



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

**Case Reference** : **MAN/OOCB/LBC/2015/0015**

**Property** : **11 Kings Avenue, Wirral CH47 0NH**

**Applicant** : **Anthony Ryder & Linda Christine Ryder**  
**Applicant's representative:** **DAS Law**

**Respondent** : **Lesley Anne Quinn**

**Type of Application** : **Commonhold & Leasehold Reform Act 2002  
Section 168(4)**

**Tribunal Members** : **Laurence Bennett (Tribunal Judge)**  
**Jonathan Holbrook (Tribunal Judge)**

**Date of determination** : **11 September 2015**

**Date of Decision** : **17 September 2015**

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**DECISION**

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## **Summary decision**

1. The Respondent has breached a covenant in respect of alterations, modifications or additions repair in the lease relating to the Property.

## **Application**

2. Mr Anthony Ryder and Mrs Linda Christine Ryder apply for a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that a breach of covenant has occurred in the lease dated 5 March 1979 relating to the Property 11 Kings Avenue, Wirral CH47 0NH.

## **Background**

3. The Applicants are the proprietors of the freehold and successors to the Lessor's interest created by lease of the Property. The Respondent is the successor to the Lessee's interest.
4. The application was made 11 June 2015.
5. Directions made 8 July 2015 by Judge Holbrook included "The Tribunal considers it appropriate for the matter to be determined by way of a paper determination....." The directions gave opportunity for the parties to request a hearing. Neither party made such request.
6. The Applicants' submissions in response to directions include copies of the Land Registers, copy lease, a statement and submissions and photographs.
7. The Respondent has not provided submissions or responded to the application.
8. The Tribunal convened on 9 September 2015 without the parties to determine the application.

## **The Lease**

9. The Lease dated 5 March 1979 is made between Kingsmead School Hoylake Trust Limited of the one part and Mrs Joyce Tovar of the other part.
10. The Third Schedule to the Lease contains covenants by the Lessee. Paragraph 1 of that Schedule states: "Not at any time to make any structural alterations modifications or additions to the lower flat."

## **Law**

11. Section 168(1) of the Commonhold and Leasehold Reform Act 2002 (the Act) states: "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."

12. Section 168(2)(a) states: "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
13. Section 168(4)(a) states: "A landlord under a long Lease of a dwelling may make an application to the First-Tier Tribunal for a determination that a breach of a covenant or condition in the Lease has occurred."

### **Evidence and submissions**

14. The Applicants' photographs show a substantial extension to the Property. They state that they have not at any time given permission to the Respondent for the extension. They comment on Wirral Borough Council's treatment of relevant planning applications.

### **Tribunal's conclusions with reasons**

Our conclusions are:

15. We note that the covenant specified by the Applicants, its terms are clear. Their unchallenged statement is that consent to the construction of an extension has not been given. This has not been challenged by the Respondent who has failed to comply with directions in these proceedings.
16. The photographic and statement evidence shows that a substantial extension has been added to the Property.
17. We conclude that an obvious breach of covenant has taken place, the Property specified in the Lease has been altered, modified and subject to an addition; this is expressly prohibited.

### **Order**

18. The Respondent has breached the covenant in respect of alterations, modifications and additions to the Property within Schedule Three, paragraph 1 of the Lease.