



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

Case reference : CHI/00HB/LBC/2022/0003

Property : 58 Hollybrook Park, Bristol, BS15 1ST

Applicant : Qdime Limited

Representative : Allsquare Law

Respondent : Mr Martin Baker and Mrs Christina Baker

Representative : None

Type of application : Breach of Covenant. Section 168(4)
Commonhold and Leasehold Reform Act 2002

Tribunal member(s) : Mrs J Coupe FRICS
Judge Tildesley OBE

**Date Hearing
and venue** : Havant Justice Centre, Elmleigh Road,
Havant, PO9 2AL
3 May 2022

Date of decision : **24 May 2022**

DECISION

Summary of the Decision of the Tribunal

The Tribunal determined that the Applicant has demonstrated that a breach of the covenant contained in Clause 7 of Schedule 9 by the Respondent has occurred.

The Application

1. By way of an application received on the 8 February 2022 the Applicant, the owner of the freehold interest in 58 Hollybrook Park, Bristol, BS151ST (the Property) made an application to the Tribunal claiming breach by the Respondents of various covenants in the Lease.
2. The Applicant's grounds of application are set out in section 13 of the application form and allege that, in breach of the terms of the lease, the tenant operated a car sales and repair business from the communal car park and estate roads, thereby causing inconvenience and annoyance to other Tenants, the Landlord and the Company. They further allege that such behavior caused the loss of communal parking facilities and that the ambience of the development deteriorated, leading to a loss of quiet enjoyment.

Directions

3. On 18 March 2022 the Tribunal directed a hearing of the application on 3 May 2022.
4. By 8 April 2022 the Respondents were required to send to the Applicant a signed and dated statement of truth setting out each aspect of its case including a response to the points made by the Applicant, copies of any other relevant documents to be relied upon, and any witness statements.
5. By 22 April 2022 the Applicant was permitted to issue a concise reply to the Respondents case to be included within the bundle.
6. The Applicant was required to prepare the bundle, the contents of which were to be agreed by the parties, and copies submitted to the Tribunal and Respondents.
7. The Respondents did not send a statement of case by the due date. Mr Baker emailed a brief statement, accompanied by photographs, to the Tribunal at 22.07 pm the night before the hearing.

The Property

8. The Tribunal did not carry out an inspection of the Property as neither party requested such, nor did the Tribunal deem one necessary for the purposes of determining the application.
9. Hollybrook Park is a modern, purpose built development comprising three and four storey blocks of residential flats, accessed off the estate roads. The buildings are brick and render faced with partial cladding, beneath a pitched and tiled roof. Interspersed between the blocks are demised and communal permitted parking spaces. Green open spaces border the Estate and shops and amenities are within close proximity. The area is well served by public transport links.
10. No.58 Hollybrook Park is a ground floor flat with an allocated parking space.
11. The freehold of the building is owned by the Applicant.
12. The joint Respondents own the leasehold interest in the Property pursuant to a 125 year lease dated 28 July 2006, commencing 1 January 2005.
13. Party to the tripartite lease is Hazelvine Limited, a management company, referred to in the lease as 'the Company'.

The Lease

14. The Official Copy of Register of Title for the freehold interest, registration BL98235, lists the property, within the Schedule of Notices of Leases, as a ground floor flat with parking space.
15. The Lease before the Tribunal is a lease dated 28 July 2006, made between Linden Homes Western Limited as 'Landlord', Hazelvine Limited as 'the Company' and the joint Respondents, Martin Baker and Christina Baker as 'Tenant'.
16. The Applicant relied in its application on the following provisions within Schedule 4 and Schedule 9 of the Lease:
17. Schedule 4, Part 2 'Tenant's covenants with the Landlord the Company and other Tenant's or Owners of the Leasehold Property', Clause 6:
 '6. To observe the restrictions and regulations specified in Schedule 9 hereto and such other reasonable restrictions or regulations consistent with the terms of this Lease of which the Company may give notice in writing to the Tenant.'
18. Schedule 9 'Regulations', clause 7:
 '7. The Tenant shall not keep or place or permit or suffer to be kept or placed any bicycle prams pushchairs or other articles of any

description or any obstruction upon the Estate nor have or deposit any combustible explosive or offensive goods in the Demised Premises or upon any part of the Building nor do or permit to be done any act thing whatsoever on or about the Demised Premises or the Estate that may be or become dangerous or a nuisance or cause scandal or annoyance to the Landlords the Company or any of the other lessees or occupiers of the Estate or neighbourhood.’

19. Schedule 4, Part 1 ‘Tenant’s Covenants with the Landlord’, clause 12:
‘12. Not to hold on any part of the Demised Premises any sale by auction nor to use the same or any part thereof nor allow the same to be used for any illegal or immoral purposes but only to use the same as a self-contained residential apartment with appurtenances in one family occupation only.’

The Law

20. The relevant law in relation to breach of covenant is set out in section 168 Commonhold and Leasehold Reform Act 2002, most particularly section 168(4), which reads as follows:

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

21. The Tribunal is required to assess whether there has been a breach of the Lease on the balance of probabilities (*Vanezis and another v Ozkoc and others (2018) All ER(D) 52*).

22. A determination under Section 168(4) does not require the Tribunal to consider any issue other than the question of whether a breach has occurred.

Whether any breach has been remedied, or the right to forfeit for that breach has been waived, are not questions which arises under this jurisdiction. Neither can the Tribunal consider a counterclaim by the Respondent as an application under Section 168(4) can only be made by a landlord. The motivations behind the making of an application are also not relevant to the determination of whether a breach has occurred.

23. In *Vine Housing Cooperative Ltd v Smith (2015) UKUT 0501 (LC)*, Judge Gerald said this:

“The question before the F-tT was the straightforward question of whether or not there had been a breach of covenant. What happens subsequent to that determination is partly in the gift of the landlord, namely, whether or not a section 146 notice should be issued and then whether or not possession proceedings should be issued before the county court. It is also partly in the gift of the county court namely whether or not, if and when the application for possession comes before the judge, possession should be granted or the forfeiture relieved. These events are of

no concern to, and indeed are pure conjecture and speculation by, the F-tT.

Indeed the motivations behind the making of applications, provided properly made in the sense that they raise the question of whether or not there had been a breach of covenant of a lease, are of no concern to the F-tT. The whole purpose of an application under section 168, however, is to leave those matters to the landlord and then the county court, sure in the knowledge that the F-tT has determined that there has been breach.”

24. The Tribunal has jurisdiction to determine whether the landlord has waived the right to assert, or is estopped from asserting, that a breach has occurred. In *Swanston Grange Management Limited v Langley-Essex* (LRX/12/2007) HHJ Huskinson said

“The LVT needs to decide (and must consequently have jurisdiction to decide) whether at the relevant date the covenant was suspended by reason or waiver or estoppel (in which case a breach will not have occurred).”

25. The Lease is to be construed applying the basic principles of construction of such leases as set out by the Supreme Court in *Arnold v Britton* (2015) UKSC 36 where, at paragraph 15, Lord Neuberger said:

*“When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to “what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean”, to quote Lord Hoffman in *Chartbrook Ltd v Persimmon Homes Ltd* (2009) UKHL 38, (2009) 1 AC 1101, para 14. And it does so by focusing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party’s intentions.”*

26. Context is therefore very important, although it is not everything. Lord Neuberger went on to emphasise at paragraph 17:

*“the reliance placed in some cases on commercial common sense and surrounding circumstances (e.g in *Chartbrook* (2009) AC 1101, paras 16-26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most likely to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language that they use in a contract. And again save perhaps in a very unusual case, the parties must have been specifically focusing on the issue covered by the provision when agreeing the wording of that provision.”*

The Hearing

27. The Applicant was represented by their solicitor, Mr Duncan. The Respondents were represented by Mr Baker, with Mrs Baker in attendance.

Also present were Ms Cheryl Tanner, a local resident and witness for the Applicant, and Ms Nicola Honeywell, Property Manager at Hazelvine for the Applicant.

Preliminary Issues

28. The application was originally submitted in the name of Ms Tanner, a subtenant residing at Hollybrook Park. An application for breach of covenant is only valid when made in the name of the landlord. Subsequently Qdime Limited, the freeholder landlord, was substituted as the Applicant.
29. Mr Duncan, solicitor for the Applicant, clarified at the start of the hearing that Qdime Limited and Hazelvine Limited were related companies within the same ownership, as too was Allsquare Law, the solicitors' firm Mr Duncan was employed by.
30. Mr Duncan referred the Tribunal to Schedule 4, Part 2 of the lease whereby the Tenant covenants with the Landlord, the Company and other Tenants. As such, he avers that either Qdime Limited, as Landlord, or Hazelvine Limited, as the Company, had legal standing to bring this application. The Tribunal agrees with Mr Duncan's interpretation.
31. In correspondence with the Tribunal's Legal Officer prior to the hearing, the Applicant indicated that they would be seeking, at the hearing, an order to strike out or debar the Respondents from providing evidence or to restrict their participation in the hearing due to non-compliance with Directions. At the start of the hearing however the Applicant advised the Tribunal that they would not be making such an application and that they agreed it would be useful for the Tribunal to take oral evidence from the Respondents and for each party to have an opportunity to question the evidence of the other.
32. The Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013, Part 2, Section 8 empower the Tribunal to waive the requirements to comply with Tribunal Directions. Under Part 1, Section 3 of the Rules the overriding objective of the Rules requires the Tribunal to deal with a case fairly and justly. The Tribunal identified no specific prejudice suffered by the Applicant as a result of the Respondent failing to adhere to the Directions and, under the aforementioned Rules, the Tribunal exercised its power to allow the Respondents to provide oral evidence and to participate

in the proceedings.

Submissions – The Applicant

33. By virtue of Clause 6, Schedule 4, Part 2 of the lease the Applicant states that the Tenant covenanted to observe the restrictions and regulations in Schedule 9.
34. The Applicant alleged that the Respondent breached Clause 7 of Schedule 9 through the parking of vehicles upon communal areas, estate roads and permitted spaces and that such activity created obstruction, nuisance and annoyance.
35. It further relied on Clause 12, Schedule 4, Part 1 whereby it averred that the Respondent had breached the covenant by using the Property for business purposes.
36. The Applicant alleged that, for a period in excess of three years, a commercial enterprise repairing and trading used cars from the communal land, estate roads and visitors parking spaces forming the development was carried out by an occupier of the Property.
37. This activity allegedly caused nuisance and annoyance to an occupier, the Landlord and the Company, contrary to the lease.
38. Submissions filed by the Applicant included email correspondence between Hazelvine, acting in their capacity as property manager, and the Respondents in regard to the alleged breach dating from 12 April 2018. That email read: *“Your tenant is also conducting a business from the premises by buy and selling motor vehicles”* And further in the same correspondence *“He is also using other residents parking spaces, causing them inconvenience”* *“he is also parking one of his vehicles in the visitors spaces...”*. *“This is in breach of your lease”*.
39. The Applicant referred the Tribunal to one email in particular, sent by Mrs Baker to the Tribunal at 3.21pm on 3 April 2022, copying in the Applicant’s representative, wherein, they claim, that one of the joint Respondents made an admission tantamount to accepting the ongoing nature of the various breaches. The email, addressed to the Tribunal, read: *“I am writing to you that Martin Baker and our son Paul Baker have now removed most of the cars apart from two which will be sorted out this week (by the 7th of April).”* She continues *“I have told my son Paul on many occasions to move the cars, as Paul suffered with anxiety and it’s hard for him to make him do anything, so I can only again apologise.”*

40. In support of the application the Applicant submitted a witness statement provided by Ms Tanner, a resident of Hollybrook Park, a property she occupies under a Housing Association tenancy.
41. It was her evidence that the quiet enjoyment of her property had been blighted by the vehicle trading and repair business operated from the Respondents Property and the Estate in general, and that the Respondents' actions had caused her nuisance and annoyance.
42. Ms Tanner claimed that the alleged business made use of the visitors parking spaces and communal areas on a regular basis, thereby forcing visitors to park in spaces demised to other tenants, including hers. On one occasion she alleged fourteen vehicles belonging to the business were parked onsite causing noise, nuisance and disturbance and that, for a considerable period, six vehicles were parked directly outside her property. She accepted that all vehicles have since been removed.
43. Ms Tanner claimed to have witnessed the occupier of the Property carrying out maintenance and repairs to the vehicles and that '*strangers*' were seen attending the development to view vehicles for sale. She considered this activity to be a persistent problem and, in August 2021, alleged that at least ten cars were '*abandoned in the car park*' by the tenant. In support of her claim, she provided screen shots of, what she asserted to be, the tenant's facebook page advertising cars, with these same cars later identified onsite.
44. In response to a question from the Respondent, Ms Tanner admitted that she had never met the Respondent's son and based her assumption of his identity on witnessing Mrs Baker entering and leaving the Property with regular frequency.
45. The Applicant contends that the alleged breaches have been ongoing for a considerable period and that, despite email communication with the managing agent Hazelvine since as far back as April 2018 on the matter, the issue has never fully been either addressed or remedied by the Respondents.

Submissions – The Respondents

46. On behalf of the Respondents Mr Baker addressed the Tribunal on the Applicant's claims.
47. He acknowledged that their son, Mr Paul Baker, occupied the Property as his main and only residence. No formal tenancy agreement was in place, as it was considered a family arrangement.
48. The Respondent informed the Tribunal that he had not resided in the Property for over four years and that he and Mrs Baker were now divorced. He further advised that the family unit had broken down many years ago

and that communication between him and Mrs Baker was very limited. He explained that his relationship with his son hadn't been an easy one and that trust between them was lacking. On a number of occasions during his evidence the Respondent adopted language suggesting that his son habitually told untruths.

49. The Respondent admitted that his son had, at times, operated a commercial venture buying and selling cars, some of which were parked within the communal grounds and roads of the development but that the number of

vehicles parked onsite at any given time never exceeded seven. He refuted claims that his son either repaired or maintained said vehicles, advising that his son lacked the necessary expertise to carry out such work.

50. He strenuously denied that either Respondent granted their son permission to engage in such operations or that they condoned his activities. Furthermore, he averred that as soon as they became aware of the business venture, they instructed him to cease trading and to remove the vehicles from site.
51. The Respondent claimed that his son repeatedly assured him that the vehicles either weren't his or that they would be removed imminently. He stated neither claim was ultimately true and that the more he questioned his son on the matter the further their relationship deteriorated. Mrs Baker, for her part, became concerned for her son's health due to his ongoing anxiety issues and, despite condoning the activity, felt unable to exert further pressure on him.
52. On receipt of Tribunal papers, the Respondents instructed their son, again, to remove the vehicles and this time he started to comply. A number of the vehicles however failed to start so, as the date of the hearing was approaching, the Respondent claimed that he personally removed all remaining cars from site.
53. The Respondent contended that the vehicles were never in the Respondents ownership; that they instructed their removal as soon as the matter was brought to their attention by Hazelvine; that their permission for such activity was neither sought nor granted; and that when their son failed to comply with their request, they, ultimately, removed the vehicles without his consent. They considered they had acted appropriately and were not, personally, in breach of the lease.
54. Additionally, the Respondent claimed that other lessees and tenants regularly abused the communal parking areas and estate roads but were not subjected to breach of covenant actions by the Applicant. In support, he provided a series of photographs of vehicles parked onsite.
55. Furthermore, he claimed that it was out of character for the Respondents to breach any covenant citing, by way of example, their prompt adherence to the requirement for a pet licence.

56. He advised the Tribunal that a sale of the Property had been agreed on the 8 November 2021 but that the sale had been held up by Hazelvine delaying the provision of documentation to their solicitor. The Respondents both confirmed that Mrs Baker still resides in the Property part-time whilst awaiting competition of the sale.
57. As a separate matter, Mr Baker alleged that procedural irregularities on behalf of the Tribunal prejudiced the Respondents defence. The details of which follow:-
- a. Mr Baker claimed that the original email address used by the Tribunal was incorrect. He further claimed that the postal address used by the Tribunal for issuing documentation was incorrect and that he had been inconvenienced in having to collect documentation from an address where he did not reside.
 - b. Mr Baker claimed that despite a request from the Tribunal he was unable to provide a current postal address having recently moved house and temporarily residing on a caravan site where the receipt of post was prohibited.
 - c. Upon questioning from the Tribunal, he confirmed that his co-Respondent, Mrs Baker, had received the documentation and that she had notified him of the proceedings. She had also advised him that she had provided the Tribunal with his new email address and phone number. He acknowledged that he ultimately received all documentation however he claimed that he was inconvenienced by having to '*chase about*' for paperwork.
58. The second Respondent, Mrs Baker, acknowledged receipt of the Tribunal papers and subsequent documentation, albeit she advised the Tribunal during the hearing that she was unable to open some of the documents due to a lack of computer expertise.
59. Neither Respondent addressed the Tribunal on their lack of compliance with the Tribunal Directions, suffice to reiterate Mr Baker's comment above in relation to the receipt of documentation.

Consideration and Determination of Breach of Covenant

60. The Tribunal found it unfortunate that neither Respondent had filed a statement as per the Directions however the Tribunal did have regard to the brief statement supported by photographs that the Respondent had filed with the Applicant and the Tribunal the night before the hearing. Oral submissions by both Respondents were heard and, Mr Baker on behalf of both Respondents, had an opportunity to put any questions to the Applicant he so wished.
61. The Tribunal first addresses the Respondents' point on procedural irregularity and, in doing so, finds it useful to reference a timeline of

events:

- a. 08/02/2022 – Application received by the Tribunal providing the Respondent's correspondence address as 2 Castle Street, Kings Stanley, Stonehouse, GL10 3JX and an email address for Mr Baker of martinsblinds@hotmail.co.uk and Mrs Baker as cookiechris1960@gmail.com.
For ease we will refer to Mr Baker's original email address as '*hotmail*' and Mrs Baker's email address as '*cookie*'.
- b. 18/03/2022 – First letter from the Tribunal to the Respondent's notifying them of the application. Directions issued. Both emailed to addresses provided within the application, that being '*hotmail*' and '*cookie*'.
- c. 03/04/2022 – Email received by the Tribunal from Mrs Baker's '*cookie*' account providing the correct email address for Mr Baker as martinsblinds1957@yahoo.com.
For ease we will refer to this updated email address as '*yahoo*'.
- d. 04/04/2022 – Tribunal issued a letter, by email to '*yahoo*' and '*cookie*' requesting current postal address. Copied to Applicant.
- e. 05/04/2022 – Tribunal issued a letter to all parties confirming that the Directions stand and the Respondent's requirement to comply. Emailed to '*yahoo*', '*cookie*' and Applicant.
- f. 06/04/2022 – Email received by the Tribunal from Mr Baker, sent from '*yahoo*', stating that he had not received the paperwork and that five cars had been moved off site.
- g. 11/04/2022 – Copy of email from Applicant to '*yahoo*' and '*cookie*' received by Tribunal requesting Respondent to comply with Directions.
- h. 11/04/2022 – Email received from Respondent '*yahoo*' stating he had not received any paperwork and advising that he had no delivery address for post.
- i. 12/04/2022 – Tribunal issued letter to Respondent via '*yahoo*' email reminding him of the requirement to comply with Directions and attaching further copies of application documents. Copied to '*cookie*' and Applicant.
- j. 12/04/2022 – Email received by the Tribunal from the Respondent via '*yahoo*' advising that he was unable to open the attachments and requesting hardcopies to be posted to 58 Hollybrook Drive (the Property).
- k. 12/04/2022 – Tribunal posts, first class, copies of the application and letters.

- l. 14/04/2022 – Emailed received from Respondent, via ‘yahoo’ stating that he is unable to fill out the forms online, print or scan, and that the hard copies had not been received in the post.
- m. 20/04/2022 – Directions of 20 April 2022 emailed to ‘yahoo’, ‘cookie’ and Applicant.
- n. 24/04/2022 – Email received by the Tribunal from Respondent, via ‘yahoo’ advising that hard copies of paperwork had not been delivered.
- o. 25/04/2022 – Letter emailed by the Tribunal to Mr Baker at ‘yahoo’ confirming that paperwork was posted on the 12 April and that Directions stand.
- p. 27/04/2022 – Tribunal copied in on emails between Applicant and Respondent.
- q. 28/04/2022 – Letter to Applicant and Respondents (‘yahoo’ and ‘cookie’) advising of the requirement to attend the hearing in person.
62. It is evident from the timeline of correspondence that once the Tribunal were notified by Mrs Baker that the Applicant had provided an outdated email address for Mr Baker, the Tribunal reissued the documentation to the correct email address and utilised that email address from thereon.
63. It is further evident that the Tribunal requested a postal address for Mr Baker however none was forthcoming. It was only on the 12 April 2022 that Mr Baker requested hard copies be posted to the Property, 58 Hollybrook Park.
64. On questioning from the Tribunal Mr Baker confirmed that he had experienced no other issues of undelivered post to the Property. He also confirmed that correspondence, including service charge demands, were received without issue at the Property, although he did qualify his response by explaining that some demands are issued by email. In answer to the same question, Mrs Baker made reference to her dog occasionally ‘eating’ the post.
65. When questioned by the Tribunal on why he had failed to provide a correspondence address when so requested, he referred to his earlier response concerning the practicalities of temporarily living on a caravan site where the receipt of post was prohibited.
66. Upon questioning from the Tribunal, Mr Baker claimed that he had not received some of the email correspondence from the Tribunal. To explore this further the Tribunal took him through a series of emails issued by the Tribunal and asked him to confirm which of them had been received. His initial response was that none had been received, following which the

Tribunal gave him an opportunity to check this assertion using an electronic device he had before him. Having done so, he repeated his claim that none had been received. The Tribunal referred Mr Baker to a number of emails to which he had responded and asked how, if they hadn't been received, had he replied to them. Mr Baker was unable to answer. The Tribunal asked Mr Baker to explain how he considered that he had been prejudiced in these proceedings, to which he replied that it was "*not for him to go chasing around the country for documents*".

67. The Tribunal finds that Mr Baker failed to prove any Tribunal procedural irregularities or to provide any evidence of prejudice. He accepted that the joint-Respondent, Mrs Baker, received all documentation and that she notified him of the same. He accepted that once an alternative email address had been provided that the Tribunal reissued all documentation to it and that he corresponded with the Tribunal on this same email address. He acknowledged that he failed to provide an alternative postal address when so requested and that he subsequently requested documentation to be posted to the Property. He had no explanation as to why the documents, addressed to the Property and issued by first class post, were allegedly delivered elsewhere. The Tribunal finds that the Legal Officer of the F-TT met every request of the Respondents in regard to the updated email address and the issuing of hard copy documentation. As a non-resident tenant the Respondent either should have provided an alternative postal address or made proper arrangements for forwarding or diverting mail addressed to the Property. Alternatively, he should have entrusted the handling of his post to a person committed to the task. Accordingly, no procedural irregularities were found to have been proven. As such the claim of prejudice falls away.
68. Next, The Tribunal turns its attention to whether a breach of covenant has occurred and, in doing so, reminds itself that whether the breach has been remedied, or whether the right to forfeit for that breach has been waived, are not questions which arise under this jurisdiction. As such the eventual removal of the vehicles in question is not a relevant consideration in this determination.
69. Firstly, the Tribunal considered the Applicant's assertion that one of the co-Respondents had made an admission tantamount to accepting the alleged breaches. The Tribunal, for the reasons below, disagrees.
70. The email of 3 April 2022 from Mrs Baker to the Tribunal acknowledged that her son parked cars within the development, a fact neither Respondent denied throughout the proceedings. She continued "*I have told my son Paul on many permissions to move the cars ...*". The Tribunal does not concur with the Applicant that this statement, or the remainder of said email, constitute an admission of breach of covenant, instead the email simply contains an acknowledgement, on her part, that, at some point in time, vehicles belonging to her son were parked onsite.
71. Next, we turn our attention to Clause 6 of Schedule 4, Part 2, whereby the

Respondents covenant with the Landlord, the Company, and other Tenants to observe the restrictions and regulations specified in Schedule 9.

72. Clause 7 of Schedule 9 requires the Tenant not to 'keep or place or permit or suffer to be kept or placed...' any articles of any description or any obstruction upon the Estate, nor to 'do or permit to be done any act thing whatsoever in or about the Demised Premises or the Estate that may be or become dangerous *or a nuisance* (our emphasis) or cause scandal or '*annoyance to the Landlords the Company or any of the other lessees or*

occupiers of the Estate or neighbourhood' (our emphasis).

73. The evidence upon which the Applicant relies are correspondence between Hazelvine and the Respondents dating from 12 April 2018; the witness statement of Ms Tanner; and a number of undated photographs with no geographical context, each of which will be addressed below.

74. Email correspondence dated 12 April 2018 between Hazelvine and the Respondents refer to the parking of at least 3 or 4 motor vehicles onsite at any one time and the selling of motor vehicles from the car park. The Respondents were therefore aware, from as early as 2018, that such activity was considered, by the Applicant, to be a breach of covenant.

75. The Applicant claimed that requests to remove the vehicles were continually ignored, which, ultimately, resulted in Hazelvine issuing the Respondent with a breach of covenant notice.

76. It was common ground amongst the parties that excess vehicles were parked onsite and that a car sales business was being conducted from the Estate and grounds. It was also common ground that it was the Respondents' son who was responsible for business, as opposed to the Respondents themselves.

77. In their oral evidence both Respondents defended the alleged breach on the basis that they too objected to their son's business being operated from the Estate and that they unsuccessfully attempted, on multiple occasions, to persuade him to desist.

78. Turning to the lease, Regulation 7 of Schedule 9 which requires the Tenant not to '*keep or place or permit or suffer to be kept or placed any other articles of any description or any obstruction upon the Estate...*'. The natural meaning of such words is that the Tenant will be in breach of covenant if they permit such activity to occur.

79. Included within the demised premises is a single parking space. The Tribunal finds on the basis of evidence before it, that the Respondents' son, in parking multiple cars onsite at any given time, must have occupied parking spaces, communal areas or Estate land not demised to the Respondents.

80. The Tribunal is satisfied that both Respondents were aware of the alleged breach for at least three years and yet they took no meaningful steps to stop their son's activities. As such, the Tribunal finds that the Respondents permitted their son's activities.
81. Furthermore, the Tribunal does not accept the Respondents' argument that they had no control or influence over their son or his activities whilst he was residing in their Property. To the contrary, it is evident that when faced with these proceedings the Respondents took immediate steps to remedy the
- situation by personally removing the vehicles and corresponding such action to the Tribunal.
82. Additionally, the Tribunal finds that in permitting their son to operate his business from the Estate the Respondents knowingly caused nuisance or annoyance to an occupier, as evidenced by Ms Tanner.
83. Taking all evidence into consideration the Tribunal finds that, on the balance of probabilities, a breach of covenant under Schedule 9 Clause 7 was made out by the Applicant.
84. Turning next to Clause 12 of Schedule 4 Part 1, which prohibits, on the demised premises, any sale by auction or the use of the Property for any illegal or immoral purposes. The Applicant presented no evidence of any vehicles being auctioned from site. The only evidence of the car sales business was the witness statement of Ms Tanner and the Facebook screenshots showing cars for private sale as opposed to auction. Neither did these images identify the location of the parked cars.
85. In response to questioning from the Respondent, Ms Tanner admitted that she didn't know the identity of Mr Paul Baker. In light of this the Tribunal deliberated as to how Ms Tanner therefore found Mr Paul Baker's Facebook page online.
86. Clause 12 further requires the demised premises only to be used as a self-contained residential apartment with appurtenances in one family occupation. The Applicant forwarded no evidence to prove that the occupation of the demised premises wasn't as a self-contained residential apartment nor that the occupation was by more than one family. Furthermore, Clause 12 does not prohibit the running of a business from the home of a Tenant.
87. The Tribunal therefore finds that the grounds for an alleged breach under Clause 12, Schedule 4 Part 1 have not been made out.
88. In regard to the Respondents allegations of breach of covenant by other tenants, the Tribunal makes no finding as it is without jurisdiction.

Decision

89. The Tribunal determined that in breach of Schedule 9, Clause 7 the Respondents permitted their son to carry on a car sales business and to park multiple vehicles outside the demised premises and upon the common areas and estate roads, thereby causing a nuisance or annoyance to the Landlord, the Company and one occupier of the estate. The Tribunal determined the breach to have occurred from the 12 April 2018.

Costs

90. Mr Duncan advised that, should the Tribunal find in the Applicant's favour, recovery of costs, anticipated to be in the region of £4,000, would be sought from the Respondents, as per the lease in contemplation of forfeiture under s.146 Law of Property Act 1925.
91. This is not a matter for the Tribunal. The Applicant has made no actual demand for the costs of the proceedings as an administration charge. Such costs, if payable, must be reasonably incurred. The Respondents have the right to apply to the Tribunal to determine the reasonableness of the costs once a demand has been served.

Johanne Coupe FRICS (Chairman)
24 May 2022

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.