



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

Case reference: MAN/00BP/LBC/2020/0001

Property: 51 Broad Oak Crescent, Fitton Hill,
Oldham OL8 2PX

Applicant: Forhousing Limited

**Applicant's
Representative:** Brabners LLP

Respondents: Ahmed Al Qattan and
Wesal Alfahad

Type of Application: Determination under section 168 (4) of
the Commonhold and Leasehold Reform
Act 2002

Tribunal Members: Judge J.M. Going
I.R. Harris MBE FRICS

**Date of
Deliberations:** 17th September 2020

Date of Decision: 18th September 2020

DECISION

The Decision

The Tribunal finds that the Respondents have breached the covenants in the Lease contained in: –

- (1) Clause 4.4.4 requiring the property to be kept in good and tenable repair,**
- (2) Clause 4.16 relating to maintenance and keeping the property including its open areas in a clean and tidy condition, and**
- (3) Clause 4.18 prohibiting any act or thing which may be a nuisance damage or annoyance to the landlord its tenants or to the occupiers of the adjoining properties.**

Background

1. By an Application dated 14th January 2020 (“the Application”) the Applicant applied to the First-Tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) under Section 168 (4) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) for a determination as to whether a breach or breaches of covenants contained in a lease of the property have occurred.

2. The Tribunal issued Directions to the parties on 5th May 2020 stating that the matter would be dealt with on the basis of the written submissions and documentary evidence without the need for an oral hearing, unless either party requested the opportunity to make oral representations. Neither party requested an oral hearing.

3. Despite warnings as to the possible adverse consequences of non-compliance with the Directions, there has been no engagement whatsoever by Respondents with the Tribunal.

4. The Applicant’s papers included Witness Statements, various photographs of the property, a copy of the Lease, up-to-date official copies of Land Registry titles and confirmation of service of the various papers at the property on the Respondents.

5. The Tribunal convened on 17th September 2020 to consider the Application.

6. It did not physically inspect the property, but can see from the photographs and Google maps that it is a detached residential property, at the end of a cul-de-sac in a housing estate and located less than 80 metres from the site of a primary school.

Submissions by the Applicant

7. Official copies from the Land Registry confirm that the Applicant is the freehold owner and landlord of approximately 30 dwellings on the St Martin’s Park estate at Oldham, including the property. The Respondents are the present

tenants and leasehold owners of the property which they purchased in January 2016.

8. The Applicant has provided a Witness Statement dated 22nd May 2020 by Hayley Creevy its Commercial officer. She avers to the property having been neglected for a number of years, and being in a severe state of disrepair. Her statement includes various photographs clearly showing that it has been “left to rack and ruin”, and set alight.

9. “The property has also been subject to vandalism and antisocial behaviour. Unfortunately, it has become a local “hangout” for children of the nearby school”. “As a result...the police fire service and local authority’s building control team have had to, at their own expense, secure the property due to the number of occurrences of vandalism and/or antisocial behaviour. For the safety of the local community all utilities have been disconnected.... The property is also now boarded and tinned”.

10. Ms Creevy’s Witness Statement includes copies of emails from the local school relating to concerns as to pupils congregating at the property “and being shouted at by neighbours to go away”.

11. In August 2019 the Applicant’s solicitors were instructed to serve on the Respondents a notice under section 146 of the Law of Property Act 1925 which specified the breaches of covenants complained of and required them to remedy those breaches within a reasonable amount of time. The Applicant then issued a claim in the County Court to seek possession of the property. Ms Creevy’s statement says that the Respondents did not respond to that claim or attend the hearing which was adjourned.

12. The papers include confirmation of the service on the Respondents of various sets of papers relating to the Application, by professional process servers fixing the same to the fencing of the property, in sealed addressed envelopes and within waterproof wallets.

The Application

13. The Application refers to the neglected state of the property and its severe state of disrepair as constituting breaches of various covenants within the Lease relating to the obligations of its owners to keep it in good and tenantable repair and condition, to maintain the same, and not to do anything on property which might become a nuisance damage or annoyance to the landlord, its tenants, or the occupiers of adjoining properties. The Application also alleges that the Respondents have been in breach of the covenant which prohibits carrying on any trade or business at the property, by using it as a cannabis farm.

The Lease

14. The Lease in question (“the Lease”) is dated 17th November 2007 and made between The Villages Housing Association Ltd (1) and Christopher James

Neilson and Laura Neilson (2). It was granted for a term of 999 years from 17th November 2007 at a rent of £20 per annum.

15. The property is described under the Lease by reference to the plan annexed to it and clearly includes a large garden plot to the side of the house.

16. The tenants under the Lease entered into various covenants including those contained in clauses: –

“4.4.4..... To keep the Property and all additions to the Property and the boundary walls and fences and all fixtures drains soil pipes and other pipes and gas electricity sanitary and water apparatus in or under the Property in good and tenantable repair and condition.

...

4.10. Not carry on at the Property or any part thereof any trade or business nor use the Property for any purpose other than as a single private dwelling house.

....

4.16. To keep the Property including particularly any open area or forecourt space gardens or other open space between any buildings and the adjoining roads in a clean and tidy condition and free from noxious weeds deposits of materials or refuse and not to bring or keep on the property anything which is or may become in the opinion of the Landlord untidy unhealthy unsightly or in any way detrimental to the amenity of the neighbourhood and in the event of a breach of any of the conditions of this subclause to comply within one month with the requirements of any written notice given by the landlord to remedy such breach provided if the tenant shall fail to comply with such notice the Landlord shall be entitled to enter the Property and carry out any works necessary to comply with such notice and recover the costs of so doing from the tenant on demand.

....

4.18. Not to do upon the property any act or thing which may be a nuisance damage or annoyance to the Landlord or its tenants or to the occupiers of the adjoining properties.”

The Law

17. A prerequisite for the forfeiture of a lease (otherwise than for a breach of covenant to pay rent) is the service of a notice under section 146 (1) of the Law of Property Act 1925.

18. Section 168 (4) of the 2002 Act provides that 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 unless subsection (2) of section 168 of the 2002 Act is satisfied.

19. Section 168 (2) of the 2002 Act states that the section 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) the 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.

20. Section 168 (4) of the 2002 Act states that a landlord under a long lease of the dwelling may make an application to the first-tier Tribunal for determination that a breach of a covenant or condition in the lease has occurred.

The Tribunal's Reasons and Conclusions

21. The Tribunal began with a general review of the papers in order to decide whether the case could be dealt with properly without holding an oral hearing. Rule 31 of the Tribunal's procedural rules permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed).

22. Neither of the parties requested an oral hearing, and having reviewed the papers, the Tribunal was satisfied that this matter is suitable to be determined without a hearing. The issues to be decided have been clearly identified in the papers enabling conclusions to be properly reached in respect of the issues to be determined, including any incidental issues of fact.

23. The sole evidence has been provided by the Applicant. However the documentation is persuasive, and provides clear and obvious evidence of its contents. It has not been challenged and the Tribunal finds no reason to doubt the detail contained.

24. The various photographs tell the Tribunal all that it needs to know as regards the present abject and derelict state of the property. They clearly show an abandoned property, boarded up, daubed with graffiti, and with its gardens littered with rubbish and debris. Inside walls have been knocked through, the staircase partly demolished, and radiators ripped from walls. The property is a wreck, and totally uninhabitable. It is clearly a danger to anybody who might enter the same, and to the wider community. This conclusion has been endorsed by the concerns and reactions of local schools, the local community well-being team, the district council, and the police and fire authorities.

25. The Tribunal is satisfied, beyond all reasonable doubt, from the evidence provided, and has determined, that there have been clear and continuing breaches of the covenants to keep the property and service apparatus in good tenable repair and condition (clause 4.4.4), to keep the property gardens and open spaces in a clean and tidy condition (clause 4.16) and not to do anything which may be a nuisance damage or annoyance to the occupiers of adjoining properties (clause 4.18).

26. Whilst the Tribunal has no reason to dispute the allegation by the Applicant that the Property has been used for a business and as a cannabis farm, (in contravention of clause 4.10) it does not feel that the evidence produced is sufficient for it to make a determination to that effect.