



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

**Case Reference** : **LON/00BE/LSC/2019/0203**

**Property** : **44 Tovy House, Avondale Square  
Estate, London SE1 5EY**

**Applicant** : **The Mayor and Commonalty and  
Citizens of The City of London**

**Representative** : **Mr J Pennington Legh, Counsel**

**Respondent** : **Central Residential Limited**

**Representative** : **Mr L Maynard, Counsel**

**Type of Application** : **Application for determination as to  
breach of covenant or condition in  
lease under section 168(4)  
Commonhold and Leasehold  
Reform Act 2002**

**Tribunal Members** : **Judge P Korn  
Mr P Roberts DipArch RIBA**

**Date and venue of  
Hearing** : **1<sup>st</sup> August 2019 at 10 Alfred Place,  
London WC1E 7LR**

**Date of Decision** : **12<sup>th</sup> August 2019**

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**DECISION**

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## **Decisions of the tribunal**

- (1) No breaches of covenant or condition have occurred.
- (2) The Applicant's cost application is refused.

## **The application**

1. The Applicant seeks a determination pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("**the 2002 Act**") that one or more breaches of covenant or condition have occurred under the lease of the Property ("**the Lease**").
2. The Applicant is the freehold owner of the building ("**the Building**") of which the Property forms part and the Respondent is the current leasehold owner of the Property. The Lease is dated 29<sup>th</sup> April 2002 and was originally made between the Applicant (1) and Christopher Paul Harcourt and Alexis Tanith Harcourt (2).
3. The Building is a purpose-built block of flats, and the Property is a two-bedroom flat on the 7<sup>th</sup> floor. The Respondent acquired the long leasehold interest in the Property by a transfer dated 7<sup>th</sup> December 2018.
4. In its application, the Applicant alleges that the Respondent is in breach of covenants contained in clause 4(8) of the Lease in combination with paragraphs (4) and (9) of the Sixth Schedule to the Leases. The wording of the relevant part of each of those provisions is set out below:-

### **Clause 4(8)**

*The tenant hereby covenants with the Corporation that the tenant will throughout the said term hereby granted ... Observe the covenants and restrictions set forth in the Sixth Schedule hereto ...*

### **Sixth Schedule**

*(4) The tenant will not do or permit or suffer to be done in or upon the premises or any part thereof anything of an illegal or immoral nature or any act matter or thing which in the opinion of the Corporation may be or grow to be or become a danger nuisance or an annoyance to or to the prejudice of the Corporation its tenants or lessees or to the owners lessees or occupiers for the time being of any premises in the neighbourhood*

*(9) The tenant will not carry on or suffer to be carried on upon the premises any manufacture trade or business whatsoever but will use the premises as a*

*private dwelling in the occupation of one individual only and his or her immediate family and will at no time permit or suffer the premises to be occupied by more than 3 persons.*

### **Applicant's written legal submissions**

5. The Applicant alleges that the Respondent is or was in breach of the above-mentioned covenants by virtue of the following alleged facts:-

- The Respondent sub-let the Property.
- The Applicant received reports of nuisance behaviour at the Property.
- On 20<sup>th</sup> May 2019 the police forced entry onto the Property pursuant to a warrant.
- Seven people were found at the Property by the police and one said that all were paying £100 a week to a lady of East Asian descent.
- There was evidence of Class A drug use and prostitution, and Class B drugs were found at the Property.
- On CCTV footage, girls could be seen being transported to the estate of which the Building forms part in a blacked-out van and money was changing hands.
- People from the Property were seen taking drugs on the stairwell.

6. In arguing that some of the above behaviour constitutes a nuisance and/or an annoyance the Applicant states that 'nuisance' is to be construed as understood under the general law and determined by robust common-sense standards and that 'annoyance' is wider than nuisance. The Applicant also states that drug use and prostitution clearly amount to things of an illegal or immoral nature within the meaning of paragraph (4) of the Sixth Schedule.

7. As regards the meaning of the word 'permit' in the covenants being relied on, the Applicant states that this word means either to give leave for an act which without such leave could not legally be done or to abstain from taking reasonable steps to prevent it where it is within one's power to prevent it: see *Berton v Alliance Economic Investment Co (1922) 1 KB 742*. As regards the meaning of the word 'suffer' in those same covenants, the Applicant refers to the case of *Barton v Reed*

(1932) 1 Ch 362 as authority for the proposition that ‘suffer’ is wider than ‘permit’.

### **Witness evidence**

#### **PC Twinkal Sharma**

8. PC Sharma is a police officer attached to the local policing team at Peckham police station.
9. PC Sharma’s evidence consists of a brief witness statement prepared specifically for these proceedings together with a longer statement prepared pursuant to the Criminal Procedure Rules. PC Sharma begins by stating that a number of residents from the Building had expressed concerns to the local safer neighbourhoods team that the Property was a source of antisocial behaviour and potentially illegitimate activity.
10. At about 7.45am on 20<sup>th</sup> May 2019 PC Sharma attended the Property to execute a misuse of drugs warrant, and as officers forced entry a male discharged a suspected CS canister in the face of an officer. There were 4 males and 3 females inside the Property, all of Romanian nationality. Several were Class A drug users and there were clear signs of drug use having taken place at the Property. A quantity of cannabis (a Class B drug) was found in one of the bedrooms. Officers also suspected that the Property was being used as a brothel, as one bedroom was fully equipped with a large number of sex toys, condoms, lubricants, towels and hand sanitiser, “all arranged in a manner to suggest that sex work was taking place”. One of the females admitted to being a prostitute but stated that she did not work at the Property, whilst the other females denied any involvement in prostitution. All of the females said that they were safe and were not being held against their will. Two of the males were arrested, one (‘Male 1’) for possession of a firearm and assaulting a police officer and the other for a matter unrelated to his presence on the Property.
11. When interviewed by officers, Male 1 said that he had moved into the Property a few days ago and was living with his family (his uncle). He claimed to be unaware of any sex work taking place as he worked during the day and only came back late at night. He added that all of the individuals present were paying £100 a week and that this money would be collected by the end of the month by a lady of East Asian descent who he suspected was the owner of the Property.
12. PC Sharma was not present at the hearing and therefore not available to be cross-examined. Mr Pennington Legh’s understanding was that it was standard police policy not to make officers available to attend civil proceedings to be cross-examined on their evidence.

### Fabio Ruiz

13. Mr Ruiz lives at 46 Tovy House. He states that in January 2019 he started hearing banging, shouting, loud machine noises, screaming, loud footsteps and telephones ringing continuously. He goes on to state that although he originally assumed that the noise was coming from his immediate neighbour's premises it later appeared that it was coming from 44 Tovy House (the Property). He then started to record the noise. He also refers to a couple of incidents when people rang his intercom in the middle of the night, another incident when two girls who "appeared to be Eastern European" knocked on his door early one afternoon and another incident when a man (described by him simply as "black") knocked on his door one Saturday asking to speak to either Alex or Alexis.
14. On one occasion he found someone sleeping near the roof and noticed evidence of alcohol and drugs. He also noticed that the lift was going up and down all hours of the night and that it always stopped on the floor where 44 Tovy House was situated.
15. Mr Ruiz was not present at the hearing, due apparently to work commitments, and was therefore not available to be cross-examined.

### Alan Bennetts

16. Mr Bennetts is a local government officer employed by the Applicant. His witness statement is confined to clarifying the basis on which the Applicant states that it owns the Building of which the Property forms part. The Tribunal is satisfied, on the basis of the available evidence, that the Applicant owns the Building and is the Respondent's landlord, and the Respondent has not disputed this point.

### Anonymous witness statement

17. The hearing bundle also contains an unsigned and undated witness statement from an anonymous resident of the Building. He/she states that at about 2am on one night in March 2019 there was a lot of noise coming from the communal stairwell and he/she found a couple of people on the 7<sup>th</sup> floor who then promptly left. On another occasion there was antisocial behaviour on the rooftop and one of the people involved said that he was a resident of the Building. On a couple of occasions in March/April 2019 he/she also heard arguing, banging and doors slamming and high levels of people entering and leaving 44 Tovy House late at night, having been invited by Mr Ruiz to witness the noise.

## Marie Rene

18. Ms Rene is an Estate Manager for the Applicant. In her witness statement she describes meetings with Mr Ruiz and discussions with the neighbour who wishes to remain anonymous, as well as discussions with the police. She has also attached to her statement a copy of an incident diary provided by Mr Ruiz. The statement also quotes Janine Jerry, Customer Services Officer for the Applicant, advising that she witnessed a man from the Property entering the bin chamber at Twelve Acres House with a rucksack. Ms Rene checked the CCTV footage which confirms that a man with a rucksack and a woman entered the bin chamber. The police attended the bin chamber a few days later and found a roll of tin foil “which could potentially be being used to smoke Class A drugs”.
19. A couple of days later on 30<sup>th</sup> May 2019 Ms Jerry told her that two of the men from the Property were again hanging around opposite the bin chamber, and when Ms Rene went to look she saw two men loitering and apparently watching the bin chamber. Also, when checking the CCTV footage she saw a van with blacked-out windows enter the estate and stop. The two men who had been loitering greeted the driver and two girls came out of the van with luggage. There was an exchange of money and “the whole transaction looked suspicious”.
20. On 4<sup>th</sup> June 2019 Ms Jerry told her that she had seen the occupiers of 44 Tovy House leave the estate with their suitcases. Ms Rene checked the CCTV footage and saw seven people leaving the estate with suitcases. Then on 10<sup>th</sup> June, a woman identifying herself as the leaseholder of 44 Tovy House, Miss Yinghua Quan, came into the estate office and said that she had received a letter from the Applicant regarding the alleged breach of her lease due to her tenants. She advised Ms Rene that her tenants had moved out the previous day. She had rented the Property out to only two occupants but Ms Rene pointed out that the police had found seven people at the Property.
21. At the hearing Ms Rene showed the Tribunal some CCTV footage of a van arriving at the estate and people getting out of the van, of people standing around outside the estate and of people with suitcases.

## Yinghua Quan

22. Ms Quan is the sole director and sole shareholder of the Respondent company. Her witness statement was only provided on the morning of the hearing. Counsel for the Respondent said that he and the Respondent’s solicitor had only very recently been instructed.

23. In her witness statement, Ms Quan states that she purchased the Property in or around December 2018 and that the Respondent entered into a tenancy agreement with a Mr Cardios on or around 11<sup>th</sup> December 2018. Mr Cardios told her that he intended to live at the Property just with his family. He paid the rent each month by standing order, and Ms Quan was not aware of any issues in relation to the Property until June 2019 when she was contacted by the police. As soon as she became aware of the problems she gave notice to the tenant to vacate in early June. She understands that the tenant has not been convicted of any criminal offences. Attached to her witness statement is a copy of a new tenancy agreement with a Fadare Omdara in respect of the period 15<sup>th</sup> June 2019 to 14<sup>th</sup> June 2020.
24. Ms Quan also produced a copy bank statement to substantiate her claim that Mr Cardios had been paying by standing order.
25. At the hearing Ms Quan said that the Respondent was a property-buying and property-renting company. She started renting out properties at the end of 2018. She said that Mr Cardios entered into a written tenancy agreement but that she had not kept a copy of it due to her own inexperience. She accepted that she was also a director of 3 or 4 other companies but said that the others were not active.
26. Mr Pennington Legh put it to Ms Quan that she had received rent from multiple tenants in respect of the Property for the period in question and that they had paid in cash, but she denied this. She had listed the Property on OpenRent and Gumtree and had let the Property to Mr Cardios who had paid by bank transfer. She said that she had not met him (leaving this to someone else to do) and had not obtained any references but that this was because she did not have the time. She had spoken to him by telephone and there was an exchange of text messages. She had been satisfied that he had a job and could afford the rent. When someone had later visited the Property on her behalf they had noted that it was clean and tidy and that the tenant was living with his girlfriend. Ms Quan was told that there were three occupiers in total; the tenant, his girlfriend and his father.
27. Mr Pennington Legh questioned her assertion that rent was paid by standing order, as the bank statements showed that the amount being paid varied from time to time. Ms Quan explained the reasons why the amount varied. She accepted that 'standing order' might not be the correct terminology but denied that the rent had been paid in cash. Mr Pennington Legh also asked why the rent was paid into her bank account rather than into the company's account. She replied that this was her choice, in part because the mortgage was paid out of her account.

28. Mr Pennington Legh also noted that Ms Quan had appeared to concede by email that the Respondent had been in breach of the Lease. In response she said that the apparent admission was based on an assumption that what she had been told was factually correct but that she had now changed her mind and did not accept that seven people had been living at the Property.

### **Respondent's closing submissions**

29. Regarding the allegation of illegal and immoral conduct, Mr Maynard said that the best evidence was from PC Sharma but that PC Sharma was not available to be cross-examined on that evidence. In any event, PC Sharma's evidence does not prove that more than three people were in occupation, nor that any drug trading took place. There was no evidence of a forensic examination of the alleged drugs found at the Property and there was only a suspicion of brothel use. There was no evidence of any charges having been brought against Male 1, which might indicate that the case against him was weak.
30. Mr Ruiz was also not available to be cross-examined on his evidence, and in relation to the period from January to March 2019 he was unable even to say where the noise was coming from. The fact that people rang his intercom and knocked on his door does not support the Applicant's case, particularly as there is no suggestion that anybody mentioned sex or drugs.
31. Ms Rene's evidence does not add much as it mainly states what she was told by others. The foil in the bin chamber is of no interest and the CCTV footage adds very little. As regards whether there was a nuisance emanating from the Property, even if there was at some point it is clear that there is no longer any nuisance. As for whether a trade or business was being carried out from the Property, the most that could be said was that PC Sharma merely had a suspicion that it was being used as a brothel.
32. As for whether the Property was being occupied by more than three people, whilst there is some evidence on this point from PC Sharma it relied on the accuracy of the information provided by one of the men arrested by the police and on what that information actually meant.
33. Regarding the possible confusion about what a 'standing order' is, Ms Quan is not a native English speaker and cannot be expected to know the fine linguistic details of English banking transactions. As to how she arranges her business affairs, the fact that it might not be the optimum way to arrange them is irrelevant to the central issues in this case, and her evidence as to how she found the tenant and what he told her is credible.



## **Applicant's closing submissions**

34. Mr Pennington Legh submitted that it was important to look at the evidence as a whole and not just to pick off and challenge individual points. Specifically on the issue of whether any nuisance is continuing, the test under the 2002 Act is whether a breach of covenant has occurred, and therefore it is irrelevant for these purposes whether the breach is continuing.
35. In Mr Pennington Legh's submission, Ms Quan was not a reliable witness and the issue concerning the standing order was an important one. It was also strange that Ms Quan had not kept a copy of the tenancy agreement or asked for references and that the money had been paid into her personal account.
36. PC Sharma's witness statement needed to be viewed as a whole, and Mr Ruiz's statement contained evidence that there had been a lot of people and a lot of noise. His incident diary showed a pattern of nuisance. The CCTV footage and photographs showed more than just an ordinary taxi service, particularly as they showed people embracing each other. The use of the Property as a brothel was inconsistent with use of the Property as a private dwelling. Mr Pennington Legh also questioned whether a person living with his girlfriend could be said to be occupying just with his "immediate family".

## **The statutory provisions**

37. The relevant parts of section 168 of the 2002 Act provide as follows:-

*"(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 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.*

*(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."*

## **Tribunal's analysis**

## Factual findings

38. The only people available to be cross-examined on their witness statements were Ms Rene and Ms Quan. The contents of Mr Bennetts' witness statement are not disputed, so this leaves the witness statements of PC Sharma, Mr Ruiz and the anonymous neighbour. Whilst the reasons why these witnesses were not available to be cross-examined on their evidence have been explained, it remains the case that less weight should be placed on evidence given by witnesses who have not made themselves available to be questioned about the reliability of, and any possible inconsistencies in, that evidence. In addition, it is difficult to place much reliance on an unsigned and undated statement from an anonymous witness. Furthermore, whilst Ms Rene did make herself available for cross-examination, the vast majority of her witness evidence relates to things that she has been told by others and not to events witnessed by her personally.
39. The next point is the credibility of the two witnesses who did attend the hearing. Ms Rene was not cross-examined in the end, but that is not her fault. She did, though, have an opportunity to present some of her evidence as she showed the Tribunal some CCTV footage and provided some comments by way of explanation as to what she believed was happening. In the course of the presentation Ms Rene came across well enough, but the fact remains that most of her evidence was not based on what she had witnessed herself, and therefore there was a large amount of hearsay and assumption.
40. As regards the credibility of Ms Quan, we do not consider it significant that she was unable to state with certainty how standing orders work. As for her business practices, these do seem a little unorthodox and it is surprising that she did not take more care in checking out her tenant, but we are not persuaded that the evidence demonstrates a general lack of credibility. She has produced a copy of a current tenancy and has produced copy bank statements showing regular amounts being received from the person who she states was her tenant at the relevant time.
41. We turn now to the alleged facts themselves in the light of the above observations on the weight to be placed on the witness evidence and the credibility of the witnesses. As regards the claim that the Property was being used as a brothel, all that PC Sharma is able to say is that officers suspected that the Property was being used as a brothel based on one bedroom containing sex toys, condoms, lubricants, towels and hand sanitiser arranged in a particular way. None of the people interviewed by them admitted to working as a prostitute at the Property, and the CCTV footage and photographs do not come anywhere close to constituting meaningful evidence that the Property was being used a brothel. Mr Ruiz's comments about women knocking on his door and others ringing his intercom, if and to the extent that

they are intended to demonstrate that the Property was being used as a brothel, do not advance matters as there are plenty of other possible explanations for this behaviour. The Applicant's factual evidence on this issue is therefore very weak in our view.

42. As regards drug use, it is unclear on what basis PC Sharma is so sure that several of the people at the Property were Class A drug users. However, PC Sharma goes on to state that there were clear signs of illicit drug use having taken place at the Property and that a quantity of cannabis (a Class B drug) was found in one of the bedrooms, and we are satisfied on the balance of probabilities that illicit drug use did take place at the Property. We do not, though, accept that there is sufficient evidence that drug trading (as distinct from drug use) was taking place at the Property.
43. It is not disputed that the Respondent has sublet the Property. As regards the alleged nuisance behaviour, the main evidence is that of Mr Ruiz. PC Sharma, Ms Rene and the anonymous resident have all given their own accounts, but PC Sharma and Ms Rene are basing their evidence on what others have told them and as noted above it is difficult to accord much weight to the evidence of the anonymous resident. Specifically as regards Mr Ruiz's evidence, it has not been tested by cross-examination and it shows that he was initially confused as to where the noise was coming from. However, in our view his witness statement coupled with his incident diary constitutes a credible account of a pattern of noise and antisocial behaviour emanating from the Property at various points between January and June 2019.
44. On the question of how many people were occupying the Property and on what basis, again the main evidence is that of PC Sharma. PC Sharma's witness statement constitutes credible evidence that there were seven people at the Property when the police forced entry, and the time of entry was 7.45am which is not the time of day when one would normally expect visitors. However, the evidence that all seven people were actually in occupation – as distinct from merely being physically present – is in our view not strong enough. There could, for example, have been an all-night party or some of them could have stayed over just for one night. PC Sharma quotes 'Male 1' as stating that he was "living with family (his uncle)", which is not so different from Ms Quan's own account of the tenant living with his father and girlfriend as a family. As for the comments attributed to Male 1 about all individuals present paying £100 a week, the proposition that all of them were living with him at the Property is seemingly inconsistent with his statement that he was living with his family.
45. In any event, PC Sharma's evidence on the issue of who was in occupation relies to a large extent on the credibility of Male 1, who immediately prior to the statement on which PC Sharma relies was

arrested for possession of a firearm and assaulting a police officer and was presumably not in the most co-operative of moods as it was early in the morning and the police had just forced entry onto the Property. He may also at this point have been under the influence of drugs, and his own evidence has not been tested at the hearing. The only other evidence is Mr Ruiz's comments about noise etc, Ms Rene's comments and Ms Jerry's reported comments about the comings and goings on the estate and the CCTV footage and photographs, none of which in our view demonstrates that the Property was being occupied by more than three people.

46. The Applicant argues that even if the Property was being occupied by Mr Cardios together with his father and his girlfriend this did not constitute occupying the Property with his "immediate family", the reasoning seemingly being that a man's girlfriend is not part of his immediate family. We do not accept this point. In the 21<sup>st</sup> century there is a wide range of possible relationships, and many heterosexual couples deliberately choose to live together as boyfriend and girlfriend, for example because one or both of them disapproves of the institution of marriage. Such a couple might have chosen to enter into a civil partnership, but although the law is in the process of changing the option of entering into a heterosexual civil partnership is not currently available. No evidence has been brought by the Applicant to show that this particular relationship is not a committed long-term relationship or to show that the three occupiers do not between them constitute immediate family.

47. To summarise our factual findings, we accept on the balance of probabilities that illicit drug use has taken place at the Property and that there has been some noise and antisocial behaviour emanating from the Property. It is also common ground between the parties that the Respondent has sublet the Property. However, the Applicant has not shown to our satisfaction that the Property was being used as a brothel or for drug trading or that it was being occupied by more than three people or that it was being occupied otherwise than as a private dwelling in the occupation of one individual only and his immediate family.

#### Application of factual findings to the covenants relied on

48. The mere fact that the Respondent sublet the Property is not by itself a breach of any of the covenants contained in the Lease.

49. The use of drugs at the Property clearly constitutes the doing of something which is of an illegal nature. The Applicant states that it is 'trite' that drug use is (also) immoral and the Respondent has not disputed this point.

50. However, the actual covenant is that “*the tenant will not do or permit or suffer to be done in or upon the premises or any part thereof anything of an illegal or immoral nature*”. The issue is therefore not merely whether the activity in question (i.e. the drug use) has taken place but whether the tenant (i.e. the Respondent) has done the activity in question or permitted it to be done or suffered it to be done. There is no evidence, and it is not being suggested, that the Respondent itself or Ms Quan has been taking drugs at the Property. Has the Respondent ‘permitted’ drugs to be taken at the Property? The Applicant has referred us to the decision of the Court of Appeal in *Berton v Alliance Economic Investment Co* in which Atkin LJ states that to his mind the word “permit” means “*either to give leave for an act which without that leave could not be legally done, or to abstain from taking reasonable steps to prevent the act where it is within a man’s power to prevent it*”. In fact the lead judgment in that case was given by Bankes LJ, and so Atkin LJ was providing his personal reasoning rather than that of the Court. More fundamentally, though, *Berton* was a case in which it was common ground that the tenant knew about what was happening on the premises. The question of whether the tenant had permitted (in that case) weekly tenants to remain was therefore predicated on the assumption that the tenant knew that they were in occupation. In our view, one cannot be said to ‘give leave’ for an act to happen if (and whilst) one does not know that it is happening, and nor can it reasonably be said that it is within a person’s power to prevent an act of which he or she is ignorant in the context of whether that person has ‘permitted’ the act in question.

51. The evidence in this case indicates that the Respondent (and Ms Quan) did not know that drugs were being taken at the Property. Indeed, Ms Rene’s own witness evidence supports the Respondent’s case on this point. On receiving complaints in relation to the Property the Applicant appears initially not to have taken much action and then belatedly seems to have investigated and liaised with the police, but one thing that the Applicant appears not to have done is to contact the Respondent until quite a late stage. Ms Rene’s own evidence confirms that Ms Quan then took the initiative by coming into the Applicant’s estate office and speaking to Ms Rene. Ms Quan told her that she had terminated the tenancy and that the occupiers had moved out, and the Applicant has not sought to argue before the tribunal that the Respondent permitted a breach merely by not acting quite quickly enough on being notified as to what was happening at the Property. We therefore do not accept that the Applicant has shown that the Respondent ‘permitted’ drug use at the Property.

52. As regards whether the Respondent ‘suffered’ drug use to take place at the Property, the Applicant has referred us to the decision in *Barton v Reed* as authority for the proposition that ‘suffer’ is wider than ‘permit’. Whilst Luxmoore J did indeed state that ‘suffer’ is wider than ‘permit’, his factual finding again was that the tenant knew what was happening, and so again the analysis was whether – knowing what

was happening – the tenant took sufficient steps to prevent it continuing so as not to be in breach of covenant. A possible distinction between ‘permit’ and ‘suffer’ might be that the former is active whilst the latter is more passive, but we are not persuaded that a person can be said to have permitted or suffered something of which that person has no knowledge. Applying the point to the present case, if without the Respondent’s knowledge a visitor to the Property had taken drugs on a single occasion it is very hard to see how the Respondent could be said to have permitted or suffered that drug-taking to take place.

53. As regards the noise and/or antisocial behaviour, in our view the largely untested witness evidence is just sufficient to show that some noise and/or antisocial behaviour emanated from the Property such that it would have been an ‘annoyance’ to other occupiers of the Building living in the immediate vicinity of the Property, although we do not accept that the evidence is strong enough to demonstrate ‘nuisance’, the test for nuisance being stricter than that for annoyance. However, even accepting that some ‘annoyance’ was caused, we then just run into the same problem as applies to the issue of drug-taking. The relevant part of the covenant is not to *“do or permit or suffer to be done in or upon the premises or any part thereof ... any act matter or thing which in the opinion of the Corporation may be or grow to be or become a ... nuisance or an annoyance to or to the prejudice of the Corporation its tenants or lessees or to the owners lessees or occupiers for the time being of any premises in the neighbourhood”*. Again, the covenant is not to *“do or permit or suffer to be done”*, and for the same reasons as apply to the drug-taking we are not persuaded that the tenant under the Lease has done or permitted or suffered to be done the activities complained of such that a breach of the Lease itself has occurred.

54. In conclusion, on the evidence before us there has been no breach of any of the covenants relied on by the Applicant.

### **Cost applications**

55. The Applicant has applied for an order under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent be required to reimburse to the Applicant the application fee of £100.00 and the hearing fee of £200.00 paid by him in respect of this application.

56. The Applicant has been wholly unsuccessful in its application. Whilst it is appropriate to note here that the Respondent – in breach of directions – has only fully engaged with this process at quite a late stage, we do not consider this to be a sufficient reason to make a cost award against the Respondent in circumstances where the Applicant has been wholly unsuccessful. The Applicant’s cost application is therefore refused.

**Name:** Judge P Korn

**Date:** 12<sup>th</sup> August 2019

### **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. 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.