FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CH/LBC/2019/019**
Property	**:**	**19 The Stephenson, North Side, Dunston, Gateshead NE8 2BF**
Applicant	**:**	**Staiths (Phase 1) Management Company Limited**
Representative	**:**	**Clarke Mairs LLP**
Respondent	**:**	**Mehdi Shabanzadeh**
Type of Application	**:**	**Commonhold and Leasehold Reform Act 2002 Section 168(4)**
Tribunal Members	**:**	**Judge W.L. Brown** **Mr IR Harris, MBE FRICS**
Date of Determination	**:**	**27 February 2020**
Date of Decision	**:**	**2 April 2020**

DECISION

Decision

The Application is granted. The Tribunal determines pursuant to section 168(4) of the Commonhold & Leasehold Reform Act 2002 that a breach of a covenant or condition in the lease has occurred.

The Tribunal directs that any application to the Tribunal related to the recovery of costs in these proceedings shall be submitted with reasons in support within 28 days of the date of issuing of this decision.

Background

1. By Application dated 14 August 2019 (the "Application") the Tribunal was requested to make a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 (the "Act") that a breach has occurred of one or more covenants in the lease 15 July 2005 ("the Lease") of the Property. The leasehold title is registered at the Land Registry under title number TY436383. It is subject to a registered charge dated 15 July 2005 in favour of Topaz Finance Limited.

2. The Application relates to the property known as 19 The Stephenson, North Side, Dunston, Gateshead NE8 2BF ("the Property"). The Property is situated in a riverside development of approximately 700 homes known as The Staiths ("the Development"). The Property is within Phase 1 of the Development in an apartment block known as The Stephenson ("the Block").

3. The Applicant is a residents' management company and it' managing agent is Brannen and Partners ("Brannen") and Ms Marie Davison of Brannen is the appointed property manager.

4. The Respondent is the sole owner of the leasehold interest in the Property.

5. Directions were made by the Tribunal on 1 November 2019.

6. No party having requested a hearing, the Tribunal convened on 27 February in Newcastle upon Tyne to make its determination.

Issues

7. For the Tribunal to find whether there has been a breach or breaches of covenants in the Lease by the Respondent it had to consider three key questions arising on the facts: Has the Respondent caused or permitted use of the Property for short-term lettings? Has the Respondent caused or permitted a nuisance or annoyance to occur – whether from short-term letting or otherwise? Further, has the Respondent failed to take appropriate steps to remedy any such breach and/or abate the nuisance and what is the relevance of these actions?

The Lease

8. The lease of the Property is dated 15 July 2002 and is between George Wimpey UK Limited (1), Staiths Management Company Limited (2), Staiths (Phase 1) Management Company Limited (3), the Applicant (4). It is for a term of 150 years (less one day) from 31 December 2002.

9. Of relevance to the Application are the following Lessee covenants in the Lease:

"*Schedule 4 – Tenant's Covenants:*

……

19. not at any time to carry on or permit to be carried on upon the Property any trade or business whatsoever nor to use or permit the same to be used for any purpose other than as a private dwelling house for occupation by one family at any one time.

20. not to use (or permit or suffer the Property to be used) for any illegal immoral or improper purpose and not to do permit or suffer on the Property any act or think which shall or may be or become a nuisance damage annoyance or inconvenience to the Landlord to the tenants or occupiers of the other Properties or houses in the Estate or to any owners or occupiers of any neighbouring property and to pay all costs charges and expenses of abating a nuisance and executing all such work as may be necessary for abating a nuisance or for carrying out work in obedience to a notice served by a local authority insofar as the same is the lability of or wholly or partially attributable to the act or default of the Tenant.

……

22. not to do or not to do on or in the Property any act matter or thing which may be or become a nuisance or cause any annoyance damage or inconvenience to any owner or occupier of the Estate or any other adjoining or neighbouring property or which may lessen the value of such land or buildings.

……

31. to be responsible for and keep the Landlord and the Companies fully indemnified against all damage damages losses costs expenses actions demands proceedings claims and liabilities made against or suffered or incurred by the Landlord and the Companies arising directly or indirectly out of:

31.1 any act omission or negligence of the tenant or any persons at the Property expressly or impliedly with the Tenant's authority; and

31.2 any breach or non-observance by the Tenant of the covenants conditions or other provisions of this lease.

……

32.2 not to sub-let the whole of the Property without the consent of the landlord (such consent not to be unreasonably withheld or delayed save that it should be reasonable for the Landlord to withhold consent where the proposed under letting is other than to one family).

.....

35.1 pay all expenses including the solicitors" costs and surveyor's fees incurred by the Landlord and the Companies incidental to service of all notices and schedules relating to wants of repair or dilapidations of the Property or other breaches of the Lease whether the same be served during or after the expiration or sooner determination of the Term (but relating in all cases to such wants of repair or other breaches of covenant that accrued not later than the expiration or sooner determination of the Term).

35.2 pay all costs and expenses including the solicits' costs and surveyors' fees incurred by the Landlord and the Companies incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 or incurred in contemplation of the proceedings under Section 146 and 147 of that Act notwithstanding in any such case forfeiture is avoided otherwise than relief granted by the Court."

By clause 4 of the Lease the lessee covenants to fulfil the obligations referred to above (although it is noted that in the copy document provided to the Tribunal the covenant relates to Schedule 3, which appears to be an error as the relevant Schedule is 4 – in which the obligation is repeated).

The Law

10. Section 168(1) of 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 in respect of a breach by a tenants of a covenant or condition in the Lease unless subsection (2) is satisfied*".

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"

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*".

The Evidence and Submissions

The Applicant

11. The Applicant states through its Solicitor that the freeholder of the Property, Taylor Wimpey UK Limited, has consented to the Application and consents to being added as a co-Applicant so far as the Tribunal considers necessary.

12. The Applicant's allegations of breach of covenant are that

    (i) the Respondent has acted in breach of the Lease in using the Property for a trade or business, being short-term commercial and/or holiday lettings and permitting the Property to be used for a purpose other than as a private dwelling house for the occupation of one family at any one time in breach of Clause 19 of Schedule 4 to the Lease.

    (ii) The use of the Property in breach of the Lease has caused significant ongoing nuisance, annoyance and inconvenience to the occupiers of neighbouring properties in breach of Clauses 20 and 21 of Schedule 4 to the Lease.

13. It is not claimed that the Respondent is the occupier of the Property. The evidence is that at the relevant dates for the allegations the Property had been let to a Mr Chris Spence. The breaches of covenant alleged by the Applicant relate to arrangements with various letting agents and the letting of the Property on a short-term basis to customers.

14. The Applicant states that numerous complaints have been received relating to the use of the Property for short-term lettings. Neighbouring residents have complained of significant nuisance, annoyance and disruption as a result of noise, litter, antisocial behaviour and inappropriate parking by occupants of the Property interfering with their right to quiet enjoyment of their properties.

15. The history of events according to the Applicant is as follows.

16. Letters were sent by the Applicant to all owners in Phase 1 on 11 August 2017 and 18 January 2018 setting out that properties must not be used for short-term lettings and asking that they stop immediately. On 17 January 2019, it was reported to Brannen that the Property was being let via Airbnb and occupants of the Property had been causing disruption to neighbours in the Block with late night noise, smoking and litter.

17. On 21 January 2019, Brannen sent an email to all owners in Phase 1 requiring that any short-term lettings stop immediately and drawing their attention to the requirement that leaseholders require consent from the freeholder to lettings. The email set out that if any properties were still advertised on Airbnb within seven days then the matter would be passed to the Applicant's solicitors.

18. The Property remained advertised on Airbnb and further complaints were received by Brannen regarding a loud party which took place in the Property on 1 February 2019.

19. The Applicant instructed Clarke Mairs LLP ("CM") and on 26 March 2019 CM wrote to the Respondent setting out that the Applicant considered he was in breach of the Lease and in the absence of the Property being removed from all short-term booking sites within 14 days of the date of the letter then Tribunal proceedings would be issued.

20. CM identified the Property advertised for short-term lettings on the following booking sites:

    www.expedia.co.uk
    www.hotels.com
    www.homeaway.com
    www.booking.com
    www.alexanderapartment.co.uk
    www.airbnb.co.uk

21. A number of complaints were received by Brannen throughout April 2019 relating to short-term lets of the Property including complaints of noise, loud music, fighting and disruption. A Schedule of Breaches was provided in evidence with copy emails making complaints about nuisance behavior associated with the Property, although details of senders were redacted. Evidence of computer screen internet results of certain advertisements of the Property for stays of 1 or a few nights was presented. These comprised availability for 15 – 18 October 2018; 19 November 2018; 16 – 17 and separately 28 April 2019; and 6 May 2019. Another print indicated the Property had been available for such lettings since 5 October 2019.

22. On 15 April 2019 a reminder letter was sent to the Respondent by CM which drew attention to the regular complaints being received and, in particular, relating to a large gathering which took place on 12 April 2019 causing disruption to neighbouring properties in the Block.

23. CM also sent an email to the Respondent on 16 April 2019 attaching copies of the letters dated 26 March and 15 April 2019 and requiring confirmation that the property be removed from all booking sites.

24. On 16 April 2019, the Respondent replied stating that the Property had not been advertised on any commercial website and was not let commercially. CM responded with a list of five websites on which they had identified the Property as being available to book however there was no further response from the Respondent.

25. It is alleged that one resident raised significant concerns about the noise disruption from the Property and the effect of the lack of sleep on their employment duties. Also, the Applicant stated that it understood that the residents of a neighbouring property were forced to move home as a result of the constant disruption from the Property. The Applicant presented 12 emails dated between 2 February 2019 and 18 November 2019 referring to the Property and the use of it by different people or noise from it.

26. The freeholder of the Block has confirmed to the Applicant that no consent to sublet has been given to the Respondent in respect of the Property and consequently any subletting of the Property for any period amounts to a breach of Clause 32.2 of Schedule 4 to the Lease.

27. Responding to the Statement dated 9 January 2020 from the Respondent, the Applicant presented a Reply by way of a statement containing a statement of truth from its solicitor, Mrs Ager of CM. It further stated as follows.

28. Mrs Ager made enquiries with the Respondent as to the identity of the tenant of the Property during a phone call which took place on 3 December 2019. The Respondent was unable to recall the name of the tenant but stated that the Property was let to one family. During a telephone conversation on 4 December 2019 the Respondent was still unable to confirm the name of the tenant. He stated that the tenants were a couple of students. The Applicant notes that the tenancy agreement now provided is between the Respondent and Chris Spence. The Applicant understands that Chris Spence is an employee of Alexander Apartments being one of the booking agents identified by the Applicant as advertising the Property for short-term lettings.

29. Mrs Ager telephoned Alexander Apartments on 4 December 2019 and spoke with Mr Spence. It was submitted that it was apparent from that telephone conversation that Mr Spence was involved in the letting of the Property and he did not refer to being the tenant of the Property and/or residing there.

30. The Respondent has not provided any evidence of a request or consent for the sub-letting of the Property to Mr Spence as required by Schedule 4 of the Lease. The email exchange with Paul Sanderson of RMG relied upon by the Respondent appears to be from 11 years ago.

31. It records that contrary to the Respondent's assertion Brannen have not received accusations of discrimination in any form relating to the Applicant.

32. On 26 March 2019 a formal letter before action was sent to the Respondent by CM which set out the breaches of the Lease and put the Respondent on notice that the Applicant intended to issue a Tribunal application against him.

33. On 15 April 2019 a chasing letter was sent to the Respondent. The letter set out that complaints had been received by the Applicant that weekend relating to a large party at the Property which took place on 12 April 2019. The letter also confirmed that CM had written to the Respondent's mortgagee and letting agent to put them on notice of the intended Application.

34. By email dated 16 April 2019 to Mrs Ager, the Respondent stated that the Property was not being let commercially and demanded payment of his costs to date of £745. Mrs Ager responded on the same date with a list of 5 websites on which the Property appeared to be let. The following day the Property was withdrawn from a number of the sites.

35. The Applicant denies that the Respondent has taken reasonable steps to remedy this matter. No significant steps were taken by the Respondent until the Application was issued by the Applicant.

The Respondent

36. The Respondent provided statements dated 9 and 31 January 2020, without statements of truth. His position was as follows.

37. He bought the Property "off plan". It is a two bed apartment on the ground floor with its own entrance. The entrance leads directly on to a large external car park. The Property is not inside the Block.

38. He stated that the Property had been sub-let with consent from the freeholder on a shorthold tenancy to a Mr Chris Spence, whom he understood had a partner and another member of family living with him. Mr Spence had produced identification by way of his passport. His tenancy started on 30 July 2018 for one year which was later extended to 31 January 2020. He produced an email dated 23 January 2009 from Paul Sanderson, Regional Manager of RMG Ltd (then managing agent of the Block) to his wife, Judith Mehdi which includes: "……*I have also updated the files with both properties as being let"* as evidence of consent to his sub-letting to an assured shorthold tenant. He stated that he had been upfront with Marie Davison of Brannen about the sub-letting and he was not the only leaseholder in the Block to sub-let.

39. When he received communication around 26 March 2019 alleging use of the Property for short-term letting he contacted his tenant who denied subletting was taking place. He visited the Property several times and saw no sign of subletting. He searched Google and found no signs of the Property being advertised.

40. He stated that the accusations were mainly hearsay and he had been given no evidence in support, despite it being alleged that complaints were being received from February 2019. The complainant details were redacted from documents (being those emails referred to in paragraph 25). Had he been given credible evidence the issue could have been resolved. His email of 19 April 2019 denied the allegations, indicating the Property was not commercially advertised and suggesting disturbances could be caused by occupants of any of the surrounding flats. Anti-social behaviour should result in complaint to the police. The allegations of nuisance were false or exaggerated and malicious. He also indicated that there may be racial-prejudice motivation behind them.

41. In any event, adjacent to the car park area is The Staiths Café, a very busy restaurant open 7 days a week from 8am to 10pm. Some of the issues which have been complained about may originate from this restaurant which has licence to sell alcohol and holds busy weekly events He stated that he had visited the restaurant, which also has outdoor seating and seen customers spilling in to the neighbouring properties with young people smoking and drinking.

42. He stated that he operates with his spouse a "handful" of properties which are let out. He denied being responsible for them being advertised or let out on a night to night, bed and breakfast or a hotel basis. The Property has always been on a short term let of 6 or 12 months duration. Any short-term subletting was without his knowledge or consent.

43. He stated that he had inspected the Property and saw no sign of short-term subletting – it looked *"….normal as if it is lived in by a family*." Nevertheless, having received the Tribunal bundle on 9 December 2019 he had contacted his tenant on 11December on 13 December 2019 he had issued a Section 21 (Housing Act 1988) notice to terminate Mr Spence's tenancy. He also had informed the police. In his statement for the Tribunal dated 31 January 2020 he indicated that Mr Spence had vacated the Property.

44. Also, since receiving the bundle he had visited and spoken to three neighbours whose entrance doors are right next to each other and next to the Property. These three apartments are rented to tenants, who admitted holding parties and which they consider to be normal, but denied hearing or seeing unusual activities, parties or drunk people as alleged by the Applicant.

45. He informed the Tribunal that he had made visits to the area several times at different times and saw no signs of disturbances, but that *"….no landlord can reasonably control how their property is used without taking away the freedom of their tenant."*

46. The Tribunal also was presented with a statement from the Respondent's spouse, Judith Shababzadeh dated 7 January 2020, in which she confirmed the properties they operate are not advertised for short-term letting. Tenants allowed to sublet without written agreement from the landlord.

47. An extract from the Assured Shorthold Tenancy used for Mr Spence was presented, including the following tenant restrictions:

"Use of Property
1.5 To occupy the Property as the Tenants only or principal home.
1.6 Not to assign or sublet or part with or share possession of the Property or any part of it, or to allow the Property to be occupied by more than the maximum Number of Permitted Occupiers, without the express written permission of the landlord (which will not be unreasonably withheld).
1.7 Not to carry on in the Property any trade profession or business or receive paying guests or exhibit any poster or notice board so as to be visible from the exterior of the Property or use the Property for any other purpose other than a private residence for the Tenant ……
1.8 Not to use the Property for any immoral, illegal or improper purposes."

The Tribunal's Findings and Decision

48. The content and effect of the Lease restrictions (paragraph 9) were not in dispute. The Tribunal records and as noted in the Issues above, that the Applicant does not seek a finding that the letting to Mr Spence of itself was a breach of leaseholder covenant. The Applicant posed three questions:

    i) Has the Respondent carried on a trade or business from the Flat?
    ii) Has the Respondent used the Flat for a purpose other than as a private dwellinghouse?
    iii) Has the Respondent caused or permitted a nuisance or annoyance by his use of the Flat for short-term lettings?

49. Regarding i) the Applicant's position is that the use of the Property for short-term lettings amounts to the Respondent carrying on a business from the Flat. The Tribunal was referred to the academic legal text Woodfall: Landlord and Tenant, which provides at 11.208:
"*……the taking in of lodgers has already been discussed in relation to a covenant not to sub-let. The use of a house for that purpose would seem to be a breach of a covenant not to carry on a business.*"

50. Regarding ii) the Applicant's position is that the use of the Property for short-term lettings to groups, sometimes for as little as one night at a time, is a breach of the requirement to use the Property as a private dwellinghouse for the occupation of one family. The Tribunal was referred to Woodfall: Landlord and Tenant which provides at 11.206:
"*……the covenant to use as a private dwellinghouse only is also broken:…by the tenant receiving friends and others as paying guests as a regular practice, or using the property for the business of granting licenses for occupation, or for short term lettings (measured in days or weeks rather than months)…*"

51. In addition, the Tribunal was directed to In Nemcova v Fairfield Rents Limited [2016] UKUT 303 (LC) in which His Honour Judge Stuart Bridge said:
"It does seem to me that in order for a property to be used as the occupier's private residence, there must be a degree of permanence going beyond being there for a weekend or a few nights in the week. In my judgment, I do not consider that where a person occupies for a matter of days and then leaves it can be said that during the period of occupation he or she is using the property as his or her private residence. The problem in such circumstances is that the occupation is transient, so transient that the occupier would not consider the property he or she is staying in as being his or her private residence even for the time being."

52. Regarding iii) the Tribunal was referred to Woodfall: Landlord and Tenant which provides at 11.197
"The word "nuisance" is to be construed in the sense in which it is understood under the general law: that is to say "an inconvenience materially interfering with the ordinary comfort physically of human existence, not merely according to dainty modes and habits of living, but according to plain and sober and simple notions amount the English people…..An "annoyance" is a weedier term than nuisance. "if you find a thing which reasonably troubles the mind and pleasure, not of a fanciful person or of a skilled person who knows the truth, but of the ordinary sensible English inhabitant of a house – if ….there is anything which disturbs his reasonable peace of mind, that [is] an annoyance, although it may not appear to amount to physical detriment to comfort."

53. The Tribunal must make findings of fact on these three questions, but it is conscious that it must also decide whether a finding of fact giving rise to a breach of a Lease covenant means that the Respondent is burdened with that breach when he may have been unaware of it due to the defaulting activity being under the control of his sub-tenant. On the issue of whether action by a third party causing a breach of obligation is a breach of lease covenant the Applicant referred the Tribunal to Woodfall: Landlord and Tenant at 11.199:

"*A covenant not to permit the carrying on of a prohibited activity will generally be broken if the prohibited activity is carried on by the covenantor himself. In a covenant not to permit certain use of the premises, "the word permit means one of two things, either to give leave for an act which without that lease could not be legally done, or to abstain from taking reasonable steps to prevent the act where it is within a man's power to prevent it*".

In addition the Applicant quoted Tribunal Judge Lesley Smith in the First-tier Tribunal decision of Laxcon Developments Ltd v St John Guy Rogers LON/00AY/LBC/2015/0021:
"*The Respondent said that he could not be held to be at fault for causing the nuisance complained of since he had not permitted it and had tried to stop it. However, if he had not let rooms in the Property via Airbnb to others who had either caused the nuisance or allowed others to do so, these incidents would not have occurred at all. The paragraph in the Lease provides for a breach if the nuisance or annoyance is permitted or suffered to be used for the purpose which causes the nuisance. By permitting his "guests" to use the Property and those guests either having parties or allowing others to do so, he is just as responsible as he would be if he were hosting the parties himself*".

54. The Tribunal made the following findings of fact on a balance of probabilities regarding the questions set out in paragraph 48.

55. As to i), the Property has been advertised for short-term lettings. Arising from the persuasive evidence set out in paragraphs and 20 and 21 the Tribunal found that a trade or business had been operated from the Property, to which the Respondent replied only with a denial of responsibility for the advertisements.

56. As to ii), the existence was not disputed of assured shorthold tenancies of the Property to Mr Spence for 6 months from 30 July 2018 and 12 months from 1 February 2019. The characteristic of an assured tenancy is that it is the tenant's only or principal home. The Tribunal accepted the guidance from Woodfall (paragraph 50) and on the facts found that there had been periods, at least those on the dates mentioned in paragraph 21, that the Property was being used for the business of granting licenses for occupation, or for short term lettings of a day or days only. While the occupation by the paying occupiers for a day or a few days was transient and therefore the Property was not being used by those individuals as a private residence, the evidence from paragraphs 20 and 21 is that there have been periods when the Property was not occupied as a permanent home for one family or group of people, because of the divesting of the right to occupy in favour of strangers, who appear to have occupied with exclusive possession for their periods of stay. Therefore the Tribunal found that the Property has been used for a purpose other than as a private dwellinghouse.

57. As to iii), the Applicant relied principally upon the evidence in anonymised emails of complaint about anti-social behaviour associated with the Property and an indication of complaints made to Brannen. The Respondent offered plausible reasons to suggest that this evidence was weak and was contradicted by his own investigations (paragraph 40 and 41). The Tribunal was not persuaded that allegations of nuisance occurring at or from the Property had been made out.

58. In consequence of the findings there are two potential breaches of lease obligations at issue – regarding the covenants set out in Schedule 4, clause 19. Firstly as to the advertising for short-term letting, that a trade or business was being undertaken at the Property and secondly that it was being used or permitted to be used for any purpose other than as a private dwelling house for occupation by one family at any one time. The Tribunal had to go on to consider the effect of the responsibility of the Respondent for those activities.

59. The Tribunal found it difficult to give weight to the Respondent's denial of knowledge of the short-term letting activity. He stated that he investigated after the warning of 26 March 2019 about the alleged activity. However, the evidence (paragraph 21) is that the Property continued to be advertised for short-term letting for dates in April and May 2019.

60. The Respondent has offered no explanation of why he decided on 4 December 2019 to issue a notice to terminate Mr Spence's tenancy of the Property, but took no action sooner, which potentially he could have done relying on breaches of tenant obligations in the assured shorthold tenancy agreement (paragraph 47) if he gave credence to the Applicant's allegations. It could be that it was only in the face of the cumulative evidence presented in the bundle for these proceedings that he was persuaded that the behaviour alleged had occurred, but not by that set out in the Applicant's Solicitors' earlier correspondence. The Respondent was on notice of the allegations in March 2019, but took no proactive steps by way of warning in writing his tenant against any non-permitted behaviour. The Tribunal found that as a person who asserted that he manages additional properties the Respondent had knowledge and responsibility to undertake additional diligence in a timely manner to investigate and at least warn of the consequences for his tenant if the allegations had substance, not least because he was on notice of the serious consequences for his Lease if the Applicant's allegations were made out before this Tribunal. He failed to take such action.

61. The extract from Woodfall at 11.199 (paragraph 53) is pertinent to this Application, in that the Tribunal found that the Respondent could have, but failed to take, reasonable steps to prevent the unlawful activity alleged, being the use of the Property for the business of short-term letting and further it had been used for a purpose other than as a private dwellinghouse. He delayed from March until December 2019 to take any action against Mr Spence, when the advertising was continuing and could be established by reasonably straight-forward internet enquiry.

62. Therefore the Tribunal finds that the Respondent has breached the covenants set out in Schedule 4, clause 19. However, it does not automatically follow that an actual finding of any breach must inevitably cause a consequence for the leaseholder; that is a matter for the parties and if necessary the jurisdiction of the County Court.

Costs

63. Although the Respondent in his email of 16 April 2019 requested from the Applicant payment of his costs he made no representations concerning costs of these proceedings.

64. The Applicant requested for an Order for costs in the Application but did not refer to it in its Statement of Case dated 21 November 2019. It stated in its undated Skeleton Argument document: "*The Respondent ought to pay costs on an indemnity basis in accordance with Clause 31 of Schedule 4 to the Lease.*"

65. While the Tribunal has found braches of the Lease it does not automatically follow in these proceedings that costs follow that outcome. If either party seeks an Order for recovery of costs they should apply within these proceedings with supporting reasons within 28 days of the date of issuing of this decision.

Judge L. Brown
27 February 2020