



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

Case reference : **CHI/45UH/LBC/2023/0012**

Property : **Flat 4 Traslyn Court, 15a Selden Road,
Worthing, West Sussex, BN11 2LL**

Applicant : **Traslyn Court Management Limited**

Representative : **Bate and Albon Solicitors**

Respondent : **Yildiz Doe**

Representative : **Mr M Doe (Respondent's husband)**

Type of application : **Determination of breach of covenant
pursuant to section 168(4)
Commonhold and Leasehold Reform
Act 2002**

Tribunal members : **Judge H. Lumby
Mr P Turner-Powell
Ms. J Dalal**

Venue : **Havant Justice Centre**

Date of hearing : **24 August 2023**

Date of decision : **20 October 2023**

DECISION

Decisions of the tribunal

The tribunal determines that the Respondent is in breach of the provisions of clause 4(17) of her lease of the Property.

The application

1. The Applicant seeks a determination pursuant to section 168(4) Commonhold and Leasehold Reform Act 2002 (the “2002 Act”) as to whether the Respondent is in breach of clause 4(17) of her lease of the property.
2. The relevant provision relates to requirements for floor coverings within the Respondent’s flat, which the Applicant contends has been breached by the Respondent.

The background

3. The property is a two bedroom flat in a Victorian building. It has been converted into eleven flats, with the works completed in 2006. It is located on the first floor which is the ground level entrance to the building. There are various other flats in the building, including one directly beneath.
4. The Respondent is a long leaseholder, holding her interest pursuant to a lease dated 12 October 2005 for a term of 99 years from 24 June 2005. The freehold reversion to the lease is vested in the Applicant.
5. The property is not occupied by the Respondent but instead is sublet by her to a family comprising two parents and two children.
6. The flat beneath the property is owned by Ms Maria Sforza, who is also a director of the Applicant. She contends that she is disturbed by noise and vibration from the property, most notably from children running around. She has installed acoustic insulation in her flat to reduce the noise but claims that the disturbance is continuing.

The lease

7. Clause 4(17) of the Respondent’s lease of the property contains a covenant by the tenant as follows:

“In the case of all flats except the garden flats to keep the floors of the Premises (except the bathroom and kitchen floors) covered at all times with carpet or underfelt or other covering approved by the Lessor so as adequately to prevent the penetration of sound from the Premises to the premises beneath and to take all such precautions as are reasonably necessary to prevent such penetration of

sound as aforesaid including the placing of adequate insulators under wireless and television sets gramophones pianos and musical instruments”

8. The property is not a garden flat for these purposes and so the covenant applies to the Respondent.

Tribunal determination

9. This has been a determination following a hearing on 24 August 2023. The documents that the tribunal was referred to are in a bundle of 85 pages; in addition, they were provided with a five page extract of the Building Regulations document relating to resistance to the passage of sound and an eight page guide issued by Basingstoke and Deane Council on noise associated with laminate and wood flooring. The Respondent also produced a B&Q specification obtained the day before showing the sound proofing qualities of a particular laminate which was asserted to be the same as the laminate in the Property. The contents of all these have been noted by the tribunal.
10. The tribunal heard from Mr Paul Harrington and Ms Sfora on behalf of the Applicant and Mr Doe on behalf of the Respondent. At the request of the parties, the tribunal deferred issuing its decision in order to give the parties time to reach a settlement. However, the time given has now elapsed without the proceedings being withdrawn.
11. Having considered all of the documents provided and heard the submissions of the parties, the tribunal has made determinations on the issue as follows.

Applicant's case

12. The Applicant has provided a statement of case and a reply to the Respondent's response. setting out her case together with a response to the Respondent's statement of case. Their case is that the Respondent has failed to keep the floors (except the bathroom and kitchen) covered with a carpet and underfelt or other covering approved by the landlord so as to prevent the penetration of noise. Instead there is a laminate flooring. This is in breach of the requirements of the covenant as it does not comprise carpet or underfelt or other approved covering.
13. Ms Sfora explained that she was disturbed by noise and vibration from children running around in the Property. She had requested that the Property be carpeted and had spent around £6000 installing sound proofing above her property but the issue continued.
14. She accepts that the installation of carpeting may not solve her issue but would accept the position if it was installed.

Respondent's case

15. The Respondent accepts that there is no fitted carpet in the Property, except in the bedrooms. However, there is no requirement for carpeting in the kitchen and bathroom. The remaining rooms are the hallway and the living room. Mr Doe argues that the flooring in these rooms is a laminate and special underlay which are sound proofed to 19 decibels, the Respondent was careful to get better quality laminate when installing it.
16. Mr Doe accepted that this flooring was installed without landlord consent
17. The Respondent contends that the requirement of the covenant is to install a floor covering which adequately prevents the penetration of sound. It is the nature of buildings of this type that there will be sound transference and it is not possible to eliminate it, Ms Sfora should have been aware of this when she purchased her flat.
18. In any event, steps have been taken by the tenants of the Property to reduce the noise from the children – Mr Doe explained that they had placed a children's play mat in the living room and hallway, with a carpet over the playmat in the living room and a duvet on top. The carpet is not wall to wall, covering only three quarters of the length of the living room and between one metre and one point five metres in width. The Respondent argues that this is adequate prevention. She cites as evidence the fact that the Environmental Health Officer for the local council had been informed of the issue but had not issued any statutory notices and the fact that the previous owner of Ms Sfora's flat had not complained.

The tribunal's decision

19. The issue to be determined is whether the Respondent is in breach of the specific covenant in the Lease.
20. The Property comprises of a hallway, a living room, two bedrooms, a kitchen and a bathroom. The covenant does not apply to the kitchen and the bathroom. The bedrooms have carpets and the Applicant has not challenged this. The tribunal determines that the bedrooms are not in breach of the covenant.
21. The question is therefore whether the floor coverings in the living room and hallway amount to a breach of the covenant.
22. The covenant is in two parts. First there is the requirement to keep the relevant floors covered at all times with carpet or underfelt or other covering approved by the Lessor so as adequately to prevent the penetration of sound from the Premises to the premises beneath. Secondly, there is the requirement to take all such precautions as are reasonably necessary to prevent such penetration of sound; that limb refers to this

including steps in relation to televisions, musical instruments and other items but these have not been raised by the Applicant and so have not been considered.

23. The tribunal first considered the first limb. The Respondent accepts that the living room and hallway are not covered by carpet or underfelt, but instead laminate. The issues are therefore whether this laminate has been approved by the landlord and whether it adequately prevents the penetration of sound to the premises beneath.
24. The Respondent has accepted that the landlord has not approved the covering and so she is in breach of the requirement to obtain landlord's consent to the floor covering. Accordingly, the tribunal determines that she is in breach of the covenant.
25. The tribunal also considered whether the laminate and the additional coverings added by the tenant of the Property adequately prevented the penetration of sound to the premises beneath. Ms Sfora complained of noise and vibration. Vibration is not sound. It should therefore not be taken into account when assessing whether the floor covering adequately prevents the penetration of sound.
26. However, the noise of children running in the Property is sound. The fact that Ms Sfora can hear this sound means that the floor coverings do not adequately prevent the penetration of sound to the premises beneath. The test here is not by reference to some finite level of noise so as to instigate an intervention by the Environmental Health Officer. It is instead a question of whether the occupiers of the premises beneath can hear the noise.
27. The Respondent argues that the laminate was sufficient for the previous owners and therefore should be sufficient for Ms Sfora. However, the issue is whether there is penetration of sound, not whether any such noise was not an issue for a previous occupier. It is a major issue for the current occupier.
28. The wording of the covenant does not expressly state that the penetration of sound should be prevented to a reasonable level, although the tribunal finds that some sort of allowance should be given to take account of the nature of the building and the practicality of taking action. The tribunal finds nonetheless that the level of noise exceeds that reasonable allowance. Accordingly it determines that the floor covering does not adequately prevent the penetration of sound and so determines that the Respondent is in breach of the covenant.
29. The tribunal next considered the second limb of the covenant, as to whether the Respondent has taken all such precautions as are reasonably necessary to prevent such penetration of sound. The tribunal has some

sympathy with the tenants of the Property who have clearly at least in the living room taken steps to limit the noise, with the play mat and carpet and duvet on top. However, they have not addressed the issue and the requirement is to take all such precautions as are reasonably necessary to prevent the penetration of sound. The Applicant has argued that such precautions should include carpeting the living room and the hallway and Ms Sforna has indicated that she would accept the position if this was done. However, the Respondent has refused to take this step. The fact that the previous occupiers beneath the Property did not have an issue is not relevant, the requirement runs throughout the term and so the necessary steps may evolve. As a result, she has not taken a precaution reasonably necessary to prevent the penetration of sound to the premises below. The tribunal therefore determines that she is in breach of the covenant.

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
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.