FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	HAV/00HR/LBC/2025/0603
Property	**:**	Flat 11 Launceston House, 442 New Road, Ferndown, Dorset, BH22 8EX ("the property")
Applicant	**:**	442 New Road Limited
Representative	**:**	Stephen Sykes
Respondent	**:**	Mr A Catlin & Mrs M Catlin
Representative	**:**	None;
Type of Application	**:**	Application for an order that a breach of covenant has occurred – Section 168(4) of the Commonhold and Leasehold Reform Act 2002
Tribunal member	**:**	Tribunal Judge H Lederman Tribunal member C Davies FRICS Tribunal member T Wong
Date of Hearing	**:**	8 July 2025
Date of Decision	**:**	12 September 2025

DECISION AND REASONS

DECISION

The Respondent has not breached the covenants numbered 2(xvi) or 3(1) of the Lease dated 24th November 2008 (incorporating an earlier Lease of the property dated 9th November 1981) ("the Lease") for the purpose of section 168(4) of the Commonhold and Leasehold Reform Act 2002.

REASONS

1. The Applicant is the registered owner of the freehold and landlord of a block of 12 flats and development known as Launceston House, 442 New Road, Ferndown Dorset. All of the flats are held on the terms of materially identical leases. At the hearing the Applicant was represented by Stephen Sykes who was described as a managing agent and also appeared to be the leaseholder of Flat 5 Launceston House.

2. The Respondents are two of the three leaseholders of the property and have been resident at the property a second floor flat for some years now. The third leaseholder Steven Allen Catlin was not represented and was not joined as a party to this application. The Second Respondent Mrs. M Catlin gave written authority for the First Respondent Mr. A Catlin to represent her. The Lease was granted for a term of 999 years from the 1st January 1980.

3. The Applicant alleges the Respondents have breached covenant at clause 3(1) of the Lease which (in summary) prohibits a leaseholder from doing or permitting or suffering to be done "in or upon "the Demised Premises" anything which may be or become a nuisance annoyance or cause damage or inconvenience to the Lessor or the occupiers of the other flats in the Building or neighbouring owners and occupiers or whereby any insurance for the time being effected on the Building and the garages or any contents thereof may be rendered void or voidable or whereby the rate of premium may be increased".

4. The application was received on the 19th January 2025 and the Tribunal issued directions in April 2025.

5. Mr Catlin attended the hearing remotely from the offices of East Dorset and Purbeck Citizens Advice Bureau with the assistance of Brendan Mullaney an adviser at that Bureau. Mr Catlin appeared to have difficulty in hearing all of the proceedings at the hearing. The Tribunal allowed and encouraged Mr Mullaney to assist Mr Catlin by explaining and repeating to Mr Catlin the gist of what had been said. The Tribunal ensured that there were appropriate breaks in the proceedings at the hearing to enable that to occur. Fortunately Mr Catlin's objections had been helpfully summarised in a letter prepared by Mr Mullaney on 10th June 2025 at pages 70-72 of the hearing bundle. Ultimately the Tribunal was satisfied that Mr Catlin had a good understanding of the issues and evidence debated at the hearing. As Mr Catlin's case had been fully set out in correspondence in the hearing bundle before the hearing, the Tribunal was confident that any difficulty he had in hearing or understanding had been fully compensated by the adjustments made in the course of the hearing.

6. Mr Sykes attended the hearing at the Tribunal Centre in Havant in the company of other leaseholders including Mrs Himson of Flat 9.

7. One part of the Applicant's case is that Mr and Mrs Catlin have allowed the balcony of the property to fall into such a state of disrepair over a 10 year period, which has led to water damage being caused to the balcony of flat 9 and internal water damage to flat 7 at Launceston House. Mr Sykes also contended that Mr Catlin in his capacity as director of the Applicant owed a "duty of care" or a duty under clause 3(1) of the Lease to direct or require managing agents to carry out certain works of repair to parts of the development.

8. The Tribunal was referred to a survey report of the south elevation balcony areas and guttering arrangements prepared by Russell Fareham, a building surveyor following an inspection of the development on 16th August 2024. The report was accompanied by 23 (unnumbered) coloured photographs, mainly of the exterior, showing various degrees of disrepair and deterioration.

9. The application also refers to paragraph (xvi) of the lease of the property. Mr Sykes confirmed this was a reference to the leaseholder's covenant in clause 2(xvi) of the Lease to yield up the demised premises with the lessor's fixtures and additions thereto at the expiration or sooner determination of the term of the Lease in good and substantial repair order and condition. The Tribunal determined at an early stage that the allegation of breach this covenant did not add anything to the alleged breach of clause 3(1) of the Lease. As the expiry of the Lease was hundreds of years away, this allegation could safely be left to one side and as having no substance.

10. Mr. Sykes said that he was a specialist roofing contractor by trade. He prepared a detailed letter of 18th May 2025 at pages 73 – 81 of the hearing bundle. That letter explains some of the history and his experience as a roofing contractor. It also explains his belief that disrepair of the balcony to the property has led to water penetrating the left hand cavity wall of the balcony of Flat 9 and into internal parts of Flat 7.

11. Mr. Sykes said in his letter and in his explanation at the hearing he believed water damage had been caused by the serious neglect of the leaseholders of the property in not informing the managing agents NMC. It was also part of Mr. Sykes' explanation and the Applicant's case that Mr Catlin as a director of the Applicant had "neglected" his duties by "suppressing" repair work or failing to instruct works of repair. Mr. Sykes also alleged that Mr Catlin inhibited or delayed repair works by failing to pay service charge invoices raised by the Applicant.

12. The Tribunal explained its provisional view that a covenant of the kind in clause 3(1) of the Lease was common in residential leases and was usually directed to positive acts, or omissions "*done in or upon the* Demised Premises". The emphasised words are usually taken to refer to activities or omissions related to the use or occupation of the property. The Tribunal indicated that words "nuisance annoyance or cause damage or inconvenience" were usually directed towards activities or use of leasehold premises (here the property) permitted or suffered by the leaseholder which interfered with the use or enjoyment of nearby or adjacent leasehold properties. The Tribunal invited Mr. Sykes and the Applicant to draw attention to any acts or omissions by the Respondents in their capacity as leaseholders which could be argued to fall within the activities or omissions prohibited by this clause.

13. The Tribunal bears in mind the guidance in the Supreme Court from decisions such as *Arnold v Britton* [2015] A.C. 1619 that interpretation of a contract such as a lease involves identifying what the parties had meant through the eyes of a reasonable reader. It has been stressed that this is a single exercise, which considers

the practical consequences of possible readings:

> "This unitary exercise involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated." (*Wood v Capita Insurance Services Ltd* [2017] A.C. 1173

14. It would be inherently unlikely that a clause such as 3(1) would embrace a duty to carry out repairs or organise repairs when such a duty was also required of individual leaseholder by covenants in other parts of the Lease.

15. The Tribunal noted and drew the Applicant's attention to the fact that the upper horizontal surface of the balcony exclusively serving the flat was demised to each flat by clause 1(viii) of the Lease, on the assumption that all the leases of the development were in a similar form. In other words, some of the repairing liability for those parts of the balcony might not fall within the Applicant's repairing responsibility as landlord within clause 4(c) of each lease. This point was made on behalf of Mr Catlin in a letter from the Citizen's Advice Bureau in a slightly different way.

16. Mr Catlin and his representative made the point that most of the balcony falls within the repairing responsibility of the Applicant as a reserved part or structural parts reserved to the landlord referred to in clause 1 of the Lease. In other words, the responsibility under the Lease for repairs to the balcony primarily lay with the Applicant and could not fall within the terms of clause 3(1) which referred to acts or omissions done in or on the demised premises.

17. Mr. Sykes and the Applicant also complained the Respondent had failed to satisfy a Court order or judgement in respect of monies owed under the Lease as service charges. They drew attention to the fact that a warrant was issued against Mr Catlin to enforce a judgment on the 14th April 2025. They also referred to the fact that Mr Catlin had entered into a "Breathing space" arrangement in respect of a debt of £3540 owed to the Applicant referred to at pages 114-115 of the hearing bundle. It was explained to the Applicant and Mr. Sykes that the application under section 168 of the 2002 Act could not deal with service charges as this was outside the scope of that section .

18. After a prolonged exchange between the Tribunal and Mr. Sykes and other leaseholders attending on behalf of the Applicant, the Applicant was unable to identify any act or omission on the part of the respondents which might have fallen within the scope of clause 3(1) of the Lease.

19. This application is dismissed.

This has been a remote hearing in part, and partly face to face to which none of the parties objected and was particularly appropriate to the First Respondent's circumstances and health. The form of remote hearing was video. All the issues could be determined in a remote hearing. The documents that the Tribunal was referred to are in a bundle of 115 pages

H Lederman
Tribunal Judge

12th September 2025

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.