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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAY/LBC/2013/0096**
Property	:	**Flat 34B Chaucer Road, London SE24 0NU**
Applicant	:	**Gandercliff Limited**
Representative	:	**Mr Carl Fain, Counsel, instructed by Systech Solicitors**
Respondent	:	**Mrs Joanne and Mr Boaz Elieli**
Representative	:	**In person**
Type of Application	:	**For a declaration as to a breach of covenant – section 168(4) Commonhold and Leasehold Reform Act 2002**
Tribunal Members	:	**Mr Robert Latham** **Mr Peter Roberts DipArch RIBA**
Date and venue of Hearing	:	5 February 2014 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	18 March 2014

DECISION

The Tribunal determines that for the purposes of section 168(4) of the Commonhold and Leasehold Reform Act 2009, a breach of the lease has occurred. We refer to our findings at [56] – [62]. However, we are satisfied that the extent of the breaches is substantially less than that for which the Applicant contends in its notice of application. We are further satisfied that this application was issued

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prematurely. We regret that the Applicant did not consider alternative remedies, such as mediation.

The Application

1. By an application, dated 2 December 2013, the Applicant seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2009 ("the Act") that the Respondent tenants are in breach of five clauses of their lease of Flat B, 34 Chaucer Road, London SE24 ONU ("Flat B") by reason of building works which they have carried out at their flat.

2. On 5 December, the Tribunal gave directions (at p.10D of the Bundle of Documents). Pursuant to these directions, the Applicant has provided the Tribunal with a copy of up to date Office Company Entries of both the freehold and leasehold titles to the property. The Tribunal have served a copy of the application on Bank of Scotland PLC, the mortgagees.

3. On 19 December, the Applicant filed their Statement of Case (at p.117-121). They have also filed witness statements from (i) Mr Kim Buckingham, a director of both the Applicant Company and Townplot Limited ("Townplot"), the managing agents (at p.53-55); and (ii) Ms Jennifer Johnson, the lessee of Flat C (at p.66-8). Ms Johnson exhibits a Catalogue of Events (at p.71-80). She has also provided a number of photographs, recordings and videos which have been provided on a memory stick.

4. On 10 January 2014, the Respondents filed their Statement of Case (at p.145-168). They have responded to Ms Johnson's Catalogue of Events at p.160-168) and to the recordings at (p.150-153). Both Mr and Mrs Elieli filed witness statements (at p.169-171 and 171-2).

The Hearing

5. Mr Fain appeared on behalf of the Applicant and provided us with a Skeleton Argument. He adduced evidence from Ms Johnson and Mr Kim Buckingham. They were cross-examined by Mrs Elieli, with some additional questions posed by her husband.

6. Ms Johnson placed particular emphasis on Lambeth's Code of Practice for Construction Sites" (the "Code of Practice") (at p.60). This has been prepared to enable "developers and contractors to understand what standards should normally be adopted. Lambeth considers the following working hours should apply when there are sensitive receptors such as schools, hospitals or residential premises: She suggests that a neighbour can only execute such works between 08.00–18.00 during weekdays; 08.00–13.00 on Saturdays; and no works on a Sunday or a public holiday unless agreed in advance with the local authority.

7. Ms Johnson took us through her photographs, all of which bear dates (at p.81-116). We were also played a number of the recordings which she had made with her dictaphone. She described how when there were incidents, she made a note on a scrap of paper. She then added this to her Diary of Events.

8. The Respondents appeared in person and both gave evidence. They were cross-examined by Mr Fain. They also produced a Skeleton Argument.

9. The Respondents do not suggest that Ms Johnson has fabricated her Catalogue of Events; rather that she has exaggerated. For example, at [7] of her statement, Ms Johnson suggests that since April 2012 to December 2013, the property had been like a building site. There has "been "constant noise and disruption and this noise and disruption has frequently started very early in the morning and has frequently continued very late at night and has frequently been on Saturdays and Sundays". They contended that this could not be possible as they both have full time jobs, Mrs Elieli being a Solicitor working some 60-70 hours a week in the commercial litigation department of Edwards Wildman Palmer, UK LLP, whilst Mr Elieli works some 50-60 hours a week as Head of Services and Quality for Outward, a Care and Support Charity. They spend half their weekends outside London. The recordings (at p.71) relate to 12 incidents over a period of 18 months.

10. Mr Elieli described how he found it difficult to communicate with Ms Johnson. She only approached him on two occasions in early 2012. She shouted at him. She has given him no opportunity to respond. She has avoided eye contact.

11. Mr Elieli described how he had initially sought to build bridges with Ms Johnson, but these attempts had been rebuffed. There was an incident on 26 April 2012 when Ms Johnson was going to a family funeral. She was unable to get her suitcase downstairs because it was blocked by builder's materials. Mr Elieli's father offered to take it down for her. Ms Johnson returned on the Sunday evening when works were still in progress. Mr Elieli offered to help Ms Johnson with her case. This offer was refused. A few days later, there was a tool box on the stairs which Ms Johnson knocked over. The Respondents accepted that they had caused Ms Johnson some inconvenience. They brought her a pot plant and apologised. Ms Johnson describes how she didn't want a pot plant. She just wanted the works to stop. She binned the plant. It maybe that the Respondents did not realise that Ms Johnson was grieving and wanted to be left alone and in peace. Equally, Ms Johnson felt unable to give them credit for their attempts to make amends.

12. The Respondents referred us to the previous decision in LON/001Y/LAC/2013/0018 and LON/00AY/LLC/2013/0001, dated 15 October 2013 (at p.173). The Applicant contended that this is not relevant to our current determination. We are satisfied that it is. This also started as an application under s.168(4) for a determination that the Respondents had

carried out building works in breach of the terms of their lease. The Applicant subsequently demanded an administration charge of £9,556. The Tribunal found that this was not payable. Alternatively, the Tribunal would have found that it was unreasonable.

The Issue in Dispute

13. Strictly, all this Tribunal is asked to determine is whether the Respondents have breached a term of their lease. The answer to this is that the Respondents have admitted to breaching Clause 4(8)(b) of their lease (at p.32).

14. However, we are satisfied that it is necessary for this Tribunal to make additional findings as to the extent of the alleged breaches. This application may be a prelude to forfeiture proceedings. The Respondents are also aware of the strict terms of Clause 4(27) of their lease which obliges them to pay the landlord's costs on an indemnity basis where they have breached the terms of their lease.

The Lease

15. The lease for the property which was granted by the Applicant on 27 March 2012 is at Tab 3. The Applicant contends that the Respondents have breached the following covenants:

(i) Clause 4(4) – that the lessee will comply with statutes, etc (p.28);

(ii) Clause 4(23) – that the lessee will comply with planning laws and other regulations (p.35);

(iii) Clause 4(8)(b) – that the lessee will not leave goods, boxes, refuse or rubbish on the staircase or cause obstruction etc (p.32);

(iv) Clause 4(16) – not to cause annoyance, nuisance or disturbance to the lessor or other lessees (p.34);

(v) Clause 4(21) – not to play music, etc, so as to cause a nuisance or annoyance to the lessor or other lessees (p.35).

16. The Respondents referred us to the following terms of the lease:

(i) Clause 4(27) which gives the lessor rights to demand costs on an indemnity basis in respect of any breach by the lessee.

(ii) Clause 6(7) which provides for the lessor to determine any dispute between lessees of adjoining flats.

The Law

17. Section 168 of the Act 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.

18. Mr Fain referred us to Clerk & Lindsell on "Torts" in determining what constitutes an actionable nuisance at common law (at [20-15]:

"Noise and dust caused by demolition and rebuilding will not be actionable if the operations are reasonably carried on, and all reasonable and proper steps are taken to ensure that no undue inconvenience is caused to neighbours. In considering what is reasonable, account must be taken of modern methods. The damages awarded will only be in respect of losses caused by the acts of the defendants which are in excess of what is permissible.

> "A man who pulls down his house for the purpose of building a new one no doubt causes considerable inconvenience to his next-door neighbours during the process of demolition; but he is not responsible as for a nuisance if he uses all reasonable skill and care to avoid annoyance to his neighbour by the works of demolition. Nor is he liable to an action even though the noise and dust and the consequent annoyance be such as would constitute a nuisance if the same, instead of being created for the purpose of demolition of the house, had been created in sheer wantonness, or in the execution of works for a purpose involving a permanent continuance of the dust and noise. For the law, in judging what constitutes a nuisance, does

> take into consideration both the object and the duration of that which is said to constitute the nuisance."

Nevertheless, the claimant merely has to establish that an actionable degree of interference has occurred, the burden is then on the defendant to prove that his actions were reasonable. The principle that harm caused by temporary building work is not actionable is, however, confined to mere inconvenience and does not extend to physical damage to property.

19. In modern urban life, there has to be an element of give and take. However, any tenant must be sensitive to the impact of their actions on their neighbours. Clerk & Lindsell address this issue at [20-10]:

"In nuisance [by interference with enjoyment], there is no absolute standard to be applied. It is always a question of degree whether the interference with comfort or convenience is sufficiently serious to constitute a nuisance. The acts complained of as constituting the nuisance, such as noise, smells or vibration, will usually be lawful acts which only become wrongful from the circumstances under which they are performed, such as the time, place, extent or the manner of performance. In organised society everyone must put up with a certain amount of discomfort and annoyance caused by the legitimate activities of his neighbours. Ordinary domestic use of premises therefore cannot constitute a nuisance, even though interference with the enjoyment of neighbouring premises is caused, if that interference results solely from construction defects for which the defendant is not responsible. In attempting to fix the general standard of tolerance the vague maxim *sic utere tuo ut alienum non laedas* has been constantly invoked. But the maxim is of no use in deciding what is the permissible limit in inconvenience and annoyance between neighbours, and the courts in deciding whether an interference can amount to an actionable nuisance have to strike a balance between the right of the defendant to use his property for his own lawful enjoyment and the right of the claimant to the undisturbed enjoyment of his property. No precise or universal formula is possible, but a useful test is what is reasonable according to ordinary usages of mankind living in a particular society.

> "Whether such an act does constitute a nuisance must be determined not merely by an abstract consideration of the act itself, but by reference to all the circumstances of the particular case, including, for example, the time of the commission of the act complained of; the place of its commission; the manner of committing it, that is, whether it is done wantonly or in the reasonable exercise of rights; and the effect of its commission, that is, whether those effects are transitory or permanent, occasional or continuous; so that the question of nuisance or no nuisance is one of fact (per Oliver J in *Stone v Bolto*n [1949] 1 All ER 237 at p.238-9)."

<u>Background</u>

20. 34 Chaucer Road is a substantial Victorian semi-detached house which has been converted into four flats. Ms Johnson occupies Flat C on the second floor. The Respondents occupy Flat B on the first floor.

21. We did not hear evidence from either of the other tenants, namely Mr de Souza and Mr Hopkins who occupy the ground and basement flats. Both moved into their flats before the Respondents. The Respondents explained how they had a good relationship with them. Mr Hopkin has been content for Mr Elieli to set up his workmate bench in the garden which is included in his demise.

22. As is common with this type of conversion, the sound insulation between the flats is poor. However, whilst one of the complaints has been the playing of music, this is not an issue raised in evidence. It is apparent that the problems within the property are recognised by the occupants. Indeed, the Respondents have installed a false ceiling to improve the sound insulation. Ms Johnson has rather been concerned about the nuisance caused by building works carried out by the Respondents.

23. On 10 January 1985, Ms Johnson acquired her leasehold interest in the second floor flat. Her lease, dated 16 December 1980, is at p.266. She is a single woman who lives in her flat on her own. She has a full-time job as a NVQ Assessor.

24. On 21 June 2011, the Applicant acquired the freehold interest in 34 Chaucer Road (p.12). On 27 March 2012, it granted a new lease to Christine Chick, the existing tenant of Flat B, for a term of 175 years from 25 March 2011. This new lease included Clause 4(27) giving the lessor the right to demand indemnity costs.

25. On 23 March 2012, the Respondents acquired the lease in Flat B for £198,000 (see the Office Copy Entries at p.15-16). Their interest was registered on 20 June 2012. The property is charged to the Bank of Scotland PLC.

26. In their decision of 15 October 2013, the Tribunal found that when the Respondents acquired Flat B, it was in a bad state of repair with faulty electrics, crumbling plasterwork, inefficient heating and leaking windows. The Respondents wanted to carry out works before they moved in and wrote to Townplot, the managing agents, on 3 April 2012. We have that letter at p.122. They sought consent to install a new boiler, replace three windows, remove stud walls to create an open plan living and kitchen space and to replace the front door. They also proposed to upgrade the electrical wiring and replaster the inter walls. We were told that the internal walls were lathe and plaster. The Tribunal found that the landlord gave its consent requiring a licence fee of £400.

27. Works started shortly thereafter. Builders were employed for some of the works. A new bathroom was installed. There is no suggestion that the builders worked outside the core hours specified in Lambeth's Code of Practice. The replacement of the windows required planning consent and these were deferred until December. Mr Elieli described how he removed the stud walls and replaced the front door. He used electrical saws (both a jig and circular), a drill and sander. He used a workmate bench which he set up in the garden; he borrowed a tile cutter. The Respondents assert that this phase of the works was finished on 9 May. On 19 May, the Respondents were married. On 26 May, they went on honeymoon. We accept their evidence on this.

28. We make the following findings:

(i) The Respondents' builders left building materials on the staircase. This is recorded in the photos at p.81-99 taken on 1 and 6 May.

(ii) Some works were executed by the Respondents in the evening and at weekends. Ms Johnson takes the view that residents carrying out DIY to their homes should work within the hours of work specified in Lambeth's Code of Practice. We do not accept this. However, anyone carrying out DIY works must have regard to the impact of their work on their neighbours.

(iii) At about 00.30 on Monday, 23 April, Ms Johnson recorded some hammering, namely some 10 blows. She stated that she had returned home on the Sunday evening and that such building activities were audible for some 4 hours. We reject the Respondent's evidence that this could be attributable to domestic appliances in the kitchen. We are satisfied that this was unreasonable and constituted a nuisance. However, this was an isolated incident.

(iv) Some building works were executed during between 19.30 and 21.30 on the evening of Sunday, 1 May. This was also a breach of covenant.

(v) Ms Johnson suggests that building works continued into June. We are satisfied that this phase of the works finished on 9 May.

(vi) Although she was compiling her Catalogue of Events, Ms Johnson made no complaint to the managing agents at this time.

29. On 11 December 2012, the Respondents obtained planning permission to replace the windows and they proceeded with this work. The previous Tribunal were satisfied that they informed Mr Buckingham when they had completed these works. A new kitchen was installed at this time.

30. We make the following findings:

(i) There was some DIY building work over the weekend of 15/16 December. Some hammering was audible at 09.45 on the Sunday. This was marginally early for works executed over a weekend.

(ii) Ms Johnson complained that wall paper in the hallway was damaged on Friday 7 December (see photo at p.100). We accept the evidence of the Respondents that they were not responsible for this as they were in Poland. In any event, the state of the decorations was poor and requires attention.

(iii) No complaints were made to the managing agents by any of the other tenants.

31. We have had regard to the events that led to the previous determination by the Tribunal (at p.173).

(i) On 31 January 2013, the Applicant issued an application pursuant to s.168(4) for a determination that the Respondents had carried out the building works in breach of covenant. No letter before action was sent. This application was withdrawn at the substantive hearing following the Respondents agreement to pay the licence fee of £400 which had been agreed prior to the execution of the works.

(ii) Thereafter, the Applicant demanded £9,556 by way of costs arising from the s.168(4) application. The Applicant issued a further application pursuant to s.168(4) on the ground that the Applicants had failed to pay this administration charge. The Respondents issued a separate application under s.20C Landlord and Tenant Act 1985. On 13 June 2013, a Procedural Chairman indicated that both these applications were misconceived.

(iii) Whilst these applications were still pending, the Applicant issued separated proceedings in the County Court claiming the administration charge of £9,556 together with additional costs.

(iv) Thereafter, the Respondents issued a separate application under Schedule 11, Commonhold and Leasehold Reform Act 2002, challenging the payability and reasonableness of the administration charge of £9,556.

(v) On 4 September 2013, a Tribunal determined these two applications issuing their decision on 15 October. The Tribunal found that (i) a demand made by the Applicant for the administration charges for legal costs in the sum of £9,556 was unreasonable and that no part of this was payable; and (ii) the Respondents had obtained their landlord's consent for the works and that the licence fee of £400 would be paid after the works had been completed. The Tribunal noted that the Applicant had issued proceedings prematurely before both the Tribunal and in the County Court without sending appropriate pre-action correspondence (see [36], [37] and [50]).

(vi) The Tribunal refused the Applicant permission to appeal. Thereafter, the Applicant sought permission to appeal from the Upper Tribunal.

32. Ms Johnson complained about further DIY works which were carried out during the summer of 2013. The photos confirm that a circular saw was used and this was left on the staircase on 16 June (p.104-5); 28 July (106-107) and between 3 and 5 September (p.105-110). This was a breach of covenant.

33. On Saturday, 16 June, Mr Elieli did some sawing on the roof of Flat A. Ms Johnson complains that there was an electrical lead which ran across the staircase. On Saturday 28 July, Ms Johnson complained to Mr de Souza about the Health and Safety risk posed by the saw on the stairs. Mr de Souza was not willing to become involved. However, it seems that Mr de Souza subsequently had a quiet word with the Respondents as a result of which the saw was moved. It is apparent that Ms Johnson considered that no DIY works should have been executed by the Respondents on a Sunday or after 13.00 on a Saturday. We do not accept this. We do not consider any of these matters to be sufficient to constitute a breach of covenant.

34. Relationships between Mr and Mrs Elieli and Ms Johnson further deteriorated in October. These events led to the current application by the Applicant.

35. On 20 October, a pipe under the radiator in Ms Johnson's bathroom burst. The Respondents gave evidence that this was not the first time that water had penetrated into their flat. The Respondents complained about this to "Louie", Ms Johnson's builder, whilst she was still at work. Louie advised Mr Elieli to drill a hole in the false ceiling to allow the water to escape. The Respondents asked for their plumber to check the works as Louie was not a qualified plumber. Mr Elieli also made some remark about contacting the freeholder.

36. In his evidence, Mr Buckingham described how he had had a conversation with Ms Johnson on 21 October about extending her lease. He added that she had made some reference about "noise". He told her, that she must put it in writing. In his statement, he describes how he had contact with Ms Johnson "around 9 November". This was the first that he knew of her complaints.

37. On 27 October, there was further water penetration into the Respondents' flat. Ms Johnson described this as "the night of the storm". At 23.30, Mr Elieli complained to Ms Johnson about this. She called Louie. He borrowed a ladder from the Respondents to try and access the roof. It seems that the cause of the problem was a blocked hopper.

38. On 11 November, there was an incident when Mrs Elieli states that she was verbally abused by Ms Johnson and reported the incident to the police. On

12 November (at p.190), Mr Elieli reported this to Townplot, the managing agents. Police officers made contact with Ms Johnson on 13 and 16 November. Ms Johnson complains that they attended her flat without making a prior appointment (see p.229)

39. On 14 November (at p.57), Ms Johnson sent an e-mail to Mr Buckingham requesting him to use the evidence which she had provided to stop the Respondents from carrying out renovation works illegally. She referred to the adverse impact that this had had on her life over the past 19 months. She complained that the problems were still continuing. She attached the Lambeth Code of Practice which specified the hours within which she considered it reasonable for works to be executed. It would seem that she had provided Mr Buckingham her Catalogue of Events (at p.71-80) and sound recordings some days previously. She made a number of further complaints over the subsequent three weeks (see p.229-233).

40. In cross-examination, Mr Buckingham was asked why he had gone straight to solicitors. His response was that "it could not be undone". The Applicant made no contact with the Respondents prior to issuing this application which was sent to the Tribunal on 3 December, together with witness statements from Mr Buckingham and Ms Johnson.

41. On 3 December, the Applicant's Solicitors, Systech Solicitors ("Systech"), sent the Respondents a letter requiring them to admit they were in breach of their lease and requiring them to give a number of undertakings, including not to execute any building works outside the times specified in the Lambeth Code of Practice (at p.122-124). The Respondents were warned of the landlord's right to recover its costs. Systech asserted that there was no requirement for a letter to be sent before a s.168(4) application is issued.

42. We note that Systech had represented the Applicant in the previous applications before this Tribunal where the Applicant had been criticised for issuing more than one application without any pre-action correspondence.

43. On 6 December, the Respondents replied to the Systech (at p.129). They made a detailed response to the allegations made against them. They accepted that they had stored items in the common parts on a temporary basis and were wrong to do so. Otherwise, they disputed that they had caused a nuisance. They agreed to restrict their DIY works to between 08.00-18.00 during the week and 10.00-17.00 at weekends. This recognised that many working people like to sleep in at weekends. Ms Johnson, herself, tends to get up late at weekends. They also complained that Ms Johnson had acted aggressively as a result of which they had had to call the police. Particulars of such incidents are to be found at p.192.

44. On 11 December, Systech responded (at p.134). They continued to seek an undertaking that the Respondents would not execute any works on a

Sunday or after 14.00 on a Saturday. The Respondents replied on 17 December (at p.142). The Applicant referred us to this correspondence despite it being marked "without prejudice". The Respondents made no objection.

45. During December, the landlord tried to arrange an inspection of Flat B. Mr Buckingham suggested 13 December, which was not convenient to the Respondents. The Applicant subsequently sought to arrange for their surveyor, Mr Grey, to attend on his own. The Respondents' reply (at p.201) was that Clause 4(10) of the lease only permitted an inspection by "the lessor and his agents" and not by his agent on his own. This is indicative of the entrenched position now adopted by the Respondents.

46. The Applicant contends that the Respondents have continued to carry out DIY works in beach of the terms of their lease:

(i) Ms Johnson complains that she was woken at 13.30 on Sunday 1 December by banging and sawing. Mr Elieli explained that he was installing a new consumer unit in the kitchen.

(ii) Ms Johnson complains that Mr Elieli had set up a workbench in the front garden and was sawing wood. Mr Elieli stated that he was cutting skirting as he was laying new carpets.

We are not satisfied that either of these incidents was sufficient to constitute a nuisance or put the Respondents in breach of their lease. Mr Elieli informed us that the garden was in the possession of the basement tenant, Mr Hopkins. Mr Hopkins would not have allowed him to make unreasonable use of his garden.

Our Determination

47. When the Tribunal gave Directions on 5 December 2013 (at p.10D), the Procedural Judge directed the Applicant to file a statement setting out when if first became aware of the alleged breach of covenant, what steps were taken to inform the Respondents of the breach and what discussions have been undertaken between the parties with a view to resolving the issues.

48. In making this Direction, the Procedural Judge would have been mindful of the guidance given in the RICS's "Service Charge Residential Management Code" (2nd Edition). Part 19 relates to Disputes between Occupiers. A landlord should have clear policies and procedures for handling disputes. The landlord should deal fairly with all parties. A landlord should always consider other ways of resolving disputes, such as mediation.

49. We are satisfied that this application was issued prematurely. We do not accept Mr Buckingham's explanation that "it could not be undone". Clause

6(7) of the lease imposes an obligation on the landlord to determine any dispute between lessees of neighbouring flats. A landlord must be seen to act impartially and to investigate the respective contentions of its lessees before determining what course of action to take. The Applicant should also have had particular regard to the previous decision of this Tribunal in which the Respondents' position had been vindicated. The landlord had been criticised for issuing proceedings without any adequate pre-action correspondence. It is difficult to see how the Applicant could have seen this application as a means of improving the relationship between its lessees. The Respondents are not unnaturally concerned that the real objective of the Applicant is to make yet further demands for administration charges.

50. The starting point of this dispute is the hours during which it is considered reasonable for a lessee to carry out DIY works to their flat. The Applicant have adopted a stance that it is unreasonable for a lessee to carry out any such works over a weekend, save for the period of 08.00 to 13.00 on a Saturday; and no works are to be conducted over a public holiday (see p.125).

51. The Respondents, on the other hand, suggest that it is reasonable to conduct works between 10.00 to 18.00 on a weekend.

52. The Tribunal is satisfied that Lambeth's Code of Practice applies to "developers and contractors". It is not intended to apply to people carrying out works within their own home. Indeed, applying the Code to those who want to do their own building and decorative works would make this pastime almost impossible for those in full-time employment. The hours proposed by the Respondents do not seem unreasonable. However, it is not appropriate for any Tribunal to set down hard and fast rules. In any residential environment, there has to be a degree of give and take. Any resident must be conscious of the effect of their actions on their neighbours. What may be justifiable over one or two weekends, would not be reasonable if repeated every weekend thereafter.

53. We regret that the Applicant did not consider the possibility of mediation prior to the issue of these proceedings. We would urge both lessees to consider this option, particularly if there are further works which the Respondents intend to execute to their flat. We are satisfied that neither side has acted with malice. However, the relationship between the parties has deteriorated. The purpose of mediation is to enable parties to focus on outcomes and to facilitate more effective communication. Both parties have a common interest in being able to occupy their flats in peace and with a sense of security.

54. As Mr Elieli frankly admitted, their relationship with Ms Johnson did not start well. We find that Ms Johnson has had unrealistic expectations as to what DIY works her neighbours can execute in their home. She is a single person, living on her own. She has found it difficult to adapt to the lifestyle of her new neighbours. She finds it difficult to deal with conflict and has

tended to snap. She speaks her mind and has been reluctant to listen to a contrary view. She has felt the need to gather evidence in a manner which her neighbours have inevitably seen to be obtrusive.

55. On the other hand. The Respondents must also their share of responsibility for the extent to which their relationship with their neighbour has deteriorated. They have embarked upon significant DIY works to their flat over many months with inadequate consideration of the impact on their neighbour. They have not alerted Ms Johnson as to when they intend to work over weekends. There have been occasions when they have clearly overstepped the mark of what is reasonable. They have resented the activities of Ms Johnson in standing outside their flat with her dictaphone. Not without justification, they have seen this as an invasion of their privacy. However, they have adopted an increasingly entrenched and inflexible position. One example of this is their refusal to allow their landlord's surveyor access to inspect their flat.

56. Having made these general observations, we now turn to the issues which were are required to determine:

<u>(i) Clause 4(4) – Covenant to comply with statutes</u>

57. The Applicant has not satisfied us that the Respondents have breached this term of their lease. We are not satisfied that the works have constituted a statutory nuisance pursuant to the Environmental Protection Act 1990.

<u>(ii) Clause 4(23) – Covenant that the lessee will comply with planning laws and other regulations</u>

58. The Applicant has not satisfied us that the Respondents have breached this term of their lease.

<u>(iii) Clause 4(8)(b) – Covenant not to leave goods, boxes, refuse or rubbish on the staircase or cause obstruction etc</u>

59. By Clause 4(8)(b) of their lease (at p.32), the Respondents agree "not to put or leave any goods boxes refuse or rubbish on the staircase or otherwise obstruct same nor cause any obstruction to the entrance and passages in the Building as a whole". The Respondents admit that they have breached this term by keeping items in the common parts (see p.130-1). This is confirmed by the photos at p.83 (a door photographed on 1 May 2012), p.85-9; 93-5; 98-9 (building material on 6 May 2012); p.104-116 (a large circular electric saw on 16 June, 28 July, 3 and 5 September and 27, 29 and 30 November 2013).

60. In mitigation, the Respondents contend that Ms Johnson also left items such as potted plants and an old television set outside her flat on the second

floor. They suggest that initially, Mrs Johnson did not object. However, she had left a note complaining about a hand saw.

(iv) Clause 4(16) Covenant not to cause annoyance, nuisance or disturbance to other lessees

61. The above matters would also constitute a breach of this condition. We also find that there was one significant occasion when works were executed unreasonably, namely on the evening of Sunday 22 April 2012 over a period of 4 hours until 00.30 on the Monday morning (see [28(iii)] above). It was also unreasonable to execute works over the evening of Sunday 1 May 2012 (see [28(iv)]).

(v) Clause 4(21) Covenant not to play music, etc, so as to cause a nuisance or annoyance to the lessor or other lessees

62. The Applicant has not satisfied us that the Respondents have breached this term of their lease. Ms Johnson has not complained about the playing of loud music. Her complaint has rather been restricted to complaints about noise emanating from building works.

Robert Latham

Tribunal Judge

18 March 2014