FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	HAV/00HQ/LBC/2025/0615
Property	**:**	7 Cheyne Court, 37 Surrey Road, Westbourne BH4 9HR
Applicant	**:**	Upper Garden Flats Limited
Representative	**:**	Andrew Gibbs-Ripley (solicitor advocate), Coles Miller Solicitors LLP
Respondent	**:**	Enkelejda Hazell
Representative	**:**	In person
Type of Application	**:**	Breach of covenant (s.168 Commonhold and Leasehold Reform Act 2002)
Tribunal Members	**:**	Judge M Loveday P Smith FRICS S Mason FRICS
Date and venue of hearing	**:**	4 December 2025, Havant Justice Centre
Date of Decision	**:**	26 January 2026

DETERMINATION

Introduction

1. This is an application under s.168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") for a determination of breaches of covenant in a lease of a flat and garage space in Bournemouth.

Background

2. The matter relates to the 7 Cheyne Court, 37 Surrey Road, Westbourne BH4 9H ("the Flat"). The building comprises a purpose-built block of 16 residential flats with two exterior garages and basement parking.

3. By a lease dated 1 August 1973, the Flat and a basement garage space were demised for a term of 99 years from 25 March 1973 ("the Lease"). The Lease was in tripartite form, with a lessee-owned company (Number 37 Surrey Road Bournemouth Limited) responsible for the provision of services and collection of service charges.

4. The Respondent is the registered proprietor of the Lease, and the Applicant is the freehold owner of the building. The Lease plan shows 14 rectangular parking spaces and two garages at basement level. Parking space 2 is allocated to the Flat.

5. By an application dated 25 May 2025, the Applicant sought a determination that the Respondent was in breach of clause 3(c) and para 8 of Sch.5 to the Lease in relation to the parking space. Directions were given on 13 August and 8 September 2025. A hearing took place on 4 December 2025, where the Applicant was represented by Mr Andrew Gibbs-Ripley (solicitor advocate) and the Respondent appeared in person. Both relied on detailed skeleton arguments, and the Tribunal is grateful to both for their helpful submissions.

The Lease terms

6. The material terms of the Lease appear in Appx. A. But in essence:
    a. By clause 3(c), the lessee covenanted not to make any structural alterations or structural additions to the demised premises … without the previous consent in writing of the Lessor.
    b. By para (8) of Sch.5, it was also provided that "The garage forming part of the demised premises shall not be used for any purpose whatsoever other than as a garage for a private motor car or other private vehicle or vehicles belonging to or used by the Lessee".

7. The meaning of the Lease terms falls to be interpreted according to the well-known principles of interpretation helpfully summarised by Lord Neuberger in *Arnold v Britton* [2015] UKSC 36, [2015] AC 1619 §15-23. Suffice it to say that there was little (if any) difference between the parties on the meaning of the Lease. But it is material that at the lease date, the car parking spaces had not yet been laid out. So much was common ground. It was therefore not particularly surprising that the Lease described Flat 7's parking as a "garage" with a "garage door" - when it was eventually constructed without any "garage door". The words

of the covenants must be read in the light of this lack of certainty about the physical layout of the basement parking.

CALRA 2002

8. The material provisions of the 2002 Act are as follows:

> **"168 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
> (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.
> ...
> (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."

9. The Tribunal's jurisdiction is limited to the question whether the Respondent is in breach. For example, issues such as waiver of the right to forfeit are outside the Tribunal's remit. By contrast, waiver of covenant, in the sense of estoppel, is within the Tribunal's jurisdiction: *Swanston Grange (Luton) Management Ltd v Langley-Essen* [2008] L. & T.R. 20. The Tribunal is also encouraged to make findings of fact which may be relevant to a court in any possession hearing.

Facts and evidence

10. Although there was a witness statement from Mr Timothy Denslow and some cross-examination at the hearing, the basic facts are not really in dispute.

11. The Lease plans show the block was built on a site which slopes downwards from south (front) to north (rear). Most of the basement is below ground level, but an additional area has been excavated to allow level access to the basement car parking area. Just by this entrance there are two external garages with conventional 'up and over' and 'roller' garage doors. Inside the basement car parking area are some 14 parking spaces, each with concrete slab floors and ceilings. Two spaces (numbered 12/13 and 8/9 on the Lease plan) are in double bays, which results in spaces which are considerably narrower than the rest. The remaining 10 spaces are in individual bays, with the rear and sides of each bay formed by the basement walls or brick/masonry partitions. In some cases, the partition walls incorporate structural columns supporting the ceiling of the basement. The Flat 7 parking space is (confusingly) marked as no.2 on the Lease plans. The plans show the space with two brick/masonry side walls, one of which incorporates a structural column, but they do not show any garage door.

12. There is photographic evidence that from time to time, several lessees used their parking spaces either partly or wholly for storage in various ways. There are photographs showing one of the four "double" spaces in the basement with furniture, suitcases, shelves and cupboards and no space left for a car. The same photograph shows the adjacent space with a parked car, but goods and furniture along the left-hand side and at the rear end. A photograph of the other double unit shows a car with some cupboards with goods piled against the rear wall, next to a space with purpose-built fitted cupboards and bicycles, leaving sufficient space for a small car. The Tribunal was told the parking space for Flat 8 was particularly long and narrow, and that the owner had built a "partition wall" at one end leaving enough space for a car to be parked, and it may well be this is the last of the photographs referred to above.

13. In any event, there is no dispute that in 2011, the Respondent's husband constructed a wooden partition and door across the front end of the Flat 7 parking space. They were built between the open end of the side walls, effectively sealing the whole space. The partition was built of plywood and fixed to a lightweight timber frame. There was a minor dispute about how the frame was fixed to the basement walls and ceiling, but (insofar as it is relevant), the Tribunal finds it was fixed to the soffit, floor and the righthand side wall with metal screws or fixings. The door was formed by a smaller plywood panel mounted on hinges attached to the left-hand side wall. The door was secured to the plywood partition with a hasp, chain and padlock. The partition and door were of lightweight construction and could be dismantled by releasing the screws or fixings in a matter of minutes. But until this was done, it was impossible to use the space for parking a car or similar vehicle.

14. The Respondent produced an email from the Applicant's managing agents dated 18 February 2011. This stated that:

> "Further to our recent correspondence I have now received instructions from the Directors They advise as follows:
>
> ...
>
> 2 A partition may be built in the garage, provided sufficient space be left for a car, and the partition being demountable, as is the case with Flat 8 garage.
>
> ...
>
> 4 The garage forms part of the demised premises and cannot be assigned or underlet separately. If however an informal arrangement is made with another resident in the block there would be no objection.".

15. It is also common ground that the Applicant raised no objection to the partition in the Flat 7 parking space between 2011 and 2023, and that during this time the Applicant accepted ground rent and service charges. However, on 2 February 2023, the agents wrote to all the lessees (including the Respondent) as follows:

> "Firstly, with regards to the garages, we would remind lessees that under the terms of the lease lessees are not to make any structural alterations or structural additions to the demised premises, nor to erect any new buildings thereon or remove any of the lessors fixtures, without previous consent in writing of the lessor. In addition to this, the garage forming part of demised premises should not be used for any purpose whatsoever other

than as a garage for a private motor car or other private vehicle or vehicles belonging to or used by the lessee."

16. In a letter to the respondent dated 18 January 2023, the agents specifically required her to remove the partition
    "The Company therefore has no alternative but to insist that you remove the partition that you have erected and that you use the garage for the purposes defined in the Lease only and for no other purpose".

17. Finally, during the course of his evidence, Mr Denslow was asked what the Respondent's main objection really was. He explained it was the "closing off" of the space. Storage was fine, but "it should always be possible to fit a car in there". The objection was really to the position of the partition. By contrast, the Flat 8 partition was only 1m back from the rear wall.

The Applicant's case

18. The Applicant argued the starting point was the clauses referred to in paragraph 7 & 8 above. The Respondent had not denied using the garage space in the manner alleged. Giving the identified terms their ordinary and natural meaning, it is apparent that the Respondent has acted in breach of that term It was both a breach of clause 3(c) of the Lease and a breach of para (8) of Sch.5 to the Lease.

19. The main relevant authority was *Duval v 11-13 Randolph Crescent Ltd* [2020] UKSC 18. In that case, the Supreme Court held that a term had to be implied into a lease to the effect that the landlord promised not to put it out of its power to enforce the relevant clause in that lease by licensing what would otherwise have been a breach of it. In other words, a landlord could not contract out of a breach of a lease. The main thrust of the Respondent's case appears to be that she had prior consent. But taking the Lease as a whole, there are other express terms that need to be read in conjunction with those already highlighted above. Clause 6(b) is a covenant from the Lessor that confirms:
    "That the Lessor will require every person to whom it shall hereafter grant a Lease of any flat and/or garage comprised in No.37 Surrey Road to covenant to observe the regulations set forth in the First Schedule hereto and become a member of the Company."
    This has a similar function to the "enforcer" covenant in *Duval*. When read in conjunction with clause 6(b), it is clear the Lessor has a positive obligation to contract with each and every lessee to observe Sch.1. In other words, the Lessor is duty bound under the terms of the Lease to ensure that Sch.1 is adhered to. Applying *Duval*, the Applicant cannot legally grant consent to use the garage for any other purpose than that which is stated in Sch.1, as to do so would mean that it would not only be sanctioning a breach of para (8), but also putting it at odds with its own clause 6(b) duty to enforce the lease terms.

20. The Applicant dealt with the meaning of "other private vehicle" in para (8). The provision should be interpreted *ejusdem generis* the words "private motor car". Moreover, it was a "car shaped space", and the Lease contemplated use for a car or similar vehicle. The partition and door plainly prevented any use for a vehicle similar to a car.

The Respondent's case

21. The Respondent's primary case in relation to clause 3(c) was that the demountable partition was not a "structural" alteration or addition. No evidence had been produced showing the partition formed part of the building structure or affects its integrity.

22. The Respondent's secondary case was that written consent was granted on 18 February 2011 expressly authorising the installation. Consent, once granted, remained operative unless lawfully revoked. No revocation exists. The Directors had authority under para 19 of Sch.1 to regulate the internal layout and use of thew Building and nothing prevented consent being given for a non-structural internal partition.

23. The Respondent further argued that for thirteen years the Applicant treated the lease as continuing, collected service charges, carried out inspections and AGMs, and raised no objection. The Applicant cannot approbate and reprobate by accepting the benefits of the lease while repudiating its own consent. The doctrines of estoppel, waiver and acquiescence reinforce that the Applicant elected for over a decade to treat the partition as authorised.

24. As to para 8 of Sch.1, this requires use of the garage for a private motor car or private vehicle; it did not prohibit incidental storage, internal dividers or personal items. The partitioned space remained capable of accommodating an "other private vehicle or vehicles belonging to or used by the Lessee" and there was therefore no breach.

The Tribunal's determination

25. The Tribunal is required to determine the question of whether there has been a breach of covenant on the civil standard of proof.

Clause 3(c): structural alteration or addition

26. In assessing any breach of clause 3(c), the first question is whether the partition and door were "structural alterations" or "structural additions" to the parking space demised by the Flat 7 Lease. If the answer to both these questions is "no", the questions of written consent and any equitable answers to the alleged breaches do not arise.

27. In understanding what was meant, one of course bears in mind that factual matrix at the date of the Lease. As explained, the precise layout of the basement was not 100% certain at the date of the Lease. But it was at least known there was a concrete screed, brick or masonry partitions and structural columns.

28. A useful starting point in relation to the word "structure" is the well-known passage in *Irvine's Estate v Moran* [1991] 1 E.G.L.R. 261, which has been described as a 'good working definition':

> "I have come to the view that the structure of the dwellinghouse consists of those elements of the overall dwelling house which give it its

> essential appearance, stability and shape. The expression does not extend to the many and various ways in which the dwellinghouse will be fitted out, equipped, decorated and generally made to be habitable. I am not persuaded by [counsel for the landlord] that one should limit the expression 'the structure of the dwellinghouse' to those aspects of the dwellinghouse which are load bearing in the sense that that sort of expression is used by professional consulting engineers and the like; but what I do feel is, as regards the words 'structure of the dwellinghouse', that in order to be part of the structure of the dwellinghouse a particular element must be a material or significant element in the overall construction. To some extent, in every case there will be a degree of fact to be gone into to decide whether or not something is or is not part of the structure of the dwellinghouse. It is not easy to think of an overall explanation of the meaning of those words which will be applicable in every case and I deliberately decline to attempt such a definition. I am content for the purposes of this case to say that I accept [counsel's] submission that 'structure of the dwellinghouse' has a more limited meaning than the overall building itself and that it is addressed to those essential elements of the dwellinghouse which are material to its overall construction."

29. In this particular Lease, the word "structure" appears in clause 7(a), which is a covenant to maintain the "foundations main walls girders structure and roof". It also appears in clause 3(h) in a different context. Clause 3(j) requires the lessee to yield up the demised premises at the end of the term together with "all additions thereto".

30. The Tribunal considers the focus of clause 3(c) is the nature of partition and door themselves. And the Tribunal has no hesitation at all in finding they were neither structural alterations nor structural additions. They were lightweight plywood constructions and were easily dismountable. If they were unscrewed from the walls ceiling and floor, they would immediately lose any form and function. The partition and door are not a material or significant element in the overall construction of Flat 7 or the parking space, let alone a significant element in the overall construction of the Building. They have no load bearing features, and the Flat, parking space and Building would all function perfectly well for the intended purposes without them. It should also be noted that the basement parking area has non-structural partitions marked on the lease plan, all of which are of masonry or brick. It is much more likely the draftsman intended to refer to these kinds of structural alterations or structural additions rather than plywood constructions when drafting the Lease provisions.

31. It follows the Tribunal agrees with the Respondent that the partition and doors are not "structural", and that there has therefore been no breach of clause 3(c). It also follows it is unnecessary to consider the Applicant's *Duval* arguments. If consent was not needed for the works, it matters not whether the Applicant had the power to give that consent.

Para 8 of Sch.1: user

32. There is no dispute that the garage forming part of the demised premises has not been used for the purpose of a garage for a private motor car since 2011. The plywood door is simply too narrow to admit even the smallest motor car which was in general use at the date of the Lease.

33. In his submissions, the Respondent suggested that bicycles might fall within the words "other private vehicle or vehicles belonging to or used by the Lessee". There was no formal evidence that bicycles were stored in the space, but the Tribunal in any event does not consider a bicycle would be an "other private vehicle". The Tribunal agrees with the Applicant. The nature of the "vehicles" are assessed *ejusdem generis* the preceding words "private motor car". And as the Applicant put it, this was a "car shaped" parking space in a garage area adapted for motor vehicles.

34. User is expressed to be solely for garaging the lessee's private motor car or other private vehicle. The Respondent is *prima facie* in breach of this requirement.

35. The Respondent has raised several arguments relating to the consent given and equitable defences. As to the consent, para 8 of Sch.1 is an absolute user covenant, and it is not qualified in the same way as clause 1(3). But in any event, the email of 2011 did not purport to license use for anything other than garaging vehicles. The email expressly stated that "sufficient space [must] be left for a car". Again, there is no need to consider the *Duval* arguments, because no license was given.

36. Another perhaps obvious issue is outside the Tribunal's jurisdiction. The Respondent pointed to the receipt of rent and service charges since 2011, with full knowledge that the parking space was not being used for a permitted purpose. There is a perhaps obvious argument in any County Court forfeiture proceedings that the Applicant has waived its right to forfeit the Lease. But that is not a matter for the Tribunal in s.168(4) proceedings.

37. The Respondent's skeleton argument also referred to acquiescence, variation in practice or estoppel. It is of course possible to waive a covenant, but the requirements are strict. The editors of *Woodfall* summarise the position at 11.43.3 as follows:

> "It must not be supposed that mere passive acquiescence in one breach of covenant is a waiver for all future time of the right to complain of any other breach. The question, which has to be decided upon the facts of each case, is whether the conduct or omissions of the plaintiff have put him in such an altered relation to the covenantor as, makes it manifestly unjust for the court to grant him the relief he asks for. The question is not whether breaches have been overlooked in individual cases, but whether those omissions can be said to amount to a representation that the covenants are no longer enforceable. Where a covenant in a lease contained a covenant preventing the erection of buildings other than single storey villas, but high rise blocks had been erected on parts of the land over a period of over 45 years, it was held that the whole of the covenant had been abandoned, and could not be enforced by the landlord so as to prevent the

> erection of further high rise blocks. Likewise where a landlord granted the tenant consent to install wooden floors and underfloor heating in a flat there was a waiver of a covenant to keep the floors covered with carpets."

The requirements are therefore onerous.

38. The Respondent (who the Tribunal again reminds itself acted in person throughout) did not really develop the estoppel or waiver arguments any further. But given the qualified nature of the 2011 license, which made it abundantly clear the space had to be capable of use for garaging a car, it is hard to see how it is unfair for the Applicant to complain about breaches. The fact remains that the Respondent built his partition across the parking space in clear breach of the permission given in 2011. The user covenant at para 8 of Sch.1 was not breached.

Rule 17(1)(b)

39. At the start of the hearing, the Respondent applied for an order under r.17(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that her name and the Flat address should not be included in the published decision of the Tribunal. She explained she valued her privacy and had no presence online, such as Facebook. The public would have access to the decision and that was sufficient: there was no legitimate public interest in seeing her name and the Flat's address as well. In particular, no other residents were aware of the case. However, when asked by the Tribunal, the Respondent accepted there was no specific physical threat to her, such as a stalker. But she feared some people might be unreasonable.

40. The Applicant relied on the presumption of open justice and opposed the application on the ground that there was no specific threat to threat to the Respondent.

41. The Tribunal indicated at the start of the hearing that it would not make any order under r.17(1)(b). Its reasons are essentially based on the principles of open justice summarised by the Court of Appeal in *R (on the application of Guardian News and Media Ltd) v City of Westminster Magistrates Court* [2012] EWCA Civ 420 §1-4. Open justice is a constitutional principle which has been recognised by the common law since the fall of the Stuart dynasty, and it is not only the individual judge who is open to scrutiny, but the process of justice itself. Rule 17(1)(b) is a derogation from that principle, but it must be exercised in accordance with the same common law rule. In this case, the only argument put forward was publication of the Respondent's name and the Flat address would interfere with her privacy. But that is an objection that can be made in every case before the courts. There is no suggestion of any additional threat, whether physical or otherwise, and that is the mischief addressed by r.17(1)(b).

LTA 1985 s.20C

42. There are applications under s.20C Landlord and Tenant 1985 and under paragraph 5A of Sch.11 to the Commonhold and Leasehold Reform Act 2002 dated

14 October 2025. The principles applicable to both are similar and summarised in *Conway v Jam Factory* [2013] UKUT 0592 (LC) at [51] to [58].

43. In this instance, the starting point is that the Applicant is contractually entitled to add its costs to the service charges or recover them from the Respondent by way of administration charges. But it has only succeeded on one of two issues. Moreover, its main concern, expressed by one of its Directors, was to deal with the partition, rather than storage use. The Tribunal considers it just and equitable to make an order in relation to 50% of the Applicant's costs under both provisions.

Conclusions

44. The Tribunal determines under s.168 of the 2002 Act that the Respondent has since 2011 breached para (8) of Sch.5 to the Lease of the Flat dated 1 August 1973. There has been no breach of clause 3(c) of the Lease.

45. Under s.20C of the 1985 Act, 50% of the Applicant's costs incurred in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the service charges payable by the Respondent.

46. Under para 5A of Sch.11 to the 2002 Act, the Respondent's liability to pay administration in respect of the Applicant's Tribunal litigation costs are to be reduced by 50%.

APPENDIX A: LESSEE'S COVENANTS

3. THE LESSEE hereby COVENANTS with the Lessor and the Company follows:-

...

(c) Not to make any structural alterations or structural additions to the demised premises nor to erect any new buildings thereon or remove any of the Lessor's fixtures without the previous consent in writing of the Lessor

5. THE LESSEE to the intent and so as to bind the owner of the demised premises into whosoever hands the same may come and to benefit and protect the remain-der of No. 37 Surrey Road and every part thereof hereby COVENANTS with the Lessor the Company and with the other lessees for the time being of No. 37 Surrey Road that the Lessee and the persons deriving title under him will at all times hereafter observe the regulations set forth in the First Schedule hereto ...

THE FIRST SCHEDULE above referred to

Restrictions and Management Regulations applicable to all Flats and Garages

...

8. The garage forming part of the demised premises shall not be used for any purpose whatsoever other than as a garage for a private motor car or other private vehicle or vehicles belonging to or used by the Lessee

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

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.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX: SCHEDULE 1 TO THE LEASE

THE FIRST SCHEDULE
THE DEMISED PREMISES

1. The premises specified in the Particulars as shown for identification purposes edged red on the Plan A annexed hereto and forming part of the Building including:
(a) The internal plastered or plaster board coverings and plasterwork of the walls bounding the premises and the doors and door frames and window frames fitted in such walls (other than the external surfaces of such doors door frames and window frames) and any glass fitted in such doors and window frames and
(b) The plastered or plaster board coverings and plaster work of the walls and partitions lying within the premises and the entirety of any non- supporting walls and partitions and the doors and door frames fitted in such walls and partitions and
(c) The plastered or plaster board coverings and plaster work of the ceilings and the surfaces of the floors including the whole of the floorboards (if any) and
(d) All conducting media which are laid in any part of the Building and serve exclusively the premises (excluding any such deemed to be property of the relevant statutory undertaker)
(c) All fixtures and fittings in or about the Demised Premises and not hereafter expressly excluded from this demise

But not including:
(i) any part or parts of the Building (other than any conducting media expressly included in this demise) lying above the said ceilings or below the said floor surfaces
(ii) any of the main walls roofs foundations timbers beams and joists of the Building or any of the supporting walls or partitions therein (whether internal or external) except such of the plastered and plaster board surfaces thereof and the doors and door frames fitted therein as are expressly included in this demise
(iii) any conducting media in the Building which do not serve the Demised Premises exclusively