FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	CHI/40UB/LBC/2022/0007
Property	**:**	13 Stony Street, Frome, Somerset, BA11 1BU
Applicant	**:**	Snarecroft Limited
Representative	**:**	Selborne Chambers
Respondent	**:**	Ms T Saxon
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. D. Clarke Mr. M. Jenkinson
Date Hearing and venue	**:**	Bath Law Courts, North Parade Road, Bath, BA1 5AF 28 July 2022
Date of decision	**:**	22 August 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 4(i) of the Lease, by the Respondent has occurred, and continues, in regard to:

- Ground 3: Main roof to garden house
- Ground 8: Ceiling plaster

Further, and in regard to Ground 2: 'Retaining wall adjacent 14 Stony Street', the Tribunal determined that were the Applicant to establish that the wall is demised to the Respondent, then a breach of covenant in Clause 4(i) of the Lease has occurred and continues.

Finally, the Tribunal determined that a breach of covenant contained in Clause 4(i) of the Lease had occurred, but that the breach had been remedied by the date of the hearing, in regard to:

- Ground 1: Garden retaining wall
- Ground 4: Defective render to the flank wall adjacent 14 Stony Street.

The Application

1. The Applicant is the registered owner of the freehold interest in a mixed commercial and residential building known as 13 Stony Street, Frome, Somerset, BA11 1BU. The Respondent holds a long leasehold interest in part of the freehold title at the rear, known for postal delivery purposes as The Garden Flat, 35 Catherine Hill, Frome, BA11 1BY ('the Property').

2. By way of an application dated 10 March 2022, received 11 March 2022, the Applicant sought a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 ('the Act') that the Respondent, lessee of the property, had breached various lease covenants, the details of which were set out in section 5 of the application form.

3. At the hearing, the Applicant pursued ten grounds of alleged breach of covenant, as provided in a Schedule of Dilapidations dated 12 July 2022, prepared by Mr. Andrew Moulsdale BSc FRICS of BS Initiative Limited, instructed by the Applicant as an expert witness Building Surveyor.

Directions

4. On 11 March 2022, the Applicant applied to the Tribunal for an Order under Section 168(4) of the Commonhold and Leasehold Reform Act 2002.

5. Directions were made on 6 May 2022 setting out a timetable for the exchange of documents between the parties and the preparation of a hearing bundle. The hearing was set down for 30 June 2022.

6. On 30 May 2022, the Applicant submitted a case management application informing the Tribunal that the Respondent had failed to comply with Directions, and an application for an Order that the Respondent be debarred from proceedings.

7. On 7 June 2022, the Tribunal issued a Notice that it was minded to debar the Respondent from taking further part in the proceedings in accordance with Rule 8(2)(e) Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on the grounds that she had failed to comply with the Tribunal's directions. Any representations from the parties were required by 15 June 2022.

8. On 14 June 2022, representations were received from the Respondent but not copied to the Applicant. The Tribunal forwarded a copy to the Applicant.

9. On 23 June 2022, a Case Management Hearing was held and further Directions were made by the Tribunal. A hearing was set down for 30 June 2022.

10. The Respondent complied with the Directions on the 29 June 2022, following which the hearing of 30 June 2022 was adjourned.

11. On 8 July 2022, the Tribunal issued Directions providing for an inspection of the property, followed by a hearing at Bath Magistrates and County Court, on 28 July 2022.

The Property

12. Prior to the hearing the Tribunal carried out an inspection of the property, in the presence of the Respondent, Ms. Saxon, and the Applicant's Chartered Building Surveyor, Mr. Moulsdale. As part of the inspection access was provided to the adjoining property, 14 Stony Street.

13. The property is an attached single storey building originally built as a store, which has been converted, at a date unknown or undisclosed, but prior to the lessee's purchase in 2013, to residential accommodation.

14. The parties concur that planning permission for the conversion into residential accommodation was unlikely to have either been sought or granted. It was further agreed between the parties that the accommodation, as viewed by the Tribunal on inspection, was unlikely to meet current Building Regulation requirements.

15. The Applicant was unable to advise as to when they first became aware that the building had been converted to residential use.

16. The property is located within the centre of the market town of Frome, close to all usual amenities and public transport. Access is via a narrow walkway off Catherine Hill.

17. Having previously been utilised for commercial purposes, the property is of non-traditional construction, with stone, rubble and rendered elevations beneath a mono-pitched corrugated metal roof with Velux windows.

18. The accommodation comprises an entrance hall; reception room with kitchen; Bedroom; Bathroom. A garden area is included. There are no demised parking facilities.

19. The freehold interest in the property is registered to the Applicant under registration WS80753, Official Copy of Register of Title.

The Lease & Background

20. The Applicant, as at 8 July 1988, was the freehold owner of the property known as 13 Stony Street, Frome, Somerset, which comprised a mixed residential and commercial development, together with a rear courtyard and large shed.

21. On 8 July 1988, the Applicant granted a long lease ('the Lease') for a term of 125 years, commencing 24 June 1988, to Vallis Way Properties Limited. It is this Lease that is before the Tribunal.

22. The Lease demised everything within the freehold, save for the ground floor shop and emergency access, to the Tenant. In particular, it demised two flats (termed maisonettes) and "the outbuilding and rear courtyard". A plan outlining the extent of the demised premises is annexed to the lease.

23. Between 8 July 1988 and 30 April 2013, the outbuilding was converted into residential use, as evidenced by sales particulars of Hunter French, a copy of which were provided within the Respondent's bundle.

24. On 30 April 2013, the Respondent became the registered proprietor of the Lease, referred to by HM Land Registry as "Garden Flat, 13 Stony Street, Frome, (BA11 1BU)". The property was occupied in a residential capacity thereafter.

25. The Respondent stated that she was poorly advised throughout the purchase by her own solicitor. Although she was informed that the property had no planning consent, she was also advised that, due to residential occupation in excess of ten years, the property would qualify for a certificate of lawful use. She stated that at no time were the extent of the demised premises or her obligations in regard to repair and maintenance explained.

26. In consideration of what is caught by the repairing obligation in the Lease, the Applicant averred that the date of conversion into residential accommodation is of no consequence, as reference to 'premises' in a lease include any additions or alterations made during the term.

27. Mr. Warwick considered it irrelevant what stood on the site when demised. His opinion was that the Respondent was responsible for maintaining the premises in good order, and that now extended to the premises as residential accommodation. He considered where the property had fallen out of repair, it was the Respondent's obligation to put it back in repair, irrespective of whether that structure was now an entirely different being to that which was originally demised.

28. In support of this assertion Mr. Warwick directed the Tribunal to extracts at paragraph 7-21 in Dowding & Reynolds, 7th Edition whereby:

> 'As a general rule, anything which is attached to the land becomes part of it (…). When the land is subject to a lease, the thing so attached becomes part of the premises demised by the lease, so that, in principle, references in the lease to "the demised premises"… will ordinarily include alterations and additions made during the term.'
>
> 'It follows that, in principle, a covenant to repair premises will apply to all subsequent alterations and additions, unless that result is excluded by the language used.'

29. The Applicant relied upon the following provisions within the Lease, provisions they allege to have been breached by the Respondent:

> Clause 3(1)(l)(vi): Not to: 'bring or permit or suffer to be brought in or upon the demised premises or any part thereof any goods or do or permit or suffer to be done upon the demised premises anything whatsoever which may invalidate any insurance or render any increased or extra premium payable for the insurance of the demised premises or of the building of which the demised premises form part of of [*sic*] any adjoining property against the insured risks and in case of increase in any such premium caused by the Lessee or any servant agent or visitor of the Lessee as aforesaid to repay the same to the Lessors demand and to carry out in accordance with the directions of the Local Authority the Fire Authority and the insurers of the demised premises such works as may be required by any of them for the better protection of the demised premises".
>
> 4(i): 'To keep the demised premises and all walls roofs roof timbers party walls sewers drains pipes cables wires and appurtenances thereto belonging in good and substantial repair and condition and in particular (but without prejudice to the generality of the foregoing) so as to support shelter and protect the parts of the Building other than the demise premises.'
>
> 4(ii): 'Whenever necessary during the term and also in the year 1993 and in every succeeding fifth year and in the last year of the said term howsoever determined to paint with two coats of suitable good quality paint and paper and distemper in a good and workmanlike manner all the inside parts of the Flat respectively heretofore or usually painted papered or distempered and wherever necessary as aforesaid and in the 1991 and in every successive seventh year and in the last year of the said term howsoever determined to paint with two coats of suitable good

quality paint in a good and workmanlike manner all the external parts heretofore or usually painted the tints or colours on each occasion to be approved in

writing by the Lessors.'

4(v): 'Not to do or permit to be done any act or thing which may render void or voidable any policy or policies of insurance of the Building or any part thereof or any policy or policies of insurance in respect of the contents of any of the flats comprised in the Building or which may cause an increased premium to be payable in respect of thereof.'

Clause 7(ii): 'That the word "repair" includes the rectification or making good of any defect in the roof or structure of the Building notwithstanding that it is inherent or due to the original design thereof.'

30. The Applicant further relied on the omission within Clause 5 of the Lease, 'Lessors' Covenants', of any reference to, or obligation, for the landlord to maintain or effect repairs to the demised property.

The Law

31. The relevant law relating to the Tribunal's jurisdiction 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."

32. 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)*.

33. 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.

34. 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."

35. 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)."*

36. 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."*

37. 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

38. The Applicant was represented by Mr. Warwick of Counsel. The Respondent presented her case in person.

39. Also present were Mr. Moulsdale, Building Surveyor and expert witness for the Applicant; and Ms. S. Kuszer in her capacity as Secretary to Snarecroft Limited.

The Evidence

40. The ten grounds of alleged breach of covenant were presented in Mr. Moulsdale's Schedule of Dilapidations dated 12 July 2022 and are as follows:

41. **Ground 1: Garden retaining wall:**

42. Applicant: Mr Moulsdale's report identified misalignment and cracking of the wall at the junction with the Garden House. He noted the wall to be saturated and, in his opinion, potentially dangerous. He considered the wall to require structurally tying back, by way of steel strapping to the flank wall of the Garden House.

43. Respondent: At the hearing Ms Saxon accepted that the wall had been in disrepair but stated that the recommended work had been completed the previous day.

44. **Ground 2: Retaining wall adjacent 14 Stony Street:**

45. Applicant: Mr. Moulsdale considered the wall to be in a poor condition, as evidenced by multiple fractures and loose masonry, particularly to the upper sections. He considered inadequate weathering of the top sections to have resulted in saturation and vegetation growth. It was Mr. Moulsdale's opinion that the wall is in a precarious and potentially dangerous condition.

46. Upon questioning from the Tribunal Mr. Moulsdale stated that he did not consider this to be a party wall, instead arguing that it falls within the premises demised to the Respondent.

47. Respondent: Ms. Saxon agreed the wall was, and remains, in serious disrepair. However, she argued that the wall was not her responsibility, as it was not demised under her Lease. As such she considered the repairs to be the responsibility of the freeholder and, accordingly, there was no breach of the lessee's covenant at 4(i).

48. **Ground 3: Main roof to the property**

49. Applicant: Mr. Moulsdale considered the detailing about the Velux windows to be defective, resulting in water ingress which, in turn, had damaged the ceiling and wall finishes.

50. Respondent: Ms. Saxon accepted Mr. Moulsdale's findings and agreed that remedial work was required. She explained that the installation of the Velux windows was a later addition and that she had obtained quotations for the repairs. She considered the works to be in hand and, accordingly, there was no breach of covenant.

51. **Ground 4: Defective render to the flank wall adjacent 14 Stony Street**

52. Applicant: In his report Mr. Moulsdale identified saturated, cracked and blown render, and incomplete and defective sections around the flank windows. He considered the defective render should be hacked off, the window reveals remade, and the brick wall over the lintel reinstated. Re-rendering should follow.

53. Respondent: During the inspection Ms. Saxon pointed out to the Tribunal that such work had been substantially completed and, that, the only works outstanding were redecoration of the area.

54. **Ground 5: External decorations**

55. Applicant: During oral submissions at the hearing the Applicant applied to withdraw this alleged breach of covenant.

56. Respondent: In view of the Applicant's application to withdraw this alleged breach no comment was made by the Respondent.

57. **Ground 6: High level entrance steps**

58. Applicant: Mr. Moulsdale referred the Tribunal to a rainwater downpipe installed beneath one of the steps and running across a path. He considered the siting of said pipe a trip hazard, which required removal and repositioning.

59. Respondent: Ms. Saxon explained that the downpipe was already installed when she acquired the leasehold interest. She agreed the positioning of the pipe could prove dangerous. However, she disagreed with the Applicant's assertion that this amounted to a breach of covenant under the Lease.

60. **Ground 7: Low level entrance steps**

61. Applicant: Mr. Moulsdale regarded the steps as unsafe. In support of his opinion, he referred to a missing handrail and spalled treads which, cumulatively, he considered a hazard.

62. Respondent: During the site inspection Ms. Saxon directed the Tribunal to repairs recently undertaken to the steps; repairs she considered met the requirements of Mr. Moulsdale report.

63. Furthermore, Ms. Saxon directed the attention of the Tribunal to a handrail that she had acquired and which was awaiting installation. She disputed however that a missing handrail was a breach of covenant,

instead considering it a safety issue.

64. **Ground 8: Ceiling plaster**

65. Applicant: Mr. Moulsdale referred the Tribunal to the damaged ceiling plaster around the Velux windows, caused, he asserted, by water ingress. He referred the Tribunal to his previous comments under Ground 3 'Main roof to the property'.

66. Respondent: As per paragraph 50 above, Ms. Saxon did not dispute Mr. Moulsdale's findings, and, furthermore, agreed that remedial work was required. Remedial works were due to be completed imminently and, hence, she disagreed that she was in breach of covenant.

67. **Ground 9: Fire precautions**

68. Applicant: Mr. Moulsdale identified various issues which, in his opinion, constituted a fire hazard, including inadequate fire resistance internal doors and step detail; the installation of a wood-burning stove which didn't meet current standards; an internal accommodation layout not compliant with current building regulations; and an uncertified boiler cupboard.

69. Mr. Warwick averred that such issues had the potential to invalidate the buildings insurance and, accordingly, the Respondent was in breach of covenant 3(1)(l)(vi) and covenant 4(v) of the lease.

70. Further to a request from the Tribunal prior to the hearing, the Applicant provided a copy of an insurance schedule for 13 Stony Street, Frome, BA11 1BU, describing the premises as "shops with flats above", with an effective renewal date of 1 February 2022.

71. Respondent: Upon questioning from the Tribunal, the Respondent agreed that fire doors and fire safety additions to the wood-burning stove are required. She advised that she was in the process of obtaining quotations for such work.

72. With regard to the safety compliance of the wood-burning stove, she explained how she relied upon the company supplying and installing the burner to meet mandatory safety standards.

73. **Ground 10: Unauthorised alterations**

74. Applicant: The Applicant alleges a breach of covenant in respect of unauthorised alterations to common areas; formation of a roof enclosure over the common area; installation of roof lights; and installation of a window opening. The Applicant stated that they had no knowledge as to who carried out the alterations, or, as to when they were undertaken.

75. Respondent: The Respondent stated that part of the aforementioned works was completed by her in an attempt to enhance the communal areas and improve safety. As such, she did not consider the alterations a breach of covenant.

Consideration and Determination of Breach of Covenant

76. The lease granted on 8 July 1988 demised everything within the freehold, including "the outbuilding and rear courtyard" but excluding the ground floor shop and emergency access, to the lessee.

77. By virtue of Clause 4(i) the lessee is obliged to 'keep the demised premises and all walls roof roof timbers party walls sewers drains pipes cables wires and appurtenances thereto belonging in good and substantial repair and condition …'

78. The parties concur that, at the date the lease was granted, the building now occupied in a residential capacity and the subject of this application, was no more than an outbuilding or store. The date of conversion was not determined, nor the date the Applicant first became aware of the conversion.

79. Despite the alleged unauthorised conversion, the Applicant contended that the Respondent was liable to keep the structure, in its form as at the date of application to the Tribunal, in good and substantial repair and condition, an opinion the Applicant reinforced by reference to an extract from *Dowding & Reynolds, Dilapidations, 7th Edition*. The Tribunal notes the general principle that the issue of whether the covenant to repair applies in any given case is a question of the proper construction of the contract but that the opinion of the learned authors is that the correct conclusion in most cases is that it does apply.

80. The same text, also at paragraph 7-21 proceeds to consider situations where a lessee may not be liable for the maintenance and repair of alterations and additions made during the term.

81. In *Cornish v Cleife* (1864), 18 H&C 446 Channell J stated the rule as follows:

> "The authorities cited in the textbooks establish these rules, that where there is a general covenant to repair, and keep and leave in repair, the inference is that the lessee undertakes to repair newly erected buildings. On the other hand, where the covenant is to repair, and keep and leave in repair the demised buildings, no such liability arises."

82. Bigham J relied on the same principle in *Smith v Mills* (1899) 16 TLR 59:

> "The rule laid down in (the authorities) was there where there was a general covenant to repair that must refer both to the buildings erected at the date of and subsequent to the demise; but where the covenant to repair in its terms applied to certain specified buildings, it must not be extended beyond those buildings".

83. Since the Respondent was not legally represented, the Tribunal carefully considered all the material and caselaw in the section from *Dowding and Reynolds*. However, it concluded that none of the cases there cited as examples of decisions where the covenant to repair did not extend to subsequent changes in the original demised premises suggested that the general principle should not apply to the repairing covenant in the Lease. The Tribunal is therefore persuaded by Mr. Warwick's argument that the provisions of Clause 4(i) oblige the lessee Respondent to repair and maintain both the demised premises and any additions and amendments thereof, which, in this matter include repairs and maintenance to the building as a residential unit.

84. The Tribunal considered each alleged breach in relation to the relevant Lease covenant to determine whether, on the balance of probabilities, there had been a breach.

85. **Ground 1: Garden Retaining wall:**
The Tribunal considered the disrepair, as identified by Mr. Moulsdale in his report dated 28 June 2022, to constitute a breach of covenant 4(i). The Tribunal therefore finds that a breach of covenant has occurred.

86. The Respondent, in her oral evidence, contended that the required repairs had been affected the previous day. However, such repairs were not pointed out to the Tribunal during their inspection. Mr. Moulsdale, also present at the site inspection, did not contest the Respondent's statement on the point.

87. **Ground 2: Retaining wall adjacent 14 Stony Street:**
It was common ground between the parties that the wall presents in a serious state of disrepair and, having inspected the wall, the Tribunal concurs. However, the question as to whether this wall forms part of the property demised to the Respondent or, whether it is party wall shared with the adjacent property remains unresolved due to inadequate evidence on the point.

88. The Land Registry title and plan, as provided by the Applicant, do not identify ownership of the wall.

89. After careful consideration, the Tribunal is not convinced that the Applicant has proven the wall to be demised to the Respondent and, accordingly, the issue of liability is unresolved.

90. The Tribunal does however agree with the Applicant that the Lease contains no Landlord's repairing covenant. As such, repair of the wall, does not fall to the Applicant.

91. For the avoidance of doubt, the Tribunal finds the wall to be in disrepair. Furthermore, were the Applicant to prove that the wall is demised to the Respondent, then the Tribunal finds the Respondent has breached covenant 4(i) of the Lease.

92. **Ground 3: Main roof to the property**
Water ingress and consequential damage were evident to the Tribunal during their inspection.

93. The Tribunal considered whether the repair of an alteration or addition fell within the Respondent's repairing obligation of Clause 4(i). For reasoning explained in paragraph 83 above, the Tribunal concluded that it did. Accordingly, the Tribunal find the Respondent to be in breach of Clause 4(i) of the Lease.

94. **Ground 4: Defective render to the flank wall adjacent 14 Stony Street**
The Tribunal determined the disrepair, evident in Mr.Moulsdale's report, to constitute a breach of covenant 4(i). However, such disrepair, with the exception of re-decoration, had been remedied by the day of the hearing, as observed by the Tribunal and Mr. Moulsdale during their inspection.

95. The Tribunal therefore find that a breach of covenant 4(i) has occurred. The Tribunal records that the breach has since been remedied.

96. The Tribunal finds that, by way of reasons explained in paragraph 97 below, any outstanding re-decoration of the area fails to constitute a breach of covenant.

97. **Ground 5: External decorations**
The Tribunal approved the Applicant's withdrawal of the alleged breach of covenant. This is because the relevant decoration covenant, unlike the covenant to repair, applies to the residential accommodation existing in 1988 (as set out in clause 1) and does not extend to the whole of the demised premises or the store later converted into the Garden Flat.

98. **Ground 6: High level entrance steps**

99. The Tribunal inspected the location of the downpipe during the site visit and agree with the Applicant that the positioning of the rainwater goods has the potential to create a trip hazard.

100. However, the Tribunal concurs with the Respondent that, although an obvious health and safety issue, the Applicant has not proven this to be a breach of covenant under the Lease. Accordingly, the Tribunal find no such breach.

101. **Ground 7: Low level entrance steps**

102. During the inspection, the Tribunal noted that the alleged disrepair to the step treads had been remedied. Mr. Moulsdale, in his oral submissions, advised the Tribunal that such repairs were, in his opinion, satisfactory.

103. Neither the Applicant's written submissions, nor either of Mr Moulsdale's reports in the Applicant's bundle, contained any photographic evidence of the steps prior to the repairs effected by the Respondent. In the absence of such evidence, and having observed no disrepair during inspection, the Tribunal finds that the Applicant has failed to prove a breach of covenant under Clause 4(i) of the Lease.

104. The Tribunal agrees with the Respondent that a missing handrail does not amount to a breach of covenant under Clause 4(i). Accordingly, the Tribunal finds no breach of covenant.

105. **Ground 8: Ceiling plaster**

106. The alleged damage was evident to the Tribunal during inspection. The remedial works, as proposed by the Respondent, although scheduled, had not been undertaken when the Tribunal inspected.

107. Accordingly, the Tribunal finds the water ingress and plasterwork damage to fall within clause 4(i) of the Lease, to keep the demised premises in good and substantial repair, and accordingly the Tribunal finds a breach of covenant in this regard.

108. **Ground 9: Fire Precautions**

109. The Applicant submitted no evidence to the Tribunal to prove that any of the matters raised would invalidate the buildings insurance policy. As far as the Tribunal could ascertain no advice had been sought from the insurer or, if it had, none was provided for the Tribunal's consideration.

110. The Tribunal questions whether the buildings insurance policy, as per the copy provided, meets the landlord's obligations. The policy describes the premises as "shops with flats above", so the Tribunal is not convinced that it currently extends to include the Garden Flat.

111. Furthermore, the Tribunal has been presented with no evidence to prove that the insurer has been notified of the potentially unauthorised additional residential use, at the property.

112. The Tribunal finds the Applicant has not proved that the building insurance policy is, or has potential to be, invalidated by the points identified in Mr. Moulsdale's report. Accordingly, the Tribunal find no breach of covenant in this regard.

113. **Ground 10: Unauthorised alterations**

114. The Tribunal, in questioning, put it to Mr. Warwick that, potentially, the entire residential structure was unauthorised. Moreover, it was clear from the evidence that the unauthorised alterations complained of were largely in existence when the Respondent purchased in 2013. It was suggested that the Applicant either had to make a case that the whole conversion to residential use was in breach of covenant rather than just part of it, or not at all.

115. Further to the Tribunal's questioning, the Applicant sought the Tribunal's permission, which was granted, to withdraw this particular allegation of breach of covenant.

Decision

116. The Tribunal determines that in breach of Clause 4(i) of the Lease, the Respondent has failed to keep the demised premises in good and substantial repair and condition, and the Tribunal therefore determines that a breach of covenant has occurred, and continues to occur, in regard to:

- Ground 3: Main roof to garden house;
- Ground 8: Ceiling plaster.

117. Further, and in regard to Ground 2: 'Retaining wall adjacent 14 Stony Street', the Tribunal determines that, if it is established that the wall is demised to the Respondent, it then follows that the Respondent is in breach of covenant on this ground.

118. The Tribunal determines that, in breach of clause 4(i) of the Lease, breaches of covenant occurred from 22 April 2021, or an earlier date, but have been remedied by the date of the hearing on:

- Ground 1: Garden retaining wall;
- Ground 4: Defective render to the flank wall adjacent 14 Stony Street;

119. The Tribunal determines the breaches identified to have existed on or before 22 April 2021.

120. In her closing statement, Ms. Saxon stated that, subject to the outcome of these proceedings, a sale of the property had been agreed to a firm who would undertake the required works and that the offer reflected the extent of works required.

121. In his closing submissions, Mr. Warwick stated that a sale of the property, followed by immediate remedial works, could potentially be a pragmatic resolution. He suggested the Applicant's intent in bringing these proceedings was to affect the required repairs, as opposed to consideration of forfeiture.

Costs

122. Neither party made any application to the Tribunal in respect of costs.

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.