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

Case Reference : **BIR/00GF/LBC/2015/0010**

Property : **Flat 7, Eagle Court Crescent Road
Wellington Telford TF1 3DR**

Applicants : **Mr Michael Brendan Bailey Gledhill
and Mrs Immacolata Carmela Gledhill**

Respondent : **Mr Ian Michael Taylor**

Type of Application : **Application under section 168 (4) of
the Commonhold & Leasehold Reform
Act 2002 for an order that a breach of
a covenant or condition in the lease
has occurred.**

Tribunal Members : **Judge M K Gandham
Mr V Ward BSc (Hons) FRICS**

**Date and venue of
Hearing** : **Paper Determination**

Date of Decision : **5 April 2016**

DECISION

21. The *Field v Barkworth* decision was decided on the facts of the case and dealt with a property which was defined in the schedule to that lease in various parts. As such when the alienation clause referred to '*any part of the premises*' this was construed in the context of that particular lease as including all the separate parts of the property i.e. the whole of the premises.
22. It is quite clear that each lease must be considered in context and, in this case, the Tribunal considers the interpretation of the Respondent is correct. Clause 3(14)(a) clearly refers to dealings with a *part* of the flat, as opposed to the *whole*, such dealings of *part* being prohibited. Clause 3(14)(b) confirms that the flat cannot be let as a whole during the last seven years of the term without the Landlord's written consent.
23. If clause 3(14)(a) prohibited underletting of the whole of the flat, then the registration of underleases – referred to in clause 21 of the Lease – would not have been required.
24. In addition, it would be absurd to construe the Lease in such a way as to believe that dealings of the flat as a whole would be prohibited under the Lease for the majority of the term under clause 3(14)(a), but then in the last seven years of the term such conditions would be relaxed to allow dealings subject to the Landlord's consent under clause 3(14)(b).
25. In relation to the Applicants' submission regarding the definition of the Property, the First Schedule defines the Property as '*Flat 7 Eagle Court, Crescent Road, Wellington, Telford*', with the plan being for identification purposes only. The Assured Tenancy Agreement, dated 10th September 2015, also refers to the property to be let as '*7 Eagle Court, Crescent Road, Wellington, Telford*'. The Tribunal considers the Applicants' argument to be without merit and that the tenancy was clearly intended to be an underletting of the whole of the Property.
26. Accordingly, the Tribunal determines that the Respondent's underletting of the flat does not constitute a breach of clause 3(14) of the Lease. The Tribunal also does not consider that the underletting of the flat on an assured shorthold tenancy as a private residence constitutes commercial use.

Appeal

27. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM

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Judge M. K. Gandham