FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	HAV/29UE/LBC/2024/0602
Property	:	Flat 4 The Haven, North Road, Sandwich Bay, Sandwich, Kent CT13 9PJ
Applicant	:	Ms Janet Booker
Representative	:	Mr Kynoch, counsel, instructed by Colman Coyle Ltd
Respondent	:	Mr Tobias Taylor
Representative	:	Mr Dening
Type of Application	:	Breach of Covenant S168(4) Commonhold and Leasehold Reform Act 2002
Tribunal	:	Regional Judge Whitney Mr C Davies FRICS Mr B Bourne MRICS
Date of Hearing	:	22 July 2025
Date of Decision	:	16 October 2025

DECISION

Background

1. The Applicant seeks an Order under S168 (4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent has breached covenants in his lease, details of which are set out in witness statements provided by the Applicant and Paul Belsey and Michelle Burgess (who are the occupiers of Flat 1 The Haven).

2. The application was received on 8 November 2024.

3. Directions were issued on 5th March 2025 initially listing the matter for a hearing on 15 May 2025. That hearing was adjourned and directions given.

4. Those directions were substantively complied with. A bundle of 268 pdf pages was provided. References in [ ] are to pages within that bundle. A large number of video clips were provided to the Tribunal as part of the Applicant's evidence.

Hearing

5. The hearing took place in person at Ashford Tribunal Centre. The Applicant was represented by Mr Kynoch of counsel. The Respondent attended in person and was represented by Mr Dening.

6. Mr Kynoch had supplied a skeleton argument.

7. The below is a precis only of what took place at the hearing which was recorded.

8. As a preliminary issue Mr Dening submitted that the recordings should not be relied upon. He suggested they were an infringement of Data Protection rights as the Landlord should be registered with the ICO. He suggested that to be recording all the time including sound was a derogation of grant from the lease and a breach of article 8 of the Human Rights Act. He produced a print out from the ICO website.

9. Mr Kynoch resisted the application.

10. Mr Kynoch then presented his clients case. It was agreed that the following breaches were admitted by the Respondent:

    - Leaving a cat box in the hall way;
    - Leaving recycling on the landing;
    - The Respondent stored his bicycle on the landing;

11. Alleged breaches of failing to clean the windows or maintain the garden were not being pursued. The issue for determination related to the allegations of behaviour causing a nuisance.

12. Mr Kynoch explained Mr Belsey (an occupier of another flat in the Property) was not able to attend. He had given a witness statement [98 & 99] and the Applicant sought to rely upon the same.

13. Mr Kynoch called Ms Booker. She confirmed her three statements [21-33, 105-106 & 190-196] were true.

14. Mr Dening then cross examined.

15. Ms Booker denied interfering with post left for Mr Talbot in the communal hallway.

16. She suggested she had tried to talk to Mr Talbot but he had ignored all requests. She agreed she had discussed matters with her solicitor with a view to building a case against Mr Talbot. She denied only raising matters after Mr talbot had told her he wanted to sell his flat.

17. Ms Booker was questioned by the Tribunal. She confirmed she accessed her property via the communal hallway. She stated she had heard music on occasion in her part of the Property. She had been called out of bed in November 2022.

18. Mr Kynoch then called Ms Burgess. She confirmed her statement was true [100-102].

19. She was cross examined.

20. She had not read the lease.

21. She said she had personally observed and been kept awake by loud music. There was not much sound proofing between the flats.

22. This concluded the Applicants evidence.

23. Mr Taylor gave evidence. He confirmed his two statements at [113-115 & 152-167] were true.

24. He confirmed Mr Dening had helped him write his statements.

25. He was referred to [159] paragraph 49. He agreed Mr Dening put "into context" what he wished to say. He knew an injunction was an order forcing something upon someone. He stated he fixed bikes for a living.

26. He confirmed both the cats that had been in the flat were now dead so the cat box is no longer required. He explained he had not

thought anything of placing things on the stairs as the only people who used the stairs are people accessing his flat.

27. He confirmed he no longer leaves recycling on the stairs.

28. He confirmed after reading the lease [68] he was now aware of Regulations 1, 2 & 4.

29. In respect of paragraph 21 [25] he accepted what was said was "sort of" fair. However he suggested how do you determine what is "drunk"? He did not believe simply returning to your own home hurt anyone. Lots of people have a drink whilst at home.

30. He acknowledged that he and his partner may have come home when drunk [158] paragraph 42. He explained often they come home late as he works 7 days a week, he accepted he and his partner may argue but suggested that this was not often and "is life".

31. He suggested that on occasion Ms Booker and Mr Belsey have been drunk and he had to assist them.

32. He was played the video referred to in paragraph 23 of Ms Booker's first witness statement [25] (the video showed Ms Moore, the Respondent's partner talking to her cat in the early hours in the communal hallway). He stated he didn't remember the occasion. He felt he did his best to get Alice (his partner) into the flat as they did not realise the time. He did not know the camera picked up sound. He stated he was the only bike mechanic in two shops and so often worked until very late.

33. He stated he could not comment for Ms Moore. He had not asked her to give a statement or attend. If he had known she was required he would have asked her to come.

34. He denied the video showed a "drunken habit".

35. Mr Taylor was shown a video taken on 4 December 2023. It appeared to show two people identified as Ms Moore and her daughter returning to the flat at about 10.30pm. Mr Taylor agreed that they appeared drunk. He suggested Ms Moore's daughter was the more drunk of the two and he explained this is why she is not allowed to come to the flat any longer. He stated if he had been at home this would not have happened. He explained that Ms Moore's daughter has not been to the flat since June 2024. He apologised for that behaviour.

36. He explained he and Ms Moore have lived together at the flat for the past 16 years, from when it was first purchased save for a 3 month gap last Summer. He explained he and Ms Moore reconciled. He explained he had changed the locks at that time and excluded Ms Moore.

37. Mr Taylor was then shown video clip taken on 20 December 2023 at about 11.40pm. He denied it showed him and Ms Moore having an argument. He agreed that had both had a drink and were walking upstairs to the flat. He thought it was just banter between them. He agreed they did argue but this was not such an occasion.

38. He was referred to paragraph 42 and onwards [27 & 28]. He explained he did not do the hoovering himself and could not really comment upon the same.

39. Next he was played a video clip from 9 February 2024 at 2.11am (see para 48 of the first witness statement [28]). No sound was audible in the Tribunal room.

40. He agreed there had been one incident when he had texted Mr Belsey to apologise. He did not agree all the noise complained of was from his flat. He suggested there were lots of properties in the area which often had noise coming from them.

41. He explained in the past he had spoken to Mr Belsey about loud noise. He suggested the issues only arose once the Applicant moved back into the property.

42. We watched a video ref paragraph 51 [28] from 7 June 2024 at 23.21. We were unable to hear anything.

43. He was asked about receiving the documents re the application. He confirmed he thought it was 8 May 2025 when he found out about the application. Mr Taylor stated he acted on the letter when he received the same. He was surprised not to be addressed as Toby as everyone knows him as that. Further he would have expected the letter to have been sent by Recorded Delivery if important.

44. He explained if a letter doesn't look important he may not open it immediately. Once he got the letter he went and saw Mr Dening with the bundle after a friend had given him Mr Dening's details.

45. Mr Taylor was questioned by the Tribunal.

46. He stated he did not try and avoid post.

47. He stated that Ms Moore does not drink too much regularly.

48. He accepted he is responsible for visitors to the flat. He does not want to antagonise any of the other occupants.

49. Mr Dening made submissions.

50. He suggested Mr Taylor knew nothing of these proceedings until 8 May 2025. He did not open any post until that date. At that point he

spoke to a friend who referred him to Mr Dening and at that point he applied for an adjournment.

51. He admits he does not always open his post. The pile in December shown in photographs is large. Further the Respondent does suggest the mail, may have been interfered with.

52. Mr Dening referred to the fact the Applicant in her evidence talked about taking photographs of the post tray because she wanted to be sure Mr Taylor received the documents.

53. He suggests there should be no order for wasted costs.

54. He suggests there is no evidence of a "drunken habit" and he suggests more evidence would be required to substantiate the same.

55. As to the videos with sound there is no objective way of telling the volume or where the sound is coming from. He suggests the Applicant could have provided decibel metre readings or have referred such matter to the local Environmental Health Officer

56. He suggests the sound clip of Mr Belsey complaining of noise was not referred to within his statement. There is no direct evidence as to the same.

57. He suggests as to the admitted breaches these relate to supposed obstruction of the stairs which only the Respondent or his guests use. Further he suggests any such breaches have been waived and Mr Talyor has ceased all such conduct.

58. Further all the breaches relied upon are old. Despite further statements being filed no further breaches are alleged.

59. Mr Kynock made submissions on behalf of the applicant.

60. He suggested three of the alleged 6 breaches are not contested: obstructions caused by catbox, recycling and bicycle.

61. As to noise he referred to the text message [199] which he suggests is an admission of a breach.

62. He suggests there is a pattern of intoxicated behaviour. It is not isolated incidents but a regular pattern which is a nuisance. He suggests the behaviour of the Respondent and his partner is selfish, unfair and inconsiderate. He suggested that Mr Taylor accepts no responsibility for the actions of himself and his partner.

63. As to seeking the costs of the previous adjournment Mr Kynoch suggests that Mr Taylor's evidence is at best confused. He was plainly reluctant to receive documents and evasive in his conduct. This is

exemplified in the way Mr Taylor argued his case over the use of his forename.

64. Mr Kynoch rejects the allegation that his client tampered with the mail. He suggests the Applicant was not cross examined on this point and if the Respondent wished to sustain such an argument she should have been cross examined.

65. Turning to Section 20C and paragraph 5A he suggests Mr Taylor has admitted breaches and so no order should be made.

66. Mr Dening in reply stated Mr Taylor admitted he received the bundle in the post prior to the last hearing. The issue was the timing.

67. He suggests the Applicants have withdrawn certain allegations. He submitted it was clear the Applicant was building a case over time

68. He suggests the costs should not be recoverable from the Respondent.

Decision

69. We thank all parties for their submissions and representations. We have considered all within the bundle and watched all the videos provided.

70. We do record that on a number of the videos we were unable to hear any sound when we listened prior to the hearing as was the case within the hearing.

71. We remind ourselves that it is for the Applicant to prove on a balance of probabilities those breaches which are alleged.

72. We concentrate on those breaches which were pursued. These were identified as:

1) Matters relating to the cat litter tray
2) Matters relating to the recycling being left on the landing
3) Matters relating to the storage of the Respondent's bicycle on the landing
4) Matters relating to the Respondent's, and his guest's drunken and immoral behaviour
5) Matters relating to the Respondent playing loud music late at night.

73. The lease of the premises is effectively two documents. An original lease dated 23 November 1973 [49-63] ("the Old Lease") and a new lease which was an extension by reference to the old lease dated 12 June 2017 [37-48] ("the New Lease"). The clauses it is alleged were breaches are contained within the Second Schedule of the Old Lease which are regulations the leaseholder Respondent covenants to comply

with and which are incorporated into the new lease. This was not disputed and we accept this was the correct interpretation of the leases.

74. The relevant sections of the Second Schedule are

> "1. No person of unsound mind or of drunken or immoral habits shall be permitted to reside in the Flat"
>
> "2. No act or thing which shall or may be or become a nuisance damage annoyance or inconvenience to the Lessors or any occupier of the buildings or the neighbourhood shall be done or suffered to be done upon the demised premises or any part thereof"
>
> "4. No music or singing whether by instruments voices wireless gramophone television or other means shall be allowed in the flat or the buildings on the Estate between 11 p.m. and 7 a.m. except in so far as such music or singing shall not be audible outside the demised premises"
>
> "6. Nothing shall be deposited or left in the entrance hall stairways or passages of the buildings neither shall any carpet mat or rug be beaten or children allowed to play therein neither shall the same to be any way obstructed"

75. Mr Taylor admitted that the following matters were breaches:

- That he kept a cat box on the stairway
- That he kept recycling on the stairs
- That he kept a bike in the communal hallway

76. It was accepted that such matters were breaches of clause 6 of the Second Schedule. Given the admission we make no determination in respect of these matters and simply record the admission of the breaches.

77. Turning to the two remaining matters we consider the evidence before us. We note that Mr Belsey, whilst we had a statement, did not attend and was not cross examined. We take account of his evidence but attach less weight than that from those witnesses who attended.

78. It was clear the Applicant felt animosity towards the Respondent. It was plain that these matters had prayed upon her mind and she did view the Respondent and his actions in negative terms. This is something we take account in considering her evidence.

79. As to the Respondent and the allegations of breach we found he was straight forward and honest. We were less sure as to his

explanations as to why he had not received the post. We found his answers in this regard evasive and we formed the view he deliberately choose to not look at post as a way of avoiding legal process.

80. The evidence of Miss Burgess was of little assistance to us in making our decision. We accept her evidence but it was in the main general and hearsay.

81. We turn to the allegations. We did not find that evidence, notably the videos, supported a breach of Clause 1 of the Second Schedule. Whilst we accept certain videos we were shown were of the Respondent and his partner and other guests returning to the Property in a drunken state this alone is not in our judgment sufficient to amount to a breach. We accept the submission made by Mr Dening that a more consistent and documented history of drunken behaviour must be established rather than what appear to be relatively occasional instances of persons returning to the flat whilst intoxicated.

82. Mr Taylor admitted that he and his partner had returned home late at night intoxicated on occasion. He suggested this was not necessarily a regular occurrence but happened from time to time. We find both he and his partner did return home on occasion intoxicated but as we say above this alone does not in our judgment prove that a person of "drunken habits" resided in the flat. Many people will on occasion drink so as to become intoxicated but this in our judgment would not lead a reasonable person to suggest they were of a "drunken habit" without more evidence of a repetitive, very regular nature. We were not satisfied the videos obtained over many months relied upon showing occasional instances proved the same.

83. Turning to the question of nuisance we were satisfied there was a breach of this covenant. We find that the incident when The Respondent's partner and her daughter returned home on evening of 4 December 2024 did amount to a nuisance. Mr Taylor acknowledged the same when he apologised. Further he acknowledged he was responsible for the actions of lawful visitors to his flat.

84. Equally we agree that the 20 December 2023 incident amounted to a nuisance to others in the building. We accept Mr Taylor's explanation that he and his partner were bickering and not arguing but notwithstanding this the conduct, given the hour, did in our judgment amount to a nuisance.

85. We were referred to a video of Mr Belsey referring to noise late at night. However given Mr Belsey did not refer to this in his statement and he did not attend to be questioned we were not satisfied that a nuisance in this instance was proved. Equally in respect of the other "noise" nuisances given the videos failed to demonstrate either noise or that it came from the Respondent or his Property these were not proved. We do however find that there was a noise nuisance on 19 September

2023 as evidenced by the text messages [199] sent by Mr Taylor which is effectively an admission.

86. We are satisfied that there have been breaches of clause 2 & 4 of the Second Schedule.

Costs

87. The Applicant has made an application for costs pursuant to Rule 13(1)(b) of the Tribunal Procedure Rules for the wasted costs in respect of the previous hearing.

88. Essentially it is suggested that Mr Taylor knew or ought to have known about the proceedings [208-214]. It is suggested that Mr Taylor avoided dealing with the proceedings as part of a deliberate course of conduct

89. Mr Taylor appears to suggest that the Applicant may have interfered with his post so that he did not see letters received from the Applicant's solicitor. Mr Taylor did not cross examine the Applicant on this. We were not satisfied that there was evidence that the Applicant had deliberately interfered with the Respondent's post so he was unaware of the legal action she was taking.

90. Further we found Mr Taylor's own evidence relating to his collecting and opening post to be evasive.

91. We are satisfied that Mr Taylor, putting his evidence at its highest, deliberately choose to ignore post addressed to him in the hope he could avoid any legal process. This was a deliberate course of conduct and in our judgement was unreasonable.

92. Given we have made a finding that such conduct is unreasonable we must then consider whether we should make any order for costs. We are satisfied we should. If he had engaged with the proceedings in good time and made the admissions of breach he now has made this may have reduced the costs of these proceedings. We are satisfied that an order for costs should be made in principle.

93. We are satisfied that the Applicant did waste costs in preparing for the first hearing. We have considered the costs schedule [234 & 235]. We are not satisfied all the costs were wasted and undertaking a summary assessment we assess the costs which the Respondent should pay in the sum of £5,000 within 28 days of the date of this decision.

94. We have considered whether we should make any additional costs orders pursuant to section 20C or Paragraph 5A. We decline to do so. Breaches of lease have been admitted and proven and in our judgment we are satisfied no order should be made.

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.