whether the flat has gas supplied is open to question. The sellers pack when the current lessees purchased indicates not and the sales particulars refer to electric heating, hob and oven. There is insufficient evidence for me to make a finding either way but neither do I find that a reference to a "whiff of gas" to be sufficient evidence to determine that a breach has occurred. **The Tribunal determines that no breach has occurred.**

81. Despite determining that no breach has occurred it is clearly in the interest of the Respondents to establish whether a gas supply is present in their flat and if so, that it is safe. There is no liability for any certificate obtained to be provided to the Freeholder.

Other issues

82. The Applicant refers to an occasion when a car was parked in an unauthorised space for which the Respondent provides an explanation. Clearly unauthorised parking should not take place, but such an incident is not a breach of the lessees' covenants.

83. The Applicant refers to a lack of response to the carrying out of roof repairs and makes reference to Section 20 consultation. From the information provided I am not persuaded that the formal written consultation procedures required by the Landlord and Tenant Act 1985 were carried out. However, in any event, as long as those requirements have been strictly followed the freeholder may proceed to comply with the repairing obligations set out in the lease.

84. In summary the Tribunal finds that the following breaches have occurred;

    a. **the installation of a water pipe was in breach of Clause 5(c)**

b. **that access was denied on 4 June 2018 in breach of Schedule 3.3.**
c. **the Tribunal determines that a breach of clause 5(g) did occur in respect of the transfer to Mrs Elizabeth Jayne Edworthy.**

85. Finally, the tribunal notes that these are two modest flats in a building needing expenditure on repairs and earnestly suggests that the parties invest their resources in putting this property in to a state of repair rather than engaging in unnecessarily combative litigation.

D Banfield FRICS

28 June 2021

RIGHTS OF APPEAL

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

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for 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.

4. The application for permission to appeal must 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.

LEGISLATION

S.168 No forfeiture notice before determination of breach

(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) 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) But a landlord may not make an application under subsection (4) in respect of a matter which—

(a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(b) has been the subject of determination by a court, or

(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.