



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

**Case Reference** : **BIR/47UF/LBC/2019/0005**

**Property** : **4 Foster Green, Perton,  
Wolverhampton, WV6 7SQ**

**Applicant** : **Marden Limited**

**Respondent** : **Jayne Kim Flavell**

**Application** : **Breach of covenant**

**Members of Tribunal** : **Judge D Jackson  
Mr D Satchwell FRICS**

**Date of Decision** : **30 July 2019**

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**DECISION**

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1. On 17<sup>th</sup> April 2019 the Applicant applied to the Tribunal for an order that a breach of covenant or a condition in a lease has occurred under section 168(4) of the Commonhold and Leasehold Reform Act 2002.
2. On 17<sup>th</sup> April 2019 the Tribunal issued Directions.
3. The Tribunal has considered Statement of Case signed by Mr Jolyon Moore on behalf of the Applicant.
4. The Respondent has failed to comply with Directions. She has failed to acknowledge any of the letters sent to her by the Tribunal. The Applicant has used the services of an enquiry agent and has provided the Tribunal with an address in Bilston for the Respondent. None of the letters sent by the Tribunal to the Respondent at that address have been returned by Royal Mail.
5. Neither party has requested an oral hearing.

### **The Lease**

6. The Property is held under the terms of a Lease dated 2<sup>nd</sup> August 1984 and made between McLean Homes Midland Limited (1) and Philip James Cave and Tracey Warden (2) whereby the Property was demised for a term of 99 years from 25<sup>th</sup> March 1983 at an initial yearly rent of £50 (“the Lease”)
7. The Property is the subject of a mortgage in favour of Halifax.
8. The Applicant alleges breach of three separate Lessee covenants contained in the Lease:

Clause 2(e): “to keep the said dwelling and all services installations belonging thereto (so far as the same are not maintainable by any Local or other Authority) in good repair and if necessary to rebuild any parts that require to be rebuilt”

Clause 2(j): “to maintain in good repair and condition the fence or wall (if any) marked with a letter “T” inwards on the said plan and any other fence or wall erected or to be erected by or on behalf of the Lessor within the boundaries of the land hereby demised”

Clause 2(q): “to ensure that nothing shall at any time be done on the land hereby demised that shall be a nuisance annoyance or injury to any part of the Estate of the Lessor or its occupiers”

9. By clause 5(ii) the Estate of the Lessor means all land within Title No: SF 182671 of which the Property is part.

### **Deliberation**

10. The Tribunal attended to inspect the Property on the morning of 25<sup>th</sup> July 2019. The Respondent did not attend at the inspection. Any site inspection is subject to the Tribunal obtaining all appropriate consents to its request for entry under Rule 21 of the Tribunal Procedure Rules. Accordingly, the Tribunal was only able to carry out an external inspection of the elevation facing the public highway.
11. The Property is a 2 bedroom detached property with gardens to front and rear and an adjoining covered carport. All curtains were closed. The front garden appeared well maintained. The only disrepair that could be discerned from an external inspection was that the wooden barge boards and fascias were in need of re-painting.

12. Appendix A to the Applicant's Statement is a letter dated 19<sup>th</sup> November 2018 from South Staffordshire Council to the Applicant following a complaint from a member of the public indicating "The property has clearly been empty for a long period of time and has fallen into a state of disrepair".
13. The Applicant indicates that the owner of neighbouring property No.6 Foster Green has described how police forced entry to the Property some years ago when a water leak caused the ceiling in the living room to collapse. It would appear that the collapsed ceiling is visible through the patio doors at the rear of the Property.
14. The Applicant also refers to the rear garden being overgrown, an accumulation of rubbish and deterioration of the party fence. Neighbours maintain the front garden as they are concerned about vandalism and antisocial behaviour associated with empty properties.
15. Attached to the application is a letter dated 22<sup>nd</sup> November 2018 written by the Applicant to Halifax advising the Respondent's lender of the breach of covenants. Halifax replied on 4<sup>th</sup> December 2018 "We have requested Miss Flavell to take the appropriate steps to rectify the breach within 21 days".
16. The Respondent has failed to respond to the application, Directions or the Applicant's Statement of Case. Under those circumstances, and in the absence of any representations from the Respondent, the Tribunal accepts the evidence of the Applicant. That evidence amounting to a collapsed ceiling, accumulation of rubbish and deterioration of the party fence is sufficient, in the absence of any submissions to the contrary, to establish breach of the 3 covenants as alleged by the Applicant.

## **Decision**

17. Pursuant to s168 (4) of the Commonhold and Leasehold Reform Act 2002 the Tribunal determines that a breach of lessee's covenants contained in clauses 2(e), (j) and (q) of the Lease has occurred.

D Jackson  
Judge of the First-tier Tribunal

Either party may appeal this decision to the Upper Tribunal (Lands Chamber) but must first apply to the First-tier Tribunal for permission. Any application for permission must be in writing, stating grounds relied upon, and be received by the First-tier Tribunal no later than 28 days after the Tribunal sends this written Decision to the party seeking permission.