

**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**

Case No. CHI/19UG/LBC/2007/0007

**REASONS**

**Application** : Section 168(4) Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”)

**Applicant/Landlord** : Cliffside Management (Swanage) Limited (“the Company”)

**Respondent/Leaseholder** : Ms Angela Evelyn Rosemary Stone (Flat 1)

**Building** : 9 Ulwell Road, Swanage, BH19 1LE

**Flats** : the 4 flats comprising the Building

**Premises** : Flat 1 in the Building

**Lease** : the lease of the Premises dated the 31 January 2003 and made between Ashmoor Developments Limited (1) and Angela Evelyn Rosemary Stone (2)

**Date of Application** : undated, but sent to the Tribunal with a letter dated the 30 March 2007

**Date of Hearing** : 12 July 2007

**Venue** : Poole Lighthouse for the Arts, Kingland Road, Poole, Dorset

**Attendances on behalf of the Applicant/Landlord** : Mr Mike Parker (Flat 4)

**Also in attendance** : Mrs Julie Madley, Mr and Mrs P Walters, and Ms L Madley

**Attendances on behalf of the Respondent/Leaseholders** : Mr D Weintraub of Grenville J Walker

**Also in attendance** : Ms A Stone, Mr R Woodford, Ms J Kowalewski (until 12.50)

**Members of the Leasehold Valuation Tribunal** : Mr P R Boardman JP MA LLB (Chairman), Mr D L Edge FRICS, and Mr K M Lyons FRICS

**Date of Tribunal’s Reasons** : 3 August 2007

## **Introduction**

1. This Application by the Applicant/Landlord is under section 168(4) of the 2002 Act, namely for a determination that a breach of a covenant or condition in the Lease has occurred
2. The hearing of the application took place on the 12 July 2007

## **Documents**

3. The documents before the Tribunal are the :
  - a. application and supporting documents numbered 1 to 95 in the Tribunal's bundle
  - b. statement by Ms Stone dated the 21 June 2007
  - c. bundle of further exhibits to Mr Parker's statement, submitted on the 5 July 2007
  - d. letters from Swanage Medical Practice and Royal Bournemouth Hospital submitted at the inspection of the Building on the morning of the hearing
4. References in these reasons to page numbers are references to page numbers in the Tribunal's bundle, references to MPI, MP2, and so on, are references to the exhibits to Mr Parker's statement, and references to AS1, AS2 and so on, are references to the exhibits in Ms Stone's statement

## **Inspection**

5. The Tribunal inspected the Building on the morning of the hearing on the 12 July 2007. Present were Mr Parker, Mrs J Madley, Ms L Madley, Mr and Mrs Walters, Ms Stone, Mr Woodford, and Ms Kowalewski
6. The Building was a 2-storey, early 1900's detached house, recently converted with a rear extension to provide 4 flats
7. There was a shallow front garden with Flat 1. It extended down the right-hand side, giving access to the external door of Flat 1
8. A communal front door to Flats 1 to 3 had an entry-phone, and led to a carpeted communal hallway, with an alcove on the left, next to the stairs at the end of the hallway. Access to Flat 4 was via steps at the side rear of the property
9. A communal tarmac drive down the left-hand side led down to a tarmac communal parking area with 5 marked bays and 2 integral garages. There was a rear lawn with trees and shrubs
10. There was an external electricity meter cupboard on the left-hand side of the Building next to

the communal driveway

## **The Lease**

11. The copy of the Lease at pages 19 to 40 ends part way through paragraph 2 of the sixth schedule. The parties confirmed at the hearing that there was one further page, but that its contents related to the maintenance charge, and were not material to these proceedings
12. For the purposes of these proceedings the material parts of the Lease are as follows :

### ***Clause 1***

*“the Estate” means the land shown edged red on the [Lease plan]*

*“the Building means the land and building erected thereon known as...including( for the avoidance of doubt) the garages on part of the ground floor thereof*

*“the Flat” means Flat Number 1 on the ground floor of the Building and shown edged red on [the Lease plan] together with two car parking spaces edged blue on the [Lease plan] and the patio garden shed area and garden ground each edged in green on [the Lease plan]*

### ***Clause 4 (a)***

*The rights (in common with the Lessor and all others entitled to the like rights) set out in the First Schedule are included in this Lease for the benefit of the Flat*

### ***First schedule***

#### ***Rights included in the demise***

##### ***Paragraph 5***

*The benefit of the covenants and restrictions in the Third Schedule... in the leases of the other flats... in the Building... so far as the same are intended to benefit the Flat*

##### ***Paragraph 6***

*The right to deposit refuse in a refuse bin located in a position designated by the Lessor and all necessary rights of access thereto*

### ***Third schedule***

#### ***Part I***

##### ***Covenants by the Lessee***

##### ***Paragraph (r)***

*To observe such reasonable restrictions and regulations as the Lessor may from time to time make for the good running and management of the Estate*

##### ***Paragraph (s)***

*To keep any garden area included in this demise properly cultivated and in a neat and tidy condition*

**Part II**

**Restrictions**

**Paragraph 2**

*Not to do or suffer to be done any act or thing causing nuisance or annoyance to the Lessor or the owners lessees and occupiers of the other flats ... nor to use the Flat or suffer the use of the same for any illegal or immoral purposes*

**Paragraph 5**

*Not to obstruct or permit the obstruction of any of the entrances porches hallways passages landings or staircases in the Building or the driveway forecourt or the footpaths in the Estate*

**Paragraph 10**

*No vehicles other than a taxed and roadworthy private motor vehicle shall be kept on any car parking space included in this demise*

**Fourth Schedule**

**Covenants by the Lessor**

**Paragraph 4**

*To use his best endeavours to keep all entrances porches hallways passages landings and staircases in the Building retained by the Lessor clean and reasonably lighted and decorated*

**Preliminary and procedural matters**

13. Mr Weintraub objected to the admission in evidence of the bundle of further exhibits to Mr Parker's statement, submitted on the 5 July 2007. Mr Weintraub had seen it for the first time on the morning of the hearing, which had given him no time to prepare
14. However, after having had the opportunity of considering the bundle with Ms Stone over the lunch break, Mr Weintraub indicated that he was prepared to withdraw his objection, subject to the Tribunal not taking account of a sentence in MP18 at the foot of page 5 of that bundle
15. Mr Parker agreed to that sentence not being considered, and also agreed to the admission in evidence of the letters from Swanage Medical Practice and Royal Bournemouth Hospital submitted at the inspection earlier that morning

**The points of claim**

16. The Company's points are set out in detail in Mr Parker's statement dated the 27 March 2007 at page 5. Ms Stone's responses are set out in detail in her statement dated the 21 June 2007

17. A summary of those points, of the additional oral evidence and submissions at the hearing, and of the Tribunal's decision and reasons in relation to each point, with a note in each case of the point numbers in Mr Parker's statement, the clause number of the Lease referred to in Mr Parker's statement in respect of which a breach of covenant is said to have taken place, the exhibit numbers of photographs, and the page numbers of the Tribunal's bundle, is as follows

***Point 5.1 : waste bins outside front door (schedule 1 paragraph 6 page 26) (MP4)***

18. The Company's claim : Ms Stone placed her waste bins outside the front door of the Building instead of in the designated areas, despite a letter from the Company dated the 27 July 2006 (MP3)
19. Ms Stone's response : the dustbin men would not go round to the back to collect them
20. In response to questions from the Tribunal, Mr Parker said that the Company's solicitors had advised about the headings of the claim, and about the clauses in the lease which were relevant, but, having been given time during the hearing to consider the point, Mr Parker accepted, on reflection, that schedule 1 of the lease contained rights for the benefit of the Premises, and not covenants or conditions, and that Mr Parker was unable to direct the Tribunal to a covenant or condition in the Lease in respect of which Ms Stone's alleged behaviour in that respect could be claimed to be a breach
21. The Tribunal finds that schedule 1 paragraph 6 of the Lease is a right for the benefit of the Premises, and not a covenant or condition capable of being broken
22. Tribunal's decision : there has been no breach of a covenant or condition in the Lease for the purposes of section 168(4) of the 2002 Act in relation to this item of claim

***Point 5.2 : untaxed car (schedule 3 part II paragraph 10 page 33) (MP6)***

23. The Company's claim : Ms Stone owned a Rover, and her son, who often stayed with her, had a Vauxhall Nova. The Rover had been parked in the Estate untaxed from the 1 June 2006 to the 17 August 2006, and from the 1 February 2007 to the 19 February 2007. In Mr Parker's witness statement he stated that before the 27 August 2006 the tax disc from the Nova had been placed on the Rover, leaving the Nova untaxed. The tax discs for both vehicles were then replaced between August and November 2006. At the hearing before the Tribunal, it was alleged that the Nova had been parked there untaxed from the 1 March 2006 to the 9 March 2006
24. Ms Stone's response : accepted so far as the Rover was concerned, but the vehicle had been taxed immediately afterwards on each occasion. In her witness statement she said that at no

time had her son transferred one tax disc to another. She produced photographs which she said proved that the cars were all taxed by the beginning of August

25. So far as the Nova was concerned, the Tribunal gave Ms Stone the opportunity to submit written representations after the hearing, with Mr Parker having the right to a written response
26. Ms Stone's further representations were contained in a letter from her solicitors dated the 17 July 2007. The Nova had not been in Swanage between January 2006 and the 29 June 2006, so that it was not relevant whether it was taxed during the period from the 1 March 2006 to the 9 March 2006
27. Mr Parker responded by letter dated the 25 July 2007. He said that new exhibits, which were attached to the letter, included photographs which proved that the Nova was at the Estate, untaxed, on the 15 August 2006
28. The Tribunal finds that the Rover car was parked in the Estate untaxed for the periods claimed, namely for 78 days and 19 days, but that it was then taxed immediately afterwards
29. Tribunal's decision : the parking of the Rover car untaxed was in each case a breach of covenant, but each breach of covenant has subsequently been remedied
30. The Tribunal finds that there is no evidence before the Tribunal that the Nova was at the Estate, untaxed, between the 1 March 2006 and the 9 March 2006, as alleged at the hearing. In relation to the allegation in Mr Parker's witness statement and letter that the Nova was at the Estate, untaxed, in August 2006, the Tribunal finds that no evidence in that respect was produced at or before the hearing, and the Tribunal is not prepared to admit into evidence after the hearing the documents attached to Mr Parker's letter, in respect of which Ms Stone has not had the opportunity to comment

***Point 5.3 : hallway items storage (schedule 3 part II paragraph 5 page 32) (MP8, MP19)***

31. The Company's claim : Ms Stone had always stored items, including a bookcase, in the communal hallway, making it difficult to use the communal internal areas, and constituting a health and safety risk. She continued to do so despite the letter from the Company dated the 27 July 2006 (MP3) and a further letter dated the 28 September 2006 (MP7)
32. Ms Stone's response : it was accepted that the photographs were representative of the items that used to be in the hallway, but the items were not causing an obstruction, as could be seen from the photographs at AS7 and AS8

33. Mrs Madley said at the hearing that she accepted that the hallway had not been obstructed at the time of the Tribunal's inspection, in that the only items now remaining were the bookcase, a mirror, and, in the alcove, a folding stepladder
34. Mr Parker said that he was happy with the bookcase, but not with the ladder
35. In answer to questions from the Tribunal, Mrs Madley said that cleaning of the hallway was carried out by herself and Mrs Walters by hoovering the hallway carpet about once a month
36. In answer to further questions from the Tribunal about the meaning of the word "obstruct" in schedule 3 part II paragraph 5, Mr Parker said that it meant "to put anything in the way". Any article placed in the hallway would constitute an obstruction, whether or not it interfered with passing along the hallway
37. Mr Weintraub responded that "obstruct" in that context meant "preventing passing", whereas Mr Parker's interpretation would mean that nothing could be placed there
38. The Tribunal finds that :
  - a. the Tribunal has not been directed to any clause in the Lease preventing the placing of articles in the hallway, as such
  - b. the issue before the Tribunal in respect of this item is accordingly limited to the question whether Ms Stone has caused an obstruction, or has permitted an obstruction, in breach of schedule 3 part II paragraph 5
  - c. each of the parts of the Building and the Estate referred to in schedule 3 part II paragraph 5 is a part of the Building or the Estate through which or over which access is required by each of the lessees, namely *the entrances porches hallways passages landings or staircases in the Building or the driveway forecourt or the footpaths in the Estate*
  - d. according to the Compact Oxford English Dictionary (second edition), "obstruct", in the context of a way or passage, means "to block up, close up, or fill with obstacles or impediments; to render impassable or difficult of passage"
  - e. the bookcase in the photographs was still present when the Tribunal inspected the hallway
  - f. the measurements in AS7 of the width of the hallway and the width of the bookcase fairly represented the available amount of room at the time of the Tribunal's inspection
  - g. there was plenty of room for members of the Tribunal to walk down the hallway past the bookcase without any difficulty, and it did not block the hallway or render the hallway

impassable or difficult of passage

- h. the ladder in the alcove did not block the hallway or render the hallway impassable or difficult of passage
- i. none of the other items in the photographs, including the photographs at MP19, blocked the hallway or rendered the hallway impassable or difficult of passage
- j. neither the ladder viewed on inspection, nor any of the other photographed items in the alcove at MP19 blocked, or impeded, or made difficult, access to the fire alarm in the alcove

39. Tribunal's decision : on the evidence before the Tribunal, there has been no breach of a covenant or condition in the Lease for the purposes of section 168(4) of the 2002 Act in relation to this item of claim

***Point 5.4 : blocking driveway (schedule 3 part II paragraph 5 page 32) (MP9)***

40. The Company's claim : Ms Stone had blocked the driveway by parking up to 4 cars in the communal area and preventing access to the driveway and the other lessees' parking bays

41. Ms Stone's response : if friends parked against the wall in front of her car, she asked them to move on to the road as soon as she was aware of them doing so. She had on occasion parked outside her parking bay in order to open her shed door. However, at no time was access blocked, as there was more than enough room, as was shown in AS9 and indeed in MP9. She had blocked the driveway once for 2 minutes while she used the bathroom, but had moved the car into her parking bay immediately afterwards

42. At the hearing, Mr Parker said that on one occasion Ms Stone had parked in the neck of the driveway blocking Mr Parker in for 3 hours while Ms Stone was on the beach. Mr Weintraub objected to that evidence being admitted because no prior notice of it had been given and there were no photographs, which Mr Parker accepted

43. The Tribunal finds that :

- a. the Tribunal has not been directed to any covenant or condition in the Lease requiring Ms Stone to park only within the designated parking bays
- b. the issue before the Tribunal in respect of this item is accordingly limited to the question whether Ms Stone has caused an obstruction, or has permitted an obstruction, in breach of schedule 3 part II paragraph 5
- c. for reasons already given, the Tribunal finds that "obstruct" in this context means "to block up, close up, or fill with obstacles or impediments; to render impassable or difficult of passage"



- d. the Tribunal accepts Mr Parker's photographic evidence in MP9 that on occasions a car has been parked partially, or wholly, out of Ms Stone's designated bay by the boundary on the left-hand side of the Estate, and that on one occasion 2 vehicles were so parked (photograph C5 on page 63)
  - e. however, having inspected the car parking area itself, and having considered all the evidence before the Tribunal, including the photographic evidence, the Tribunal finds that the parking complained of did not cause such difficulty for the other lessees in manoeuvring out of their parking spaces as would constitute an obstruction for the purposes of schedule 3 part II paragraph 5
44. Tribunal's decision : on the evidence before the Tribunal, there has been no breach of a covenant or condition in the Lease for the purposes of section 168(4) of the 2002 Act in relation to this item of claim

***Point 5.5 : nuisance and annoyance (schedule 3 part II paragraph 2 page 31) :***

45. The Company's claim in principle : the Tribunal indicated to the parties at the hearing that the Tribunal's view was that the covenant in the Lease against nuisance and annoyance in schedule 3 part II paragraph 2 was intended to be a covenant against the use of the Premises and the Estate in such a way as to cause nuisance and annoyance to the other leaseholders, and was not intended to govern the relationship of the parties in any other context. Both Mr Parker, on reflection, and Mr Weintraub, indicated that they accepted that view
46. The Company's individual claims under each sub-heading are as follows

***Point 5.5.4, 5.5.8, 5.5.9, 5.5.11 : abusive language and abusive gestures***

47. The Company's claim : Ms Stone had used abusive language and gestures to the other leaseholders on the occasions set out in Mr Parker's statement
48. Ms Stone's response : denied, except that Ms Stone did make an abusive gesture towards Mr Parker's wife, which was witnessed by Ms Kowalewski, after Mr Parker's wife had been offensive towards Ms Stone
49. The Tribunal finds that the alleged abusive language and gestures would not, even if proved, and even if they had taken place in the Building or the Estate, have constituted a breach of the covenant in the Lease against nuisance and annoyance in schedule 3 part II paragraph 2, in that the abusive language and gestures would not have been part of the use of the Premises and the Estate, as such, but would have been symptoms of the breakdown of the personal relationships of people who happened also to be leaseholders of Flats in the Building

50. Tribunal's decision : on the evidence before the Tribunal, there has been no breach of a covenant or condition in the Lease for the purposes of section 168(4) of the 2002 Act in relation to this item of claim

***Point 5.5.5, 5.5.17, 5.5.22 : stalking through communal garden and to the beach***

51. The Company's claim : Ms Stone had harassed Mr Parker and his family on the occasions set out in Mr Parker's statement

52. Ms Stone's response : denied. It was the other leaseholders who were harassing her, as set out in her letter at AS10 and in Mr and Mrs Woodford's letter at AS11

53. The Tribunal finds that the alleged harassment would not, even if proved, and even if it had taken place in the Building or the Estate, have constituted a breach of the covenant in the Lease against nuisance and annoyance in schedule 3 part II paragraph 2, for the same reasons as already given in relation to the alleged abusive language and gestures

54. Tribunal's decision : on the evidence before the Tribunal, there has been no breach of a covenant or condition in the Lease for the purposes of section 168(4) of the 2002 Act in relation to this item of claim

***Point 5.5.7, 5.5.10 : throwing plums at Mr Parker's car and Flat and leaving garden waste on communal bench (MP4, MP11)***

55. The Company's claim : Ms Stone threw plums at Mr Parker's car and Flat and left garden waste on the communal bench

56. Ms Stone's response : the only time when she had left garden waste in the garden was when she had come home to find that the other leaseholders had ripped up her plants and removed her garden bench. She had trimmed a buddleia above the bench and Mr Parker had not given her a chance to throw the waste away before he started photographing. She had never thrown plums at cars

57. In cross-examination Mr Parker admitted that he had not actually seen Ms Stone throw the plums

58. The Tribunal finds that :

- a. the leaving of garden waste on the communal bench was a use of the Estate which was capable of being a nuisance and an annoyance to other leaseholders, in that they would have had to move the garden waste before being able to sit on the communal bench
- b. however, there is no evidence before the Tribunal, either in the written or oral evidence of Mr Parker or the written or oral evidence by Mrs Madley, that it actually caused any nuisance or annoyance
- c. the only evidence before the Tribunal of the extent of the garden waste left on the communal bench is at MP11 on page 68, although the Tribunal also notes a photograph of garden waste on the lawn (MP4 at page 46) and notes that both photographs are captioned as being on the same date, namely the 6 August 2006
- d. the extent of that waste is small
- e. there is no evidence before the Tribunal that the waste was present on the bench or the lawn for longer than the day noted in the caption to the photographs
- f. having considered all the evidence in the round, the Tribunal is not persuaded, on a balance of probabilities, that the garden waste deposited on that day did in fact cause nuisance or annoyance to the Company of the other leaseholders so as to amount to a breach of schedule 3 part II paragraph 2

59. Tribunal's decision : on the evidence before the Tribunal, there has been no breach of a covenant or condition in the Lease for the purposes of section 168(4) of the 2002 Act in relation to this item of claim

***Point 5.5.11 : upending benches, emptying rubbish bins over benches and gardens, blocking Mr Parker's car with garden rubbish, and playing very loud music from car late at night***

60. The Company's claim : on various other occasions Ms Stone had up-ended one of the new benches, emptied rubbish bins over benches and gardens, placed garden rubbish immediately behind Mr Parker's car blocking its exit route (MP11 page 68), and played very loud music from her car late at night

61. Ms Stone's response : denied. She had never put rubbish behind Mr Parker's car blocking his way, and the twig shown in the photograph would not have blocked his way in any event. On one occasion, which was the day when they destroyed her plants and removed her bench, she did sit in the garden and play music from her car at the normal volume until about 10.30 pm

62. Mrs Madley's oral evidence was that she had instigated the moving of Ms Stone's bench into Ms Stone's front garden, and, in the morning, had discovered a communal bench had been up-ended

63. The Tribunal finds that :

- a. there is no evidence before the Tribunal that any of the leaseholders witnessed Ms Stone upending the bench, the emptying of rubbish bins, or the placing of garden rubbish behind Mr Parker's car
- b. Ms Stone denies Mr Parker's assertions in each respect
- c. the Tribunal is not persuaded, on a balance of probabilities, that Ms Stone was responsible for any of the three matters complained of
- d. Mr Parker's assertion about the music from the car is that it was played very loud, and late into the night
- e. Ms Stone has admitted playing music from her car, but says that it was at normal volume until about 10.30 pm
- f. having considered all the evidence in the round, the Tribunal is not persuaded, on a balance of probabilities, that the music was loud enough or late enough to constitute a breach of the covenant in the Lease against nuisance and annoyance in schedule 3 part II paragraph 2

64. Tribunal's decision : on the evidence before the Tribunal, there has been no breach of a covenant or condition in the Lease for the purposes of section 168(4) of the 2002 Act in relation to this item of claim

***Point 5.5.16 : entering Mr Parker's garage and taking items removed from electricity cupboard***

65. The Company's claim : Ms Stone entered Mr Parker's garage, uninvited, where Mr Parker was sorting out unwanted items from the electricity cupboard. Ms Stone sorted through the items and took a quantity of them

66. Ms Stone's response : Mr Parker removed items left by the former management company for everyone's use in the electricity cupboard. There were screws and other items. Mr Parker had them in the car park in front of his garage. Ms Stone took a few screws

67. In cross-examination Mr Parker confirmed that all leaseholders, including Ms Stone, were entitled to take the items

68. The Tribunal finds that :

- a. the Tribunal is not persuaded that the removal of the items was of itself a breach of the covenant in the Lease against nuisance and annoyance in schedule 3 part II paragraph 2, in that, in the first place, the items were, in Mr Parker's words, "unwanted"; in the second place, their removal was not part of the use by Ms Stone of Ms Stone's Flat or of

the Estate, as such; and, thirdly, there is no evidence before the Tribunal that their removal actually caused any nuisance or annoyance to the Company or to any of the other leaseholders

- b. there is a conflict of evidence before the Tribunal about whether the items were in Mr Parker's garage or outside it; however, even if the items were in the garage, and even if Ms Stone's entering the garage were unauthorised, the unauthorised entry would not, by its very nature, be nuisance or annoyance in the use by Ms Stone of the Premises or of the Estate

69. Tribunal's decision : on the evidence before the Tribunal, there has been no breach of a covenant or condition in the Lease for the purposes of section 168(4) of the 2002 Act in relation to this item of claim

***Point 5.5.18 : blocking driveway with wheelie bin***

70. The Company's claim : Ms Stone moved her wheelie bin into the centre of the driveway to block Mr Parker's exit

71. Ms Stone's response : she had never put a wheelie bin in the centre of the driveway

72. In cross-examination Mr Parker said that it was Ms Stone's wheelie bin, but admitted that he had not actually seen her put it into the middle of the driveway

73. The Tribunal is not persuaded, on a balance of probabilities, that Ms Stone was responsible for moving the bin

74. Tribunal's decision : on the evidence before the Tribunal, there has been no breach of a covenant or condition in the Lease for the purposes of section 168(4) of the 2002 Act in relation to this item of claim

***Point 5.5.19, 5.5.20 : dumping mouldy sheet at the foot of Mr Parker's steps***

75. The Company's claim : Mr Parker found a mouldy and dirty sheet on his steps and believed Ms Stone to have been responsible. He moved it to one side. Later that day the sheet was back on the bottom step

76. Ms Stone's response : the dirty sheet was not hers. It had been left by the builders

77. The Tribunal finds that

- a. there is no evidence before the Tribunal that any of the leaseholders witnessed Ms Stone placing the sheet on the bottom of the steps
- b. Ms Stone denies doing so
- c. the Tribunal is not persuaded, on a balance of probabilities, that Ms Stone was responsible for placing it there

78. Tribunal's decision : on the evidence before the Tribunal, there has been no breach of a covenant or condition in the Lease for the purposes of section 168(4) of the 2002 Act in relation to this item of claim

***Point 5.5.24, 5.5.25 : lengthy ringing of Mr Parker's doorbell, banging on door, shouting loudly, and covering external light with bin bag and cardboard***

79. The Company's claim : Mr Parker's wife put on their outside light after dusk. About 9.00 pm Ms Stone rang their door bell/entryphone, holding her finger on it for a long time. Mr Parker's wife refused to answer. Ms Stone banged hard on the door and shouted loudly and incoherently. Mr Parker's wife called the police. The light went off. The police arrived and said that the light had been covered with a bin bag, which had melted, and cardboard, which the police said was a fire risk

80. Ms Stone's response : she did hold the buzzer down for a short period as they had intentionally left the light on to stop her sleeping. She did not bang on the door or shout. In view of their refusal to turn off the light, she did cover the light as she needed to go to sleep as she had to work in the morning and was not well

81. In cross-examination Mr Parker said that their light was operated from a switch inside their Flat, and that the light did shine into Ms Stone's bedroom, but that they had not turned it on with the intention of doing so, but had turned it on because it was a security light

82. The Tribunal finds that :

- a. both parties agree that Mr Parker's external light was switched on, and that it was shining into Ms Stone's bedroom
- b. there is a conflict of evidence before the Tribunal about the length of time during which Ms Stone pressed the buzzer, and about whether she shouted or banged on the door
- c. however, the pressing of the buzzer of Mr Parker's Flat, or the banging on his door and the shouting outside his door would not, by its very nature, be nuisance or annoyance in the use by Ms Stone of the Premises or of the Estate

83. Tribunal's decision : on the evidence before the Tribunal, there has been no breach of a covenant or condition in the Lease for the purposes of section 168(4) of the 2002 Act in relation to this item of claim

***Point 5.6 : failing to keep garden areas neat and tidy (schedule 3 part I paragraph (s) page 31) (MP12)***

84. The Company's claim : Ms Stone had allowed her front garden to become overgrown and unkempt, with bags of excrement piled up, and junk left in the garden. The garden at the rear of Flat 1 on the left-hand side of the Building was also completely wild, partially restricting access to the stairs to Mr Parker's Flat

85. Ms Stone's response : the photographs at MP12 were from the end of season and winter when no garden was at its best. Ms Stone's own photographs were at AS12, together with a note dated the 18 April 2007 and certificate from "Swanage in Bloom" stating that Ms Stone's garden had shown an improvement each year, and was awarded third place in 2006

86. In answer to questions from the Tribunal Mr Parker accepted on reflection that photograph D15 in the bundle of further exhibits to Mr Parker's statement submitted on the 5 July 2007 showed items in the common parts are leading from the communal front door to Ms Stone's front gate, and that those items were not within Ms Stone's Flat or garden, as such

87. The Tribunal has taken account of all the evidence, including the photographic evidence, on behalf of the Company. However, the Tribunal has also taken account, first, of the "Swanage in Bloom" award, and, secondly, of the Tribunal's favourable overall impression of the appearance of the front and back gardens when the Tribunal inspected the Estate

88. Tribunal's decision : on the evidence before the Tribunal, there has been no breach of a covenant or condition in the Lease for the purposes of section 168(4) of the 2002 Act in relation to this item of claim

***Point 5.7 : unauthorised access to Flat 4***

89. The Company's claim : on one occasion Ms Stone forced her way into Flat 4, and on various occasions she had climbed the stairs to the entrance to Flat 4 without consent

90. Ms Stone's response : Mr Parker contradicted himself by on the one hand complaining that Ms Stone did not maintain her rear garden, and then on the other hand complaining that she was trespassing on his stairs when she tried to do so

91. In answer to a question from the Tribunal, Mr Parker was unable to direct the Tribunal to a covenant or condition in the Lease in respect of which Ms Stone's alleged behaviour in that respect could be claimed to be a breach, except the covenant against nuisance and annoyance in schedule 3 part II paragraph 2
92. The Tribunal finds that the alleged behaviour would not be capable of being a breach of schedule 3 part II paragraph 2, in that unauthorised access to another Flat would not, by its very nature, be nuisance or annoyance in the use by Ms Stone of the Premises or of the Estate
93. Tribunal's decision : on the evidence before the Tribunal, there has been no breach of a covenant or condition in the Lease for the purposes of section 168(4) of the 2002 Act in relation to this item of claim

***Point 5.8 : management committee decisions (schedule 3 part I paragraph (r) page 31) :***

***Point 5.9 : temporary woodpile (MP13)***

***Point 5.10 : plant pots and artificial tree (MP14)***

***Point 5.11 : provision of new benches (MP15)***

***Point 5.12 : electricity meter storage cupboard (MP16)***

94. The Company's claim : a management committee meeting took place on the 23 July 2006, when decisions about each of these matters were made. Ms Stone was the only leaseholder who did not attend, and was represented at the meeting by Ms Kowalewski. Minutes were sent to Ms Stone (MP5). Those minutes constituted *reasonable restrictions and regulations* made by the Company for the purposes of schedule 3 part I paragraph (r). Ms Stone had not complied
95. In answer to questions from the Tribunal Mr Parker said that the Company relied on the minutes themselves. There had been no separate publication of *reasonable restrictions and regulations* made by the Company for the purposes of schedule 3 part I paragraph (r). Mr Parker was unable to direct the Tribunal to any other covenant or condition in the Lease in respect of which Ms Stone's alleged behaviour in each respect could be claimed to be a breach, except that the items in the electricity storage cupboard could constitute an obstruction for the purposes of schedule 3 part II paragraph 5
96. The Tribunal finds that :
- a. the mere publication of the minutes of a meeting of the Company does not of itself constitute the making of restrictions and regulations by the Company supplementary to the Lease pursuant to schedule 3 part I paragraph (r)
  - b. the electricity storage cupboard does not fall within any of the categories listed in



schedule 3 part II paragraph 5, namely *entrances porches hallways passages landings or staircases in the Building or the driveway forecourt or the footpaths in the Estate*, each of which, unlike the electricity storage cupboard, is a part of the Building or the Estate through which or over which access is required by each of the lessees

97. Tribunal's decision : on the evidence before the Tribunal, there has been no breach of a covenant or condition in the Lease for the purposes of section 168(4) of the 2002 Act in relation to this item of claim

### **Summary of the Tribunal's findings**

98. The Tribunal finds that a vehicle was parked in the Estate untaxed for 78 days and 19 days, in breach of a covenant by Ms Stone under her Lease, but that each breach of covenant has subsequently been remedied in that the vehicle was then taxed immediately afterwards

99. However, the Tribunal finds that, on the evidence before the Tribunal, there has been no breach of a covenant or condition in the Lease for the purposes of section 168(4) of the 2002 Act in relation to any of the other items of claim

Dated the 3 August 2007



.....  
P R Boardman  
(Chairman)

A Member of the Tribunal  
appointed by the Lord Chancellor