FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00GF/LBC/2021/0002**
HMCTS code (paper, video, audio)	**:**	**V:CVPREMOTE**
Property	**:**	**Apartment 4, Stirchley Hall, Stirchley Road, Telford TF3 1DY**
Applicant	**:**	**Stirchley Hall Management Company Ltd**
Respondent	**:**	**Mrs Fiona S. Palmer**
Application breach	**:**	**Application for an Order under s168(4) of the Commonhold and Leasehold Reform Act 2002 - breach of covenant or a condition in a lease.**
Tribunal members	**:**	**Judge D. Barlow** **Mrs S. Hopkins FRICS**
Date of Hearing	**:**	**4 August 2021**
Date of Decision	**:**	**31 August 2021**

DECISION

COVID-19 PANDEMIC: DESCRIPTION OF HEARING

This has been a remote video hearing consented to by the parties. The form of remote hearing was V:CVPREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The Tribunal's determination is set out below.

DECISION

The Tribunal makes the following determinations:

(1) The tribunal decides that prior to March 2020 Mrs Palmer was in breach of the covenant at paragraph 14(b) Part II of the Sixth Schedule to the Lease, but has not been in breach of that covenant since March 2020.

(2) The tribunal decides that Mrs Palmer has not breached the covenants at paragraphs 3, 7, 13, 14(a) and 31 of Part II of the Sixth Schedule.

(3) The tribunal does not have jurisdiction, under this application, to consider breaches of paragraphs 1(ii) and (iii) of the Ninth Schedule.

REASONS

The Application

1. On 9 March 2021 the Applicant landlord (SHMC) sought a determination under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that Mrs Palmer, the leaseholder of Apartment 4, was in breach of paragraphs 1(ii) and (iii) of the Ninth Schedule and paragraphs 3, 7, 13, 14(a), 14(b) and 31 of Part II of the Sixth Schedule to the original lease dated 2 September 1991, which was incorporated by reference within a new lease dated 23 March 2018 between (1) the Landlord (2) and Dianne Austin ("the lease").

2. The application was heard on 4 August 2021. The Applicant, SHMC, was represented by Mr John Sinclair, a director of SHMC and chair of the management board. Mr Sinclair and his wife are also the leaseholder of Apartment 3. The Respondent, Mrs Palmer represented herself. The Tribunal inspected the relevant parts of Stirchley

Hall on the 3 August 2021, in the presence of the Respondent, Mrs Palmer and Mr Crozier, who together with Mrs Crozier is the leaseholder of Apartment 2.

3. The relevant legal provisions are set out in Appendix 1.

The Background

4. SHMC is the freeholder of Stirchley Hall, which comprises four residential apartments let on long leases, together with internal and external communal areas, some of which are shared with other parts of the development. The four apartment owners are equal shareholders of SHMC, all therefore owning both their long leasehold apartments and an undivided share in the freehold reversion.

5. The property is a four-bedroom apartment within Stirchley Hall. The Hall is a Grade II listed property which was converted and divided into four apartments in or about the mid-1980s. The front, south-west facing part of the Hall comprises Apartment 2 on the ground floor with its own entrance, and directly above it on the first and second floors, part of Apartment 4. The remainder of Apartment 4, together with Apartments' 1 and 3 are situated within the larger rear wing of the Hall.

6. Apartments 3 and 4 share a common entrance hall ("the Communal Hall") on the ground floor from which stairs lead to a shared landing giving access to the entrance doors of Apartment 3 and Apartment 4. There is a second set of stairs leading down to a large cellar, part of which falls within the area demised to Apartment 4. There is a door in the cellar which leads to a further cellar area situated below, and apparently belonging to, Apartment 2. Apartments 1 and 2 are not accessed from the Communal Hall, both have their own, separate, entrances. However, the meters for all four apartments are within the Communal Hall, to which all apartment owners have a right of access. Apartment 1 is at the far end of the rear wing with its own entrance.

7. Externally there are shared driveways, pathways, blocks of garages, extensive communal parking areas, communal cultivated and lawned areas. There are also private gardens owned by the individual leaseholders. Maintenance of the main structure and common areas of Stirchley Hall, the structure of the garages, the shared accessways, parking areas and amenity areas is the responsibility of SHMC under the Lease, to which the leaseholders are required to contribute a service charge in accordance with the Lease. Each leaseholder is responsible for the internal maintenance and repair of their Apartment and garage and also for the maintenance of their private garden area.

8. Mrs Palmer owns a long leasehold estate in Apartment 4 under title number SL252052, which she purchased in February 2019. Mr and Mrs Crozier own Apartment 2. Mr and Mrs Sinclair own Apartment 3 and Mr Clinton Ogilvie owns Apartment 1. The four apartment owners are the shareholders of SHMC which owns the freehold estate under title number SL17745.

9. In July 2019 issues arose between Mrs Palmer and SHMC concerning payment of service charges which culminated in SHMC obtaining a county court judgement for arrears totalling £1,546.71. On 23 November 2020, Mrs Palmer was ordered to pay periodic payments of £100.00 per month to discharge the judgement debt over a

period. There have been issues with the regularity of the payments and arrears that have accrued since the judgement. That, together with concerns about Mrs Palmers conduct has led to the Applicant making this application.

10. The Applicant has raised 8 allegations of breach of covenant arising from the issues complained of.

11. Two of the issues relate to payment of service or administration charges under the Lease. The tribunal does not have jurisdiction to consider the alleged breaches of the terms of the county court order. Neither does it have jurisdiction to make any determination concerning the payability or amount of service or administration charges under this application. The tribunal explained to the Applicant that it would need to make an appropriate application under the Landlord and Tenant Act 1985 for such matters to be determined.

12. Consequently, the tribunal makes no determination on the two issues that relate to payment of service and administration charges under the Lease, which are the alleged breach of paragraphs 1(ii) and (iii) of the Ninth Schedule. The remaining 6 issues were considered at the hearing.

13. At the hearing, the Applicant was represented by Mr Sinclair, Mrs Palmer represented herself. The other leaseholders did not attend the hearing and therefore gave no evidence other than their written statements, none of which contained a statement of truth.

Inspection and hearing

Inspection

14. On 3 August 2021 the tribunal carried out an inspection of the exterior of the Hall, the Property, the Communal Hall, the bedroom in Apartment 2 situated below the kitchen of Apartment 4, the private gardens of Apartments 2, 3 and 4 and the external communal areas of the estate. The Hall is approached from Stirchley Road along a shared gravel drive that almost circles the Hall. The properties within the development are all accessed from the main driveway which also provides access to the front and side private gardens, the garages, the shared parking areas, the bin stores and the communal amenity areas. All appeared to be well maintained and in reasonable condition. A paved pathway leads from the gravel drive to the Communal Hall leading to Apartments 3 and 4. Mrs Palmers private garden is situated to the left of the pathway. The open plan private garden of Apartment 3, which consists of gravel, lies to the right of the path.

15. Mrs Palmers garden is mostly lawned with ornamental shrubs and a few garden ornaments, surrounded on two sides by mature shrubs and trees. There is a small paved area on which she keeps garden furniture, a barbeque, some pots and other items. The common boundary with the garden of Apartment 2 is a line of trellis panels. The garden was attractively laid out, tidy and well maintained. By contrast the gravelled area which comprises the garden area of Apartment 3 was covered in weeds.

16. The Tribunal indicated that it had read the parties written submissions. In the Applicant's case there was no formal statement of case, just a very short Overview confirming that SHMC is the freeholder responsible for management of the Stirchley Hall. The owners of Apartments 1, 2 and 3 are the current directors of the company, Mrs Palmer having been removed as a director due to her non-payment of management fees which had led to the company obtaining a county court judgement against her. Attached to this was a statement from Mr and Mrs Sinclair which stated that Mrs Palmer had caused distress to the other owners during the two years she had occupied Apartment 4 by making false promises about payments, permission to keep animals and cleaning, as shown in the evidence. The evidence comprises a front sheet for each allegation specifying the relevant Lease provision. Attached to each front sheet are various exchanges of emails, correspondence, photographs and extracts from the minutes of meetings of the management board, together with short signed statements from Mr and Mrs Sinclair and Mr Crozier and a letter from a Patricia Picard.

17. Mrs Palmer provided a written Statement commenting on the various allegations, to which she also attached various emails, photographs and minutes of a meeting. A short Reply to Mrs Palmers statement was submitted by the Applicant all of which had been read by the tribunal and would be treated as the parties' evidence in chief.

The Issues

18. Issue 1. The Applicant says that Mrs Palmer is in breach of covenant for failing to keep the premises demised by the Lease in good repair, as required by paragraph 3 of Part II of the Sixth Schedule.

19. The Applicant's written evidence comprised copy exchanges of emails between the leaseholders concerning the state of the Communal Hall and a statement from Mrs Susan Sinclair, signed on 20 March 2021, which stated that on the Sinclair's return from France in April 2019 (where they live for part of the year), items belonging to Mrs Palmer were left in the Communal Hall for a week, the hall was dirty with mud and footprints, cleaning had been neglected and there was hardened glue residue on the carpet from Mrs Palmer repairing a garden pot. There was also a strong smell of cat urine. The email exchanges took place in July 2019, October/November/December 2020 and January/February 2021. They primarily concern complaints by Mr Sinclair, Mr Crozier and Mr Ogilvie about the state of cleanliness of the Communal Hall, the smell of cat urine and items belonging to Mrs Palmer being left there.

20. None of the evidence had any relevance to Mrs Palmers covenant to keep the premises demised by the Lease in repair. The evidence all relates to the Communal Hall which is not within Mrs Palmers demise. In fact, responsibility for cleaning and maintaining the common entrance halls and landings, and providing floor coverings as may be necessary, lies with the landlord under paragraph 11 of the Schedule 8 of the Lease.

21. This was put to Mr Sinclair at the hearing. He readily acknowledged that having identified a number of issues with Mrs Palmer's behaviour, the Applicant had trawled through the Lease to find the clauses that appeared to be most relevant. He

accepted that while the issues might arguably amount to a breach of some other covenants in the Lease, they could not constitute a breach of Mrs Palmers repairing covenant because the Communal Hall was not within the extent of her demised premises. This allegation was therefore dismissed by the tribunal.

22. Issue 2. The allegation here is that Mrs Palmer failed to allow the lessor to enter the premises with or without workman as required by paragraph 7 of Part II of the Sixth Schedule. The written evidence provided by the Applicant comprised an exchange of emails with Mrs Palmer concerning access by two roofing contractors to inspect the roof over the Property, to identify the source of ingress of water into Mrs Palmers Apartment. SHMC is liable for maintenance and repair of the roof under paragraph 6 of Part 1 of the Seventh Schedule and paragraph 1 of the Eighth Schedule. Mrs Palmer's email indicates that she had been taken by surprise by the second contractor who had called on a Sunday, without an appointment while she was busy, but who she nevertheless admitted. Her email concerning the issue finishes: "*More than happy to show contractors around if I am given prior warning which is only fair.*"

23. An exchange of emails followed the next day in which Mr Sinclair put forward the contact details of a further roofer and asked Mrs Palmer to contact him to arrange a mutually convenient appointment. Mrs Palmers response was "*Fair enough but I don't know when that is going to be as I have a lot of commitments this weekend and not sure if I am going to be here*".

24. In the event no arrangements were made by Mrs Palmer. Mrs Palmer did not comment on this allegation in her written statement but confirmed in evidence that she had admitted the first two roofing contractors to the property. She did not contact the third roofer whose details had been supplied by Mr Sinclair, because the leak had stopped. Mrs Palmer could offer no explanation of why the ingress of water had stopped but thought the rain may have penetrated the mortar in the gable part of the roof due to unusual weather conditions prevailing at the time. The problem had not re-occurred and she did not therefore see any point in contacting the roofing contractor

25. Mr Sinclair said that he didn't know if the leak had stopped or if it had been repaired. The tribunal asked if the Applicant had any evidence that Mrs Palmer had refused to grant access to the lessor's workmen. Mr Sinclair confirmed that the issue was Mrs Palmer's failure to make the arrangements with the roofer having said in correspondence that she would. It was suggested to Mr Sinclair that it was the lessor's responsibility to arrange the repairs, not the leaseholders. His response was that Mrs Palmer was at the time also a director of SHMC.

26. Issue 3. This is an allegation that Mrs Palmer failed to obtain the prior written permission of SHMC to keep her cats on the premises, contrary to paragraph 14(b) of Part II of the Sixth Schedule. The Applicant's written evidence is mostly exchanges of personal emails between Mr Sinclair and Mrs Palmer in October 2019 in which he complains that the cats were found in the communal areas, followed by more formal emails from Mr Sinclair in December 2020, through to February 2021, in his capacity of Chairmen of SHMC, complaining of various matters including keeping pets without permission. In his email of 17 February 2021 at numbered point 3, Mr Sinclair writes: "*Keeping, in your case cats without the written*

permission of the management company. You must apply for permission and if not approved remove these cats permanently from the premises."

27. Mrs Palmer's response to the emails was that permission had been obtained before Mr Sinclair's time as Chairman, via Diane Austin (who was Mrs Palmers predecessor in title). Mr Sinclair disputed this stating that it would have required a majority vote of the directors.

28. Mr Sinclair then wrote to three of the former apartment owners for confirmation of any permission granted. Mr and Mrs Edwards, the previous owners of Apartment 2 responded to say they couldn't recall having given permission or being asked. Mrs Edwards did recall seeing a littler tray in the hallway but didn't recall seeing a cat, she also said that Diane Austin had a cat which didn't cause a problem because it never ventured out. Mr McNulty, another former leaseholder/director responded to say that having searched his emails he couldn't find any regarding giving permission. Mr Sinclair's enquiry of Alison Sherwood, also a former leaseholder/director, elicited the following response: *"In my time at Stirchley, residents have had pets and there has never been any permission asked of the Management Co – all very much live and let live."*

29. Mr Sinclair reported the outcome of his enquiries to Mrs Palmer on 18 February 2021 as follows: *"Where is the written permission. We have just had confirmation from another person who was director at the time, he has no knowledge of giving permission for you to keep cats. None of the five directors in apartments 1, 2 or 3 who were in office at the time gave any permission and have now confirmed that in writing."*

30. Mrs Palmer responded on 21 February 2021 to say that she was still waiting to hear from her solicitors re permission for her cats, but having deliberated for the last few days had decided that it was in everyone's best interests for her cats to be re-homed and they had been collected at 11.30 that day.

31. In her Statement Mrs Palmer states that before moving in she asked if she needed permission, was told she did not and so took that as read.

32. Issue 4. The allegation here is that Mrs Palmer kept a cat (or cats) which in the opinion of SHMC became a nuisance or annoyance to SHMC or the occupiers of the other apartments, contrary to paragraph 14(a) of Part II of the Sixth Schedule. The Applicants evidence comprises exchanges of emails between the leaseholders and SHMC, 2 statements from Mrs Sinclair both signed on 20 March 2021, a statement from Mr Crozier signed on 23 March 2021 and a letter from Patricia Picard , a visitor of Mr and Mrs Sinclair, addressed "*to whom it may concern*", dated 20 March 2021.

33. The nuisance or annoyance complained of is the soiling of the Communal Hall, in particular the carpeted area, by Mrs Palmers cats. The issue appears to have first been formally raised with SHMC by Mr Crozier, in an email dated 6 September 2019 in which he asks for the issue to be added to the agenda for the forthcoming management company meeting. The minutes of the meeting held on 28 September 2019 show that '*Fiona*' was to address the odour problems in the entrance hall.

34. The Applicant's evidence then jumps to 26 July 2020, an email from Mr and Mrs Sinclair to Mrs Palmer which said that one of their relatives had visited the property and noticed a smell of cat urine again. It is not clear when the issue was again formally raised by SHMC with Mrs Palmer, but this email indicates that by 26 July 2020 at the latest, she was aware that the problem with her cats soiling the Communal Hall was continuing. Mrs Palmer responded on 2 August 2020 to say that the carpet had been cleaned. There follows and exchange of emails between the leaseholders in October 2020, complaining of various matters including the soiling of the carpet and smell of cat urine in the Communal Hall, which culminated in a formal request from Mr Sinclair dated 5 October 2020 requiring Mrs Palmer to remediate the smell, even if that required replacement of the carpet.

35. On 27 October 2020 a further email was sent to Mrs Palmer by Mr Sinclair demanding that she had the carpet professionally cleaned or replaced pointing out that there was provision in the lease for SHMC to seek an indemnity from Mrs Palmer if it had to organise the work. This appears to have been followed by further exchanges between Mrs Palmer on 3 and 4 November 2020, which included her confirming on 4 November 2020 that the cat smell had been dealt with. However, on 11 November 2020, Mrs Palmer clarified that she had arranged for professional carpet cleaners to come on 25 November 2020.

36. Following a further enquiry from Mr Sinclair in December 2020 Mrs Palmer said on 21 December 2020, that there was no smell of cat urine in the hall. It had been down to the smaller of her cats getting out when her front door bounced open. Mr Sinclair wrote again on 17 January 2021, to ask "*If the entrance hall does not smell of cat urine, when was this professionally cleaned. This problem has persisted for over a year and you promised professional cleaning would take place on the 25 November 2020.*" A further letter was sent on 17 February 2021 repeating concerns about several issues including nuisance and damage caused by the cats. Mrs Palmer responded to the issues and said that she had eradicated the smell which Mr Sinclair could check with the other residents. Mr Sinclair (who was in France) forwarded this response to Mr Crozier and Mr Ogilvy for confirmation that there was "*no smell of cat urine in the common area".*

37. Mr Crozier did not directly address the smell of cat urine but said *"We both hate going into the communal area it stinks and we both come out feeling dirty".* Mr Ogilvy said that he had been to do an inspection of the common area *"currently only used by Fiona Palmer"* and that despite her claims the area still smells of cat urine particularly the landing.

38. The letter from Patricia Picard states that she visited the hall on 15 April 2019 staying for eight nights. On arrival there was a strong smell of cat urine in the hall and some spare furniture stored in one corner, the smell persisted until she left. Mr Crozier's statement dated 23 March 2021 states that although the cats are no longer there the smell remains and despite several promises to have the carpet cleaned this has never happened. Mrs Sinclair's statements say that on the Sinclair's return from France in April 2019 and September 2019, there was a strong smell of cat urine in the Communal Hall, stairs and landing. The statements did not contain statements of truth and none of the Applicant's witnesses attended the hearing. It was not therefore possible for Mrs Palmer or the tribunal to test this evidence where it was either disputed, or in conflict with Mrs Palmers evidence.

39. Mrs Palmer said in evidence there were no complaints until the Croziers moved in. She acknowledged in her Statement and in evidence that one of her cats did escape from her apartment on several occasions due to a problem with her front door. She said that she did her best to rectify the matter and had cleaned the carpet herself on several occasions with bicarbonate of soda to eradicate the smell. Mrs Palmer said that she had also arranged for professional cleaners to attend the property on 25 November 2020, but the appointment had to be cancelled due to Covid 19.

40. Mrs Palmer said that in February 2021, with some reluctance she had taken the decision to rehome her cats, despite their being her only companions during the Covid 19 lockdown. It was a hard decision to make but one she thought was best all round in the circumstances.

41. The tribunal asked Mr Sinclair is he accepted that the odour problem had now been eradicated. He said that the tribunal may not have detected the smell because the door had been left open, but he had been assured that if the door remained closed for any length of time the odour is still apparent.

42. The Applicant did not however dispute that from that date on which Mrs Palmer re-homed her cats she was no longer 'keeping' a cat for the purposes of this covenant.

43. Issue 5. The allegation here is that Mrs Palmer used permitted or suffered on the demised premises acts or things which became a nuisance, annoyance or inconvenience, to the lessor or the lessees or occupiers of other Apartments, contrary to paragraph 13 Part II of Schedule Six.

44. The specific allegations are:

    a. Unacceptable levels of noise from the use of Mrs Palmers washing machine causing vibration of walls and a bedroom ceiling of Apartment below.
    b. Unacceptable level of noise between 11.00pm and 7.00am, from Mrs Palmer walking about her apartment, using equipment and closing doors and drawers noisily.
    c. Use of the Communal Hall for storage of garden tools and other items.
    d. Use of the communal area of the cellar for the storage of property without seeking agreement with the other leaseholders.
    e. Persistent odour in the Communal Hall from earlier soiling of the carpet by Mrs Palmer's cats.
    f. Retaining a communal green bin in Mrs Palmer's garden area.
    g. Parking on a communal grassed area and on one occasion on Mr Sinclair's gravelled area of private garden.

45. The Applicant's evidence comprises two witness statements from Mr Crozier both dated 23 March 2021, neither of which contained a statement of truth; a witness statement from Mrs Sinclair also dated 20 March 2021 and which did not contain a statement truth; some copy emails between the other leaseholders, including a long email from Mr Crozier to Mrs Palmer dated 6 September 2020, in which he sets out a litany of complaints about her behaviour.

46. In his first statement, Mr Crozier describes unacceptable levels of noise resulting from an allegedly faulty washing machine and unacceptable levels of noise at night from Mrs Palmer pacing up and down on her kitchen floor which is directly above his bedroom. This can apparently occur a couple of times a night and is loud enough to wake Mr and Mrs Crozier. The statement also mentions the dropping of items of equipment, slamming doors and drawers and states that the Crozier's have taken recordings of the noise levels from the washing machine and have kept a diary of times and dates of being disturbed at night.

47. The second statement describes an unacceptable smell emanating from the Communal Hall believed to be from Mrs Palmers cats soiling the carpet. The statement also mentions the use by Mrs Palmer of the Communal Hall as her personal space to keep gardening tools and the use by Mrs Palmer of the cellar to store her property without seeking agreement from the other leaseholders. Mr Crozier also alleges that this has compromised access to his own cellar. Both statements are very short comprising just two paragraphs each, no details of the dates and times of the allegations of nuisance have been provided, and no copies of the diaries or recordings were in evidence. Furthermore, Mr and Mrs Crozier did not attend the hearing to give evidence.

48. Mrs Sinclair's statement is just a few lines alleging that twice during September/October 2019, Mrs Palmer used her washing machine whilst they were in Apartment 3. The noise was, she says, incredibly loud causing their shower cubicle to rattle alarmingly. Mrs Sinclair did not attend the hearing to give evidence.

49. The emails include one from Mr Crozier to the other leaseholders complaining that it was midnight and he was still listening to Mrs Palmer's washing machine. He says that he knocked her door twice and even though he could hear her, she did not answer. Mr Crozier's email goes on to urge the management committee to take action against Mrs Palmer.

50. The long email from Mr Crozier to Mrs Palmer dated 6 September 2020, is partially in response to complaints that appear to have been made by Mrs Palmer to Mr Crozier, about noise from the sound system in his apartment. He refutes this and goes on to complain about Mrs Palmer slamming her front door at 6.00am when she leaves for work, stomping around her apartment in the early hours without any consideration for others, running her washing machine late in the evening causing his bedroom ceiling and window frames to vibrate and plaster dust fall off the walls, parking on grassed areas, disregard of the shared hallway, storage of a quantity of junk in the shared portion of the cellar and the retention of a communal green bin in Mrs Palmer's garden area, all of which he contended were in breach of the terms of the lease.

51. There is an email from Mr Ogilvy to Mr Sinclair complaining about the way Mrs Palmer had raised with him, an issue concerning his parking. A photograph of Mrs Palmer's car parked on the gravelled area of Mr Sinclair's private garden was provided, together with two emails dated 17 October 2020, the first from Mr Sinclair to Mrs Palmer complaining about this and the second from Mr Ogilvy to Mr Sinclair, saying of Mrs Palmer that he *"gave her a bollocking and she moved her car after saying it was never an issue before. I told her that was a lie and she knows it's an*

issue. Anyway we need to put bollards in the ground to stop it I am afraid unless we can get her out."

52. At the hearing Mr Sinclair explained that he had not been resident at his apartment since before the pandemic. Mr and Mrs Sinclair spend part of the year in France. They were in France when both countries were locked down and have not therefore been back to their apartment for some time. He therefore relies on emails from the other leaseholders to keep him abreast of any issues. Mr Sinclair was not aware of Mrs Palmer's trespass on his private garden until he received the photograph her car parked on the gravel from Mr Ogilvie. Although in France, he was really cross about it and said that it illustrated Mrs Palmers overall disregard of other leaseholders' areas.

53. Mrs Palmer had quite a lot to say on the allegations of nuisance and annoyance to other leaseholders.

Washing Machine

54. In relation to the washing machine. Mrs Palmer said the vibration problem is a consequence of her kitchen appliances sitting on a sloping wooden floor, covered with just lino. Vibration is inevitable when appliances are in use. Mrs Palmer said that she arranged for a mechanic to look at her washing machine in March 2021. There was a fault with the door closure mechanism, which has now been repaired. Furthermore, she had put boards under the washing machine to minimise noise vibration and she ensures that nothing is left on the work surfaces that would add to the problem. She has also minimised the number of washes.

55. Mr Sinclair acknowledged that Mrs Palmer was entitled to use her washing machine. The problem is the location of the machine directly above Mr and Mrs Crozier's bedroom where it causes a nuisance if it is run at night. He said that there were various things Mrs Palmer could do to reduce the vibration, such as ensuring the machine was balanced or installing rubber feet which Mr Sinclair had done with his washing machine. She could also try not to use the machine after 11.00pm. Mr Sinclair also said that Mr Crozier had offered to pay half the cost of installing some insulation.

56. In response Mrs Palmer said that Mr Crozier had made no such offer to her at any time, she said that she was not now using the washing machine at night, had minimised the number of washes she was doing, arranged for the door closure mechanism to be fixed and put the machine on boards to reduce the level of vibration. The vibration was now much less than before. Mr Sinclair accepted that because he had not been to his apartment for some time, he could not comment on the degree to which the vibration had been reduced by the steps Mrs Palmer had taken.

Stomping about

57. Mrs Palmer said that relations between herself and the Croziers had deteriorated. There had been an issue concerning ownership and use of the boundary fence between their private gardens that had not been resolved and unfortunately because their bedroom was situated directly beneath her kitchen it was inevitable that when

she got up for work at 5.00am they might be disturbed. She tried not to be noisy, did not wear heeled shoes, so was not clip clopping about, but she had to go to work. Mrs Palmer also said that if she needed to get a drink during the night there should be no reason for her not to, that she didn't hold parties, didn't stomp around and didn't put appliances on after 10.00pm. In his Reply Mr Sinclair said that Mrs Palmers statement demonstrated her failure to recognise that her actions had implications for other residents who are regularly woken up at night due to her insistence on getting a glass of water when she could easily have taken a glass to bed.

58. Mrs Palmer said that hearing your neighbours was a consequence of communal living and she has had to put up with other leaseholders playing loud entertainment systems. She had complained about the level of sound from the Crozier's system on several occasions but acknowledged that when Mr Sinclair raised the issue with the Croziers' they had turned the volume down.

59. Mr Sinclair said, when asked by the tribunal, that he was not aware that SHMC had included within any periodic survey of the building, a report on sound compartmentalisation, or any remedial steps that could be undertaken to improve it.

Use of the Communal Hall

60. Mrs Palmer said that she had on occasion kept a wheelbarrow in the Hall for a day or two, she didn't think it would be an issue but after receiving complaints moved it to the garage.

61. Mr Sinclair accepted that Mrs Palmer had cleared her items from the Hall following the complaints but said the point was, that it illustrated Mrs Palmer's disregard of communal areas.

Use of the Cellar

62. Mrs Palmer acknowledged that she had stored several items in the cellar and that it had become a mess in need of a good clear out. She got fed up trying to work out what she could and couldn't keep there, so shifted everything out and now has nothing stored there.

63. Mr Sinclair accepted that Mrs Palmer had eventually removed all the items she was storing in the cellar, but only after he chased it more than once.

64. Mr Sinclair said that a Fire Risk Assessment was carried out in 2020 (mid-year), for the first time since 2011/12, which said that no combustible items should be stored in the cellar. He regarded the cardboard and paper items Mrs Palmer was storing in the cellar to be within this category. Mrs Palmer said that she had never been provided with a copy of the FRA but had seen the recommendations. Mr Sinclair said that he couldn't be 100% sure that FRA had been sent to all leaseholders. The FRA also highlighted risks from exposed wiring in the cellar that required the installation of fire protecting conduits and the absence of fire extinguishers in certain places. Mr Sinclair said these recommendations may not have yet been implemented, he would need to check with Mr Crozier. The cellar had only recently been cleared to afford an electrician access to the wiring.

65. Mr Sinclair accepted that the FRA did not preclude Mrs Palmer from storing paper and cardboard items in the cellar if they were in a suitable cabinet but said she would still need the consent of the other leaseholders.

Carpet in Communal Hall – odour of cat urine

66. Mrs Palmer had little to add to her previous submissions concerning her attempts to clean the carpet, restrain her cats from straying and her ultimate decision to rehome them.

Retention of a green bin in private garden

67. Mrs Palmer says that she didn't see any harm in keeping one of the green bins on her property but having received objections to that, and to her standing some of her pots in front of her fence along the edge of the communal path she had removed them. Mrs Palmer says that she used to maintain the communal area and keep it weeded but as it is not her property, she no longer does that.

Parking on a communal grassed area and Mr and Mrs Sinclair's garden area

68. Mrs Palmers statement largely deals with an issue she had with Mr Ogilvie parking on the communal parking area inconveniently in a way that left no room for her visitors. She attached copies of email exchanges with Mr Ogilvy and with Mr Sinclair concerning this. The issue apparently escalated leading to police involvement but Mr Sinclair states in his Reply that as far as SHMC is concerned, the matter is closed.

69. In evidence Mrs Palmer said that she had on occasions parked on the grassed area immediately in front of the entrance to her Apartment to unload shopping because she suffers with a bad back. The car was generally only left 10-15 minutes before she moved it, but she had once left it there overnight. Mrs Palmer said that had been her practice since moving to the apartment and no one had ever complained about until Mr Ogilvie raised the issue late 2020. She now stops on the driveway for about 5 minutes to drop off her shopping, which is not ideal but resolves the problem.

70. Mrs Palmer also admitted that she had on one occasion, parked on the gravelled area of Apartment 3's garden when Mr and Mrs Sinclair were in France because she didn't think they would mind. She was dropping of some heavy detergents and just pulled up for a couple of minutes. Had Mr Sinclair been there she would have asked if he minded.

71. Mr Sinclair said that the leaseholders concern about parking was the potential for damage to the grass which would detract from the overall amenity of the site.

72. Issue 6. This concerns an allegation that Mrs Palmer has failed to keep her private garden as an ornamental garden with lawns and flower beds in accordance with paragraph 31 Part II of the Sixth Schedule.

73. The evidence provided by the Applicant comprises a witness statement from Mr Crozier dated 23 March 2021 (without a statement of truth). Mr Crozier alleges that the garden has not been maintained as an ornamental garden with lawns and flower

beds because it was currently used to store old garden furniture, rusty barbecue, old bits of material, dead plants and a large butane gas cylinder. The garden is he states, not maintained. The statement includes no dates or times for Mr Crozier's inspections or allegations. Two photographs of Mrs Palmers garden are attached to an email dated 10 March 2021, included with the evidence. They show what appears to be a well-tended area of garden with a maintained lawn and ornamental shrubs. The lawn and the shrubs appear to be in good order. There is a small paved area used for storage of usual garden furniture, a gas barbecue, various pots, one of which has sustained damage, there is a butane gas cylinder presumably for the barbecue, all quite usual to those seen in many domestic gardens. It is not clear when the photographs were taken, but they show the garden in winter before anything much is growing. The statement goes on to complain that Mrs Palmer had attached old blankets to the trellis fencing between her property and theirs (which is not shown in the photographs) and that Mrs Palmer had been parking her car on some of the grassed communal areas causing damage to them.

74. There is an email from Mr Ogilvy to the other leaseholders dated 12 November 2020, stating that he had repatriated a communal green bin found lying on its side in Mrs Palmer's garden, to the communal bin area, as it was needed by the gardener who was clearing leaves.

75. No evidence was provided that these issues had been raised with Mrs Palmer prior to the proceedings, and Mr Sinclair acknowledged at the hearing that it was possible they had not been raised with Mrs Palmer. Mrs Palmer confirmed in evidence that she was unaware of any concern about the maintenance of her garden until she read the tribunal papers.

76. Mr Sinclair was asked what he thought was meant by the term 'ornamental garden'. He was not able to offer any definition other that to say what he thought it didn't mean. In his view it did not mean leaving items of garden furniture and equipment out rather than put away in the garage, or leaving out 5 or 6, pots of dead plants (sometimes as many as 8 or 9), for as long as two years in some cases. It didn't mean allowing pots and other items of garden furniture that had blown over, to be left on their sides for months, or retaining one the communal green bins. Mr Sinclair said that the garden may now look very pleasant, but it was clear from the photographs that items had been left on their sides, which had now been tidied up. He acknowledged however that the garden had never been overgrown, the lawn was kept trimmed and the shrubs maintained.

77. Mrs Palmer stated that she was under the impression that she could keep her garden as she liked provided it was tidy and this issue had never been raised with her prior to the proceedings. Mrs Palmer described an altercation with Mr and Mrs Crozier concerning ownership of the boundary fence between their areas of private garden. Ownership of the fence is apparently unclear, it having been erected prior to their respective periods of ownership. Mrs Palmer had a vine in her garden that climbed along and through the trelliswork. After moving in the Crozier's pruned all the stems on their side of the fence and attached some fairly lights to the top. Mrs Palmer objected to this and to the danger caused by drawing pins dropping on her side of the fence. Mrs Palmer said that since the fence altercation they have barely spoken.

The tribunal's discussion and determinations

78. The issue for the tribunal is whether Mrs Palmer has breached the covenants at paragraphs' 3, 7, 13, 14(a), 14(b) or 31 of Part II of the Sixth Schedule to the Lease.

79. The determination of this issue is primarily a question of fact. The tribunal is required first to make findings in respect of each incident relied upon by the Applicant, and then if need be, consider whether the findings constitute a breach of the said covenants.

80. Before making specific findings, the tribunal wishes to make some general observations. First, the tribunal emphasises, that its sole jurisdiction under section 168(4) of the Act is to determine whether a breach or breaches of covenant have occurred. It has no jurisdiction to determine a boundary dispute, disputes over the extent of rights of way, trespass, or damage to property, or any other matter that does not come within the ambit of any of the covenants contained in Schedule 6 to the Lease.

81. In the tribunal's view, the structure of section 168 is such that an action under section 168 (4) should only be brought if the tenant does not admit the breach. In the tribunal's view, which follows from the structure of section 168 and the potentially severe consequences for the tenant, the landlord is responsible for proving the breach on the balance of probabilities. It also follows the landlord should give the tenant an opportunity to admit the breach and put matters right before bringing proceedings under section 168(4) of the 2002 Act.

82. In construing the wording of the lease, the tribunal had regard to Lord Neuberger's comments in *Arnold v Britton [2015] UKSC 36* where he set out six matters pertinent to the assessment of the meaning of the relevant words:
    - The natural and ordinary meaning of the clause;
    - Any other relevant provisions of the lease;
    - The overall purpose of the clause and the lease;
    - The facts and circumstances known or assumed by the parties at the time the document was executed;
    - Commercial common sense;
    - But, disregarding subjective evidence of any party's intentions.

83. Breaches of paragraphs (i) and (iii) of Schedule 9 of the Lease (payment of service and administration charges) have already been dealt with at paragraph 11 and 12 above.

84. Issue 1 has been dismissed at paragraphs' 18-21 above.

85. This leaves Issues 2, 3, 4, 5 and 6 for the tribunal to determine.

86. Issue 2 concerns the allegation that Mrs Palmer failed to permit a roofing contractor to enter her apartment as required by paragraph 7 of Part II of the Sixth Schedule. The Applicant provided no evidence in support of this allegation. Mrs Palmer was asked to arrange an inspection with a roofing contractor. She didn't, but her failure

to make the arrangement is not a breach of paragraph 7. Responsibility for managing the building, which includes arranging maintenance inspections, is with SHMC, not Mrs Palmer in her capacity as lessee. Mrs Palmer did not refuse access to SHMC or its workman, the visit was simply never arranged, therefore the tribunal does not find this allegation proved.

87. Issue 3. Paragraph 14(b) prohibits the lessee from keeping a cat on the demised premises without the prior written permission of the management company. Mrs Palmer says in her statement that before moving in she asked if she had to obtain permission for her cats and was told she didn't and so took this as read. This statement is inconsistent with some of her emails to Mr Sinclair, in which she states that permission had been obtained from the previous director/owners of the other apartments.

88. Mr Sinclair's evidence does however suggest that there is no procedure in place for seeking consent and no reliable records appear to be kept. Consequently, he had to contact previous owners to check whether consent to Mrs Palmers cats had been given. The response from two of the former owners was that they could find no emails concerning this and had no recollection. However, Alison Sherwood's response indicates that residents have at times kept pets but had never sought permission because it was all very much "*live and let live*" at Stirchley Hall. It does therefore seem that the requirement for consent under paragraph 14(b), is inconsistently applied by SHMC and was only raised in Mrs Palmers case, following issues with her cats soiling the Communal Hall. However, the tribunal is satisfied that on the balance of probabilities Mrs Palmer did not obtain written permission to keep her cats, and there is insufficient evidence for the tribunal to conclude, notwithstanding the inconsistent approach of the SHMC, that the requirement for consent had been waived.

89. Mr Sinclair accepted at the hearing that from the date on which the cats had been re-homed Mrs Palmer was not in breach of this covenant but confirmed that the nuisance caused by the cats soiling the communal areas remained an issue. The tribunal finds therefore that Mrs Palmer was in breach of clause 14(b) prior to the date on which she rehomed her cats but was not in breach after that date.

90. Issues 4 and 5 concern the allegations of nuisance or annoyance. Paragraph 14(a) provides the lessee must not keep any animal which in the opinion of SHMC has become a nuisance or annoyance to other apartment occupiers. Paragraph 13 prohibits the lessee from doing any act or thing on the demised premises which becomes a nuisance damage annoyance or inconvenience to SHMC or the other apartment occupiers.

91. Mr Sinclair did not elaborate upon the meaning of the words used in clause 13 or 14 or comment on which consequence from the alleged breaches the Applicant relied upon.

92. The Tribunal refers to the Encyclopaedia of Housing Law and Practice, Volume 1 Chapter 1 1-002 for the meaning and scope of nuisance and annoyance:

> ""Nuisance" includes behaviour which would amount to the tort of nuisance, e.g. excessive noise, making a lot of dust, allowing water to overflow onto the

> premises of another, creating foul odours: Chapman v Hughes (1923) 129 L.T. 223; Parker v Elvin (1944) 143 E.G. 129, CA); ..... But is not to be confined to nuisance in this technical, legal sense: Harlow DC v Sewell [2000] E.H.L.R. 122 but construed in a natural way, and "annoyance" is in any event a term with a wider meaning, although it must be such as would annoy an ordinary occupier, not an ultra-sensitive one: Tod-Heatly v Benham (1888) 40 Ch.D. 80;
>
> The phrase "nuisance and annoyance" should be given a broad common sense meaning, Kensington Housing Trust v Borkwood [2005] J.H.L. D75.....

93. The Tribunal construes damage in similar terms, as causing a loss to the persons who are the object of the covenant. The Tribunal interprets inconvenience as causing trouble or uneasiness to those persons.

94. Issue 4 concerns paragraph 14(a) of the Sixth Schedule, which prohibits Mrs Palmers keeping a cat which has become a nuisance or annoyance to SHMC or the other leaseholders. The evidence indicates that she was first notified of an issue with her cats soiling the Communal Hall at a management committee meeting on 28 September 2019. The minutes show under the heading *Quiet Enjoyment*, that '*Fiona*' was to address the odour problems in the entrance hall. The next piece of evidence is a personal email from Mr and Mrs Sinclair to Mrs Palmer on 26 July 2020 which said a visiting relative had noticed the smell again. The inference drawn by the tribunal is that the problem had been addressed after the meeting in September 2019 but had re-occurred prior to the email of 26 July 2020. Some 10 months later.

95. Mrs Palmer responded in August 2020 to say that she had cleaned the carpet. In October 2020 the problem appears to have re-occurred leading to the October/November 2020 email exchanges. Mrs Palmer said that she'd arranged for a professional carpet cleaner to attend on the 25 November 2020, but the appointment was cancelled due to the pandemic. The tribunal has no reason to doubt Mrs Palmers evidence concerning this. There were further email exchanges between Mr Sinclair and Mrs Palmer in February 2021 concerning various matters including her cats, following which she reluctantly re-homed her cats.

96. The tribunal was unable to detect any trace of an odour in the Communal Hall during its inspection on 3 August 2021. The door was closed when the tribunal inspected the external areas and remained closed until the tribunal was admitted by Mrs Palmer. There was no trace of an odour on entry, or later on leaving the hall area. The carpet appeared to be undamaged and in satisfactory condition. The tribunal is therefore satisfied that contrary to Mr Sinclair's evidence, the Communal Hall is odour free.

97. Furthermore, liability for cleaning and maintaining the Communal Hall, including the replacement as necessary of floor coverings, is with SHMC under paragraph 11 of the Eighth Schedule to the Lease. It was therefore both the responsibility of and within the hands of SHMC, to remediate any persistent odour and seek to recover the costs from Mrs Palmer. When this was put to Mr Sinclair he said that SHMC had the funds to arrange for the carpet to be professionally cleaned, but the management committee had decided that as Mrs Palmer had significant

responsibility for the odour, she should do it. He added that as the mess in the cellar needed addressing, they thought it preferable in any event, to defer any cleaning until the cellar had been cleared.

98. The tribunal finds that Mrs Palmer took steps to eradicate any nuisance or annoyance caused by her cats soiling the Communal Hall when she was first notified of the issue by SHMC and on being subsequently notified in July 2020 and October 2020 when the problem re-occurred. In November 2020 she made arrangements for the carpet to be professionally cleaned but the arrangements were thwarted for reasons beyond her control. In February 2021, to meet the leaseholders ongoing concerns Mrs Palmer made the decision to part with her cats. Having regard to the actions taken by Mrs Palmer on the occasions she was notified of the issue, and taking into account the failure of SHMC to take any action to comply with its covenant under paragraph 11 of the Eighth Schedule, the tribunal do not find that Mrs Palmer was in breach of the covenant at clause 14(a) of the Sixth Schedule.

99. Issue 5 concerns paragraph 13 of the Sixth Schedule, which provides the lessee must not use or permit or suffer on the demised premises any act or thing which shall or may become a nuisance, damage, annoyance or inconvenience, to the lessor or the lessees or occupiers of other Apartments. The acts complained of are said to be:

Using a washing machine

100. The tribunal finds that Mrs Palmer was using her washing machine and that consequently the leaseholders beneath her were disturbed by the vibrations. The act complained of is 'using a washing machine'. This is a perfectly usual and normal use of Mrs Palmers apartment. She is not responsible for the design and layout of the conversion works or the absence of adequate noise compartmentalisation measures. Mrs Palmer has taken several steps to reduce the disturbance caused by the inadequacies of the building, which are not disputed. Mr Sinclair believes there are further steps that might also assist. However, the tribunal does not find the act of using a washing machine to be a breach of the covenant at paragraph 13.

Stomping about

101. The tribunal accepts that when Mrs Palmer gets up in the night, or early in the morning for work, the sound of her walking around her apartment may disturb the leaseholders below. The tribunal accepts Mrs Palmers evidence that she does not wear heels, stomp around, throw parties or run appliances late at night, but has to get up for work at 5.00am and sometimes needs to use her kitchen at night if she needs a drink. The tribunal finds that the act complained of is walking about the apartment. Mrs Palmer is, as she suggests entitled to walk around her apartment, it is a usual and reasonable part of living there and the tribunal does not therefore find that the act of walking around the apartment to be a breach of the covenant at paragraph 13.

Use of the Communal Hall

102. Mrs Palmers use of the Communal Hall is not within this covenant. Paragraph 13 prohibits the use of the 'demised premises' for acts or things that may

become a nuisance. The covenant does not extend to use of communal areas that are not within Mrs Palmers apartment.

103. Furthermore, paragraph 4 of the Fourth Schedule to the Lease grants the tenant a right to use the entrance halls, lobbies passages landings and staircases leading to the Apartment. The right is not confined to a right of way over those areas for access to the Apartment, and there does not appear to be any restriction in the lease, on the tenant's use of the Communal Hall that would prohibit Mrs Palmer from keeping personal items in the Communal Hall.

104. The tribunal therefore finds that the use of the Communal Hall by Mrs Palmer to keep personal items is not a breach of the covenant at paragraph 13.

Use of the Cellar to store personal items without consent

105. Mrs Palmers use of the cellar may fall within this covenant; it depends which part of the cellar she was using. Part 1 of the Third Schedule defines the extent of the demised premises as follows:

"ALL THAT first and second floor apartment forming part of the development and known as Apartment 4 and including part of the cellar of the Building .....ALL which said Apartment is delineated on plan number 2....."

106. Unfortunately, no lease plans were provided that might have allowed the tribunal to distinguish the extent of the cellar that is owned by Mrs Palmer from the remainder, which probably falls within one or more of the other leaseholders' ownership.

107. The acts complained of is storing items in the communal part of the cellar without the other leaseholders' consent. If the items were stored in the part of the cellar that is demised to Mrs Palmer, she doesn't need the other leaseholders' consent and the act of keeping items in such part of the cellar does not constitute a breach of the covenant at paragraph 13. If the items were stored in a part of the cellar that falls within another leaseholder's demised premises, or a communal area, that may constitute a private trespass, but it is not a breach of the covenant at paragraph 13.

108. The tribunal therefore finds that there is insufficient evidence for it to determine that Mrs Palmer is in breach of the covenant at paragraph 13.

Use of communal green bin

109. The act complained of is retaining one of the communal green bins within Mrs Palmers garden for personal use. The evidence here is a copy email from Mr Ogilvie which says that he had taken the bin back to the bin storage area because it was needed by the garden maintenance company. The tribunal noted on its inspection that the development benefitted from a large number of green waste bins. Mrs Palmers garden is far more densely cultivated that the other gardens, which are largely areas of open plan lawn or gravel. The tribunal accepts Mrs Palmers evidence that she did not think retaining a green bin in her garden area would be an issue. The tribunal reminds itself that the act complained of must be something that

would trouble, upset or annoy an ordinary occupier, not one that was unduly sensitive. There should also be a degree of persistence, following the lessor's notification of the breach.

110. Mr Crozier briefly mentions retention of a green bin in his personal email to Mrs Palmer dated 6 September 2020. The management company do not however appear to have formally raised this as an issue with Mrs Palmer. Mr Ogilvie's email to Mrs Palmer dated 12 November 2020, refers to a discussion with Mr Sinclair before entering Mrs Palmers garden to remove the bin and ends with the words "*stand back and wait for the repercussions*". There is no evidence that Mrs Palmer continued to retain a green bin after this date. The tribunal finds that Mr Ogilvie's email is consistent with some of the leaseholders feeling mildly irritated with Mrs Palmer's actions, and that while the act might have been a petty irritation to Mr Crozier and Mr Ogilvie, is not so unreasonable as to cause an actionable nuisance, annoyance or irritation so as breach the covenant at paragraph 13.

Parking of the communal grassed area and the garden area of Apartment 3

111. The first act complained of is parking on the communal grassed amenity area. Once again however, this does not fall under paragraph 13 for the same reason as the Communal Hall. Paragraph 13 is limited to acts on the premises demised to Mrs Palmer by the Lease. Furthermore the Lease does not appear to contain any general restriction or covenant in relation to use of the amenity areas, other than a covenant at paragraph 11 of the Sixth Schedule to make good any damage caused to any part of the development by any act or omission of occupants of the demised premises. There is however no evidence of damage caused to the grassed area by Mrs Palmer occasional parking on it, so the tribunal was unable to consider whether a breach of paragraph 11 had occurred.

112. The second act complained of is parking on the gravelled part of Mr and Mrs Sinclair's garden. Although this may constitute a private trespass the act does not fall within paragraph 13 for the same reason as set out in the preceding paragraph. Therefore, the tribunal finds that the acts complained of are not a breach of the covenant at paragraph 13.

113. Issue 6. The act complained of is failing to "keep and maintain the garden as an ornamental garden with lawns and flower beds…." contrary to paragraph 31 of Part II of the Sixth Schedule.

114. The lease offers no definition of the term 'ornamental garden', the term is capable of differing interpretations and Mr Sinclair put forward his subjective view of what the term did not mean. However, the tribunal has interpreted the term 'ornamental garden' by adopting the objective criteria of a garden that incorporates plants that are designed more for their aesthetic pleasure and appearance than for the production of crops or cooking. An ornamental garden would generally include flowering plants and shrubs, in addition to foliage plants, and possibly some ornamental shrubs and trees.

115. Mrs Palmers garden was, in the tribunal's opinion, a particularly attractive example of an ornamental garden when it inspected and from its consideration of

the photographic images provided by the Applicant. There is no restriction or prohibition in the Lease on standing items of garden furniture, barbeques or empty pots, upright or on their side in the garden; and the Lease is unsurprisingly silent as to the need to replace any plants that have died within a time period (or at all). The allegations were not notified to Mrs Palmer before the issue of proceedings and appear to have been added as an afterthought to bolster the weight of the overall allegations concerning Mrs Palmers conduct. The tribunal is satisfied that this allegation has no substance whatsoever.

116. Mrs Palmer has not breached the covenant at paragraph 31 of Part II of the Sixth Schedule.

Judge D Barlow **Date: 31 August 2021**

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix 1

Relevant legislation

Commonhold and Leasehold Reform Act 2002

Section 168

No forfeiture notice before determination of breach

(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 determination is made.

(4) A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.

(5) But a landlord may not make an application under subsection (4) in respect of a matter which—

(a) ...

(b) has been the subject of determination by a court, or

(c) ...

Section 169

(7) Nothing in section 168 affects the service of a notice under section 146(1) of the Law of Property Act 1925 in respect of a failure to pay—

(a) a service charge (within the meaning of section 18(1) of the 1985 Act), or

(b) an administration charge (within the meaning of Part 1 of Schedule 11 to this Act).