

The Serenity; Right to Peaceful Enjoyment

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A lease of residential premises is something quite specific. The familiar authorities may be distilled to the conclusion that this means ‘exclusive occupation for a term at a rent’, though rent is not necessarily an essential ingredient.

The requirement of exclusive occupation means that there must be a right to quiet enjoyment, whether by way of an express or implied covenant. An express term may be negotiated to be narrowed or extended provided that the essential exclusivity is not compromised.

How does the Court balance the lessor’s rights and obligations to carry out repairs, maintenance and improvements, often not of the demised property itself but of a neighbouring property or the exterior of a block, with the lessee’s right to be left in peace?

In *Owen v Gadd* [1956] 2 QB 99, a newly-opened shop’s customers had been deterred by scaffolding poles which had been erected by the landlord outside the shop so that it could work on the exterior of the upstairs flat which it retained. This was considered a breach of the covenant for quiet enjoyment entitling the lessee to damages (which was upheld by the Court of Appeal).

In [Lechouritis v Goldmile Properties Ltd \[2003\] EWCA Civ 49](#) [2003] EWCA Civ 49 the Claimant’s restaurant business had been disrupted by exterior works carried out by its landlord, and the restaurant sought damages. The Court of Appeal held that provided the landlord exercised reasonable care to minimise disturbance there was no breach in its covenant of quiet enjoyment.

By contrast, in [Timothy Taylor Ltd v Mayfair House Corporation \[2016\] EWHC 1075 \(Ch\)](#) a landlord had reserved a ‘wide and untrammelled’ right to carry out building work around the Defendant’s art gallery. Here, the manner of the landlord’s carrying out the work interfered with the tenant’s unqualified right to quiet enjoyment since the landlord had not taken adequate steps to minimise disturbance.

In the recent case of [Piechnik v Oxford City Council \[2020\] EWHC 960 \(QB\)](#), a lessee of Oxford City Council was the successor to a purchaser under the statutory Right To Buy (RTB) scheme. His was a two bedroom flat on the tenth of the fifteen floors of Plowman Tower in Headington, Oxford.

Between 2012 and 2016, OCC gave notice of its intention to carry out major works, suggesting a service charge was likely to be imposed on each lessee. Claiming that the proposed works amounted to improvements rather than maintenance, Dr Piechnik and others challenged the recoverability of these sums, and the matter was referred to the First Tier Tribunal in the usual way, where the lessees found some success.

The issue which then arose was the extent to which Dr Piechnik would be required to accommodate OCC by providing access to carry out the proposed works. The works were substantial and included ventilation, a new boiler system, new electrical switches, and the installation of a sprinkler system, digital sockets, windows and cladding. These included matters to which local authorities have been particularly alert since the disaster at Grenfell Tower in 2017.

In July 2017, OCC sought an injunction to compel Dr Piechnik to provide access, resulting in an agreement whereby the doctor provided limited access. This agreement had, however, been without

prejudice to the parties' respective rights and remedies. Dr Piechnik therefore sought (amongst other things) an order for damages for breach of covenant, namely interference with his right of quiet enjoyment.

As a preliminary issue, Mr Recorder Berkley QC had concluded that the lease provided OCC a right to enter for the purpose of carrying out improvements as well as essential repairs, and that the FTT's conclusions as to what were improvements and what was maintenance bound the parties.

Before the substantive trial, Dr Piechnik appealed to the High Court, and Tipples J handed down her decision remotely pursuant to the Covid-19 Protocol.

The Court considered the implications arising when a lease had been granted under the 1985 RTB legislation. She noted the lessor's obligations to maintain the structure and exterior and the services to which the lessee was entitled, and the parties agreed that there was a corresponding implied right of access to carry out that work. The lease itself also described rights which were qualified by certain express limitations set out in a Schedule.

The parties had been prepared, the Recorder below had concluded, to 'erode the tenant's right to quiet enjoyment' to the extent necessary to allow the landlord to avoid the risk of death or personal injury or take steps to remedy anything which might be 'injurious to health'. On Dr Piechnik's behalf it was argued that the right was in fact limited to what was necessary to comply with OCC's obligations, because otherwise it might permit OCC to enter at will for any works, however optional. On the facts, the Court concluded that the express terms of *this* lease provided for more than the very narrow access required for it to perform its bare repairing obligations.

At first instance, the Court concluded, OCC had advanced a misconceived argument based on rights to light and air arising under the Housing Act 1985, which regulated the RTB. This had led the Recorder into the error that the relevant extended right related to the avoidance of death or injury. To that limited extent, Dr Piechnik's appeal was successful.

The trial will presumably proceed in the County Court on the footing that there is an extended right arising under the express terms of the lease, but that it is not defined by considerations of safety.

It remains to be decided whether OCC overstepped the mark in carrying out the upgrade of Plowman Tower. Although Dr Piechnik found some success in his challenge to the preliminary determination, the High Court's redefinition of OCC's rights to interfere with his peaceful enjoyment seem unlikely to assist him greatly. The Court will at that trial, as in all such cases, have to balance and seek to reconcile the rights and obligations of a landlord with the right to quiet enjoyment which is the hallmark of all leases.