



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

**Case Reference** : LON/00BG/LBC/2017/0013 & 0014

**Property** : 1 Cape Yard, London E1W 2JU  
61 China Court, Asher Way, London E1W 2JF

**Applicant** : 1. Quay 430 Management Limited  
2. Quay 430 Freehold Limited

**Representative** : Miss N Muir Counsel, instructed by The Bevis  
Partnership LLP Solicitors together with  
Messrs Rendall & Rittner Ltd, Managing  
Agents

**Respondent** : Ms Ming Li

**Representative** : Mr Francis Ng, Counsel

**Type of Application** : Application for an order that a breach of  
covenant or condition of the lease has  
occurred pursuant to section 168(4) of the  
Commonhold and Leasehold Reform Act 2002

**Tribunal Members** : Tribunal Judge Dutton  
Mr M Cairns MCIEH

**Date and venue of  
Hearing** : 10 Alfred Place, London WC1E 7LR on 7th  
February 2018

**Date of Decision** : 23rd February 2018

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**DECISION**

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## **DECISION**

**The Tribunal makes the determinations as set out below.**

### **BACKGROUND**

1. These two applications were made by Quay 430 Management Limited and Quay 430 Freehold Limited, the latter being the freeholders of the two properties for which the applications were made. The first application related to the property at 1 Cape Yard, London E1W 2JU (Cape Yard) and the second to 61 China Court, Asher Way, London E1W 2JF (China Court). Both properties were owned by Miss Li. In respect of Cape Yard, the allegations in the application related to alterations made without the consent of the landlord, that there had been under lettings without consent and a breach of the regulations in that the garage was being used for purposes other than parking a private vehicle.
2. In respect of China Court, it is alleged that again there had been an under letting without consent and that there have been alterations made without consent. It is also alleged that Ms Li had let the property in breach of the lease in that it was not being used as a private residential flat in one occupation only. It was also alleged that there may have been acts which would render the insurance void or voidable. This however was not a matter that was pursued by the Applicants at the hearing.
3. Prior to the hearing, we were provided with a bundle of papers which included the applications and the directions. We also had a statement made by Ms Li and statements in response from a Mr Radek Kedrak, an Estate Manager employed by Quay 430 Management Limited and a statement from Gemma McNeill a trainee solicitor employed by the Bevis Partnership LLP.
4. In addition to these documents, we had copies of the freehold and leasehold entries and copies of the leases of both properties. Just before the hearing copies of skeleton arguments prepared by Miss Muir and Mr Ng were produced, which we had the opportunity of considering.

### **INSPECTION**

5. We inspected both properties in the company of Miss Muir and Mr Ng before the hearing.
6. We will start firstly with Cape Yard. This is a ground floor property with a garage at a slightly lower level. The flat itself is within a well maintained and gated estate. Internal inspection showed that the garage door, which was a metal up-and-over type, remained in situ but some metre and a half behind the garage door doubled glazed UPVC doors had been installed. These had replaced wooden doors that were in situ at the time that Ms Li purchased the property. We were told that she had acquired her interest in this property in early 2000. A storage area had been created in the area between the external garage doors and the interior double glazed doors. At the time of our inspection we noted that a motor cycle was parked in this area, which also housed the central heating boiler. The

remainder of the garage has been converted to a bedroom with a tiled flooring, radiators and lighting.

7. We also noted that the kitchen had been sub-divided to create an additional bedroom. This appeared to have been achieved by constructing a stud partition wall.
8. We then inspected China Court, which is a property over two floors. There were external doors to the property at first and second floor level and that at least five of the bedroom doors appeared to have individual locking handles in place. There were also shower rooms and on the ground floor a kitchen dining area. At the time of our inspection, the alterations appear to have been removed. These we were told consisted of a floor being installed at the second floor level blocking off the stairs but creating an area where it is said a wash hand basin and washing machine had been sited. A door had been put at the bottom of the stairs to create storage space.

### HEARING

9. At the hearing, which took place after the inspection, we were told that a jurisdictional point raised by Mr Ng in his skeleton argument was no longer pursued. It appears that there had been some misunderstanding of the application form but it was quite clear that both Applicants were shown as being parties to the case.
10. In her opening to us Miss Muir told us that in respect of Cape Yard, there had been alterations without the consent of the landlord, being a partitioning of the kitchen to create a bedroom and the conversion of the garage into residential space. It was alleged that there was a further breach of under letting without consent.
11. In respect of China Court, we were told that there had been a breach by creating two separate units through blocking of the staircase, the installation of a new floor and a door at the foot of the stairs to create storage space. It is accepted that these changes have now been removed although it is not in dispute that these alterations were in place at the time of the application. There is also a breach in respect of under letting without consent and also the use of the property other than in accordance with the terms of the lease, which under the regulations prohibits the use of the premises other than a private residential flat in one occupation only.
12. We were referred to the relevant leases and in respect of both the permitted user clause which limited the use of the flat to private residential in one occupation only.
13. At clause 4(4)(b) there is a requirement not to assign or under let the whole of the premises except in accordance with clause 5(6). At clause 5(6) (c) any under lettings requires that it should not take place without the consent of the management company. There is also a requirement for the undertenant to enter into a direct covenant with the management company to perform and observe the covenants on behalf of the lessee. Clause 5(6)(d) confirms that the consent of the

management company is required to any under letting although such consent would not be unreasonably withheld.

14. The regulations in the fourth schedule include, as we have indicated above, a prohibition against using or occupying the premises other than in accordance with the permitted user and requiring that the garage is for the parking of private motor vehicles ancillary to such permitted user only. At regulation 2 there is also a prohibition against using the premises for business purposes.
15. Miss Muir told us that Ms Li's witness statement admitted that a stud wall had been created in China Court and that no consent had been obtained. It is said by Mr Ng on behalf of Ms Li that she knew nothing about that but Miss Muir's view was firstly that Ms Li should have known about it and secondly it would be unusual for a tenant of an assured shorthold tenancy to undertake such changes.
16. Miss Muir went on to indicate that Ms Li admitted replacing the wooden doors in the garage and that the garage was not being used as such but was providing additional sleeping accommodation. There was Miss Muir said no indication that she, that is Ms Li, had applied for or received consent for these alterations.
17. Mr Ng in his skeleton argument had raised the question of limitation with regard to this matter. Miss Muir's response to this, although not included in her skeleton argument, was that this was not an action for breach of covenant. The right to forfeit does not apply until the landlord has knowledge and the landlord in this case could not tell that these works had been done as the garage door was still in place.
18. In relation to China Court, it was accepted that the internal works had now been removed but in Miss Muir's submission there was no suggestion that the works had not been undertaken. It was also said that the flooring could not have been carried out without cutting into the walls making it a structural alteration. Further, it appeared that the property had been further sub-let and that there was some evidence that some of the units were being let as an Airbnb holiday letting.
19. Mr Ng in his skeleton argument had alleged an estoppel, being representations by Mr Kedrak the Manager. However, it was Miss Muir's view that Mr Kedrak had not been told all he needed to know and, therefore, there was no promissory or proprietary estoppel in this case. The fact that it appeared that some form of permit had been granted did not in Miss Muir's view mean that there was an estoppel issue.
20. On the question of under letting Miss Li admitted the sub-letting of the property to a commercial company called Kenneth Lloyds E1 Limited at a rental of £3,300 per month. The tenancy agreement that was in the papers before us was for three years and included permission granted to the tenant to install an internal door to close the staircase for additional storage and to extend the landing on the first floor. Such alterations were to be for the term of the tenancy only and that the property would be reinstated at its conclusion. The agreement also says that the property would be let to Kenneth Lloyds E1 Limited and the company's employees and contractual partners. No consents had apparently been sought or obtained for this, nor had a deed of covenant been entered into. It did appear,

however, that fees of £120 per annum had been paid by Ms Li in connection with the lettings, at least for the last couple of years.

21. We heard from Mr Liam Keating BSc Hons a building surveyor from Cardoe Martin. No witness statement had been produced but we did have a letter dated 20<sup>th</sup> October 2017 to Rendall & Rittner Limited. This letter confirms that he made an inspection of both properties on 19<sup>th</sup> October 2017 with Ms Li. In respect of 1 Cape Yard he confirms as follows: *"A partition with French doors has been installed to separate the garage into a small storage area and bedroom. The area was being used as a bedroom at the time of our inspection. A gas boiler is installed to what remains of the garage area with a flu penetrating the garage wall. There are hardwood finishes installed to all floors."* The letter goes on to deal with the position at 61 China Court as follows: *"This is a duplex flat, ground floor and first floor. The internal staircase has been infilled by extending the floor above so the stairs remain in place as a storage area but do not provide access to the upper floor. The new section of flooring is fixed to the structural walls so essentially this can be deemed to be structural work. The floor affects the means of escape. Additionally, a kitchen-type worktop with sink has been installed to the new floor section and plumbed in together with a washing machine."*
22. In evidence, he confirmed that insofar as Cape Yard was concerned, it is possible that the double glazed doors used the same fixing holes as the previous wooden doors, which themselves he thought were a previous alteration. He did not consider the installation of flooring was structural work and could not say whether the radiators would have required plumbing given that the boiler appeared to have been in the garage area since the property was built.
23. Asked by Mr Ng whether the washing machine had been plumbed in, he said he could not say.
24. We then heard from Miss McNeill who provided a witness statement, which we had had the opportunity of reading. She told us that the entirety of her statement was based on instructions and that comments made at paragraph 8 relating to health and safety issues and building regulation requirements was not something that she could expand upon as she had no knowledge as to whether those matters actually related.
25. Finally, we heard from Mr Kedrak whose witness statement was found in the bundle. He told us that he had been employed as the Estate Manager since March of 2016 and that in around March of 2017 whilst inspecting China Court he had discovered that there was some refurbishment works, which were being undertaken that he knew nothing about. Apparently, he sent an email to Ms Li at the beginning of April requesting access, which appears to have been granted, and advised her that a permit for the work had to be filled in and returned to his office.
26. Shortly thereafter Ms Li and a Mr Lukeman, the new tenant, attended his office and he was handed a permit to work but no copy of any tenancy agreement. The permit to work was included within the papers and is dated 5<sup>th</sup> April and signed it seems by Ms Li. The scope of works are as follows: *"Installation of a door to*

*make the staircase as a temporary storage and extent the first floor landing area. No structure work involved, it will be restated back to original on termination of the tenancy. Minor interior work.*" The permit also indicates that no plumbing works were required. Mr Kedrak told us that having been told that no structural works were required, he thought the permit should be sufficient and he merely filed it. It was not made clear to him he said that the flat was being converted into two properties.

27. Asked questions by Mr Ng, he told us that he was a full-time employee dealing with all properties on the estate. He was not involved in sub-lettings. When taken to the permit, he indicated that he did not think the first floor landing extension included structural work, although he accepted he had no qualification and was talking in layman terms. His view was that if no structural works were required, no further consent would be involved.
28. On re-examination he confirmed that he had seen no drawings nor been provided with any plans.
29. Asked further questions by the Tribunal, he indicated that he did not know that non-structural works also required consent. He was aware that they were extending the landing but was not aware of the full extent of the works. He did know that there was a fire exit at the second floor. He accepted that if there were no structural changes he would just place the permit in the file and did not make his own enquiries.
30. Following the evidence for the Applicants we heard from Ms Li. Asked about China Court and the number of apparently locked doors, she said she had no idea about this, had no keys and knew nothing about it until she had seen the property today. She also said she did not know whether Mr Luckman had put in a washing machine or a hand basin. She told us that she had told him that there had been problems and that he would have to remove the flooring and reinstate the flat to its previous condition, which he had done. She did not understand the works to be structural and thought the permit that she had been given was sufficient.
31. Insofar as Cape Yard is concerned, she confirmed that she had purchased this property in February of 2000 and that at the time the garage had large wooden doors behind the metal up and over door which were draughty. She took the decision to replace these doors with UPVC double glazing in 2002. At the time of her purchase the garage was already being used as living accommodation and indeed she had paid more than the asking price because there was this additional bedroom. She had used solicitors and no issues had been raised during pre-contract enquiries.
32. With regard to the creation of a bedroom from the kitchen, she said she did not know when this had been done but the tenants who carried out the work said they would remove it when they vacated. However, she told us she was content with the works and did not ask for it to be removed. There is now a new tenant in situ.
33. Asked about sub-lettings, she told us that China Court had been sub-let since around 2007 and Cape Yard since around 2013. She told us that during this period she had been billed automatically by the managing agents in respect of

sub-letting fees and included in her statement was a service charge, ground rent and sub-letting fee report which indicated a charge made of £120 for sub-letting from January to December 2016 and for the following year in relation to China Court. She did not produce any similar documents for Cape Yard. She took this to indicate that the managing agents were fully aware that she was sub-letting.

34. She told us that she rented three other properties, although not on this development, and had never been asked to obtain consents in respect of those other lettings. She reiterated that insofar as Cape Yard was concerned, she bought the property as it now is.
35. Under cross examination from Miss Muir, she told us that she had lived in Cape Yard but had moved out in around 2013 and had let it since then. She had never lived in China Court. She was unclear as to how the Applicant's had obtained her address at 51 Sanderling Lodge.
36. She told us that in respect of China Court she had discovered the need to obtain permission to sublet by the online portal. She had apparently provided the agents with a copy of the letting agreement and a request that they add the £120 letting fee to her service charge bill. According to her witness statement her position was that the Applicants had consented to the sub-letting and had charged her for it. She was not aware that China Court was being let out on an Airbnb basis.
37. She was then asked questions by Miss Muir, one of which was whether she had ever requested a consent for lettings. She told us that it was her visit to the website at the end of last year that had indicated that such consent was required but in her view the managing agents knew that she was sub-letting as they had been charging her £120 a year for this reason. She did not realise that a deed of covenant was required. She said that she was content to keep the dividing wall between the kitchen and the new bedroom/living room as Cape Yard and asked whether she thought it was unusual for a tenant to put up the wall, she said that the tenants had indicated they would remove it when they left. They apparently had vacated in 2017 and the wall was left in situ.
38. She told us that she had been advised by her solicitors to make a request for consent to replace the doors in the garage and that there may have been some correspondence about this in 2000. She did produce a letter from Rendall & Rittner Limited dated 18<sup>th</sup> July headed 1 Cape Yard Deed of Variation, for which it appears a fee was paid and apparently a deed of variation was to have been supplied. The letter at the end says as follows: *"In addition I note that the building control department had no objections in principle to the alterations, however, would be grateful if you would forward a copy of the final written approval upon completion of the works."*
39. In respect of China Court, she was asked whether she had mentioned to Mr Kedrak that the property would be split into two flats. Her response was that the tenant had indicated that he would be extending the floor at first floor level and would use the door at that level to access the upper floor. She considered that as long as no structural works were being undertaken, then she would be covered by

the permit and of course there would be the need to return the property to its previous condition at the conclusion of the letting.

40. In re-examination she was asked what her steps were when she found out about the proceedings. She said she immediately contacted the tenant of China Court and said the works were not allowed, that it was said they were structural and that he should take them down, which he agreed to do. Insofar as the holiday letting was concerned, she told us that the tenant had been told that this could not happen and it is only subsequently that she found out about the Airbnb lettings. It seems that this was the second company letting that she had been involved in of three years.
41. Asked by the Tribunal whether she was a member of any letting association, she told us she was not. Asked whether she was aware of the letting requirements for the London Borough of Tower Hamlets, she said that she was not and was not aware that the present arrangements may constitute a HMO. She did accept that the sub-letting to the company meant that they were not going to occupy it as a family. In response to the Tribunal, she told us that as long as she received the rent she did not really care what went on at the properties. Apparently, there was an agent employed for the management of Cape Yard but not China Court.
42. We then had submissions from Counsel. Mr Ng said that insofar as the Cape Yard application was concerned, the grounds set out did not contain an allegation of sub-letting and therefore no case should be brought on this. He said that the Applicants knew about the sub-letting and that accordingly promissory estoppel applied. He referred us to his skeleton argument which set out the ingredients of promissory estoppel and referred to the case of *BP Exploration (Libya) Limited v Hunt* and Snells Equity 33<sup>rd</sup> Edition.
43. In his view the conversion of the garage was non-actionable by reason of section 8 of the Limitation Act 1980 limiting the right to bring a claim to 12 years. This was he said an action for possession based on forfeiture not an action for forfeiture. In his submission the breach was some 16 years ago and was time barred. This was not an original breach by his client. Also, it was unclear what the letter from Rendall & Rittner in 2000 was meant to refer to. In his view, we had evidence that Ms Li had bought in 2000 and that the letter seemed to support the change that was made. The burden of proof he said rested with the Applicants.
44. Insofar as the erection of the stud dividing wall at Cape Yard was concerned, his view was that an unauthorised breach by a third party was not a breach by the tenant. This was not a continuing breach and the breach had only occurred once so could not be subsequently adopted.
45. In respect of China Court, his view was that the permit broadly covered the works required. It was clear that extending the first floor landing must be to provide a safe structure and would have blocked off access from below. The work that had been undertaken was clearly that which was comprehended by the parties and the permit was within the scope of the work and within the job description for Mr Kedrak. As he was not a surveyor or a lawyer, it was Mr Ng's submission that the only reason for talking to Mr Kedrak was to deal with the permit, which if the



acceptance of same was correct meant that the provisions of the lease had been complied with. His view was that the statement made by Mr Kedrak apparently accepting the permit, and taking that no further, constituted estoppel. Ms Li had relied upon his actions by proceeding with the alterations and then restoring them. The charge for a sub-letting fee must mean the Applicants were aware of the position and that Ms Li had not complied with the terms of the lease but nonetheless accepted the fee in respect of same. This in his submission constituted estoppel/waiver

46. Insofar as the sink and washing machine was concerned, he said there was no evidence that these had been plumbed in nor that Ms Li had ever authorised them. When she did discover this, she asked that they were removed and they were. In support of this proposition he relied on the case of Hagee (London Limited) v Co-operative Insurance Society Limited (1992)63P&CR362. He also submitted that in respect of the user, he had not been aware of any bookings of an Airbnb type but when she had discovered them, she had told the tenant not to proceed on that basis.
47. Miss Muir's response was that the Hagee was not of assistance as it had unusual facts. She asked us to consider whether it was credible that the changes to China Court to create two flats was something that Ms Li knew nothing about. In her submission she was reckless as to whether she ensured the property was being used appropriately. Insofar as the meeting with Mr Kedrak was concerned, this was at his offices and he was not familiar with the inside of the flat. We were referred to his witness statement. Permission was not required if not structural but the evidence of Mr Keating was that the changes were in part structural.
48. Her submission was that the payment of the fee for sub-letting was not a waiver. We were referred to the case of Swanston Grange (Luton) Management Limited v Langley-Essen and the judgment of Judge Huskinson, which we will refer to as necessary.
49. As far as limitation was concerned, Miss Muir's view was that this was not a statute barred claim. The right for forfeit could not arise until it was known by the Landlord and therefore the limitation period was not relevant. It was her submission, however, that the use of the garage was in any event a continuing breach, a matter which appeared to be accepted by Mr Ng. His view, however, in a short response was that the £120 a year in respect of the letting fees created a waiver. That there was no evidence that sink or washing machine had been plumbed in. That there clearly was an estoppel and that that property at China Court had now been handed back in good order.

## **FINDINGS**

50. There are a number of issues in this case that we need to consider. The first relates to the alterations without consent at Cape Yard. Ms Li accepts that she replaced the wooden door with UPVC door and window in the garage. The local authority certificate of lawful development dated 19<sup>th</sup> January 2017 shows that the conversion of the garage into living accommodation is now lawful. It is the Respondent's contention that this alteration took place at the latest by 2002 and that the Limitation Act applies. The Applicant says that the Limitation Act does

not bite until the forfeiture is known. We disagree with that submission. The Limitation Act 1980 lays down a limitation period of 12 years from the date when the cause for action for forfeiture accrued. A right of action to recover land by virtue of a forfeiture is deemed to have accrued on the date on which the forfeiture occurred. The forfeiture will be incurred on the date of the breach of covenant or condition. It is our finding, therefore, that action for forfeiture founded on a particular breach must be commenced within 12 years after the breach is committed. As more than 12 years have passed we find that the Limitation Act does apply.

51. The question was also raised whether the continued use of what was the garage as living accommodation would breach the regulations in the lease, which provides that the garage should be used for the parking of private motor vehicles ancillary to the permitted user. We are faced with the decision of the local authority accepting the lawful user as living accommodation. We are somewhat perplexed by the letter from Rendall & Rittner Limited dated 18<sup>th</sup> July referring to a Deed of Variation, payment of a fee and building control. We cannot see that this would relate merely to the replacement of the internal wooden doors with the UPVC doors installed by Ms Li. Equally, however, it is unclear why there should be this correspondence in July of 2000 and an application for an established use certificate made subsequently if the two were not related. The matter is unclear and it seems to us that the burden rests with the Applicant to show that this is a continuing breach. The letter from Rendall & Rittner, in our finding evidences an awareness of the conversion and that the principles in the Swanston case would apply. Accordingly we find that there is no actionable breach in relation to either the conversion or the continued use of the garage.
52. We turn then to the question of sub-letting without consent. It appears quite clear that Ms Li has sub-let both properties without obtaining any form of consent from the Applicants. Insofar as China Court is concerned, it is equally clear that the management company has been accepting a sub-letting fee from January of 2016, being the earliest date we can see from the papers before us, in relation to this property. Quite why they charge a sub-letting fee on an annual basis when we were told that this property has been let on three-year lettings is unclear. The suggestion by Mr Ng that the application does not contain the grounds to support an allegation of subletting without consent is dismissed by us. He cannot have it both ways. Ms Li's witness statement made nothing of any suggestion that there was a limitation point and the application itself is not in reality a pleading that needs to be strictly adhered to. No prejudice has been caused to Miss Li. We therefore do not accept that this particular point rules out the Applicant's entitlement to proceed on the sub-letting basis.
53. It seems to us quite clear that there are two breaches relating to Cape Yard. The first is that there clearly was sub-letting for which no consent was obtained, nor a deed of covenant entered into by the tenant. In respect of Cape Yard no evidence has been produced to us by Ms Li to show that she has paid any sub-letting fee to the managing agents. We find that such failure to obtain consent and the deed of covenant constitutes a breach of the lease.
54. The second breach relates to the erection of the stud wall. Mr Ng asked us to rely on the case of Hagee which is somewhat peculiar to the facts. Mr Justice Harmon

said in his judgment as follows: *“No authority on this point has been cited to me, no doubt because the facts are extremely unusual in that the works in this case were not done to or in the demised premises nor with the knowledge, which might imply approval, even if tacit, of the tenant whose lease is sought to be forfeited for breach of covenant by the tenant. In my judgment a tenant cannot be held responsible for work not done by it, not authorised by it or known by it. I hold that Hagee committed no breach of his covenant with his landlord by reason of the fact that these works were carried out to the building.”*

55. Insofar as the stud wall is concerned, it is Ms Li's contention that she knew nothing of this. We must confess we find this surprising. Admittedly this property appears to be dealt with through an agent but we would have thought an agent should have been aware of such works. Nor would we expect a tenant to undertake alterations of this nature to a property without speaking to the landlord first. The tenant, on vacating, offered to take the wall down but Ms Li did not require that to be undertaken. Instead she has adopted the alterations. Further there is evidence, supported by her own candid admission, that as long as the rent was paid she was not concerned about what went on the property. We found Ms Li to be an unconvincing witness. Her recollection of dates and circumstances was somewhat woolly and in our finding we consider that she was aware that this alteration was being made and although not structural and for which approval, we suspect, would have been granted, we nonetheless find that there is a breach in this regard.
56. We then move on to the question of China Court. The first matter we must deal with is the alteration without consent. It is clear from the permit to work that discussions had taken place and the scope of works, which we refer to above would, it seems to us on any reading, indicate that this was intended to split the property into two. It does indicate that no plumbing works were involved. Mr Keating in his report indicated that the kitchen-type worktop had been plumbed in although could not say at the hearing whether the washing machine had been plumbed.
57. Mr Kedrak told us that upon receipt of the permit he did not take advice from anyone else, he did not inspect but instead filed it. It would seem to us that Ms Li, not being conversant with structural matters, although clearly aware of the lease terms, may well have thought that she had been given permission to undertake the works. In those circumstances we do find that there is estoppel in respect of these works and of course bear in mind that the works have been 'undone' since these proceedings were commenced. Accordingly, we make no finding in respect of the alterations to China Court.
58. It is clear that no formal consent to sub-letting has been obtained nor has a Deed of Covenant been entered into. It would be our view that on a letting of three years a Deed of Covenant is an important document. That has not been followed through. Furthermore, it seems to us that the permitted user is quite clear and in this lease it indicates that it should be a private residential flat in one occupation only. On our inspection, it seemed to us that is not the basis upon which the property was being let. The bedroom doors had individual locks on them and it would seem are being used as an HMO, possibly as an Airbnb, although we make no findings on that because we accept Ms Li's evidence that she was not aware

that this was being undertaken by the tenant. She was, however, aware we find that the property was not going to be used as a single residential unit. We find, therefore, that there has been a breach in connection with the permitted user of China Court.

59. Insofar as the sub-letting without consent is concerned, in respect of China Court we do have evidence that the managing agents were accepting sub-letting fees. In so doing it seems to us that they have waived the consent point for sub-letting. However, that does not mean that the requirement for a Deed of Covenant has been covered and accordingly there is, therefore, a breach in respect of that element of the lease at clause 5(6)(c)(i).
60. It is hoped that this matter need go no further. Miss Li must appreciate the terms of her lease and deal with the requirements for subletting her two properties. She needs to get consent and ensure a deed of covenant is entered in to. She must also bear in mind the permitted user provisions. A consent should be sought for the stud wall in the Cape Yard flat. Whether the demanding of an annual letting fee is appropriate should be considered.

*Andrew Dutton*

Judge:

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A A Dutton

Date: 23rd February 2018

#### **ANNEX – RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.