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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0009/06/23

In the Matter of No 57 Fields Road, Newport, NP20 5BP

In the matter of an Application under Section 168(4) of the Commonhold and Leasehold Reform Act 2002.

APPLICANT: Michelle Mckay

RESPONDENT: Carol Rosemary Collins

TRIBUNAL: **Michael Draper Tribunal member and Chair**
Johanne Coupe Tribunal member
Angie Ash Tribunal member

DECISION

Introduction

1. By application dated 7th June 2023 the Applicant seeks a determination that the Respondent has breached the terms of their lease, pursuant to section 168 of the Commonhold and Leasehold Reform Act 2002 (the "2002 Act").

Background

2. The leasehold property which is the subject matter of this claim is known as the upper flat at 57 Fields Road Newport Gwent (the property). The property is registered under title number CYM368609. The respondent is the registered proprietor.

3. The applicant resides in the lower flat at 10 Westfield Road Newport Gwent which is registered under title number CYM364735**.** The applicant is the registered proprietor.

4. Both the upper flat at 57 Fields Road and the lower flat at 10 Westfield Road together comprise a building (the building) occupying a plot of land which also includes former garages which are separated from the building by some distance.

5. The former garages have been converted by the respondent into a residential dwelling which is now known as 58 Fields Road Newport Gwent. The respondent is occupying and residing at 58 Fields Road.

6. Each of these three properties are self-contained and have their own individual access and entry points from either public or private roads.

7. The leasehold property at 57 Fields Road which is the subject matter of this claim is currently occupied by members of the respondent's family.

8. The freehold of all three properties is currently registered under title number WA59304. The registered proprietors of the freehold estate are the Applicant and the Respondent as joint tenants in both law and equity.

9. There is a pending application to HM Land Registry for the removal of the freehold estate to 58 Fields Road from the freehold estate of the building registered under title number WA59304 and for the registration of 58 Fields Road with its own title number and the respondent as registered proprietor. Objections to this process have been raised by the applicant in relation to the further subdividing of the estate from two properties to three.

The Law

10. Section 168 of the 2002 Act provides as follows:

> (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 end of the period of 14 days beginning with the day after that on which the final determination is made.
>
> (4) A landlord under a long lease of a dwelling may make an application to the appropriate 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) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party, (b) has been the subject of determination by a court, or (c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
>
> (6) For the purposes of subsection (4), "appropriate tribunal" means— (a) in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and (b) in relation to a dwelling in Wales, a leasehold valuation tribunal.

11. The tribunal is required to consider whether there has been a breach of the lease of the property at 57 Fields Road Newport Gwent.

12. The registered proprietors of the freehold estate are the applicant and the respondent as joint tenants in both law and equity. Accordingly, the applicant and the respondent together occupy the position and status of Landlord in relation to the property.

13. The application under s.168 of the 2002 Act is only brought by the applicant as one of the two joint Landlords. This and other circumstances of the application raise a number of issues relating

to the jurisdiction of the tribunal to determine the claim under s.168 of the 2002 Act and this will first of all be addressed.

Jurisdiction

14. The application alleges that one of the two joint landlords in their capacity as lessee has breached the terms of the relevant lease. The other joint landlord as applicant has initiated this claim under s.168 of the 2002 Act. The tribunal must first of all determine whether one of two joint Landlords acting alone can bring such a claim.

15. Section 112 of the 2002 Act states:

(3) The expressions "landlord" and "tenant", and references to letting, to the grant of a lease or to covenants or the terms of a lease, shall be construed accordingly

*(5) Where two or more persons jointly constitute either the landlord or the tenant or qualifying tenant in relation to a lease of a flat, any reference in this Chapter to the landlord or to the tenant or qualifying tenant is (**unless the context otherwise requires**) a reference to both or all of the persons who jointly constitute the landlord or the tenant or qualifying tenant, as the case may require*

16. The question for determination by the tribunal is whether *the context otherwise requires* that the definition of 'Landlord' for the purposes of s.168 may allow for one of two joint landlords acting alone to serve a claim under s.168 of the 2002 Act.

17. Clause 2(f) of the lease to the property states:

'*that where the **context so admits** the expression 'the lessor' shall include besides the parties named as the lessor her successors in title and the expression 'the Lessee' shall include besides the person named the Lessee her executors administrators and assigns and her successors*'

The lease therefore is silent on the point of one of joint landlords acting alone and does not assist in the determination of this question beyond a similar reference to context.

18. As a matter of general principle it is settled law that with a joint tenancy of an estate in the land, each owner has an indivisible share in the estate and all of the joint owners are equally entitled to the whole of the estate. Williams v. Hensman [1861] 70 E.R. 862 and Burgess v. Rawnsley [1975] Ch 429 apply.

19. In Doe d. Aslin v. Summersett [1830] 1 B. & Ad. 135, the freehold interest in land let on a yearly tenancy was vested jointly in four executors of a will to whom the land had been jointly devised. Three only of the executors gave notice to the tenant to quit. It was held by the Court of King's Bench in that case that the notice was effective to determine the tenancy.

20. Summersett's case was followed in Doe d. Kindersley v. Hughes [1840] 7 M. & W. 139 and Alford v.Vickery (1842) Car. & M. 280, both cases in which the validity of a notice to determine a yearly tenancy given to the tenant without the concurrence of one or more of the joint landlords was affirmed.

21. As a result of the above case law Lord Bridge of Harwich in Hammersmith and Fulham LBC v. Monk [1992] AC 478 observed that a notice to quit by any one joint freeholder was effective to determine a tenancy. Lord Browne Wilkinson also noted the submission made in Hammersmith

and Fulham LBC v. Monk that the House should overrule Summersett's case. However, Lord Browne Wilkinson declined to do so on the basis that the decision was treated throughout the 19th century as laying down the law in relation to the rights of joint lessors.

22. There is nothing in the Trusts of Land and Appointment of Trustees Act 1996 which suggests a modification of the common law position on the service of notices as approved by the House of Lords in Hammersmith and Fulham LBC v. Monk. Section 6 of that Act provides that (1) For the purpose of exercising their functions as trustees, the trustees of land have in relation to the land subject to the trust all the powers of an absolute owner.

23. The tribunal does not have jurisdiction under the Trustee Act 1925 and the Trusts of Land and Appointment of Trustees act 1996 to regulate the administration of trusts by removing a trustee and appointing another. The tribunal notes that the other joint landlord is a party to the proceedings albeit as a named respondent.

24. The tribunal finds that it has jurisdiction to determine this claim under s.168 of the 2002 Act as the context under s.112 of the 2002 Act does otherwise require such a finding in the circumstances of this case and the structure and arrangement of the parties to the relevant lease. Having regard to the case law on the service of notices referred to above there is no objection in principle why one of two or more landlords cannot act alone. We also find that we have jurisdiction to determine this claim for the following additional reasons.

25. Both parties have accepted the jurisdiction of the tribunal by making submissions and attending the hearing. Neither the applicant nor the respondent have objected to the jurisdiction of the tribunal and indeed at the hearing the respondent volunteered that she had been considering bringing her own claim unders.168 of the 2002 Act against the applicant.

26. It is not within the tribunal's jurisdiction to determine the nature of or jurisdiction in relation to the course of action required for enforcement or whether any alleged breach of covenant or right to forfeiture or enforcement action has been waived and the tribunal makes no findings in relation to these matters. Issues around jurisdiction relating to enforcement and waiver must be determined by the relevant county court and for the avoidance of doubt nothing in this judgement is intended to address these issues.

27. Schedule 6(2) of the lease states 'if during the term any dispute shall arise… relating to the maintenance or repair of any part of the building… In which the costs of such maintenance or repair are to be borne any such dispute shall be referred to… an independent surveyor to be appointed at the request of either party by the president for the time being of the Royal Institute of chartered surveyors'.

28. The application reveals that a number of issues relating to maintenance and repair of the building have already been determined by an award made by Mr Kevin Woudman as arbitrator dated 1st November 2022 (arbitration award) pursuant to Schedule 6(2) of the lease.

29. Section 168 (5) of the 2002 Act provides that a landlord may not make an application under subsection (4) in respect of a matter which— (a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party, (b) has been the subject of determination by a court, or (c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

30. The applicant has confirmed in her first witness statement dated 2nd October 2023 at Paragraph 11 that *"I have not instigated any other legal processes at this stage, except for the bankruptcy*

petition". At the hearing the applicant further confirmed that the arbitration award has not been the subject of enforcement action by the applicant.

31. The applicant has raised a number of issues in her claim and witness statements relating to the maintenance and repair of the building. The tribunal is unable to make a determination under s.168 of the 2002 Act in respect of matters relating to maintenance and repair that should be referred to arbitration pursuant to Schedule 6(2) of the lease or which are already the subject of an arbitration award. The tribunal may not interfere with the findings of that award nor indeed are inclined to do so without expert evidence or a survey on these matters. Accordingly, the tribunal will confine its findings and determination to matters beyond the jurisdiction of the arbitration award as identified in the claim brought by the applicant.

32. On a final point concerning the jurisdiction the tribunal a number of issues have been raised by the applicant that relate to the freehold estate of the property. The tribunal makes no findings in relation to these issues and for the avoidance of doubt nothing in this judgement is intended to address issues identified in the claim that relate to the freehold estate. Section 168 of the 2002 Act does not allow for such a determination.

33. In particular matters arising from and consequential to the sale to the respondent of the lower part of the garage (forming part of the wider plot of land) by the applicant's predecessor in title, the conversion of the garage to a residence now known as 58 Fields Road by the respondent, and the application by the respondent to have the freehold estate to 58 Fields Road registered with its own separate title number at HM Land Registry have not been considered by the tribunal as Section 168 of the 2002 Act either does not allow for such a determination or the applicant is otherwise estopped from raising such issues consented to by her predecessor in title: Swanston Grange Management Limited v Langley- Essex LRX/12/2007 applies.

The Lease

34. Clause 1 of the lease dated 13th July 2007 and made between (1) Robert Ogilvy Brown, Janet Paterson Brown, Anthony John and Christoper Digby John (2) David William John, Anthony John and Christopher Digby John for a term of 999 years from 1st January 2007 refers to a building comprising two flats known as Parkfield 10 Westfield Road Newport Gwent (lower flat) and 57 Fields Road Newport Gwent (upper flat) shown coloured blue on the Plan to the lease.

35. Clause 2(a) of the Lease states that the upper flat means the flat on the first floor of the Building as more fully described in Part I of Schedule 1 of the lease:

"Part I

(the Upper Flat)

ALL that upper flat of the Building including:

(i) The roof of the Building
(ii) The floor of the upper flat and the joist beneath the same
(iii) The garden and garage belonging to the upper flat but excluding the lower part of the garage coloured pink on the plan"

The Inspection of the property and Hearing

36. The building including the lower flat and the upper was inspected by all three members of the tribunal on Wednesday 18th October 2023**.** On the inspection the tribunal members were accompanied by both the applicant and the respondent. The respondent's family members were present in the flat at the time of inspection and consented to entry. The inspection comprised a visual inspection of the properties forming part of the building and garden plot only. A survey was not undertaken by the surveyor member of the tribunal. The converted garages now known as 58 Fields Road did not form part of the inspection.

37. The hearing took place on Friday 24th November 2023 at Oak House, Cleppa Park, Newport, Gwent. Both the applicant and the respondent attended in person. Neither were represented. In advance of the hearing the tribunal was provided with two witness statements from the applicant and one from the respondent in addition to the original claim form.

38. There is clearly a long running dispute between the parties that has already been the subject of an arbitration award. The tribunal is grateful to all parties for their assistance in both the inspection and the manner in which the hearing was conducted.

Issues for determination and Findings

39. The applicant asserts that the respondent is subletting the upper flat in breach of the terms of the lease or has otherwise caused an assignment of the lease to occur through the creation of split occupation of the plot on which the demised premises is situated as a result of a garage conversion project at 58 Fields Road. Schedule 4 clause 12 of the lease provides:

> "Not to assign or transfer the whole of the Demised Premises without at the same time together with the lessee of the Other Flat transferring the freehold reversion to the new Lessee….."

40. There is no evidence that the respondent has assigned or transferred the lease of the demised premises to a third party requiring the transfer of the freehold reversion to the lease. The respondent admits that her daughter and family now occupy the upper flat. This is either on the basis of an informal subletting or licence to occupy. At the hearing the respondent gave evidence that no rent is paid and there is no formal agreement in relation to that occupation.

41. Even if there was a formal agreement or rent paid the tribunal finds that Schedule 4 clause 12 of the lease does not expressly prohibit subletting or granting a licence to occupy of the upper flat. Without a specific prohibition a tenant will generally have a common law right to sublet or grant a licence to occupy and the landlord will have no right to object: Sweet & Maxwell v Universal News Services 1964 2 QB 699 applies. Accordingly, the tribunal finds that the occupation of the upper flat by members of the respondent's family is not in breach of Schedule 4 clause 12 of the lease and does not amount to an assignment requiring the transfer of the freehold reversion of the upper flat to them.

42. The tribunal also finds the covenant at Schedule 4 clause 6 of the Lease 'not to use a property other than as a private residence' does not require that the respondent is to live there personally and not to otherwise let the premises: Triplerose Ltd v Beattie and another [2020] UKUT 180 (LC).

43. The applicant asserts that the upper flat is not adequately soundproofed in line with current regulations, which is causing a significant ongoing nuisance due to noise generated by

occupation of the upper flat by a family with a young child. Schedule 4 clause 5 of the lease provides:

> "Not to do or permit to be done in or upon the Demised Premises anything which may cause damage inconvenience or annoyance to the Other Flat or the occupiers of the Other Flat or whereby the insurance of any part of the Building or its contents may be rendered void or voidable or the premium increased beyond the rate normally applicable"

44. The arbitration award has addressed the issue of soundproofing. Building regulations do not require that existing buildings are brought up to standard and as such there is no requirement under Schedule 4 clause 14 of the lease for the respondent to do so in order to observe and perform the provisions of Lease relating to compliance with all applicable Acts of Parliament by laws or regulations. The arbitration award however left open whether as a consequence of any separate nuisance claim some additional soundproofing measures may be required to be installed in the upper flat.

45. A nuisance is a use of land which wrongfully interferes with the ordinary use and enjoyment of neighbouring land. In Fearn & Ors v Board of Trustees of the Tate Gallery [2023] UKSC 4 the supreme court held that the key question is whether the [respondents] use of land has caused a 'substantial' interference with the 'ordinary' use of the [applicants] land. To amount to a nuisance, the interference must be substantial, judged by the standards of the ordinary person. Even where there is a substantial interference, the [respondent] will not be liable if it is doing no more than making a common and ordinary use of its own land. What constitutes an ordinary use of land is to be judged having regard to the character of the locality.

46. Unusually, the lease of the upper flat does not contain an express covenant on the part of the tenant not to cause or permit a nuisance. However, there is a common law obligation to that effect: Fouladi v Darout Ltd and others [2018] EWHC 3501 (Ch). The case of London Borough of Southwark and others v Mills and others [1999] 2 W.L.R. 409 expressly addressed the issue of alleged nuisance caused by a lack of soundproofing between flats. Lord Millett noted that 'modern building regulations require proper sound insulation to be installed, but this is often lacking in older buildings and conversions. In its absence each occupier is likely from time to time to be disturbed in the enjoyment of his property by noise caused by the activities of his neighbours, as they are by his. Where the disturbance is intermittent and relatively slight the parties usually accept the need to put up with the annoyance they cause each other'. The tribunal notes the respondent's evidence around steps taken to mitigate noise emanating from the upper flat caused by the occupation of the flat by a family with a young child or the siting and operation of household appliances such as a washing machine. The tribunal also acknowledges the measures taken by the applicant to minimise the impact of noise. In those circumstances the tribunal finds that the common and ordinary use of the upper flat by a family with a young child and the noise that is naturally generated by such occupation does not amount to a nuisance permitted by the respondent.

47. In the alternative, whilst there may be a common law obligation on the part of the respondent not to cause or permit a nuisance in relation to the use of the upper flat this is not an implied covenant or condition on the part of a tenant capable of being breached so that s.168 of the 2002 Act applies.

48. Schedule 4 clause 5 of the lease further refers to anything which may cause damage inconvenience or annoyance to the Other Flat or the occupiers of the Other Flat. 'Inconvenience' or 'annoyance' is a separate and potentially broader element than nuisance and can be

established even where there is no actionable nuisance: Dennis v Davies [2009] EWCA Civ 1081 applies. The tribunal considered therefore whether a reasonable person having regard to the ordinary use of the land in question would be inconvenienced or annoyed by the noise naturally generated by the lawful occupation of the upper flat by a family with a young child in the context of soundproofing not meeting current buildings standards.

49. The Court of Appeal in Tod-Heatly v Benham (1888) 40 Ch. D. 80 observed that "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 you find there is anything which disturbs his reasonable peace of mind, that seems to me to be an annoyance...".

50. Cotton LJ stated: 'Now "annoyance or grievance" are words which have no definite legal meaning. It has been pressed upon us that we cannot say that it was that which was an annoyance or grievance to reasonable people, because the Judges, in speaking of what would be an annoyance to reasonable people, are only speaking of what they themselves really think would be an annoyance or grievance. That is the difficulty that Judges very often have to deal with; *they must not take that to be an annoyance or grievance which would only be so to some sensitive persons*. They must decide not upon what their own individual thoughts are, *but on what, in their opinions and upon the evidence before them, would be an annoyance or grievance to reasonable, sensible people*; and, in my opinion, an act which is an interference with the pleasurable enjoyment of a house is an annoyance or grievance, and within the definition given by V-C Knight-Bruce in Walter v. Selfe 4 De G. & Sm. 322. It is not sufficient in order to bring the case within the words of the covenant, for the Plaintiffs to show that a particular man objects to what is done, *but we must be satisfied by argument and by evidence, that reasonable people, having regard to the ordinary use of a house for pleasurable enjoyment, would be annoyed or aggrieved by what is being done*.'

51. The tribunal acknowledges the applicant's evidence that the noise emanating from the upper flat is an inconvenience or annoyance to her. The tribunal also notes the work undertaken both by the respondent and the applicant to minimise the impact of noise. However, the subjective impact of noise on the applicant is not on its own sufficient to find that a breach of covenant exists.

52. The tribunal notes that expert evidence as to noise levels and potential impact on a reasonable and sensible person in the position of the applicant is not available as part of the submissions made. As Lord Millett stated in London Borough of Southwark and others v Mills "My Lords, I would not wish to be thought indifferent to Miss Baxter's plight. I have the greatest sympathy for her. But the fact remains that she took a flat on the first floor of a house, knowing that the ground and second floors were also occupied as residential flats, and expecting their occupants to live normal lives. That is all that they are doing." In the absence of a statutory or express covenant requirement to instal sound proofing measures to current building regulations in the upper flat the tribunal finds that there is not a breach of Schedule 4 clause 5 of the lease in the context of occupation of the upper flat by a family with a young child caused by the noise that is naturally generated by such occupation which constitutes an inconvenience or annoyance to the applicant.

53. The applicant alleges that the respondent is or has allowed a business to be run from the upper flat in breach of covenant. Schedule 4 clause 6 of the lease states "Not to use the Demised Premises for any purpose whatsoever other than as a private residence". Paragraph 63 of the applicants first witness statement sets out the evidence in support of this assertion: '….however, they continue to run a business, given delivery of newspapers to the property 57

Fields Rd which are then passed to other employees to deliver. A business known as Ella's Dairy, see photo below, also continues to run from 57 Fields Rd, this means that crates and other items are regularly stored at the property as evidenced below with photos taken as recent as August 2023…….an internet search of local businesses, identifies the property as a business address, even on google maps."

54. The respondent at the hearing acknowledged that the occupiers of the upper flat had in the past operated their own business but this had been carried on at another location away from the Demised Premises. Furthermore, that business had since been sold to a third party (the Newsagent Direct) and the occupiers were now employees of that third party who was operating the business at another site. The respondent explained that the presence of newspapers on the Demised Premises and milk crates with empty bottles stacked against the boundary wall of the property were a temporary measure as the result of business closure and run off. The applicant and the respondent acknowledged at the hearing that members of the public were not visiting the Demised Premises.

55. On inspection the tribunal members were shown a small shed or outhouse at the Demised premises which contained a table, chair and a personal computer in the style of a small home office. There were no visible signs of commercial business use at the Demised Premises.

56. In Hodgson and another v Cook and others [2023] UKUT 41 (LC), [2023] All ER (D) 54 (Feb) it was noted that a private residence restrictive covenant did not prevent a homeowner working from home on their own in the property on occasion, in circumstances where commercial activity was generally carried on elsewhere, but did prevent business use which was not of a temporary or an occasional nature. Accordingly, the tribunal are satisfied from the evidence submitted by the applicant at paragraph 63 of her first witness statement that as at August 2023 a business was being carried on from the Demised Premises in breach Schedule 4 clause 6 of the lease. The tribunal make no finding as to whether that use has continued or is continuing since that date as no evidence has been submitted to the tribunal that relates to the period following August 2023 and as noted above on inspection there were no visible signs of commercial business use at the Demised Premises.

57. The applicant refers to the erection of a 6 foot plus fence along the boundary of 57 Fields Road and 10 Westfield Road. The applicant asserts that property is situated in a conservation area and the fence which can be viewed from the windows of the lower flat is not in keeping with the character of the conservation area. The applicant asserts that the fence also restricts light into the lower flat.

Schedule 4 clause 5 of the lease provides:

"Not to do or permit to be done in or upon the Demised Premises anything which may cause damage inconvenience or annoyance to the Other Flat or the occupiers of the Other Flat or whereby the insurance of any part of the Building or its contents may be rendered void or voidable or the premium increased beyond the rate normally applicable"

Schedule 4 clause 10 of the lease also probits alterations being made to the Demised Premises which adversely affects the enjoyment of the lower flat.

The Demised Premises includes the garden area.

58. On inspection the tribunal members viewed the fence. At the hearing the respondent explained that conifers had previously existed along the boundary between the properties but these had been removed and a fence erected in their place. When erected the fence had been screened by green shrubbery in the applicant's garden which had since been removed by the applicant. The applicant noted this was to prevent further damage being caused by the shrubbery to a low stone wall and to stabilise the garden area to 10, Westfield Road. The fence is clearly visible as a stand-alone feature and is of a standard sawn wood construction.

59. In St Helen's Smelting Co v Tipping [1865] 11 HL Cas 642 Lord Westbury observed that the character of the neighbourhood is a valid consideration when considering the law of nuisance. In Wood v Cooper [1894] 3 Ch 671 the erection of a wall was held to be an "annoyance" to "reasonable, sensible people". Furthermore, in Dennis v Davies [2009] EWCA Civ 1081 it was held a covenant against nuisance and annoyance was capable of protecting a right to a view from windows. The windows to the lower flat have been in position for more than twenty years. The tribunal prefers the evidence of the applicant set out at paragraphs 31- 38 of the applicant's second witness statement. The tribunal also notes the respondent's observation in her witness statement dated 2nd October 2023 that 'The fence….is still considered by myself as temporary until a reasonable solution can be agreed'. Accordingly, the tribunal find that the erection of the fence is an annoyance and its continued presence is in breach of the covenant contained in Schedule 4 clause 5 of the lease.

60. Expert evidence on the reduction of light into the lower flat caused by the erection of the fence was not available to the tribunal and so the tribunal make no finding in relation to this matter.

Conclusion

61. For the reasons set out above the tribunal find that there are breaches of covenants in the lease as identified in relation to business use and the erection of the boundary fence at 57, Fields Road but not in relation to noise emanating from or assignment of the leasehold premises at 57, Fields Road.

Dated this 24th day of January 2024

Michael Draper
Tribunal Judge