FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00FP/LBC/2023/0011**
Property	**:**	**21 Hornbeam Lane, Uppingham. LE15 9BF**
Applicant	**:**	**Longhurst Group Limited**
Respondents	**:**	**Justin Feely and Liyan Lin**
Type of Application	**:**	**Application under S168(4) Commonhold And Leasehold Reform Act 2002 for a Determiantion that a breach of covenant in a lease has occurred**
Tribunal	**:**	**Tribunal Judge P. J. Ellis.** **Tribunal Member Mr L Packer**
Date of Hearing	**:**	**21 May 2024**
Date of Decision	**:**	**29 May 2024**

DECISION

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1. ***The Respondents have been in breach of the covenants at clause 3 of the lease as follows***
    a. ***At clause 3.5 , altering or adding to the exterior of the Premises by erecting a garage without permission***
    b. ***At clause 3.25 not to store materials by storing builders' materials and other materials associated with the Respondent's trade of builder of roofer***
    c. ***At clause 3.21 not to park on the road by persistently parking on the road after rendering the driveway unusable with building materials leaving no space for parking***
    d. ***At clause 3.19 & 3.25.3 not to carry out a business by using the property as a storage facility for the Respondent's trade of builder of roofer, and***
    e. ***At clause 3.3 to maintain fences by allowing the fence to deteriorate sufficiently so as to partially collapse or lean against another property.***

Introduction and Background

2. On 10 November 2023 the Applicant, Longhurst Group Limited, issued an application for an order that a breach of covenant or a condition in the lease had occurred pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 (the Act).

3. The Respondents are Justin Feely and Liyan Lin who have occupied the property on a shared ownership scheme for six years. They own 25% of the equity which they acquired on 19 October 2016. They rent the remaining interest under a lease with the Applicant.

4. The Applicant alleges that the Respondents are or have been in breach of covenants at clause 3 in the lease, namely:
    a. *3.5 Not to make any alterations or additions to the exterior of the Premises or any alterations or additions to the interior of the premises*

nor to erect any new buildings thereon nor in any way to interfere with the outside of the premises without the previous written consent of the landlord such consent not to be unreasonably withheld.

b. *3.25.2 Not to store inflammable materials on the premises and to store all refuse in appropriate bins*

c. *3.21 Not to park or allow to be parked any vehicle anywhere other than the drive of the premises or the allocated parking space and not obstruct or allow to be obstructed the roads within the estate*

d. *3.19 – not to use the premises nor permit the same to be used for any purpose whatever other than as a private residence in single occupation only nor for any purpose from which a nuisance can arise to the owners lessees or occupiers of the premises in the neighbourhood and 3.25.3 not to use the premises for any business purposes or illegal or immoral use*

e. *3.3 To keep from time to time and at all times during the term the together with any fences marked with an inward "T" on the plan annexed hereto clean and well and substantially repaired maintained and decorated*

5. The Tribunal issued directions for determination of the matter on 21 November 2023. The Applicant served its evidence as directed but the Respondents failed to do so. After a further order directing service of their statement of case the Tribunal barred the Respondents from taking part in the proceedings on 15 March 2024. The matter came before this Tribunal by VHS hearing on 24 April 2024 when the bar was lifted in response to representations by the Respondents, who were directed to file their statements within the time allowed to avoid reinstatement of the bar.

6. The Respondent filed and served a short statement in letter form in due time. The Applicant served a further statement in response.

7. The matter was relisted for hearing by VHS when the Tribunal considered the parties' submissions. The Applicant was represented by Mrs Susan Wells the Applicant's Home Ownership Officer and Mrs Kirsty Cornelius, the

Applicant's Home Ownership Manager. Mr Feely appeared on his own and Ms Liyan Lin's behalf.

The Property

8. The property at 21 Hornbeam Lane is a two storey house, is situated on an estate constructed in about 2010. The property was not inspected by the Tribunal. There is no dispute regarding the property itself. There is a driveway at the side of the house for parking of two cars in tandem configuration. At the time of construction there was no garage on the property. Hornbeam lane is a cul-de-sac.

The Lease

9. The freeholder at the time of commencement of the lease was Spire Homes (LG) Ltd. On 20 May 2019 Spire Homes transferred the whole of its stock to the Applicant. The lease the subject of these proceedings was made between Spire Homes and the original purchaser on 19 March 2010. The relevant terms of the lease are set out in paragraph 4.

The Statutory Framework

10. The Applicant seeks a determination by the Tribunal that the Respondents are or have been in breach of their obligations under the lease. The power of the Tribunal to make that determination is in s168 of the Act which provides under the heading No forfeiture notice before determination of breach
(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 (c. 20) (restriction on forfeiture) 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
©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.

(3)But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.
(4)A landlord under a long lease of a dwelling may make an application to the appropriate tribunal for a determination that a breach of a covenant or condition in the lease has occurred.
(5)But a landlord may not make an application under subsection (4) in respect of a matter which—
(a)has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(b)has been the subject of determination by a court, or
©has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
(6)For the purposes of subsection (4), "appropriate tribunal" means—
(a)in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal;

The Parties' Submissions

The Applicant

11. Mrs Wells on behalf of the Applicant produced a statement with photographs showing the reason for this application. In August 2023 the Applicant had received complaints about storage of building materials, obstructive parking, damage to fences and a construction at the rear of the property. The complaints were supported by photographs of the state of the property.

12. The first alleged breach related to make alterations to the property. On investigation the Applicant discovered that a garage had been erected without its permission or any planning permission.

13. The second alleged breach involved storage of building materials on the driveway. Photographs illustrated building materials and further articles associated with building trade irregularly stored on the driveway.

14. The third complaint was that the Respondent, Justin Feely, parked his van on Hornbeam Lane causing an obstruction to other occupiers and users. At the inspection conducted by the Applicant a photograph of the van parked on the road outside the property was produced in evidence. It was impossible to park the van on the driveway because of the accumulation of building and roofing materials. Mrs Wells agreed the driveway is quite narrow. There is not a lot of space for car parking on the estate especially as many occupiers have two cars. The Applicant expects the drive to be used for parking. Only ad hoc or occasional parking should occur on the road. The position of the garage which occupies part of the driveway space limits its use.

15. The lease requires the Respondents to use the property only for residential purposes. It was apparent to the Applicant that the property was being used as a business by storing materials used in connection with the Mr Feeny's business of a builder or roofer. It is recognised that some tenants will use their address as a registered office but they must not conduct their business as such at their property.

16. The final complaint related to neglect of the wooden fence allowing it to fall against the neighbour's property.

17. The Applicant wrote to the Respondents requiring them to remedy the breaches. Telephone messages were left asking the Respondents to call to discuss the situation. The Applicant did not receive any response. The correspondence included notice of intention to issue these proceedings. Further photographs of the state of the property were taken and exhibited to Mrs Wells statement.

18. Since the hearing on 26 April 2024, the Respondents have removed the materials in the driveway, repaired and renewed the fence as necessary, and ceased storage of building materials, although Mr Feeny admitted there were some paint cans and other small items in the garage. He had applied for and obtained retrospective permission for construction of the garage.

The Respondents

19. Mr Feeny attended the hearing. He admitted that there had been breaches of the covenants as alleged by the Applicant. He apologised for causing the breaches and for ignoring the Applicant's correspondence. He had taken steps to clear the site of accumulated materials and rubbish. He had made the application for retrospective permission to erect the garage.

20. As far as parking is concerned, he asserted the driveway is too small for both his car and the van. The garage takes up only two feet of driveway space. There are many cars on the road. He estimated that at any time there are 15 or more cars parked on Hornbeam Lane near his property. The Applicant is being unfair to challenge his use of the road for his van. He denies it is causing an obstruction.

21. Mr Feeny is a self-employed builder. The van is his. It shows his trade name Berryfield Roofing. He now has rented a lock up for storage of his materials but he does not park the van there. 21 Hornbeam Lane is the registered office of his company, but he does not now use the property for business purposes.

22. He had carried out repairs to the fence including replacing a damaged or rotten panel. He claimed the fence was in a poor condition when he took on the lease.

Discussion

23. Since the hearing on 24 April 2024 the Respondents hves made some effort to remedy the situation he had allowed to develop. With the exception of the alleged breach of covenant 3.21 relating to parking Mr Feeny agrees and accepts he was in breach of the covenants as alleged. Having heard the evidence of both sides and reviewed their statements including photographic evidence of the state of the property, the Tribunal is satisfied that the Respondents have been in breach of the covenants.

24. In so far as the breach of the parking covenant is concerned, the Applicant conceded that there is a problem with parking but residents should use the

space available before using the road. In this case the Respondent effectively prevented use of the driveway as a parking space by storing his work-related building materials and a trailer on the drive.

25. The Tribunal determines that the Respondents have been in breach of the covenants at clause 3 of the lease as follows
    a. At clause 3.5 , altering or adding to the exterior of the Premises by erecting a garage without permission
    b. At clause 3.25, not to store materials by storing builders materials and other materials associated with the Respondent's trade of builder of roofer
    c. At clause 3.21, not to park on the road by rendering the driveway unusable leaving no space for parking
    d. At clause 3.19, not to carry out a business by using the property as a storage facility for the Respondent's trade of builder of roofer, and
    e. At clause 3.3, to maintain fences by allowing the fence to deteriorate sufficiently so as to partially collapse or lean against another property.

Appeal

26. If either of the parties is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber) on a point of law. Any such application must be received within 28 days after these written reasons have been sent to them, as required by rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Tribunal Judge Peter Ellis