



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

Case Reference	: HAV/43UE/LBC/2025/0618
Property	: Lower Minnickfold Place, Anstie Lane, Dorking, Surrey RH5 4LP
Applicant	: Gary Puckett
Representative	: N/A
Respondents	: Eliot Morton Jodechi Morton
Representative	: Mr M Withers (counsel)
Interested Party	: Susannah Puckett
Type of Application	: Application for an order that a breach of covenant or a condition in the lease has occurred – Section 168(4) of the Commonhold and Leasehold Reform Act 2002
Tribunal Member(s)	: Judge R Cooper Mr B Bourne MRICS Ms T Wong
Date and venue of hearing	: 12 May 2026, Havant Justice Centre
Date of decision	: 1 September 2026

DECISION

Summary decision: The Tribunal determines that for the purposes of section 168(4) of the Commonhold and Leasehold Reform Act 2002 none of the alleged breaches of covenant are made out.

Background to the Application

1. This application relates to part of a large Victorian country house situated on Anstie Lane, Dorking, Surrey RH5 4LP ('the Building').
2. The Building was divided on an unknown date into three parts - Minnickfold Place (which comprises the south-west wing of the Building), Upper Minnickfold Place (a first floor flat at north-east end of the Building) and Lower Minnickfold Place (a ground floor flat situated under Upper Minnickfold Place). The large gardens surrounding the House are divided between the three properties. There are separate garages in a block.
3. Mr Puckett ('the Applicant') is the freehold owner (or one of the freehold owners) of the part of the Building comprising Upper Minnickfold Place and Lower Minnickfold Place. In this decision, this freehold property will be referred to as 'the House'.
4. The Tribunal has not been provided with documentation sufficient to determine the exact nature of Mr Puckett's leasehold interest and whether it and/or the freehold are jointly owned with Susannah Puckett, but such a determination was not necessary in relation to this application. Susannah Puckett has been joined to these proceedings as an 'interested party' although she has taken no part in them.
5. The Applicant resides in Upper Minnickfold Place ('the Upstairs Flat') with his family and it is understood he owns a leasehold interest.
6. Mr and Mrs Morton ('the Respondents') are the leasehold owners and reside in Lower Minnickfold Place. That property comprises a three-bedroom ground floor flat together with a garden, patio area and garage and other appurtenances demised with it ('the Property').
7. On 16 June 2025, the Tribunal received an application from the Applicant seeking a determination under s168(4) of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') that the Respondents have breached the terms of their lease.
8. On 28 July 2025 the Respondents applied to strike out that application on the grounds that the alleged breaches had already been determined by the previous Tribunal.
9. A case management hearing took place on 1 October 2025 to ascertain whether a negotiated settlement could be achieved. The Tribunal considered the Respondents' strike-out application and refused it. The parties agreed to mediation but in the event the attempted mediation failed to resolve the dispute.

10. On 6 October 2025 the Respondents issued an application for the appointment of a manager and applied on 22 December 2025 for the two applications to be dealt with together [29].
11. In a decision dated 24 February 2026 Judge Dobson refused to admit the application for the appointment of a manager on the basis of the Respondents' failure to serve the appropriate notice under s22 of the Landlord and Tenant Act 1987 on the freeholder before making the application, which, he found, should not be waived [32].
12. Directions were also issued to the parties on 24 February 2025 by Judge Dobson in relation to this application. Both parties have complied with the directions, but two further applications were made by the Respondents on 10 and 20 April 2026 (see below).
13. Directions were given by Regional Surveyor Clist on 27 April 2026 for those applications to be dealt with as a preliminary issue at the final hearing.
14. No inspection of the Property took place. Neither party requested it, and it was not considered necessary for a fair decision to be made by the Tribunal.

The issues for the Tribunal

15. The Applicant seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that the Respondents are in breach of various covenants in their lease.
16. A determination by the Tribunal under section 168(4) of the 2002 Act is one of the requirements before a notice under section 146 of the Law of Property Act 1925 ('a section 146 notice') can be served. A section 146 notice is the first step in the process of forfeiting the Respondents' lease (s168(1)).
17. It is for the Applicant to demonstrate on the balance of probabilities that the Respondents have breached the terms of their lease in the way alleged or have admitted the breach.
18. If a breach of the lease is found, the Tribunal may go on to consider whether any breach had been waived by the Applicant (*Stemp v 6 Ladbroke Gardens Management Ltd* [2018] UKUT 375 (LC)).

The Documents

19. The Tribunal had documents in a PDF bundle prepared by the Applicant comprising 469 pages. In addition, the Tribunal had Mr Withers' skeleton argument (submitted by email on 8 May 2026), and a supplementary bundle of documents (15 pages) sent by the Applicants by email on 11 May 2026. In addition, as the Applicant had only reproduced part of the Tribunal's determination in CHI/43UE/LBC/2023/0024 in the bundle, it

had considered in advance of the hearing the full decision in relation to alleged breaches of covenant on the part of the Respondents.

20. Where documents are referred to, they are referenced by the page number on the document '[]' in the main bundle, and '[B:]' from the supplementary bundle.

The hearing

21. Mr Puckett attended and represented himself. No witnesses were called by the Applicant.
22. The Respondents, Mr and Mrs Morton attended. They were represented by Mr Withers. No witnesses were called by the Respondents.

The preliminary issues

23. The Tribunal heard submissions from both Mr Withers and Mr Puckett on the various preliminary applications which Tribunal considered together with the overriding objective before reaching its decision. It made its decisions for the following reasons.
24. In their application of 10 April 2026 [43], the Respondents sought permission of the Tribunal to rely on the evidence of Mr Patrick Moyle BSC MRICS (23 September 2025) [202], Milborrow Chimney Sweeps (23 July 2025) [267] and RJ Acoustics (17 December 2017). Having heard submissions from the parties, the Tribunal decided that the reports could be relied on by the Respondents. Although the Applicant had objected, he had included all three reports in the bundle prepared by him for the hearing, he was aware of their contents, and the contents of the reports were relevant to the issues the Tribunal needed to determine. The Tribunal was also satisfied that Mr Puckett had previously been sent the Moyle and Milborrow reports by email on 27 November 2025 [274] and the contents were, therefore, known to him for a considerable period.
25. In their application of 20 April 2026 [46], the Respondents asked the Tribunal to strike out the Applicant's 'concise reply' on grounds that it was not concise and had introduced additional evidence in breach of the directions. The Tribunal refused the application. Mr Withers confirmed that he was ready and able to deal with the matters contained in the reply, directions had been given to the Applicant to respond to the Respondents' evidence, and although a 'concise' reply had been directed, there was no page limit specified. He was entitled to respond to matters raised by the Respondents.
26. The Tribunal refused Mr Withers' application for the scope of the Applicant's case to be limited to that contained in the original application, rather than the widened scope in his statement (which included additional alleged alterations in the flat which the Applicant said had been undertaken without consent). Directions had been given to the Applicant to set out in his witness statement details of the breaches alleged and he

had done so. The Tribunal agreed with the Applicant that the application is a summary of the issues. Mr Withers confirmed that he was able to deal with the allegations, and evidence had been filed by the Respondents in relation to the widened scope.

27. The Tribunal permitted the supplementary bundle provided by the Respondent to be admitted in evidence. Whilst not strictly relevant to the issues the Tribunal needed to deal with as it included historic evidence, it was served to rebut the historic evidence that had been introduced by the Applicant in his reply.

Evidence and submissions

28. As it was necessary for the Applicant to cross-examine both Mr and Mrs Morton because he was not represented, the Tribunal made it clear to the parties that for the purposes of the issues relevant to these proceedings, such contact during the hearing would not constitute a breach of the warning given by Surrey police on 7 December 2025 [383].
29. Mr Puckett, Mr Morton and Mrs Morton each adopted their witness statements confirming they were true to the best of their knowledge and belief. Mrs Morton clarified paragraph 6 of her statement confirming that no clients had visited the Property since the Applicant had acquired his freehold interest some time in 2016. Each was cross-examined and then submissions were heard from Mr Withers and Mr Puckett. The recording of the hearing stands as the record of proceedings. The Tribunal reserved its decision which it now gives with reasons.
30. The Tribunal clarified that although there was reference to video evidence being submitted by the Respondents the Tribunal had not seen or been provided with any such evidence. The Tribunal did not consider it necessary to do so and neither party pursued this issue.
31. It is clear to the Tribunal from the documents that there is a long and unfortunate history of acrimony between the parties to this application. Sadly, despite the previous Tribunal's clear encouragement given in CHI/43UE/LBC/2023/0024 for the parties to find a way to work together going forward, the difficulties have continued. The Tribunal does, however, acknowledge and is grateful to the parties and representatives for the courtesy shown to each other during the hearing.

Reasons for the decision

32. The purpose of bringing proceedings under section 168(4) of the 2002 Act is to enable a landlord of a long lease of a dwelling to serve a section 146 notice to forfeit the lease for breaches of covenant by the tenant. In other words, it is the first step towards the freeholder taking proceedings to obtain possession of and depriving the Respondents of their flat. The provisions of section 168 are set out in full in the Appendix to this decision.

33. If proceedings are brought under s168 of the 2002 Act, the Tribunal is required to determine whether the tenant has committed an actionable breach of covenant. The Tribunal's jurisdiction under section 168(4) is limited to making a finding of fact on whether or not a breach has occurred. The Tribunal's jurisdiction does not extend to deciding whether any breach found has been remedied. That is a question for the Court in any subsequent action for forfeiture of the lease (*Swanston Grange (Luton) Management Limited v Eileen Langley-Essen* (LRX 12/2007)). However, Judge Hutchinson in that case confirmed that the Tribunal can decide whether the landlord is estopped from asserting the facts on which the breach of covenant is based.

The Applicant's case

34. The Applicant's case is set out in his application [5] to [19], witness statement dated 17 March 2026 [49] to [67] and reply [452] to [464] together with the supporting documentary evidence.
35. In summary, the Applicant says the Respondents have breached six clauses of the lease [50]. He submits that the Respondents are in breach of their lease for the following reasons
- (a) breach of clause 2(9) by failing to carry out the repair items notified to them in a schedule of repair on 10 March 2025 following an inspection that took place on 10 January 2025. The Applicant says the Respondents contested various items on the schedule of repairs and submits that the repairs should have been carried out within one month of being notified.
 - (b) breach of clause 2(9) by failing to allow inspections to be carried out in accordance with the lease. The Applicant says this is because for the inspection carried out on 16 May 2025 the Respondents refused to permit access to the garden, garage, boiler cupboard and external areas.
 - (c) breach of Clause 2(4) by failing to carry out external decoration to the NW elevation and garage in accordance with the lease.
 - (d) breach of Clause 2(10) by carrying out alterations to the property without written consent from the Applicant. These included the replacement of the boundary wall with a fence, the plastering of the office/bedroom wall, installation of thermal wallpaper in the south porch and the overhaul and re-fitting of the ensuite bathroom.
 - (e) breach of paragraph 1 of Schedule 1 by using the property otherwise than as a private dwellinghouse. The Applicant says that the Second Respondent runs her life coaching and therapy business from the Property, including client visits and use of the garden and property.

- (f) breach of paragraph 2 of the First Schedule by the commercial use of the Property by the Second Respondent potentially rendering the insurance void or voidable.
- (g) breach of paragraph 3 of the First Schedule by causing repeated noise disturbances which amount to nuisance of annoyance and/or are audible outside the Respondent's flat. The Applicant relies on records kept for the period 9 April 2025 to 31 May 2025.

The Respondents' case

- 36. The Respondents' response is set out in the witness statements of Mrs Morton [168] to [171] and Mr Morton [177] to [192], their supporting evidence and the skeleton argument of Mr Withers.
- 37. The Respondents deny any breaches of covenant and in relation to the specific breaches alleged their submissions can be summarised as follows:
 - (a) In relation to the alleged failure to repair, the breach is denied. The Respondents admit to being served a schedule of alleged repairs but say the items were either not repairs, were not necessary and/or did not relate to 'the Flat' as defined by the lease and they deny failing to undertake repairs in accordance with the lease.
 - (b) In relation to alleged breach of the freeholder's right to inspect, the breach is denied. The Respondents permitted the inspection on 16 May 2025 which allowed the Applicant to inspect the condition of the majority of the Flat. Any limitations on the conduct of the inspection were reasonable given the Applicant's conduct at the previous inspection and during the intervening period. The Applicant had no entitlement to inspect the garden or garage and was able to access the boiler room as he had his own key.
 - (c) As to the failure to decorate the NW elevation and garage, the breach is denied. The duty is to decorate that elevation every five years, and the Respondents would be redecorating it in the usual cycle (i.e. in 2026). The garage does not fall within the definition of the Flat in the lease.
 - (d) In relation to the alleged alterations without consent, the breaches are denied. Consent is only required in relation to alterations to the Flat itself. The boundary wall to the garden does not fall within the definition of the Flat, and the Applicant had asked them to repair it. The other items either amounted to decoration and/or the Applicant had given implied consent.
 - (e) The breach of the user covenant is denied. The Second Respondent is not running a therapy business with clients visiting the Property and the Applicant accepts that 'working from home' tasks do not breach the covenant.

- (f) In relation to the alleged breach invalidating the insurance covenant, this is denied. The Applicant has provided no evidence to support the alleged breach, and his wife also runs a business from home.
- (g) Noise nuisance is denied. The matters complained of amount to normal household noise.

Discussion and conclusion

- 38. The Tribunal considered the totality of the evidence in the round, the documents, the oral evidence of Mr Puckett, Mr and Mrs Morton and the submissions made by Mr Withers and Mr Puckett. The Tribunal considered the weight that should be given to each part of the evidence before it made its findings. Although each and every part of the evidence is not referred to in this decision, that does not mean that it was not considered in this way.
- 39. The Tribunal found that Mr and Mrs Morton were straight forward in the evidence they gave to the Tribunal. Their oral evidence was coherent, internally consistent, and was consistent with and supported by the documents they had produced in evidence.
- 40. In contrast, however, the Tribunal found Mr Puckett not to be wholly straightforward in answering the questions asked by Mr Withers. He failed to answer all questions directly, and was evasive at times, for example in relation to questions about the damp report he had commissioned from Alpine Survey which he had refused to disclose to the Respondents, and about whether it was him in the photographs exhibited to Mrs Morton's witness statement showing him accessing or peering into the Respondents' garden areas. At times the Tribunal found Mr Puckett to be overly pedantic. At times his evidence was inconsistent. For example, in relation to the boiler room he initially said he could not get into the boiler room yet subsequently admitted he could access it whenever he wanted (although he said there was a bone of contention about how often) and that it contained the RCD for his property. The Tribunal found Mr Puckett's credibility was damaged by the fact he had been offered but had refused an opportunity to inspect Lower Minnickfold Place in September 2025 to check that the specified works had been carried out, yet in oral evidence although he accepted photographs and invoices showed works had been undertaken said he could not be certain they had been done in the correct way, and therefore took the view they were in breach of the lease. On balance, when looking at the evidence as a whole, the Tribunal gave greater weight to the oral evidence of the Respondents particularly where it was supported by other documentation.
- 41. The Tribunal also found in general terms that Mr Puckett's whole approach to his neighbours to be abrasive, often unnecessarily combative and overbearing. For example, in relation the alleged breach of his instruction to the Respondent to investigate the leaks to the ensuite shower and report back, rather than carry out repairs to remedy the leaks.

42. In reaching its conclusions regarding the interpretation of the lease provisions the Tribunal applied the principles established by the Supreme Court in *Arnold v Britton* [2015] UKSC 36. Lord Neuberger at paragraph 15 set out the approach that courts or tribunals should follow;

“When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to ‘what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean’, to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] AC 1101, para 14. And it does so by focussing on the meaning of the relevant words ... in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions”.

43. The Supreme Court also confirmed there is no special rule of interpretation for leases and no requirement that terms in a lease should be construed restrictively (at paragraph 23).

Upper and Lower Minnickfold Place

44. No evidence of title has been produced in the bundle for the appeal. However, it was seen by Judge Dobson as he refers in his decision on 24 February 2026 to the fact that Mr Puckett and Susannah Puckett are the freehold owners of the end of the Building which comprises Upper Minnickfold Place and Lower Minnickfold Place (‘the House’).
45. The Respondents are the leasehold owners of the Property (Lower Minnickfold Place) which comprises the ground floor of the House together with the land and other appurtenances (such as the summer house and boiler room).
46. Although no proper floor plan has been produced, from the evidence available it appears the Respondent’s Property has three bedrooms (one with an ensuite shower room and one used by the Respondents as a study), a living room, a dining room, a kitchen and a bathroom room.

The Respondent’s Lease

47. The lease of the Property is dated 31 January 1972 and was made between Vera Margaret Thorns and Herbert James & Edna Julia Simpkins. The term is for 999 years from 31 January 1972 [68] and [69].
48. So far as relevant to this application the provisions of the lease are as follows.

49. The property demised under the lease (so far as relevant to this application) is defined in Clause 1 as

‘ALL THAT the ground floor being the lower flat known or to be known as Lower Minnickfold Place.....(hereinafter called “The Flat”) being part of the building hatched in black on the plan...Together with but subject to the agreements and declaration contained inthe First Schedule to and the exceptions and reservations set out in the Second Schedule...and Together with

- (i) so much of the garden paths and terraces as are shown edged in green and crosshatched in green on the said plan*
- (ii) a right of way....over the property hatched red....Together with the right to park temporarily in the area to the North of the blue line....*
- (iii) a right of way on foot only over the property cross hatched in red....for the purpose of obtaining access to the garden and terrace included in this demise but not to sit or loiter on....*
- (iv)*

50. The ground rent is £25 payable on the 24 June each year together with a proportionate share of the insurance premium by way of rent *‘for keeping the Flat insured against loss or damage ...and if the Landlord shall insure the Flat and the upper flat and the remainder of the building and the garages marked 1 and 2....then to pay one-half of the premium.’*
51. The demise is subject to a number of rights reserved to the Landlord including a right to enter onto the property edged in green for the purpose of carrying out repairs to the House or the upper flat [69 and 75].
52. The leaseholder’s covenants are contained in clause 2.

Clause 2(4) requires the leaseholder to ‘keep the exterior of the Flat properly decorated but only in black and white such decoration to be carried out every fifth year of the term in a proper and workmanlike manner all outside wood and ironwork to be given at least three coats of good oil paint and with every outside painting to restore point and make good the brickwork and outside stonework where necessary’.

Clause 2(9) requires the leaseholder to ‘permit the landlord...twice a year upon giving three days’ previous notice in writing....to enter upon and examine the condition of the Flat and thereupon the Landlord may serve upon the Tenant notice...specifying any repairs necessary to be done and require the Tenant forthwith to execute the same and if the Tenant shall not within one month of service of that notice proceed diligently with the execution of such repairs then to permit the Landlord to enter upon the Flat and execute such repairs....

Clause 2(10) requires the leaseholder ‘Not to make any alterations in the Flat without the approval in writing of the Landlord....’

Clause 2(12) requires the leaseholder *'Not to do or permit...in or upon the Flat anything which may be or become a nuisance annoyance or cause damage or inconvenience to the Landlord or occupier of the upper flat...or whereby any insurance...on the Flat or upper flat or the building may be rendered void or voidable or whereby the rate of premium may be increased'*.

53. In addition, the First Schedule [74] contains further restrictions imposed on the leaseholders as regards the use of the property. In summary, so far as they are relevant to this application, these include the following:
- using the Flat only as a private dwellinghouse for one family and not for any purpose which might cause a nuisance, and only to use the garage as a private garage for the Flat (paragraph 1),
 - not doing any act which might render any insurance void or voidable or increase the premium (paragraph 2)
 - not playing a musical instrument, TV, radio or other *'noise making instrument'* so as to cause annoyance to the occupiers of the upper flat *'or so as to be audible outside the flat between the hours of 12pm and 8am'* (paragraph 3)

Discussion and conclusions regarding the alleged breaches

54. In relation to the various breaches alleged, the Tribunal reached the conclusions set out below for the following reasons.
55. The Tribunal first considered the provisions of the lease and in particular the definition of Lower Minnickfold Place under the lease as it is relevant to the issues the Tribunal needed to determine.
56. The lease is in many respects unusual and in places is poorly drafted. For example, it provides for the leaseholder to redecorate the exterior of their flat and repair, repoint and make good brick and stonework of just their portion of the building (rather than the freeholder undertaking such works for the building as a whole and reclaiming the cost through the service charge as would be the more usual provision).
57. In addition, there is also no express covenant on the part of the landlord to maintain and carry out repairs to the main structure, roof and communal parts. However, the Tribunal is satisfied that properly construed, given the other provisions within the lease, the purpose of the lease and commercial common sense, the lease does require the landlord to repair and maintain the external structure, walls, roof and roof timbers as well as guttering, downpipes and drains. This is because clause 2(3) requires the leaseholder to *'contribute on demand one-half of the expense of keeping in good and tenantable repair the [illegible] structure walls and roof and roof timbers of which the Flat forms part and of all additions thereto and the drains thereof and guttering and down pipes and all common services common thereto and to the upper flat and the part of the property shown hatched red...'*. Clause 3(1) of the lease provides that the Landlord will insure the House and the garages, and

under clause 3(2) the Landlord covenants to allow the leaseholders to *‘peaceably hold and enjoy the demised premises...without interruption by the Landlord’*.

58. The Tribunal finds that whilst there is no express demise of the garage to the leaseholders, it is implicit given the other terms of the lease that the leaseholders of Lower Minickford Place have the use of one of the garages. For example, paragraph 1 of the First Schedule provides that the garage shall only be used by the leaseholders as a private garage [74], and the leaseholder is required to contribute half the cost of insuring garages 1 and 2 [69] and so on. The lease, however, is silent on any repairing or redecorating obligations.
59. The Tribunal was satisfied that properly construed, by virtue of the ordinary words used and the other provisions in the lease, ‘the Flat’ as defined in Clause 1 comprises only the three-bedroom property forming the ground floor of the House (the part of the building that comprises Upper and Lower Minnickfold Place). For example, clause 1(a) makes clear that *‘the Flat’* is only part of the building [69], clause 1(c) makes clear that the land edged and hatched in green are separate from the Flat [70]. The tenant’s covenants set out the obligations in relation to the garden, terrace and paths in Clause 2(5) quite separately from those relating to maintenance and repairs to the Flat (in Clauses 2(4), 2(6) and 2(7)). From clause 18 it is clear that the Flat is separate and distinct from *‘other premises hereby demised’* [73] and so on. Therefore, whilst the garden, paths and terraces are all included in the demise, and so form part of the Respondent’s leasehold interest, the Tribunal is satisfied that they do not fall within the definition of ‘the Flat’ in this lease. In addition, as the garage block is separate from the house, the Tribunal is also satisfied that the garage does not form part of the property defined as *‘the Flat’* under the lease. This definition of the Flat is relevant particularly in relation to the Applicant’s allegations of breach relating to improvements without consent and the Applicant’s right to inspect.
60. For ease and given the number of the individual breaches alleged by the Applicant these have been grouped into the categories set out by Mr Puckett in his application.

Failing to carry out the repairs notified in the schedule of repair in breach of clause 2(9) of the lease

61. The Applicant says, in summary, that the Respondents are in breach because they refused to carry out the repairs he notified in the schedule of 10 March 2025 within the time frame required by the lease [53]. He says that the Respondents contested various items on the schedule and by 18 May 2025 had only completed 5 of 63 items [54]. He says that the repairs should have been carried out within one month of the schedule being served on them.
62. The Respondents, in summary, say they completed repairs they were required to undertake in accordance with the lease. Other items in the list

were either not due to be undertaken, had been determined by the previous Tribunal or fell outside their obligations under the lease.

63. Having considered the totality of the evidence, the Tribunal finds the Applicant has not demonstrated that the Respondents are in breach of the lease for the following reasons.
64. The Tribunal is satisfied that the obligations under the lease must be construed with a purposive effect. As to the standard of any repair and redecoration guidance is provided in Clause 2(3) of the lease that the property should be maintained in a '*good and tenantable*' state of repair. The purpose of the freeholder being able to inspect '*the condition of the Flat*' is to ensure that the state of that part of the House does not put at risk the structural integrity of the House as a whole.
65. It is not in dispute that on 10 March 2025 the Applicant served on the Respondents a schedule of repairs that he considered were required. The Tribunal finds this schedule comprises a list of some 70 items that the Applicant required the Respondents to undertake both internally and externally [93] to [109]. For convenience these have been grouped together as set out below.
66. The Tribunal is satisfied that the Applicant's complaints of delay in the Respondents carrying out works must be viewed in the context of service of the schedule which followed an inspection some two months earlier on 10 January 2025. The Tribunal infers from this delay that the Applicant did not consider any item on the schedule to be of any particular urgency.
67. Contrary to the Applicant's assertion [54], the Tribunal is satisfied that properly construed the lease did not require the Respondents to carry out all the items specified on the Applicant's schedule within a month of being notified. Whilst the lease requires that repairs are carried out '*forthwith*', in other words without delay, the obligation is on the Respondents to '*proceed diligently*' with the execution of repairs. The Tribunal is satisfied that what is required in relation to proceeding diligently will differ depending on the nature of the particular defect. Some repairs may take longer, for example if expert advice is required or because of the nature of the works themselves (for example if walls have to be dried out following rectification of water ingress before redecoration works are undertaken). In the case of other repairs, work may be required more urgently (for example action to prevent water ingress through a hole in the roof). The lease allows for the Applicant to carry out repairs in default if the Respondents do not proceed diligently, and whilst there is reference to a one-month period the Tribunal is satisfied that this relates to any failure on the part of the leasehold to proceed diligently, not to completion of works or repairs.
68. The Tribunal is satisfied that on receipt of the schedule on 10 March 2025 the Respondents did proceed diligently. However, it also finds that the Respondents not unreasonably questioned some matters included on the schedule either because they considered the items were not required or

fell outside their obligations under the lease (these are dealt with in turn below).

69. The Tribunal finds the Respondents provided the Applicant with their response to his schedule setting out in relation to each of the items the action (if any) they proposed to take. Although undated, the Tribunal is satisfied that this must have been within one month because their response was then updated on 13 April 2025. The Tribunal finds that on 13 April 2025 the Respondents confirmed a number of the items had been completed [125]. They updated the Applicant again on 18 May 2025 [129]. The Applicant has not disputed any of the works that were said to have been completed by the Respondents.
70. The Tribunal finds some repairs or actions listed on the Applicant's schedule were completed by the Respondents or contractors engaged by them within a matter of days of service (for example the opening of the chimney vent on 10 March 2025, removal of vermin traps by 20 March 2025 [125] and having a contractor deal with the blocked drain by 21 March 2025 [125]). In the case of other items on the schedule, it was clear that by 13 April 2025, works were in hand; contractors were being identified and quotations being obtained [126].
71. By 18 May 2025 further works had been undertaken (such as repairs to the ensuite bathroom), quotations had been obtained and target completion dates for works had been agreed with contractors. For example, a completion date of the end of June 2025 for works such as replacement of broken tiles on the porch roof [130], repair of the timber to stone junction on the South-East corner [131] and the raking out and repair of cracks in the various ceilings [135].
72. The Tribunal finds all these matters demonstrate that the Respondents did proceed diligently in relation to those repairs in the schedule that they considered fell within their obligations under the lease, as well as to some items that did not strictly fall within the definition of repair or redecoration or indeed within their repairing obligations (such as removal of vermin traps, the thermal lining of the north porch walls, repair of the north porch roof which they said was damaged by the Applicant and repairs and installation of fire retardant material in the boiler cupboard).
73. As to the individual items on the Applicant's schedule, the Tribunal reached its conclusion that the Respondents are not in breach of Clause 2(9) of their lease for the following reasons.

North-west exterior elevation

74. In relation to the repairs listed on pages 93 to 95 there are 11 items relating to the NW elevation of the property. The majority refer to a lack of decoration but three require the removal of a redundant flue pipe, three refer to spalling of the stonework and one relates to a blocked gully.

75. In the annotation to the photographs regarding the NW elevation, the Applicant states that it has never been maintained or decorated by the Respondents (for example [92]).
76. Based on the totality of the evidence the Tribunal is satisfied that redecoration and repairs to the NW elevation were carried out by the Respondents in 2021. This is because the Tribunal in 2024 only found a breach in relation to a part of the eastern elevation of the Flat which had not been redecorated completely by the Respondent in 2021 (paragraphs 42 and 44 of the decision [87 and 88]). The Tribunal gave this substantial weight.
77. The Respondents have also produced invoices supporting their assertion that redecoration was undertaken in 2021 [341 and 342], although Mr Morton candidly accepted in evidence that the work may not have been done to the highest standard at that time consistent with photographs provided by the Applicant from 2022. Therefore, whilst the evidence indicates that in 2025 there may have been some aspects of the NW elevation requiring redecoration again, the Tribunal found that these items of repair were not necessary because under the terms of the lease the exterior redecoration is to be undertaken every five years in accordance with Clause 2(4)). The Tribunal finds these works of redecoration to the NW elevation (and all other elevations except for the Eastern elevation) were not required to be carried out, therefore, until 2026. The Respondents have produced evidence to the Tribunal demonstrating that arrangements were underway for that redecoration to commence in the summer of 2026 [245]. It was, therefore, satisfied that the Respondents were acting diligently in that regard and there was no breach.
78. As Clause 2(4) also provides that any defects to the pointing and stonework must be repaired '*with every outside painting*', the Tribunal is satisfied that any repairs to the stonework on the NW elevation were not necessary as under the lease they needed to be carried out at the time of redecoration.
79. As to the removal of the allegedly redundant flue pipe the Tribunal finds this does not fall within the definition of redecoration. Whilst the flue pipe might fall within the scope of Clause 2(8) of the lease being a duct or '*other thing*' installed for the purpose of hot water or central heating, the Tribunal was not satisfied the Applicant has demonstrated either that the flue pipe was in a state of disrepair or that it was redundant.

Boiler cupboard

80. At pages [95] to [96] the Applicant listed five items of work he required the Respondents to carry out; removal of vermin traps, terminating or removal of exposed cabling, repair of the ceiling, the carrying out of fire prevention works and repair of the exterior step.

81. The Respondents assert that they had no duty to carry out these works as the Applicant himself has keys to the boiler cupboard and was observed to have damaged the ceiling himself during the course of the inspection on 10 January 2025.
82. During the hearing the parties confirmed that the 'boiler room' was accessible to both parties. The Applicant confirmed it contained the RCD switch for his flat.
83. The Tribunal is unable on the evidence available to determine whether the boiler cupboard falls within the Flat as defined or forms an element of the common parts to the House comprising Upper and Lower Minnickfold Place. The Tribunal finds the boiler room is accessed externally and separately from Lower Minnickfold Place. No proper floor plan was provided by either party, and it is not clear whether the boiler room is one and the same as the meter cupboard referred to in Clause 1(f) which the Tribunal finds does fall within the Flat. This is because Clause 1(f) reserves a right for the freeholder to access the '*meter cupboard being part of the Flat at approximately the point 'Z' on the said plan....*'. However, the plan attached to the lease provided in the bundle fails to identify clearly point 'Z'.
84. Whilst the Applicant may have listed actions and repairs relating to the boiler room on his schedule, if the boiler room does not fall within the Flat as defined, the Tribunal was satisfied it does not fall within clause 2(6), 2(8) or 2(9) of the lease. There would, therefore, be no repairing obligation on the Respondents to carry out works in relation to the cabling, repair of the ceiling, maintenance of vermin traps etc. Their obligation would only be to pay 50% of the costs for repairs under Clause 2(3).
85. The Tribunal finds that the fire prevention works stipulated by the Applicant, whilst sensible, would amount to an improvement rather than a repair, and the removal of vermin traps does not constitute a repair.
86. In any event, the Tribunal is satisfied that by July 2025 the Respondents had proceeded diligently and had carried out all of the stipulated actions in relation to the boiler cupboard at their own expense. Their evidence is supported by the invoices of Mark Wadey [310] and photographs produced showing completed works [298 and 316].

North elevation

87. Eleven items are listed in the schedule of repairs relating to the North elevation. For the reasons set out above at paragraphs 76 and 77 above the Tribunal is satisfied that in the 5-year cycle of redecoration required by the lease, the works of redecoration and associated woodwork, ironwork, brickwork and stonework were required to be undertaken in 2026 rather than in 2025. However, the Tribunal is satisfied from the evidence heard and the quotations received that those works are in hand [245].

88. In relation to the waterlogging of the north elevation, the Tribunal finds works were carried out within a matter of days as confirmed in the updated schedule on 13 April 2026. In any event, the Tribunal is satisfied that the Respondents' responsibility was to contribute 50% of the costs for maintaining the drain.
89. As regards the porch roof the Tribunal is satisfied from the response on 13 April 2025 that works were put in hand diligently and arrangements were made by the Respondents for those works to be completed by the end of June 2025, notwithstanding their claim that the roof was damaged by the Applicant himself in 2024 during the course of works undertaken on the main roof. The photographic evidence at [243] shows that the roof had been repaired and the porch redecorated by 26 June 2025, consistent with the invoice from Mark Wadey of 14 June 2025 [244].
90. The Tribunal, having considered the totality of the evidence, and having given weight to the photographs at 247 to 252 (which demonstrate the manner in which the Applicant was undertaking roofing works) finds that it is more likely than not that damage was caused to the tiles of the North porch roof by the Applicant.

North Dwarf wall

91. At page [100] the Applicant stipulated repointing works were required to the north dwarf wall. For the reasons set out above, the Tribunal is satisfied that the garden, terraces, and paths do not form part of the Flat. It was satisfied, therefore, that any alleged failure to repair could not fall within the obligations under Clause 2(9) as alleged. In any event, the Tribunal was satisfied from the invoice of Mark Davey that these works were being scheduled to be undertaken during the 2026 redecoration works [245].

South and South-East elevation

92. In relation to the seven items in the Schedule [100] to [101] the Tribunal finds that the defects identified were due to be redecorated and stonework made good in the normal five-year cycle (Clause 2(4) of the lease) for the reasons set out above in paragraphs 76 and 77 above. Based on the quotations obtained, the Tribunal was satisfied that the Respondents planned redecoration and any associated works to the South and South-East elevations in 2026 [245].

Rear patio

93. For the reasons set out above at paragraph 59, the Tribunal is satisfied that the garden, terraces, and paths do not form part of the Flat. It was satisfied, therefore, that any failure to repair the patio itself could not fall within the obligations under Clause 2(9) as alleged.
94. The Tribunal was also satisfied that repairs to the stonework and back step identified would also fall within the 5-year redecoration cycle for the

reasons set out at paragraphs 76 and 77 above and were also due in 2026. The schedule of works provided by the Respondents demonstrated plans were already in place for this work to be undertaken [245].

Access to inspect

95. In the schedule of repairs, the Applicant includes requests to access to inspect areas he says were denied on 10 January 2025 including the garden [102], summer house [103] and various cupboards in different parts of the Property [105, 106 and 108].
96. In relation to the garden and summer house the Tribunal is satisfied (for the reasons set out above) that the garden, terraces, and paths do not form part of the Flat. It was satisfied, therefore, that any refusal to allow access could not fall within the obligations under Clause 2(9) as alleged.
97. In relation to access to cupboards the Tribunal finds that Respondents complied with their obligation to allow access to the Applicant to inspect the condition of the flat. Inspection of the interior of cupboards was not necessary to ascertain the condition of the Flat, and the Respondents' refusal of access was reasonable in the circumstances. This allegation of breach of Clause 2(9) is, therefore, not made out.

Entrance porch and hallway

98. The Applicant instructed the Respondents to line the walls of the porch with insulated plasterboard, clean the windows which were alleged to have black mould, dry out a damp wall with a dehumidifier and repair cracks to the ceiling [103 and 104]. Save for the alleged cracks to the ceiling, all of these items do not fall within the definition of repair. The lining of the porch with insulation plasterboard on top of the single skin wall, amounts to an improvement.
99. However, notwithstanding that there was no requirement to undertake these works under the terms of the lease in response to the schedule, the Tribunal is satisfied that the Respondents proceeded diligently to undertake works to remedy the poor thermal insulation in the porch. Mr Moyle's report confirms that the porch was lined with wallrock thermal lining.

Bedroom 2/study

100. In relation to the works identified at [105] the Tribunal is satisfied that the Respondents proceeded diligently by seeking to identify the source of the damp. They initially requested from the Applicant a copy of the Alpine report commissioned by him, but as set out above the Tribunal finds this had not been provided by the date of the hearing. Notwithstanding, the Tribunal is satisfied on the basis of photographic evidence, the report of Mr Moyle and the invoices [303 to 307] that the Respondents had proceeded diligently as by June 2025 the wall had been stripped, replastered and the room redecorated.

101. The Tribunal also finds on the evidence, that in December 2025 this room was impacted by water ingress from the Applicants flat [388 to 394].

Cracks to various ceilings

102. In relation to alleged cracks to the ceilings in various rooms, the Respondents submit the cracks to the ceilings of the hallway, bedroom 2/study and living room were all caused during a two-year period of major building works undertaken by the Applicant and the repeated jumping of children in the upstairs flat.
103. The Respondents deny the allegation that there were cracks to the ceiling of the master bedroom and drawing/dining room, as they had been completely replaced in 2018 when the Respondents undertook soundproofing works. The Tribunal satisfied from the invoice at [451] that such soundproofing works were carried out in 2018, and the Applicant has provided no supporting evidence demonstrating cracks. On balance the Tribunal is satisfied that there was no evidence of significant cracks in these rooms.
104. The Tribunal is satisfied from photographs provided to the Applicant following the inspection on the 10 January 2025 that the cracks that were present were hairline [365 to 377]. It was also satisfied that despite the Respondents' assertion that these cracks were caused by the Applicant as the result of major refurbishment works to Upper Minnickfold Place, they acted diligently in dealing with them. This is based on their response to the schedule, the invoice for works [364], the photographs at [288] to [294] all demonstrating that by June 2025 the Respondents had commissioned and completed repairs to all the cracked ceilings. Mr Moyle's report following inspections in August and September 2025 show none of the ceilings to be cracked.

Windows and general dampness/ventilation issues

105. In the schedule of repairs the Applicant requires action to be taken in relation to damp affecting walls to the dining room, master bedroom and its ensuite shower room, bedroom 2/study and the entrance hall. He stipulates the use of a commercial dehumidifier and required other works. The schedule of repairs concludes with an assertion that there is a significant '*condensation/mould/ventilation/heating issue*' with condensation affecting the windows resulting in black mould. The Applicant directed the Respondents to install trickle vents in all windows.
106. The Respondents, in summary, assert that the problems with damp in the property are a consequence of the Applicant's own actions, either in failing to ensure adequate drainage (resulting in flooding or pooling of water externally), the deliberate blocking of drains and the installation of a duct from his bathroom into the chimney flue causing dampness to the chimney breast and hallway in the Respondents' flat.

107. The Tribunal is satisfied that there have clearly been issues with damp in the flat. In addition to the references on the schedule, the Respondents have produced photographs showing the external pooling of water which is in contact with the corner of the House [271]. The evidence also shows that Mole Valley District Council had served abatement notices in April and December 2023 [261 and 264] to stop flooding and water ingress into the Respondents' flat. Whilst the name and address of the recipient had been redacted from the notices, the Tribunal is satisfied it was more likely than not that the notices had been served on the Applicant because the Council in email correspondence to the Applicant in August 2025 reminded him that he was in breach of the abatement notice that was still in force [258]. The Abatement Notice served on 19 April 2023 required action to remedy water flooding from the Applicant's property into Lower Minnickfold Place [261] and on 1 December 2023 required action to remedy the statutory nuisance of water penetrating or leaking into Lower Minnickfold Place [264].
108. The Tribunal is satisfied that by the time of Mr Moyle's inspections in August and September 2025 there was no evidence of condensation mould or dampness in any part of the Property except for damp in the master bedroom and the en-suite bathroom due to the defective shower. In relation to the latter, the Tribunal was satisfied that silicone sealant works that had initially been undertaken in April 2025 were ineffective, and investigations showed the damp had been caused by a cracked shower door. Works were undertaken in September 2025 to remedy the problem [299].
109. The Tribunal is satisfied from the invoice of RJ Campbell that the Respondents had arranged for the installation of humidistat extractors in the kitchen, en-suite bathroom to the master bedroom and the bathroom [200].
110. The Tribunal finds that in response to the schedule the Respondents had proceeded diligently to deal with the blocked drain on 21 March 2025 even though this was outside their repairing obligations.
111. Whilst there is a dispute between the parties as to whether there was black condensation mould on all the windows identified by the Applicant in his schedule, the Tribunal is not satisfied that cleaning of windows amounts to a necessary repair falling within Clause 2(9). However, in any event, the Tribunal is satisfied from the report of Mr Moyle that there was no mould evident at the time of his inspections in August or September 2025.
112. The Tribunal is satisfied that the instruction by the Applicant to the Respondents to install trickle vents in all windows would amount to an improvement rather than a repair as the original windows, due to their age, did not have such a feature. It would therefore fall outside the Respondents' obligations under clause 2(9) of the lease. In any event, based on its own expert knowledge, the Tribunal was also satisfied that the installation of trickle vents would not be advisable in a property such as Lower Minnickfold Place because they are likely to weakening the

structure as well as compromise the thermal barrier designed to stop cold transfer. Mr Morton in his evidence said the four or five contractors he had contacted all had advised against drilling trickle vents. This is consistent with the advice from Mr Moyle who confirms that trickle vents cannot easily be retrospectively installed in aluminium window frames such as those to the Respondents' Property without breaking the windows [238].

113. The Tribunal is also satisfied that the Respondents had, as they said, been proceeding diligently to try to identify the cause of the damp to the master bedroom in order that appropriate steps could be taken to remedy it. The Tribunal finds that the evidence from Milborrow Chimney Sweeps [267] and Mole Valley Council environmental health department [258] indicate that ducting installed from the Applicant's upstairs shower and bathroom discharged warm damp air directly into the chimney flue (rather than to the exterior of the House) and was more likely than not the cause of the damp ingress into the Respondents' master bedroom. Therefore, before any effective repair could be carried out by the Respondents, the Applicant would need to take appropriate remedial action. The Tribunal has given weight, in this regard, to the fact that the Council confirmed on 11 August 2025 that the Applicant remained in breach of the Abatement Notice in force at that time [258].
114. Based on the totality of the evidence, the Tribunal was satisfied that the Respondents have for several years been taking action with a view to resolving the issues of damp affecting their home. In relation to the schedule of repairs notified to them by the Applicant on 10 March 2025, the Tribunal finds that they have proceeded diligently to deal with necessary repairs affecting the Flat and are not, therefore, in breach of Clause 2(9) in this respect.

Failing to allow inspections to be carried out in accordance with the lease in breach of clause 2(9)

115. The Applicant alleges a breach of clause 2(9) of the lease because the Respondents refused or obstructed reasonable requests to inspect the garden, garage, boiler cupboard and external areas on the 16 May 2025 and imposed restrictions or conditions on the inspection of the internal areas, including refusal to allow photographs, open cupboards or interfere with personal belongings [55].
116. In response, in summary, the Respondents submit that they have allowed inspections in accordance with the lease. They assert that the manner in which the Applicant has conducted inspections is excessively intrusive and he has repeatedly trespassed on their property inspecting and photographing without consent.
117. Clause 2(9) of the lease allows, but does not require, two inspections of the condition of the Flat (as defined under the lease) each year upon proper written notice being given by the freeholder. When construing the lease in a purposive manner, the Tribunal is satisfied that the inspection

provisions in Clause 2(9) are to permit a freeholder to ensure that their interest in the building as a whole or any of the leaseholders' interests are not being put at risk by a failure to repair or by unauthorised alterations (such as removal of a load bearing wall).

118. The Tribunal accepts the Applicant's evidence that he was denied access to the external areas, boiler room, garage and gardens on 16 May 2025. However, for the reasons set out above in paragraph 59, the Tribunal is satisfied that not all of the areas of the property demised to the Respondents under the lease fall within the definition of 'the Flat'. As Clause 2(9) only relates to the inspection of the condition of the Flat, any failure on the part of the Respondents to allow the Applicant access to the garden or garage could not amount to a breach of the lease.
119. Although the Tribunal has been unable to determine whether the boiler room falls within the Flat as defined, the Applicant did not dispute that he had his own ability to access the boiler room as he had his own key and the boiler room housed the RCD to his own flat. Accordingly, the Tribunal found that he was not refused access to that part of the property.
120. On the evidence before it, the Tribunal agrees with Mr Withers that the manner in which the Applicant carried out (or expected to be able to carry out) inspections of the Respondents' Property was more akin to a landlord inspecting a tenanted property in the private rental sector (for example to ensure the property is being maintained in a 'tenant-like' fashion – clean and tidy, with lightbulbs changed, sinks unblocked, and adequate ventilation and so on) rather than that of a long leaseholder. This is demonstrated by the Applicant's language in communications with the Respondents, his reference in the schedule of repairs to alleged condensation mould on the windows and his expectation to be able to inspect the inside of cupboards containing the leaseholders' private and personal effects.
121. The Tribunal also accepts and gives weight to the Respondents' evidence that the Applicant had intruded on their property and privacy at times other than inspections. In this regard the Tribunal has given weight to the fact that the photographs in the schedule dated 10 March 2025 all appear to have been taken on 22 February 2025 not the day of the inspection (10 January) indicating that the Applicant was accessing the exterior of the Flat for the purpose of inspection and photography without prior written notice. The Tribunal also gave weight to documentary evidence indicating that the Applicant has entered onto the Respondent's property or looked into their property in an intrusive manner at other times, as illustrated by the photographs taken in August, September and October 2025 attached to Mrs Morton's statement [173] to [176]. The Tribunal finds the Respondents' complaints regarding the Applicant's surveillance of them and their property are supported by the Applicant's own evidence, for example his detailed monitoring of Mrs Morton's visitors' movements [61]. The Tribunal also gives weight in this regard to the fact there is police involvement following complaints by Mr Morton of harassment [383].

122. The Tribunal finds the refusal by the Respondents to allow the Applicant to examine the exterior of the Flat was, therefore, not unreasonable given that he had demonstrated that he had been accessing, viewing and photographing it in any event without permission or prior notice between inspections.
123. The Tribunal is satisfied on the evidence that the Respondents did allow the Applicant access to the interior of Lower Minnickfold Place on 10 January 2025 and 16 May 2025. Whilst the Tribunal accepts that the Respondents imposed restrictions on the Applicant on both dates, prohibiting him from photographing the interior of the flat, and from interfering with and touching their belongings and opening cupboards, the Tribunal is satisfied that access was given allowing the Applicant to inspect the condition of the Flat within the terms of the lease. After the inspection on 10 January 2025, the Respondents provided the Applicant with photographs of the interior requested by him [361 to 379]. The Tribunal finds from the photographic evidence [315] that the Respondents did, in the event, allow the Applicant to inspect inside of their cupboards on 16 May 2025 because, as they said, they were threatened with forfeiture action by the Applicant if they refused to do so. The Tribunal is satisfied this allegation of breach of Clause 2(9) is, therefore, not made out.

Failing to carry out external decoration to the NW elevation and garage in accordance with the lease in breach of Clause 2(4)

124. The Applicant asserts in his witness statement that the Respondents have failed to comply with the terms of their lease as the NW elevation and the garage had not been decorated in the past 10 years [57] in breach of Clause 2(4).
125. Having considered the totality of the evidence, the Tribunal is satisfied that there was no breach of the covenant as alleged.
126. For the reasons set out above at paragraphs 58 and 59, the Tribunal is satisfied that the garage does not fall within the definition of the Flat as demised. As Clause 2(4) only relates to redecoration of the Flat there was, therefore, no obligation on the Respondents to redecorate it every five years. There is also no entitlement for the Applicant to inspect the garage under Clause 2(9). The Tribunal found that under the terms of the lease there is no clause as regards the Respondents' repairing obligation of garage. Their only obligation is payment of their half share of the insurance. The Respondents in their evidence confirmed they proposed to include the garage in the redecoration schedule planned for 2026.
127. In relation to the redecoration of the NW elevation, for the reasons set out above at paragraphs 76 and 77 the Tribunal is satisfied this was not required until 2026, and the Tribunal found on the evidence from Mark Drayton [245] that arrangements were well advanced in this respect.

Carrying out alterations to the property without written consent in breach of Clause 2(10)

128. The allegations of breach made by the Applicant are that the Respondents carried out alterations without written consent from him as follows:
- the replacement of the brick boundary wall with a fence,
 - the replastering of the study/bedroom wall,
 - installation of wallrock thermal lining paper in the south porch and
 - the overhaul and re-fitting of the ensuite bathroom [58].

The Applicant raised the last three allegations of breach in his witness statement following receipt of the report from Mr Moyle commissioned by the Respondents.

129. The Respondents, in summary, deny that the works required the Applicant's consent as they were either not alterations to the Flat, were not alterations or they submit that written consent had impliedly been given by the Applicant as they were listed in the original schedule.
130. The Tribunal is satisfied that clause 2(10) and the prohibition of the leaseholder carrying out alterations without consent applies only to '*the Flat*' as defined in the lease. For the reasons set out above in paragraph 59, this is only the part of the House forming the ground floor under Upper Minnickfold Place rather than the whole of the premises and land demised under the lease.
131. It is not in dispute that the boundary wall, which had partially collapsed in 2023, had been replaced by Respondents with a fence by March 2024. The Tribunal accepts that this change in material and structure would amount to an alteration.
132. However, the lease is silent as regards ownership of the boundary wall to Upper and Lower Minnickfold Place, and therefore any repairing obligation. In any event, the Tribunal is satisfied that the boundary wall to the garden (edged in green on the plan) does not fall within '*the Flat*' as defined in the lease and therefore does not fall within the prohibition on alterations in clause 2(10). Accordingly, the Tribunal finds that no written consent was required from the Applicant to demolish the brick wall or to replace it with a fence.
133. On the basis of the photographic evidence [84] the Tribunal found that the fence constructed in place of the brick wall was constructed to an acceptable standard.
134. Even if consent were required (which is not accepted), the Applicant accepted during his evidence that any breach had been waived by him as he had served notices under the lease (including the notices to inspect) after he was aware of the demolition and replacement of the wall.

135. In relation to the replastering of the study/bedroom wall, the Tribunal is satisfied that this is not the carrying out of an alteration that would require written consent. The wall was previously plastered, and the Applicant had requested in the schedule of repairs the stripping of wallpaper, repairs to and redecoration of the wall [105]. The Tribunal finds the Applicant, therefore, gave implied written consent for these works and it accepts Mr Morton's evidence that their decision to replaster the entire wall in order to obtain a better finish rather than simply undertaking patch repairs is reasonable in all the circumstances and not a breach of the lease.
136. In relation to the installation of thermal lining in the south porch the Tribunal finds that this is not an alteration requiring consent but is a redecoration albeit with insulated materials. In any event, the Applicant had requested that the Respondents line the porch with insulated plasterboard [104]. The Tribunal finds, therefore, that if consent was required it had impliedly been given in writing for appropriate thermal insulation works.
137. In relation to the ensuite bathroom, the Tribunal is satisfied that the works undertaken in April 2025 were not an alteration but amounted to a repair of the leaking shower unit. It is clear from the photograph at [107] that a shower was in situ at the time of the inspection on 10 January 2025, and the Applicant had asked the Respondents to investigate the cause of the leaks which they did. The Tribunal finds that the works were undertaken in April 2025 and again in August 2025 with a view to resolving the identified leaks and damp as requested and the Applicant has provided no evidence to demonstrate any alteration. From the report of Mr Moyle it would appear that although the original shower screen may have been removed it was due to be replaced [229]. The Applicant's only complaint appears to be that the Respondents had carried out repair works without reporting back to him as he instructed them to do. As reporting back is not a repair or any other matter covered by the lease, the Tribunal finds there to be no breach.
138. On balance, the Tribunal finds that the Applicant has not demonstrated any breach of Clause 2(10).

Using the Property otherwise than as a private dwellinghouse in breach of paragraph 1 of the First Schedule

139. The Applicant says that the Second Respondent runs her life coaching and therapy business from the Property, including client visits and use of the garden and property, in a manner which goes well beyond home working and alters the character of the residential building [60]. The Applicant accepts, however, that working from home is a '*common feature of modern residential occupation*' and that incidental work may not breach the covenant or change the character of the residential property. The Applicant also appears to accept that Mr Morton undertakes professional work from home [62].

140. The Applicant's main concerns, however, appear to relate to any potential liability arising from clients attending the Property and the impact on the insurance of the House. In this regard the Applicant cites an incident when a visitor to the Respondent's property tripped and fell on the front step in January 2025 [52].
141. On balance, having considered the totality of the evidence the Tribunal is satisfied that whilst she was undertaking home working online for her life coaching and therapy practice, Mrs Morton no longer had any clients attend in person at the Property. It found this had been the case since at least 2016, and any potential breach would have been waived by reason of the demands and acceptance of ground rent and service charge and the issuing of notices by the Applicant since then.
142. The Tribunal accepts Mrs Morton's evidence that the visitor whose four visits to Lower Minnickfold Place between 2022 and 2025 were monitored and recorded by the Applicant [61] is a friend of hers rather than a client. The Tribunal finds that neither participating in telephone or zoom calls nor Mrs Morton recording social media content would alter the residential character of the building such to be considered a change of use. On balance, the Tribunal finds the Applicant has not demonstrated a breach of paragraph 1 of the First Schedule.

Rendering the insurance potentially void or voidable by commercial use (in breach of paragraph 2 of Schedule 1)

143. Whilst the Applicant asserts that the Second Respondent's work from home has put in jeopardy the insurance for the House, he has provided no evidence to support that assertion, and the Tribunal gives particular weight to this failure. There is no evidence from the insurance company itself indicating this to be the case which the Tribunal would expect to see. The only evidence he relies on are excerpts from the wording of the policy requiring notification of any changes or facts which might affect the insurance and the duty to provide a fair presentation of risk.
144. On his own evidence, the Applicant has not notified the insurer of his purported view that there was a change from residential to business use, from which the Tribunal inferred that he did not genuinely consider there to be a change of risk from any home working activities undertaken by the Respondents. The Tribunal accepted the Respondents' evidence that the Applicant had refused to permit them from contacting the insurers directly.
145. In addition, and whilst the Tribunal makes no express finding in this regard, it notes that the Respondents assert that Mrs Puckett also carries on a business working from home [91].

Causing nuisance or annoyance by repeated noise and/or noise that is audible outside their flat in breach of paragraph 3 of the First Schedule.

146. The Applicant relies on records kept for a period between 9 April 2025 and 31 May 2025 [111 and 112] and states that he and his family had been repeatedly disturbed by the noise of TV and radio from the Respondents' flat, and that noise was audible outside the Property between the hours of 12pm and 8am.
147. The Tribunal accepts the Appellant's submission that 12pm is midday rather than midnight, and finds the lease as drafted, therefore, provides the specified hours to be midday to 8am, meaning that for 20 hours of each day sound from a TV, radio, musical instruments, loudspeaker or mechanical or other noise-making instrument or the practicing of singing must not be audible outside the Flat. The Tribunal considers the inclusion of 12pm was more likely than not an unfortunate drafting error in the lease and not in the contemplation of the parties when they entered into the lease and nor would it make commercial sense given that everyday living noise caused by machines (for example a Hoover or a washing machine) operated during the day would, more likely than not, be audible outside the property. The Tribunal considers that midnight to 8am were more likely than not the intended specified hours, and this appears to have previously been accepted by the Applicant's solicitors [432]. This Tribunal repeats the previous Tribunal's advice that the Applicant and the Respondents are urged to reach a sensible agreement on appropriate variations to this lease.
148. Having considered the totality of the evidence, the Tribunal accepts that sound will be audible between the Respondents' and Applicant's properties and the lease must be purposively construed with that understanding. Sound transmission is an almost inevitable feature of any property that has been converted into flats unless extensive soundproofing works are undertaken during the conversion. The Tribunal notes in this regard that there appear to have been ongoing issues between the parties regarding noise transmission over the years. The report of RJ Acoustics following inspection on 7 December 2017 noted that there was little to no sound protection between the flats, a fact that would have failed modern building standards [434]. The Tribunal is satisfied on the evidence that the Respondents in 2018 installed sound insulation above the master bedroom and dining room to reduce sound transmission between the two flats in those rooms. Further soundproofing works were not undertaken due to the inability to reach agreement with the Applicant for any contribution to the cost [432] or any soundproofing to the floor of the upper flat.
149. The Tribunal finds that noise from TV or radio played at a reasonable volume would also inevitably have been audible outside the Respondents' Property during the day on occasions between midday and the evening if, for example, a window or a door were open.
150. However, whilst audible sound may have been heard from a TV or radio between the hours of 12 noon and 8am, having considered the totality of the evidence the Tribunal is satisfied that no nuisance on account of noise was caused by the Respondents. In reaching this conclusion the Tribunal

has given particular weight to the evidence relied on from the Health and Safety Executive (HSE) regarding the control of noise, reproduced in Mr Withers' skeleton argument.

151. The Tribunal finds that none of the Appellant's recordings of alleged noise disturbance between 9 April 2025 and 31 May 2025 exceeded 56 decibels and, therefore, equated on the HSE scale to no more than faint or background noise. They did not even reach the level of quiet to moderate sound (such as soft music in homes). This undermines the weight the Tribunal gave to Mr Puckett's notes and emails regarding the alleged noise disturbance, which the Tribunal viewed in the context of the ongoing dispute between the two parties. By way of example, the Applicant's note on 12 April 2025 at 21.03pm refers to *'Living room TV noise very loud with major bass issue'*, with a recording of 56 decibels. However, the Tribunal notes that according to the Health and Safety Executive, that loud radio and the playing of the piano register in the region of 85 decibels, and 'loud' and 'very noisy' registering from 90 to 100 decibels, indicating that the alleged noise caused by the Respondents was not loud or unreasonable. The Tribunal also finds there to be no recordings of any noise much after 9pm consistent with Mr Morton's evidence that he goes to bed at this time.
152. On that basis the Tribunal concluded that notwithstanding the multiple complaints and recordings made by the Applicant, there is no actionable breach of the covenant in paragraph 3 of the First Schedule in respect of noise nuisance.

Conclusions

153. Having made the findings of fact set out above, the Tribunal determines that the Respondents have not breached the covenants in their lease as asserted by the Applicant.
154. As the Applicant's application has not succeeded, the Tribunal makes an Order under s20(C) of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that any costs relating to this application may not be recovered through the service charge or as an administration charge.

Note: 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 that 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, and should be sent by email to rpsouthern@justice.gov.uk.
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

The Law

Section 168 of the Commonhold and Leasehold Reform Act 2002 provides as follows:

"(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.

