



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)**

Tribunal case reference	:	CAM/22UG/LBC/2023/0013
Property	:	8 St Edmunds Court, Harwich Road, Colchester CO4 3BT
Applicant	:	Link Holdings (Gibraltar) Limited
Representative	:	Altermans Solicitors Limited
Respondent	:	Lexden Property Investments 1 Limited
Type of application	:	Determination of breach of covenant (section 168(4) of the Commonhold and Leasehold Reform Act 2002)
Tribunal members	:	Judge M. Hunt Dr J. Wilcox FRICS
Date of inspection	:	10 February 2026
Date of hearing	:	10 February 2026 (remote hearing)
Appearances at hearing	:	Mr S. Madge-Wyld (for the Applicant) Mr M. Brittain (for the Respondent)
Date of decision	:	12 February 2026

DECISION

1. Breaches of the covenants contained in the following clauses have occurred.
 - a. 3(7);
 - b. 4(8), to the extent that alterations to the plan of the Property have been made, which do not affect its structural integrity; and
 - c. 4(9), to the extent the Property has been occupied by people not forming a single family.
2. The applications under sections 20C of the Landlord and Tenant 1985 and paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 are dismissed.

REASONS

Introduction

1. 8 St Edmunds Court, Harwich Road, Colchester CO4 3BT (the “Property”) is a maisonette occupying the first and second floors of part of a larger building comprising several other flats and maisonettes (the “Building”). The Applicant is the freeholder of the Building and has been since 2007. The Respondent is the leaseholder of the Property and has been since 2022.
2. The lease that details the parties’ agreement and obligations was executed on 26 September 1972 (the “Lease”). It contains several covenants. The Applicant contends that several of these covenants have been breached and seeks a determination to that effect in accordance with s.168(4) Commonhold and Leasehold Reform Act 2002. The nature of the alleged breaches was recorded in an application notice dated 3 December 2023.
3. The Respondent had initially disputed the breaches. It also made applications under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 to be excused from any liability to contribute towards the Applicant’s costs of the proceedings. Upon the Tribunal and the Respondent’s barrister attending an inspection of the Property, alongside a representative of the Applicant, it became clear that maintaining the dispute in relation to some of the alleged breaches was untenable. Accordingly, those matters were conceded and the applications relating to costs were not pursued. Other allegations of breach remained for the Tribunal to determine.

4. In determining the application, the Tribunal considered a 63-page file presented by the Applicant and a 16-page file presented by the Respondent, each continuing a written witness statement. It also took account of its own observations from the inspection of the Property and heard submissions from the parties. It is grateful to all for their attendance and assistance. When findings of fact had to be made, they were made on the balance of probabilities in light of all of the available evidence.

Relevant law

5. Section 168(4) of the Commonhold and Leasehold Reform Act 2002 provides as follows.

“168. No forfeiture notice before determination of breach

...

(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.”

6. Where a breach of covenant is not admitted, obtaining such a determination is a necessary prerequisite to pursuing steps towards a potential forfeiture of the lease.
7. General contractual law principles apply to the interpretation of a lease when considering whether a breach of covenant has occurred.

The Lease

8. So far as relevant to the application as originally brought, the Lease contains the following covenants.
9. At clause 3(5):

“Not to make any structural alterations or structural additions to the demised premises or to erect any new buildings thereon or to remove the Landlord’s fixtures (if any) without the previous consent in writing of the Landlord”.
10. At clause 3(7):

“Not at any time to assign underlet or part with the possession of part only of the demised premises”.
11. At clause 4(1):

“To keep the demised premises and all walls party walls cisterns sewers drains pipes cables wires and ducts and appurtenances thereto belonging in good and tenantable repair and condition and so as to support shelter and protect the other parts of the Block”.

12. At clause 4(8):

“... not (without first obtaining such licence and paying such fees aforesaid) to make any other alteration in the plan or elevation of the demised premises or in any of the party walls or the principal or load bearing walls or timbers of the demised premises or the Building”.

13. At clause 4(9):

“Not to carry on or suffer to be carried on in or upon the demises any trade manufacture or business of any description but to keep and use the demised premises as to the maisonette/the flat as a single private dwelling for the occupation of one family only and for no other purpose whatsoever ...”.

14. At clause 4(10):

“Not to do or permit any act or thing on the demised premises ... which shall or may be or become a nuisance damage annoyance or inconvenience to the Landlord or any of its tenants or any tenant or occupier of any of the Block ...”.

15. At clause 4(15):

“To observe and perform the restrictions and stipulations in the Fourth Schedule hereto [which include the following:]

- 1. Not to use the demised premises or any part thereof for the purposes of any business (including and business as defined by the Landlord and Tenant Act 1954 Part II) and not to erect or allow to be erected on or affixed to the Building or any other part of the Estate any advertisement or hoarding of any kind;*
- 6. Not to permit any water or liquid to soak through the walls and floors and in the event of such happening he will ... immediately rectify and make good all damage and injury to the premises so affected”.*

16. In the Applicant’s skeleton argument provided in advance of the hearing, and as the Applicant confirmed at the hearing, determinations were only being sought in respect of alleged breaches of the covenants contained in clauses 3(5), 3(7), 4(8), 4(9) and 4(10).

The issues

17. The sole issue for the Tribunal to determine was whether the alleged breaches of covenant had occurred.

The facts

18. The Property is accessed from a ground-floor entrance that leads to a staircase ascending immediately to a small landing on the first floor. The landing serves a bathroom, the kitchen and a bedroom (which the Tribunal was informed had initially been a lounge). The kitchen showed signs of use by separate households. The bedroom was lockable from the outside with an electronic handle. The occupier was present at the Property during the Tribunal's inspection. The room contained an ensuite bathroom with toilet, basin and shower, enclosed within walls with a door. A ventilation duct had been boxed in leading from the bathroom to the rear wall of the Building. The landing contained a largely boxed-in duct, which appeared to be a waste pipe serving the upstairs rooms.
19. A further flight of steps led from the first-floor landing to a small second-floor landing. Three bedrooms are situated off the landing. The occupant of one of the rooms was also in attendance at the inspection. Her room also contained an ensuite bathroom of similar nature to the downstairs bedroom, with a boxed-in ventilation duct heading to the rear wall of the Building. One of the bedrooms was locked and inaccessible. The third was unlocked and also contained an ensuite bathroom of similar nature to the others. A ventilation duct was boxed in, but this time directed towards the front of the Building.
20. All of the bedrooms had doors lockable from the outside. Each door had a number on the front; doors were numbered from 1 to 4. The occupants present during the inspection did not appear to be related and when questioned did not know the full names of the absent occupiers.
21. The Tribunal had been presented with a plan of the Property dating from the date the Respondent purchased the Lease. It showed the rooms, but none of the ensuite bathrooms. It showed the fixings in the downstairs bathroom (bath, basin and toilet). It showed that, where one of the ensuite bathrooms on the second floor was situated, formerly there had been a cupboard. The shower in that ensuite bathroom was accessed via an opening in the wall that corresponded to where the cupboard door would initially have been situated.
22. The Tribunal had no hesitation in finding that the layout of the Property had been altered by the Respondent, without the Applicant's consent, including the installation of new water and waste pipes and ducting for ventilation.

23. The Tribunal did not undertake any invasive survey of the Property, so was unsure of the precise layout of the pipework or ducts. It noted that the pipework was only apparent in limited areas. It inspected the exterior of the Property and noted that no ventilation outlets had been drilled where it would have expected them to have been located at the end of the ventilation ducts it had seen inside the Property. No obvious corresponding vents were visible anywhere around the Property, although the Tribunal had no access to the roof or good view of it. Google Maps' satellite view provided little assistance, apart from showing that some vents or flues were present, although nothing to suggest any had been installed by the Respondent.
24. The Tribunal was not undertaking a building survey so could not establish whether the works complied with current building regulations. It suspected they did not.
25. The Tribunal was satisfied that the layout, kitchen arrangement and identity of the occupants indicated that the Property was being let to people that did not form a single family.

Conclusions

26. As indicated above, the Respondent conceded that it had breached some of the covenants as alleged. It was clearly right to have done so.
27. Firstly, it was abundantly clear that the plan of the Property had been significantly altered by the installation of at least three ensuite bathrooms, and related pipes and ducting. Accordingly, the Respondent accepted (as did the Tribunal) that there had been a breach of clause 4(8) of the Lease since at least November 2023. There was insufficient evidence to establish whether the works had involved any alteration to the party or principal or load-bearing walls or timbers, however. It may well have been the case, especially so far as the timbers were concerned, that certain holes had been drilled to allow for the passage of pipes or ducts. However, this had not been proven.
28. Secondly, it was equally clear that the Property had been underlet in parts, notably in respect of individual rooms, to people who did not form one family. The Respondent also conceded breaches of clauses 3(7) and 4(9) of the Lease had occurred on this basis and the Tribunal found it was right to have done so. The duration of these breaches could not clearly be ascertained, but they were proven to have taken place at least on 6 November 2023 and as at the date of inspection – 10 February 2026. The Applicant did not invite the Tribunal to make any determinations beyond this.

29. The Respondent did not concede other matters, so the Tribunal made the following determinations.

Clause 3(5)

30. The Applicant submitted that the layout changes referenced above amounted not only to a breach of clause 4(8) but also of clause 3(5). Reference was made to the decision in *BMR Bagshot Ltd v Dorchester Mansions (1997) Limited* [2021] EWHC 2951 (Ch) in which a significant internal re-organisation was considered a “structural alteration” for the purposes of the lease in question, despite it not having had any effect on the external structure of the flat or building. The Tribunal read the decision but noted that it is important to consider each given lease in its own context.

31. In the Lease in this case, there are two distinct covenants and clauses that potentially address the works undertaken. Considering the natural meaning of this Lease, in its own context, the Tribunal concluded that the two clauses quite clearly addressed different matters. Clause 4(8) requires the Respondent not to “*make any alteration affecting the elevation structure or stability of the demised premises or the Building nor (without first obtaining the licence in writing of the Landlord ...) ... to make any other alterations in the plan ...*”. Arguably the first part of the clause is analogous to clause 3(5). Of most importance, it makes a distinction between works that affect the structure or stability of the Property or Building with works that alter the plan of the Property. The latter part of the clause refers nowhere to “structural” alterations, whilst clearly envisaging some alterations to the Property’s layout. In the Tribunal’s view, the natural meaning of the clause was therefore that the parties envisaged two sorts of alterations, some that alter the structural integrity of the Property or Building, others that alter the internal layout but without posing any structural risks. The latter specifically address potential alterations to structural parts of the Building such as load-bearing walls, so long as they do not affect the structural integrity of the Building. An example may be piercing the external walls for the installation of vents. Unless very poorly placed or effected, such work would be better described as an alteration to the principal or load-bearing walls, but not one affecting the structural integrity of the Building. Unless authorised, the work would still amount to a breach of covenant, but only of the covenant contained in the latter part of clause 4(8) rather than that contained in clause 3(5).

32. In this case, the Tribunal was satisfied that the works undertaken were proven to amount to a breach of clause 4(8). However, it had not been proven that they affected the structure of the Building, as interpreted for the purposes of this Lease, such that clause 3(5) had also been breached.

Clause 4(10)

33. This matter was not pursued vigorously at the hearing as the Applicant recognised that there was little evidence that the works undertaken at the Property had caused any real nuisance, annoyance or inconvenience. Allegedly the occupier of the ground-floor flat may have experienced some ingress of water or soil at some point during the works. However, the Tribunal had very little good evidence of the extent, duration or cause of any such incident(s) and found the Applicant had been well-advised in the circumstances not to dwell on this alleged breach. The Tribunal was not satisfied it had been proven. Similarly, to the extent the argument raised in the application was being pursued at all, there was no good evidence that the use of the Property, as sub-let to unrelated individuals, had caused any nuisance, annoyance or inconvenience. Accordingly, the Tribunal was not satisfied that any breach of the covenant contained in this clause had occurred.

Judge M. Hunt

12 February 2026