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Residential
Property
TRIBUNAL SERVICE

REF: LON/00AK/LBC:2010/0067

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

THE COMMONHOLD & LEASEHOLD REFORM ACT 2002
SECTION 168(4)

PROPERTY:	FLAT 5, WOODVILLE COURT, 19 STAFFORD CLOSE, OAKWOOD, LONDON N14 4BF
Applicant:	(1) GEORGE WIMPEY NORTH LONDON LIMITED (2) WATERMEAD COURT (OAKWOOD) MANAGEMENT COMPANY LIMITED
Respondent:	OAKMEAD INVESTMENT LIMITED
Appearances:	MS. YASMIN MISTRY (Solicitor, Brethertons, Solicitors) MS. EMMA RUDLING MR. JOHN GIBBS (both Estate Managers of Ian Gibbs Estate Management MR. C. HOSKINS (leaseholder of Flat 22 and elector of Second Applicant) **For the Applicants** No appearance by or on behalf of the Respondent
Date of Receipt of Application:	23rd September 2010
Directions:	27th and 28th September and 28th October 2010
Date of Hearing:	22nd November 2010
Date of Decision:	24th November 2010
Members of Tribunal:	Mr S Shaw LLB (Hons) MCI Arb Mrs L. Hart BA (Hons)

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DECISION

Introduction

1. This case involves an application dated 22 September 2010 made by George Wimpey North London Limited and Watermead Court (Oakwood) Management Company Limited. Those two companies are respectively the freeholder and management company in respect of Woodville Court, 19 Stafford Close, Oakwood, N14 4BF. They will be referred to as "the Applicants" in this Decision. The application concerns Flat 5 Woodville Court ("the Property") and the Applicants seek a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") to the effect that there has been a breach (or breaches) of the lease governing the property. The application is made against Oakmead Investment Limited ("the Respondent") which company is the leasehold owner of the property.

Background

2. Woodville Court is a residential development in Oakwood, North London. It comprises two buildings with 17 flats in one block and 6 flats in a smaller block. The buildings stand in gated grounds, which are cared for by a gardener, and there are also car parking spaces allocated to each flat within the estate.

3. The Respondent is the original leaseholder owner of the property (Flat 5) on the estate. The name of the Respondent company suggests that it is an investment company, although there is no evidence upon this. It is however clear that the Director of the company is a Mr Sotiris Georgiou, who as will be referred to later in this decision, does not reside in the property. It appears to be common ground that the property has been sub-let to some other occupier. This of itself, involves no breach of the lease, since there is no prohibition against sub-letting in the lease. The thrust of the Applicants' application is that from approximately March 2009 somebody has been occupying the property, and since that period has been keeping first one dog, and then a separate replacement dog at the property, in breach of the lease. It has been alleged that no permission was applied for in respect of the

keeping of that dog at the property, and moreover, the dog has caused a nuisance to neighbouring leaseholders or occupiers of the building in a manner to be described later in this Decision. The Respondent's case, which initially involved a denial of all matters alleged, appears most recently in an email from Mr Georgiou dated 15 November 2010, to be to the effect that it is accepted that permission for the keeping of such a dog is required from the Applicants, and if, which he does not necessarily admit, there is a dog being kept at the premises, he apologies for not having requested such permission. He emphasises that he is not resident at the property (he works abroad in China) and he suggests in the email referred to, that if the Tribunal considers the current situation to be unreasonable, then he will gladly enforce *"this condition in the terms of the tenancy agreement"*. It is not clear what is meant by this offer, and whether he is undertaking to apply for permission, or to ensure that the dog is no longer kept. In any event, to date, no application for permission for the keeping of such a dog has ever been made by or on behalf of the Respondent.

The procedural background

4. The application, as mentioned, was made on 22 September 2010 (after some fruitless efforts to avoid having to take proceedings). Directions were given on the 27th September 2010 and which were amended the day after because of a slip in one of the dates given. The Applicants served a "Further Statement of Case" on 22 October 2010. Following a suggestion that proper service had not taken place, new Directions were given on 28 October 2010, and the Respondent was supposed to serve its Statement of Case by the 5 November. In fact this did not occur, and the Respondent was chased for its Statement of Case by a letter dated 10 November 2010 from the Tribunal. This resulted in an email (presumably from China) from Mr Georgiou on behalf of the Respondent, dated 15 November 2010. The Applicants have responded to the contents of this email by a further Statement of Case dated 19 November 2010.

5. The Applicants initially requested that this matter be dealt with upon papers alone, and without the need for an oral hearing. In the event, on 25 October 2010 the Respondent requested a hearing, but then on 15 November 2010 indicated in the body of representations which he wished to put before the Tribunal, as already

the hygiene issue, caused by the urination and fouling of the dog. He was concerned also that other residents would hear the barking and deduce that it was entirely acceptable to have a dog or dogs without any restriction on the estate.

9. The smell of dog urine was evident as one passed the entrance to Flats 1 to 5. It was necessary for him to do that because there is a communal footpath which runs the length of the bigger of the two buildings on the development, and which he would use to go to the side gate. The first dog, and then the subsequent bigger dog, would foul areas in the grounds close to places where residents or others would be walking, and in particular, close to areas in which children might be playing. Mr Hoskins is a director of the Second Applicant and concerns were expressed to him, not only by his wife, but by other residents at the AGM of the Residents' Association.

10. On an occasion in November 2009, Mr Hoskins told the Tribunal that he had a conversation with the person he deduced to be the owner of the dog and occupying Flat 5. Although he had never seen her coming directly out of Flat 5, he knew by sight the other occupiers of the flats in the building in which Flat 5 is situate, and he was therefore able to work out by process of deduction the only flat she could be associated with was the Property, that is to say Flat 5. On that occasion he told her that it was unacceptable to have the dog running around the property without a lead and the woman apologised to him. However, the behaviour persisted.

11. In approximately January to February 2010, he was inspecting the interior of the building in which Flats 1 to 5 are situate, in the context of checking the workings of some internal heaters. He went to the top floor landing and was outside Flat 5 when he heard the sound of a dog on the laminate flooring which was made more audible by the fact that the letterbox in the door of that flat was broken.

12. Evidence was also given by Miss Rudling to the effect that she had been a property manager associated with the Property since late 2008/early 2009. She had had an initial different reason for having contact with a woman called Andi, who occupied Flat 5. The particular reason for having contact with her was that she (Andi)

identified herself as living in Flat 5 and she had made contact with the managing agents because of a problem with an open vent above the flat she was residing in.

13. By this route, Miss Rudling knew the woman's voice and had her mobile phone number.

14. On a subsequent occasion, during 2009, she actually met with the woman whom she knew to be Andi and raised various matters with her, including the question of the dog. Andi then told her that the dog belonged to a niece of hers, who was visiting. Ms Rudling told the Tribunal that she had no doubt that in fact the dog was being kept at the property because nobody ever reported to her that anyone other than Andi or the man who appeared to be visiting or living with her, was ever seen with the dog. Secondly, the gardener had highlighted to her on many occasions that this same dog was fouling the gardens. No one suggested to Ms Rudling that a niece or someone other than "Andi" was looking after the dog.

15. The Tribunal was shown a significant amount of correspondence from which it emerged that initially the agents suggested that the person concerned should look after the dog better but thereafter by 5 January 2010, insisted that the dog could no longer be kept at the Property. When this produced no positive action, solicitors were appointed and several attempts were made to regularise the position during 2010 – all of which were unsuccessful. A full letter setting out the alleged breaches of the lease was written and sent by email on 7 May 2010 by the Applicants' solicitors. There was no response to this, nor to a repeat letter on the 20 May 2010. Following this, the proceedings before the Tribunal were eventually commenced.

The provisions of the lease

16. The relevant provisions of the lease relied upon by the Applicants can be found in the Third Schedule which lists the lessee's obligations. At paragraph 21 of that Schedule it is provided that the lessee shall:

> *"Not do anything on the premises which may be a nuisance to the developer or any neighbouring lessee or occupier of the building and not to play any musical instrument, electronic recording, TV or radio which may be audible outside the premises between 11pm and 8am."*

17. Further, at paragraph 26 it is provided that the lessee shall:

> *"Not without the prior consent of the company to keep any animal on the premises."*

18. In addition to the oral evidence referred to above, the Tribunal was shown numerous photographs, in the main taken by Mr Hoskins, illustrating a woman with a dog in the grounds of the development, and also on occasion a man with the same dog. The woman was positively identified by Ms Rudling, for the Tribunal, as Andi, the woman she had dealt with in the context of the problem with the vent at Flat 5. There are photographs showing both dogs referred to above in the grounds of the development and the second of the dogs has even been caught on camera by Mr Hoskins fouling a particular area of the grounds.

19. As has been indicated, from the email referred to above, there has been no evidence produced by or on behalf of the Respondent. That e-mail states merely a short background to the matters referred to above and asserts that if the Respondent had known of the presence of the dog previously, permission would have been obtained, for which apologies are given but he stresses that "*I am not the resident*".

Determination of the Tribunal

20. The Tribunal is quite satisfied on the evidence put before it that there has been a breach of the two covenants referred to above, that is to say paragraphs 21 and 26 of the Third Schedule to the lease. The Tribunal accepts the evidence of both Mr Hoskins and Ms Rudling that the woman featuring in the photographs and identified as "Andi" is in fact keeping a dog at the property. That dog may or may not be kept there on a permanent basis, but it is clear on the evidence before the Tribunal and on the balance of probabilities, that the dog is to be viewed frequently on and about the development. No prior written consent was obtained from the Applicants before bringing the dog onto the development. Notwithstanding the protracted run up to these proceedings, even to date, no such application for written consent has been made. Accordingly the Tribunal is satisfied that there has been a breach of clause 26 of the Third Schedule to the lease.

21. Further, Mr Hoskins told the Tribunal and the Tribunal accepts, that he has been disturbed, for the hygiene reasons mentioned above, about the animals and that this constitutes a nuisance. He is not the only person to feel this way and his co-director and others at the residents meeting referred to above, have also on his evidence, expressed unhappiness with the situation. Accordingly, the Tribunal also finds that there has been a breach of paragraph 21 of the Third Schedule in that conduct is taking place at the premises which is causing a nuisance in this respect. The Tribunal therefore makes these determinations in respect of these two specific breaches.

Costs

22. Ms Mistry applied to the Tribunal to make an order for costs against the Respondent. First, she said she required the Tribunal to direct, as it has power to do, that the hearing fee should be refunded to the Applicants in the sum of £150. She stressed that the Applicants had not sought a hearing, and that the hearing had been specifically requested by the Respondent, who then failed to attend. The Tribunal accepts this submission and directs that this hearing fee should indeed be refunded to the Applicants by the Respondent. She also requested the Tribunal to condemn the Respondent in costs for having, in effect, vexatiously requested the hearing which, at a late stage, the Respondent indicated he no longer required. The Tribunal recognises the concern the Applicants will have in this regard, but it has been noted that in fact somewhat buried in his email of the 15 November 2010, Mr Georgiou did indicate to the Tribunal that he no longer required an oral hearing. The indication was not given as clearly as it could have been and therefore was not picked up by the Tribunal's administration, but in all the circumstances, the Tribunal is satisfied that justice is done by restricting the Order for costs to repayment of the Hearing fee, as already indicated.

Legal Chairman: **S Shaw**

Dated: 24th November 2010