FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AE/LBC/2024/0011**
Property	**:**	**18 Lawns Court, Ground Floor Flat and Garden, The Avenue, Wembley HA9 9PN**
Applicant	**:**	**Ledway Building Company Limited**
Representative	**:**	**Ms Poppy Remington-Pounder, Counsel**
Respondent	**:**	**Mr Bun Lau**
Representative	**:**	**Mr Ian Rees-Phillips, Counsel**
Type of application	**:**	**Application for an Order under section 168 (4) of the Commonhold and Leasehold Reform Act 2002**
Tribunal member(s)	**:**	**Mrs S Phillips MRICS Valuer Chair** **Mr C Norman FRICS** **Mr S Mason FRICS**
Date of Hearing	**:**	**24 February 2025**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**22 July 2025**

DECISION

Decision

(1) The Respondent did not breach Clause 2.(5) of the lease, which requires the Lessee not to alter the structure or arrangements of the Demised Premises.

(2) The Respondent is in breach of Clause 2.(8)(c) of the lease which requires the lessee to deliver a deed to the Lessor which relates to the performance of the lease covenants by the intended assignee or underlessee before the intended assignee or underlessee is given possession.

(3) The Respondent did not breach Clause 3.(7) of the lease, which relates to an act which may render void or voidable the building's insurance policy.

(4) The Respondent did not breach Clause 2 of the Second Schedule, which requires the Lessee not to use the Demised Premises for any purpose which a nuisance can arise to the lessees and occupiers of other flats comprised in the Building.

(5) The Respondent did not breach Clause 3 of the Third Schedule, which requires the Transferees not to erect any building on the land without first submitting the proposed plans for approval in writing to the Transferors.

Reasons

Background

1. The applicant seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that breaches of covenant or condition in the lease of have occurred at Ground Floor Flat and Garden, 18 Lawns Court, The Avenue, Wembley HA9 9PN ("the Demised Premises").

2. The Tribunal were provided with a bundle of 357 pages. Where references are made to that bundle these are done so via [page number(s)].

3. By a Lease dated 7 April 1987, the Ledway Building Company Limited as Landlord let the Demised Premises to Wai-Wah Man for a term of 99 years from 25 March 1987. The Respondents acquired this lease on 4 June 2014 [139].

4. The Applicant is the freehold owner of 13 to 18 Lawns Court, The Avenue, Wembley, Middlesex HA9 9PN.

5. The allegations as set out in the application form are:

   (i) Breach 1: Clause 2(5): The erection of a structure without a licence or consent of the Lessor in breach of Clause 2(5) of the Lease.

   (ii) Breach 2: Clauses 2(8)(c): Failing to deliver a deed of covenant to the Applicant before underletting the Demised Premises.

   (iii) Breach 3: Clause 2(8)(d): Underletting the Demised Premises for substantially the whole of the unexpired term without providing notice of the same in writing for registration.

   (iv) Breach 4: Clause 3(3): Contravening planning control with the erection of the structure.

   (v) Breach 5: Clause 3(7): Doing an act which may render void or voidable the building's insurance policy.

   (vi) Breach 6: The Second Schedule, Clause 2: The Applicant states that the erected building is a nuisance or annoyance to other Lessees and Occupiers of the flats, as their use of the garden has been denied.

   (vii) Breach 7: The Third Schedule, Clause 3: Erecting a building on the demised premises without first submitting plans for approval.

6. In addition to the above, the Applicant is also pursuing their costs in relation to those permitted under clause 2(6) of the Lease:

   "To pay all costs charges and expenses (including Solicitors' costs and Surveyor's fees) incurred by the Lessor in or in contemplation of any proceedings under Sections 146 and 147 of the Law of Property Act 1925 and the preparation of Schedules of Dilapidations notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court."

Directions

7. Directions were issued on 20 March 2024, setting the matter down for determination via an in person hearing on 11 July 2024. Following several amended directions, the hearing date was changed on multiple occasions with the hearing finally taking place on 24 February 2025.

Inspection

8. The Tribunal inspected the Property on 24 February 2025. During the inspection the Tribunal viewed the garden area where the structure was

claimed to have been built. At the time of the inspection the large shed that had been erected which the Applicant alleged contravened the lease provisions, had been removed and was no longer present. The Applicant had also alleged that at some point in time an existing fence had been removed and new shrubbery had been planted without consent. At the time of the inspection, it appeared to the Tribunal that the plants that had been alleged as to being planted had been removed and a new fence had been installed.

9. At the time of the inspection the property appeared to be vacant and there was no evidence of any person(s) occupying the property.

10. The property is within a block of flats dating from the 1970s/1980s and Flat 18 is situated on the ground floor. The main structural floors are concrete. The demise of Flat 18 also includes a garden area as per the title plans [4, 7 & 10].

The Law

11. Section 168 of the Act provides:

> (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 (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.
>
> (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."

The Lease

12. The subject lease is dated 7 April 1987 ("the Lease") for a term of 99 from the 25 March 1987.

The Hearing

13. Ms Remington-Pounder, Counsel represented the Applicant and Mr Rees-Phillips, Counsel represented the Respondent. Mr Simon Benedikt, who works on behalf of OCC who are the managing agents for the Applicants gave evidence for the Applicant. Mr Benjy Reich, who works as a property manager for OCC also gave evidence for the Applicant. Mr Bun Lau the Respondent also provided evidence.

14. Of those who had provided witness statements for the Respondent, only Mr Lau was present at the hearing.

15. The Tribunal confirmed with the parties which breaches of the lease were still being contested. Using the breach numbers as set out in paragraph 4 above the following was established:

    a. Breach 1: Being contended.
    b. Breach 2: Respondent admitted this breach.
    c. Breach 3: Not being pursued by the Applicant.
    d. Breach 4: Not being pursued by the Applicant.
    e. Breach 5: Being contended.
    f. Breach 6: Being contended.
    g. Breach 7: Being contended.

The Applicant's case

16. Ms Remington-Pounder opened the Applicant's case by calling Mr Simon Benedikt who had provided a witness statement that was verified by a statement of truth. Mr Benedikt confirmed that OCC became managing agent of the property in April 2021 but that he was involved in the property since November / December 2011.

17. Mr Benedikt provided context on the ownership history of the building. Prior to Ledway Building Co. Ltd. taking ownership of the building in 2011 / 2012, the building was owned by the English National Opera. Their managing agents for the property were Grey & Co. Grey & Co. continued to work with Ledway Building Co. Ltd. until OCC took over management in 2021. Mr Benedikt then explained the role of two individuals who were involved with the property prior to Grey & Co. and continued to be involved until relatively recently. These were Mr Clive Morrison Snr. who had been the caretaker at the property and, once retired his son Mr Morrison Jnr. continued this role.

18. The Tribunal was directed to Ms Gabriella Ristin's witness statement [134]. Her witness statement stated that the small shed was installed by herself in 2012 as was the removal of the fence and installation of shrubs. Mr Benedikt went on to confirm that he has photographs demonstrating that nothing was there until 2013, but these were not in the bundle.

19. The Respondent cross-examined Mr Benedikt asking whether the Mr Morrison Ms Ristin was referring to in her witness statement was Mr Morrison Snr. or Mr Morrison Jnr. Mr Benedikt confirmed that this was Mr Morrison Jnr.

20. Under questioning from the Respondent, Mr Benedikt confirmed that he did not manage the site until 2021. Although he had informal involvement prior to this he had no reason to investigate the shed situation until the larger one was installed. There was therefore a possibility that the small shed had been there before and was only noticed when the larger one was erected. At the point Mr Benedikt did review this, he also noticed that it had been installed on land that was outside of the Respondent's boundary.

21. Mr Benedikt was not able to confirm and does not know who installed the shed or when the shed was installed.

22. Mr Benedikt advised the Tribunal that the larger shed was used as a summer house and for parties. He does not know what the final plan for it was. Photos in the bundle demonstrated the appearance of the larger shed [117 & 118]. There is no evidence in the bundle confirming what the area looked like before.

23. Mr Benedikt confirmed the health & safety concerns he had in relation to the structure and the loose bricks that were present on the roof of the structure.

24. Mr Rees-Phillips went on to ask Mr Benedikt about the underletting covenant within the Lease and whether it was ever enforced. Mr Benedikt advised that very few of the leases he has seen has this, that the lease is an older lease and that this is rarely seen.

25. Mr Benedikt was then asked by Mr Rees-Phillips in relation to the insurance policy. The only evidence is a vague statement [80 paragraph 15]. Mr Benedikt advised that the works could have voided the insurance and that all details of this nature needed to be disclosed. Mr Rees-Phillips submitted that it was not for Mr Mendleson (the insurance broker) to advise whether that would be in breach of the lease.

26. Mr Rees-Phillips asked Mr Benedikt about the planning and whether the structure had been approved. Mr Benedikt advised that there was no planning for the large shed and that it was not for the Applicant to assess as to whether that was needed or not but for the Respondent to undertake this.

27. With regards to Breach 7, Mr Rees-Phillips enquired as to whether this requirement to submit plans had been enforced elsewhere. Mr Benedikt advised that it had been.

28. With regards to Breach 6 and the Applicant's claim that the structure is a nuisance, Mr Rees-Phillips asked Mr Benedikt if he had any evidence to support this. Mr Benedikt said none were needed as this was common sense.

29. The Applicants then submitted the evidence of Mr Benjamin Reich [130].

30. Mr Reich submitted that his conversation with Ms Rahul confirmed that she never used the garden and therefore would not use the shed. As Ms Rahul was not using the shed, the Applicant therefore assumed that it must be the Respondent who was using the shed.

31. To the rear of the property there is a car park behind the brick wall and Mr Reich submitted that they would not have wanted any of the loose bricks to have flown off and hit any of the cars parked in the vicinity. When asked whether any complaints had been received Mr Reich confirmed that there had not been any.

32. Closing submissions from the Applicant included a general statement that regardless of whether the breach has been remedied, this Tribunal is here to confirm whether one has been committed or not.

33. The Applicant submitted that Breach 1 extended to alterations in the garden and that the supporting authority for this is *Bickmore v Dimmer* [1903] 1 Ch. 158.

34. With regards to Breach 2, the Applicant's referred to the case *Courtney Lodge Management Ltd v Blake* [2005] 1 P. & C.R. 17 CA (Civ Div) but that this is not necessary as the Respondent has admitted this breach. Additional case law provided by the Applicant in support of their argument included *Hagee (London) Ltd. v Cooperative Insurance Society Ltd.* 63 P. & C.R. 362 and *Guignabaudet v Scott Moncrieff* [2009] EWCA Civ 485. The latter case referenced involved alterations to the arrangement of the garden.

35. The Applicant further submitted that at no point was consent provided for any of the alterations undertaken by the Respondent [80 paragraph 13].

36. In relation to Breach 5 the Applicant submitted that the relevant clause in the lease [25] is broad. As no Deed of Covenant had been provided for the Respondent therefore allowed or permitted this action to happen, resulting in a breach of the insurance provisions.

37. The case of *Harrison v Good* V.C.B 1871 was quoted in relation to Breach 6 and a nuisance having occurred. The Applicant explained that the Network Rail case referenced earlier was relevant as it dealt with nuisance at common law and provided a list of various types of nuisances and that trespass and nuisance are not exclusive and can be both [340 paragraph 41].

38. The case of *The Windsor Hotel (Newquay) Limited v Maureen A. Allan* 1981 WL 186758 (1981) was used by the Applicant to demonstrate the criteria to be applied to arrive at whether something is a building or not. The Applicant submitted that the large shed is a substantial structure with some sides covered [116]. This is therefore substantial enough to activate the provisions under the lease as the Applicant's argued that the structure constituted a building and therefore the requirements under the lease to submit plans to the Lessor for approval were triggered. This was not done.

39. Lastly, the Applicant relied on the case of *Berton v Alliance Economic Investment Co Ltd* [1922] 1 KB 742 to demonstrate the Respondents obligations to remedy the breach caused by their tenants.

The Respondent's Case

40. The Respondent's submitted Mr Lau's evidence [124]. Mr Lau's witness statement in the bundle is a translated version of the original statement which is also contained in the bundle [128].

41. During cross-examination Mr Lau accepted that they had sub-let the property. Clause 2(8)(c) of the Lease [26] sets out that the Respondent cannot sublet without the Landlord's consent. Mr Lau advised that he did not realise that there was this provision when he purchased the property.

42. Mr Lau was then questioned about the garden alterations. He confirmed that he did not install the small shed and that this was already present when they purchased the property. He never challenged its existence as he did not have the rights to remove it as not his place to do so.

43. With regards to the large shed, Mr Lau only realised this had been erected when it was highlighted to him that it was done so in an area outside of his property. He instructed the tenants to remove the structure and they did so. The next time Mr Lau visited the property the structure had been removed. Photographs in the bundle from January 2025 [50] demonstrate that the structure had been taken down with materials related to the new fence present in the photo.

44. When asked if Mr Lau accepted responsibility for the shed, he said he did not. He also cleared up the rubbish because it needed clearing, not because the rubbish was his.

45. Mr Lau was then questioned about the fence line. He confirmed that there was no fence when he acquired the property. Mr Lau confirmed that a new fence has now been installed though, incorporating some of the original concrete posts that were there. When asked whether he permitted the fence to be removed, Mr Lau denied this claim.

46. With regards to the shrubs that had been planted at the rear of the property, Mr Lau confirmed that he had not permitted anyone to do so. Within Mr Lau's witness statement, he confirms that it is his understanding that the occupant of Flat 17 planted these in around 2016 [125 paragraph 11].

47. Mr Lau was asked about the BBQ and that he installed it. Mr Lau confirmed that the BBQ does not belong to him and looks to be moveable in any event. He did not permit it.

48. In submissions, the Respondent set out that no evidence has been provided by the Applicant to establish the pre-existing condition of the garden. This is relevant to the question of alteration. Furthermore, Mr Lau had no involvement in the erection of the structure and once he knew of it instructed the tenants to remove same.

49. With regards to Breach 5 in relation to insurance, the Tribunal should give the appropriate weight to a third-party conversation that was had on this matter. The Applicant has provided no other evidence in support of this breach. Building control requirements are not possible for the Tribunal to determine based on the information provided.

50. Breach 6 and the issue of nuisance, this has not been set out fully by the Applicant. As such the Respondent argued that the application for breach on this part had failed. Encroachment of the large shed on the freeholder's land is trespass and not a nuisance issue. Nuisance applies in respect of enjoyment of the land. Nothing has been presented to demonstrate that the freeholder's enjoyment of the land has been impacted. There could possibly be an argument for the loose bricks on the shed roof being a nuisance. However, the lack of precision from the Applicant in relation to this aspect of their application lets this down.

51. With regards to the authority and argument put forward by the Applicant (*Network Rail Infrastructure Ltd v Williams* [2018] EWCA Civ 1514) in relation to a classic alleged trespass to property amounting instead to a nuisance was said to nonsensical by the Respondent. It would effectively render the entire tort of trespass meaningless.

52. In relation to the alleged breach of erecting a building (Breach 7), the Respondent argued that this provision in the lease is not meant to be used or intended to catch out buildings or structures of the nature that had been erected on the land. The large shed that was erected was not substantial enough in nature for the spirit of the provision to be applied against that type of structure. Buildings are a matter of fact and degree of which the shed does not meet the required threshold for it to be defined as a building.

Findings

Breach 1

53. The Tribunal is satisfied that the erection of a large shed would breach clause 2(5). But in this scenario, it is not the Respondent who has taken action to breach this provision. The Tribunal is satisfied that it was the Respondent's tenants who erected the structure and that once the Respondent was aware of the breach, he took reasonable steps to remove the structure as set out in Mr Lau's witness statement [125-126].

54. With regards to the smaller shed that was erected on the freeholder's land, this is outside of the Demised Premises. As such this cannot be a breach of covenant as the lease does not regulate the use of that area of land.

55. The Tribunal therefore finds that the Respondent did not breach clause 2(5).

Breach 2

56. The breach of Clause 2(8)(c) has been admitted by the Respondent.

Breach 3

57. This is not being pursued by the Applicant and the Tribunal will therefore not make a finding on this point.

Breach 4

58. This is not being pursued by the Applicant and the Tribunal will therefore not make a finding on this point.

Breach 5

59. Whilst the Tribunal can understand that the erection of a structure in the external area of a property may impact the building insurance, there was no evidence provided by the Applicant that this would have been the case. The Applicant has indicated from a conversation that Mr Benedikt had with the insurance broker that this should be reviewed, and additional information would be needed to assess the impact. However, this does not demonstrate that the structure erected would impact the building insurance to void it.

60. This part of the application therefore fails, and the Respondent has not breached Clause 3(7) of the lease.

Breach 6

61. In relation to the erection of a structure being a nuisance, the Applicant did not provide any supporting evidence that this was in fact considered a nuisance by anyone.

62. The case law that was provided by the Applicant in support of this (*Network Rail Infrastructure Ltd v Williams* [2018] EWCA Civ 1514) was useful in guiding the Tribunal on nuisance.

63. As the Tribunal have found the Respondent not to be in breach of clause 2(5) as he had not erected the structure and had not permitted same, it goes to say that the Respondent cannot therefore have breached Clause 2 of the Second Schedule either. It is not the Respondent who is using the Demised Premises, and he did not permit the structure. As such he has not permitted the nuisance to take place either.

64. This part of the application therefore fails, and the Respondent has not breached Clause 2 of the Second Schedule of the lease.

Breach 7

65. The Tribunal has found that the large shed that was erected does not constitute a structure as envisaged by the terms of the Lease. The Tribunal preferred the argument of the Respondent and that temporary outbuildings of this nature were not within the spirit of the provisions in the lease.

66. This part of the application therefore fails, and the Respondent has not breached Clause 3 of the Third Schedule of the lease.

Costs Application

67. The parties indicated that they would look to submit a costs application under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and Practice Directions. The Tribunal reminded the parties of the high threshold for a successful application as set out under *Willow Court Management Company (1985) Ltd v Alexander* [2016] UKUT 290 (LC). The Tribunal advised that any Rule 13 application would be assessed after its decision had been issued. Should either party wish to pursue an application under Rule 13 this should be done within 28 days of the date of this decision via a Form Order1.

68. With regards to section 20C of the Landlord and Tenant Act 1985, as the Applicant's application has only been successful in part, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the Landlord and Tenant Act 1985, so that the Applicant may only pass up to half of its costs incurred in

connection with the proceedings before the tribunal through the service charge.

69. The Tribunal also orders that under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, the Landlord is only able to recoup up to half of their litigation costs via any administration charge or contractual cost provisions in the lease.

Mrs S Phillips MRICS 22 July 2025

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).