

This Page 1 of Order to be created as delete
A DEVANNY

29/5/15



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

RE: Property at Property at 107 Deans South, Deans, Livingston EH54 8DU, being the subjects more particularly described in Land Certificate WLN6661 (hereinafter referred to as "the house")

The Parties:-

Mr. Chris Gray and Ms. Honor Richardson, residing at the house ("the Tenant")

Invest for Wealth Limited, incorporated under the Companies Acts and having its registered office at 74 Falconer Rise, Livingston EH54 6JF whose Directors are Ms. Karen Welsh and Mr. Howard Richardson (legally represented by Ms. Kirsty Clarke) ("the Landlord")

REF: PRHP/RP/13/0113

NOTICE TO Invest for Wealth Limited ("the Landlord")

Whereas in terms of their decision dated 20 March 2014, the Private Rented Housing Committee determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular that the Landlord has failed to ensure that the house meets the repairing standard in that:-

- (a) the house is wind and watertight and in all other respects reasonably fit for human habitation;
- (d) any fittings, fixtures and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; and
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

The Private Rented Housing Committee now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Private Rented Housing Committee requires the Landlord:-

- (a) To render the roof wind and watertight and make good the damp affected areas;
- (b) To repair or replace the gas boiler to ensure that it and the gas central heating system is in a reasonable state of repair and proper working order and safe and any incidental installation works to the gas pipe work completed, all to be evidenced by an up to date Gas Safe Certificate from a Gas Safe registered engineer.
- (c) To remove and replace the hall cupboard door. The door should be removed and disposed of by a competent contractor who is licensed under the Waste Management Regulations; and
- (d) To instruct a periodic electrical inspection report from a qualified electrician and to carry out any works identified as necessary in that report to a satisfactory standard. The report should also confirm that smoke detection devices have been installed on each floor and are hard wired and interlinked and comply with current building regulations and the statutory guidance issued by Scottish Ministers on provision for detecting fires and for giving warning in the event of fire or suspected fire.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 3 months from the date of service of this Notice.

A landlord or a tenant aggrieved by the decision of the Private Rented Housing Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

IN WITNESS WHEREOF these presents typewritten on this and the preceding page are signed by Aileen Margaret Devanny, Chairperson of the Private Rented Housing Committee, at Glasgow on Twenty seventh day of March, Two Thousand and fourteen in the presence of the undernoted witness:-

A DEVANNY

WITNESS NATASHA RUSSELL.....

PANEL Clerk
.....
Europa Building
450 Argyle Street
Glasgow
G2 8LH.

certificate. 29 May 2015.
This is an amended version of the Order. The amendment is made in terms of Regulation 16 of the PRHP (Applications & Determinations) (Scotland) Regulations 2007. The Committee has also authority in terms of section 25(1)(a) of the Housing (Scotland) Act 2006 to make an Order.

A DEVANNY

amended Page 1 of Order which now applies

A DEVANNY

29/5/15



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

RE: Property at Property at 107 Deans South, Deans, Livingston EH54 8DU, being the subjects more particularly described in Land Certificate WLN6661 (hereinafter referred to as "the house")

The Parties:-

Mr. Chris Gray and Ms. Honor Richardson, residing at the house ("the tenant")

Ms Karen Walsh c/o her representative Invest for Wealth Limited, incorporated under the Companies Acts and having its registered office at 107 Deans South, Livingstone EH54 8DU whose Director is Mr. Howard Richardson ("the landlord") (Prior to 10 January 2014 the owner and landlord of the house was Invest for Wealth Limited)

REF: PRHP/RP/13/0113

NOTICE TO Ms Karen Walsh ("the Landlord")

Whereas in terms of their decision dated 20 March 2014, the Private Rented Housing Committee determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular that the Landlord has failed to ensure that the house meets the repairing standard in that:-

- (a) the house is wind and watertight and in all other respects reasonably fit for human habitation;
- (d) any fittings, fixtures and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; and
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

The Private Rented Housing Committee now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.



DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE
STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING
COMMITTEE UNDER SECTION 26(1) OF THE HOUSING (SCOTLAND)
ACT 2006

In connection with

Property at 107 Deans South, Deans, Livingston EH54 8DU
(hereinafter referred to as "the house")

Mr. Chris Gray and Ms. Honor Richardson, residing at the house ("the tenant")

Ms Karen Walsh c/o her representative Invest for Wealth Limited,
incorporated under the Companies Acts and having its registered office
at 107 Deans South, Livingston EH54 8DU whose Director is Mr. Howard
Richardson ("the landlord")

Reference PRHP/RP/13/0113

BACKGROUND

1. Reference is made to the Determination of the Private Rented Housing Committee ("the Committee") dated 27 March 2014 which decided that the landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act ("the Act") and to the Repairing Standard Enforcement Order ("the RSEO") dated 27 March 2014 which confirmed that the landlord had failed to ensure that (1) the house is wind and watertight and in all other respects reasonably fit for human habitation; (2) any fittings, fixtures and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; and (3) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

The RSEO required the landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Private Rented Housing Committee required the landlord:-

- (a) To render the roof wind and watertight and make good the damp affected areas;*
- (b) To repair or replace the gas boiler to ensure that it and the gas central heating system is in a reasonable state of repair and proper working order and safe and any incidental installation works to the gas pipe work completed, all to be evidenced by an up to date Gas Safe Certificate from a Gas Safe registered engineer.*
- (c) To remove and replace the hall cupboard door. The door should be removed and disposed of by a competent contractor who is licensed under the Waste Management Regulations; and*
- (d) To instruct a periodic electrical inspection report from a qualified electrician and to carry out any works identified as necessary in that report to a satisfactory standard. The report should also confirm that smoke detection devices have been installed on each floor and are hard wired and interlinked and comply with current building regulations and the statutory guidance issued by Scottish Ministers on provision for detecting fires and for giving warning in the event of fire or suspected fire.*

(Hereinafter the works detailed at (a) to (d) inclusive, are collectively known as "the said repairs").

The said repairs were to be carried out and completed within a period of 3 months from the date of service of the Notice of the RSEO. The Notice of the RSEO was sent by e-mail and by post to the parties on 31 March 2014. The landlord requested an electronic copy. The landlord confirmed in correspondence that the RSEO was received on 1 April 2014.

2. On 15 June 2014 Mr. Howard Richardson, a director of Invest for Wealth Ltd., wrote to the Committee indicating that the tenant had vacated the house. He indicated that there were no plans for the house to be occupied as its condition had deteriorated further. He stated that a report was being considered by West Lothian Council on the proposals for the Deans South estate and no works would be performed on the house as it was hoped that negotiations with the Council would result in the Council acquiring the house and demolishing it. A copy of the report dated 19 June 2014 from the Head of Housing Construction and Building Services of West Lothian Council was provided on 3 July 2014. This report indicated that offers by the Council to acquire the houses in the estate were available to owners up until 1 May 2014. The following details from the report provide background to the Council's intentions for the Deans South estate:

At D. 1 the report dated 19 June 2014 states that on 12 November 2013 a report was approved setting out a revised offer for the remaining 47 privately owned houses at Deans South with a view to achieving a long term solution to the difficult situation on the estate. The offer was available until 1 May 2014.

At D. 2 of the report it indicates that since November 2013 a further 25 properties have been acquired on the estate. This leaves 22 privately owned houses on the estate. At this stage there are a further 2 dates of entry agreed and 7 homeowners are actively considering a sale of their property to the Council.

At D. 3 it refers to the Open Market Shared Equity (OMSE) Scheme being available until the end of December 2014.

At D. 5 of the report it states that at this stage it is clearly not possible to redevelop the whole estate because no agreement has been reached with the remaining private owners. It is proposed to start further discussions on long term redevelopment of parts or all of the remaining estate and officers will make contact with the remaining owners.

3. On 9 June 2014 the tenant's representative, Mr. Brian Gray, wrote to advise that at the Private Rented Housing Committee hearing on 24 February 2014 Karen Walsh and Howard Richardson, the directors of Invest for Wealth Ltd., misrepresented that Invest for Wealth Ltd owned the house and that Karen Walsh was a director of that company. He stated that the house was transferred to Ms Karen Walsh on 14 January 2014. The title transfer to Ms Walsh was evidenced by a copy of the Land Certificate, which is attached.

4. These communications from Mr. Richardson and Mr. Gray were considered following the expiry of the period for carrying out works in the RSEO. In light of the issues raised within the written representations the committee sought (1) confirmation from the tenant as to whether the tenancy has been legally brought to an end and, if so, if the tenant remained a party to the proceedings before the Private Rented Housing Committee (PRHC); (2) sought clarification from Mr. Richardson on the present position with regard to ownership of the house; confirmation that the present owner is aware of the RSEO and accepts that the works in the RSEO have not been completed; and confirmation as to the identity of any agent acting for any new owner; and (3) invited written representations from parties on any circumstances considered relevant to sections 25 and section 26(3)(b) of the Housing (Scotland) Act 2006 ("the Act") and, any additional documentation, beyond that already submitted at the time of determination of the application, to support that the local authority are to acquire the house in the near future and the plans for demolition of this particular house. Information and supporting documents were sought on the stage of negotiations with the local authority.

Section 25 and section 26 of the Act provide

Section 25

"Variation and revocation of repairing standard enforcement orders

(1) The private rented housing committee which made a repairing standard enforcement order may, at any time—

(a) vary the order in such manner as they consider reasonable, or

(b) where they consider that the work required by the order is no longer necessary, revoke it.

(2) Where subsection (3) applies, the committee must vary the repairing standard enforcement order in question—

(a) so as to extend, or further extend, the period within which the work required by the order must be completed, and

(b) in such other manner as they think fit.

(3) This subsection applies where—

(a) the committee consider, on the submission of the landlord or otherwise, that the work required by a repairing standard enforcement order has not been, or will not be, completed during the period within which the order requires the work to be completed, and

(b) the committee—

(i) consider that satisfactory progress has been made in carrying out the work required, or

(ii) have received a written undertaking from the landlord stating that the work required will be completed by a later date which the committee consider satisfactory.

(4) References in this Act (including this section) to a repairing standard enforcement order or to work required by such an order are, where the order has been varied under this section, to be treated as references to the order as so varied or, as the case may be, to work required by the order as so varied."

Section 26

"Effect of failure to comply with repairing standard enforcement order

(1) It is for the private rented housing committee to decide whether a landlord has complied with a repairing standard enforcement order made by the committee.

(2) Where the committee decides that a landlord has failed to comply with the repairing standard enforcement order, the committee must—

(a) serve notice of the failure on the local authority, and

(b) decide whether to make a rent relief order.

(3) The committee may not decide that a landlord has failed to comply with a repairing standard enforcement order—

(a) unless the period within which the order requires the work to be completed has ended, or

(b) if the committee are satisfied, on the submission of the landlord or otherwise—

(i) that the landlord is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or

(ii) that the work required by the order is likely to endanger any person.

(4) Where the committee are prevented by reason only of subsection (3)(b) from deciding that a landlord has failed to comply with a repairing standard enforcement order, the committee must serve notice on the local authority stating that they consider the landlord to be unable to comply with the repairing standard enforcement order."

5. Mr. Gray responded confirming that the tenant did not accept that the tenancy had been lawfully terminated and made allegations of an illegal eviction. This was at odds with the written account provided by Mr. Richardson. The committee decided that it had no jurisdiction to decide the legality of the eviction proceedings. This is a matter for the sheriff. However, the committee did decide that the tenant remains a party to the proceedings before the PRHC on the basis that there is no acceptance from both parties that the tenancy is lawfully terminated, and, in any event the wording of Schedule 2 Paragraph 7(1) of the Act implies that it is only if the tenant withdraws or is deemed to have withdrawn as a party before the determination of the application that the tenant does not remain a party to the proceedings. Since the application has been determined it suggests that a stage of procedure beyond the application of Schedule 2 Paragraph 7 has been reached. Copy of the request for written representations was ordered to be served on Ms Karen Walsh. A copy of the Determination and RSEO had been sent to Ms Walsh on 31 March 2014.

6. On 27 August and 1 September 2014 Mr. Richardson responded with written representations and lodged various productions for the committee's consideration. The productions of the landlord consisted of the following-

1. Photograph – submitted in representation to be of the house with windows boarded up
2. ARUP Report (issue 1) - 12 June 2014 - being an update on further investigations into the structural condition of properties at Deans South, Livingston
3. Photograph (of number 63) showing a danger sign on the building
4. Photograph of fencing at an unspecified house
5. Legend prepared by West Lothian Council (WLC) undated showing houses and garages demolished and to be demolished, thought to be vacant and privately owned houses.
6. Photograph submitted to be the tenant's rubbish
7. WLC Design and Access Statement South Deans phase 1 (planning application)
8. WLC planning application location plan showing phase 1 (plan shows location of number 107 within the estate) (planning application)

In response to information requested by the committee, Mr. Richardson confirmed that the ownership was as detailed within the Land Certificate provided by the tenant's representative, i.e. the owner is Ms Karen Walsh, and that she is aware of the RSEO and its non-compliance. He helpfully confirmed that he had authority to communicate with the PRHC until

resolution of this matter, although he stated the house was not tenanted and as such there was no agent.

Mr. Richardson's comments did not answer the points raised within the committee's request for information at 4 (3) above. He indicated that the Council was keen to acquire the remainder of the estate but no meetings had been scheduled. He directed the committee to obtain further details from the Council. He provided general information about the Deans South estate since the committee's visit on 24 February 2014. Since then he stated that 25 more properties had become vacant and had been boarded up. There was additional signage within the estate warning "Danger Unsafe Building KEEP OUT" and additional fences had been erected to prevent entry. He pointed to an ARUP report which was lodged which he stated provided evidence that the properties cannot be returned to a tolerable standard due to their inherent defects. The Council had demolished some houses and had submitted a planning application covering phase 1 as per documents lodged. He suggested that this makes clear that the plan involves complete demolition and rebuild which excludes any opportunity to refurbish existing properties. He stated that the Council is involved in negotiations for the acquisition of 56 properties from Castle Rock Edinvar and, in the opinion of the landlord, these negotiations were taking priority over discussions with individual homeowners. He referred to the report previously lodged in July and dated 19 June 2014.

With regard to the house at 107 Deans South, he stated that the rubbish left by the tenant had been removed and the house had been boarded up and demolition is subject to successful negotiation with the Council. Photographs were supplied of the house and the rubbish. He confirmed that the Council had recorded the house as empty for council tax purposes from 12 June 2014.

Mr Richardson concluded by arguing that he believed that compliance with the RSEO was impossible to achieve due to the wider redevelopment of the estate. He argued that this view is strengthened by the escalation of redevelopment by the Council and that there are reasonable grounds for non-compliance with the RSEO. He stated that there are reasonable grounds for non-compliance with the RSEO. He stated that the landlord was unable to influence the timescales driven by the Council. He made no submission in relation to Section 25 or 26(3) (b) of the Act in his submissions.

7. Following receipt of these representations the committee directed the landlord in a letter dated 26 September 2014 to provide written submissions if it was contended that the works required in the RSEO would endanger any person. If this was to be argued, the committee indicated that they would seek an expert report provided by the landlord from a person qualified in health and safety matters. The committee gave the landlord a further opportunity to address them on the information sought previously by them.

8. A further submission was received by the landlord on 29 October 2014. Mr. Richardson confirmed that no specific offer had been made by the Council to acquire 107 Deans South and referred to a further letter from the Council

dated 24 October 2014 which was an offer to owners who were interested to be involved in a working group to consider development options. He confirmed that the house did not fall within the categories D2 and D3 referred to in the report dated 19 June 2014. The criteria for participation in the OMSE scheme were not met. He repeated that the house would be sold to the Council but the timescales were not within the control of the landlord. He indicated that utilities to the house had been cut off.

A request was made by Mr. Richardson for the committee to revisit the house to consider if the RSEO should be varied. He stated that with reference to point (b) of the RSEO it would be irresponsible to install a gas supply to a property which is shuttered and awaiting demolition; with reference to point (c) of the RSEO the door was removed on 27 February 2014; and with reference to point (d) there was no electricity supply in the house and it would be irresponsible to install a live electricity supply to a property which had been shuttered awaiting demolition.

Mr. Richardson concluded by stating that "we respect why it is important for the RSEO to remain on the property" and considered it appropriate for the RSEO to be extended until negotiations with the Council are concluded. He emphasised that the house was empty awaiting demolition.

In response to these submissions Mr. Gray, the tenant's agent, raised matter which were not relevant to the PRHC proceedings. However, he did state that the house was being used as the registered office of a company called Walrich Limited of which Mr. Richardson was the sole director.

9. In considering the proposal for variation of the RSEO and mindful of the landlord's suggestion in written representations that information be sought from West Lothian Council, the committee wrote to the Council and sought clarification from them as to their proposals for purchasing the house and, if so, the proposed timescale for this. Further information was also sought as to whether any proposed purchase or redevelopment plans were dependent on the actions of other owners.

A response was received from Mr. Colin Miller, Housing Strategy and Development Manager of West Lothian Council on 18 December 2014. He confirmed the willingness of the Council to purchase the house at 107 Deans South but that the owner of the house had not agreed to have the house valued by the District Valuer. A copy of the response from the Council was copied to the landlord.

10. The house was re-inspected by the surveyor member of the committee on 6 January 2015. The landlord was not present and the tenant had vacated the house. It was observed by the surveyor member that none of the external works had been carried out. No noticeable changes in the external condition of the house were obvious since the inspection at the start of 2014 by the committee, apart from the boarding up of the windows. As access was not gained no comment was made regarding the internal condition.

As comment on the general condition of the neighbourhood, the surveyor member observed that one property in the terrace of 5 houses (which includes the house) is occupied. The other 4 houses in the terrace are boarded up. In the vicinity of the house only one other property is occupied. A copy of the surveyor's report dated 19 January 2015 is attached. This report was circulated to the parties.

In response to the report, the tenant's agent replied that he agreed with the report. He doubted the landlord's intention that the house would not be used again and was awaiting demolition. He pointed out that Invest for Wealth Limited (SC272783) changed its registered office to 107 Deans South on 2 February 2015 and Walrich Limited (SC266097) changed its registered office to 107 Deans South on 25 June 2014. He suggested that the landlord had further plans for the house. He made comment about the tenant's belongings which remained in the house and a court judgment which he considered that the landlord had not complied with. The allegations about belongings and the court decree are not relevant to the PRHC proceedings and did not form part of the committee's deliberations.

The landlord in written representations repeated comments made previously. The landlord considered another difference in the house from the previous inspection was the presence of graffiti. Comments were made about rental payments made by the tenant which are not relevant to the PRHC proceedings.

Copies of the comments of each party were circulated to the other party.

11. The committee raised with the landlord the recent changes in the Register of Companies which were supported by entries from the Register. Mr. Richardson stated that Ms Walsh is the owner but at the time of the start of the proceedings the owner and landlord was Invest for Wealth Limited. Mr. Richardson stated that Invest for Wealth Limited as landlord and owner's representative has complete authority to deal with the matter until conclusion. Mr. Richardson expressed concern about the time taken by the committee to issue a final decision. He concluded by stating that the former tenant's representations relating to the registered offices of the limited companies were irrelevant. Mr. Richardson requested that a final decision be reached by the committee.

The committee considered the information before them and the written representations.

The Committee comprised Mrs. Aileen Devanny, Chairperson, Mr. Robert Buchan, Surveyor Member, and Mr. Scott Campbell, Housing Member.

DETERMINATION AND REASONS

12. The Committee considered the evidence and it is generally accepted that the works detailed within the RSEO have not been completed. The only area of dispute is in relation to an internal hall cupboard door. In the absence of evidence to the contrary, the committee are inclined on balance to accept the landlord's representation in this matter that the door has been removed.

The committee accepted the findings of the surveyor's report relating to the external description of the house and the neighbourhood.

Section 194 of the Act gives the definition of "landlord" as "any person who lets a house under a tenancy, and includes the landlord's successors in title". The committee considers that from the date of the transfer of the title of the house into the name of Ms Walsh that she assumed the position of landlord. The Land Certificate discloses that her date of entry as owner was 10 January 2014 and her title was registered on 14 January 2014. Ms Walsh was present at the hearing on 24 February 2014 and gave evidence and it is surprising that she made no mention of the change in ownership of the house at that time. This is a relevant matter as the requirements to comply with an RSEO lie with the landlord. At the date of the original hearing and determination and issue of the RSEO Ms Walsh was the landlord. The committee was of the view that the RSEO should be corrected to cure this error. An amended version of the RSEO is attached to this decision and is served on the parties.

The committee considered Mr. Richardson's comments made in representations received on 29 October 2014 that the landlord appreciated the reasons why it is important for the RSEO to remain on the house but considered it appropriate for the RSEO to be extended until negotiations with the Council are concluded.

The committee considered this request and could see the logic in this suggested approach of delaying a decision on compliance with the RSEO. In the event of a sale to the Council concluding, there would be no benefit derived from an RSEO, which is designed to improve housing conditions and to prevent letting of substandard accommodation, as the evidence is that the Council would demolish the house. However, whilst the house remains in private ownership there is still the potential for the house to be occupied as a private let and voluntary undertakings from a private landlord relating to occupancy cannot be enforced. The existence of an RSEO over the house prevents the house from being legally re-let. A landlord who lets a house which is subject to an RSEO commits a criminal offence in terms of Section 28 (1) of the Act. The RSEO is registered against the title of the house and is a title burden which transmits to successors in title on sale. The RSEO in such circumstances effectively removes the house from the private letting market until it is brought up to the repairing standard by the landlord or it is demolished.

As a consequence of receiving Mr. Richardson's request for an extension, the committee decided to delay making a final decision on the landlord's

compliance with the RSEO to allow sufficient time for negotiations for the sale to the Council to be concluded. However, such an approach cannot continue indefinitely and the committee considers that a reasonable opportunity has been provided to the landlord to complete negotiations with the Council. It is now over a year since Mr. Richardson and Ms Walsh told the committee at the hearing in February 2014 that the house was to be sold to the Council for demolition; and over 6 months since that request for an extension was made by Mr. Richardson, and yet it appears that the prospect of a sale of the house to the Council is no further advanced. Mr. Richardson suggested that the delay was due to the Council's priority in acquiring houses from a housing association. However, the committee accepted the account for the delay from Mr. Miller of West Lothian Council that no progress had been made with the acquisition due to the refusal of the landlord to allow a valuation of the house. It is interesting to note that Mr. Richardson is now of the view that a final decision should be made by the committee. The house is unoccupied but it is now being used as a business address for limited companies which does not suggest that the landlord anticipates an early sale of the house. Whilst the landlord may indicate an intention not to re-let the house to the committee, after the RSEO is revoked there is no sanction or protection against re-letting if the landlord does not comply with that undertaking. After revocation of the RSEO, the boards on the windows of the house could be removed and the utilities connected and the house re-let. The committee considered that Mr. Richardson and Ms Walsh have been less than candid in their representations relating to the identity of the landlord, and their failure to allow a valuation of the house which is the reason for negotiations not proceeding with the Council.

The committee considered whether revocation of the RSEO in terms of Section 25(1) of the Act was appropriate but discounted this option as the works required by the order continue to be necessary as the house does not meet the repairing standard and there remain health and safety concerns for future occupants due to the condition of the house.

The committee unanimously decided in terms of Section 26(1) of the Act that the landlord had failed to comply with the RSEO and directed that a notice of the failure be served on the Local Authority on which the house is situated. The committee considered whether the works required by the RSEO would be likely to endanger life. Representations and evidence were invited from the landlord on this issue but no evidence was provided. The committee considers that this is an end terraced house and is of the view having seen the property there are no reasons why the landlord could not instruct workmen to carry out the works and compliance with health and safety regulations will provide a safe system of working. The landlord has access to all parts of the house. There is a solid wall between the house and the adjoining property. Therefore, the committee did not consider that Section 26(3) (b) of the Act applies. The landlord has had ample opportunity to carry out works but had not done so. The landlord accepts that she has not carried

out the works in the RSEO. The committee does not consider that there is a reasonable excuse for the failure to comply with the Order.

It is not appropriate for the Committee to make a Rent Relief Order in terms of Section 27 of the Act as the tenancy to which the application relates has been terminated.

RIGHT OF APPEAL

A landlord or tenant aggrieved by the decision of the Private Rented Housing Committee may appeal to the Sheriff by Summary Application within 21 days of being notified of that decision.

The appropriate respondent in such appeal proceedings is the other Party to the proceedings and not the Private Rented Housing Panel or the Committee which made the decision.

Effect of Section 63

Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

A DEVANNY

Chairperson,
29th May 2015



**Private Rented Housing Panel (prhp)
Re-inspection report**

Date of inspection: 6th January 2015

Reference Number: PRHP/RP/13/0113

Property: 107 Deans South, Livingston, EH54 8DU ("the property")

Surveyor: Robert Buchan, FRICS

In attendance: The tenant has vacated the property. The landlord was not present.

Repairing Standard Enforcement Order (RSEO)

Works required by the RSEO:

- (a) To render the roof wind and watertight and make good the damp affected areas;*
- (b) To repair or replace the gas boiler to ensure that it and the gas central heating system is in a reasonable state of repair and proper working order and safe and any incidental installation works to the gas pipe work completed, all to be evidenced by an up to date Gas Safe Certificate from a Gas Safe registered engineer.*
- (c) To remove and replace the hall cupboard door. The door should be removed and disposed of by a competent contractor who is licensed under the Waste Management Regulations; and*
- (d) To instruct a periodic electrical inspection report from a qualified electrician and to carry out any works identified as necessary in that report to a satisfactory standard. The report should also confirm that smoke detection devices have been installed on each floor and are hard wired and interlinked and comply with current building regulations and the statutory guidance issued by Scottish Ministers on provision for detecting fires and for giving warning in the event of fire or suspected fire.*

Works in the RSEO undertaken: None

Comments: /.....continued below

107 Deans South, Livingston

Comments: The landlord and tenant had already advised that the property had been vacated and boarded up. The re-inspection was carried out to confirm this and to record the general condition of the property and the neighbourhood.

General condition of the property

No noticeable changes in the external condition of the property since the last inspection were observed, apart from the boarding up of the windows, and as access was not gained no comment can be made regarding the internal condition.

General condition of the neighbourhood in which the property is situated

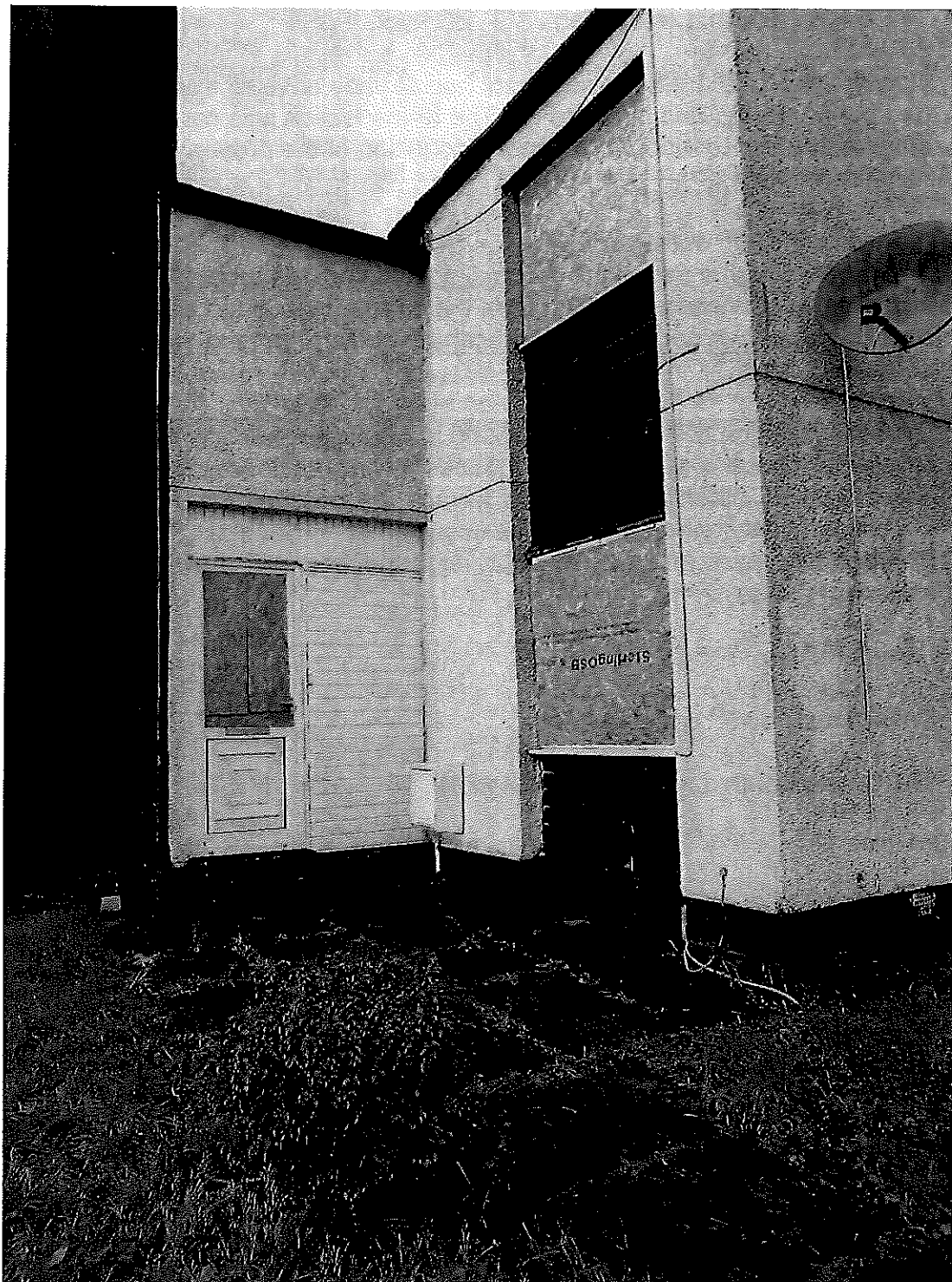
One house in the terrace of 5 houses (which includes the property) is occupied. The other houses in the terrace are boarded up. In the vicinity of the property only one other house is occupied.

Photographs were taken on the day of inspection and are attached on the following 4 pages.

Robert Buchan, FRICS

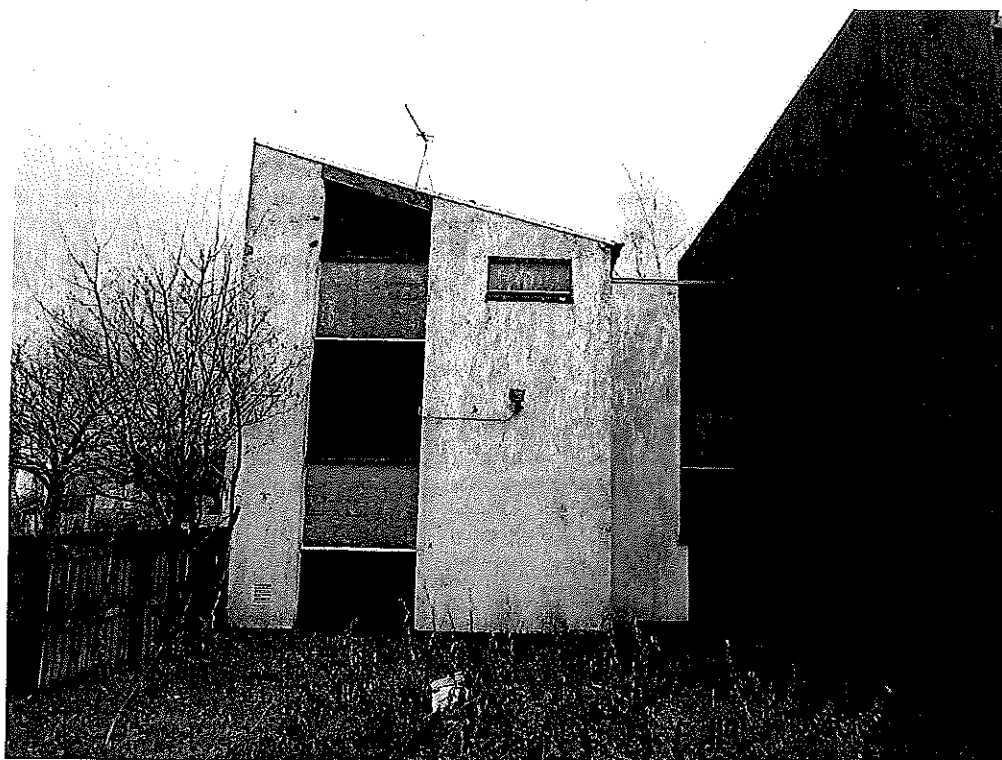
Date of report: 19th January 2015

107 Deans South, Livingston, EH54 8DU

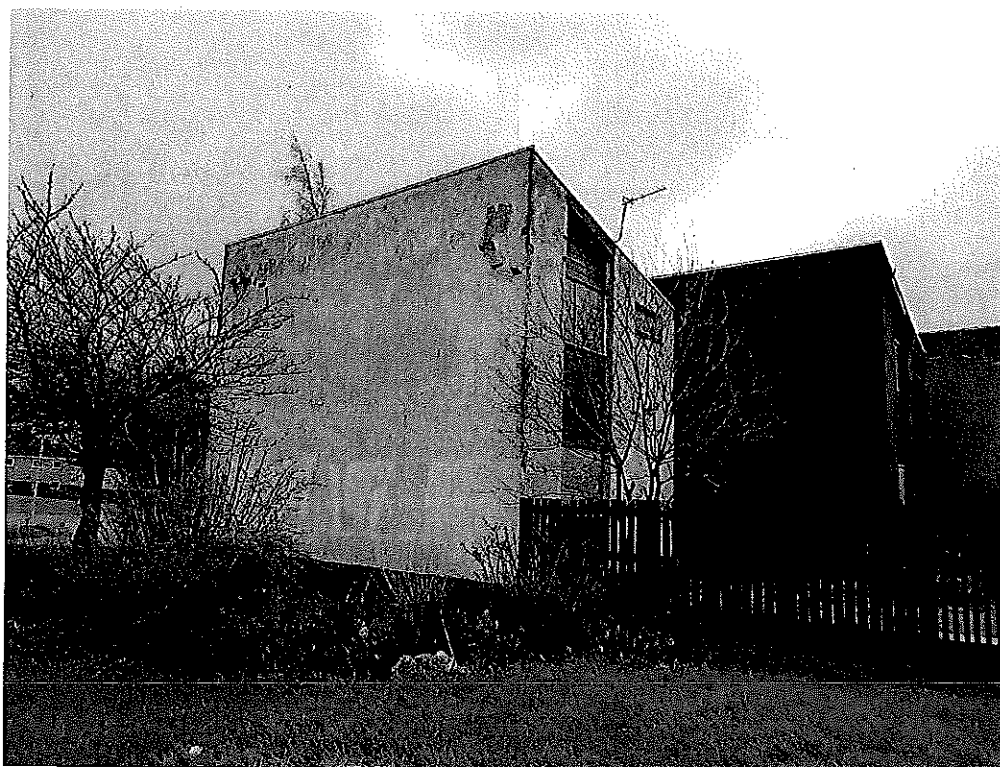


Front

107 Deans South, Livingston, EH54 8DU

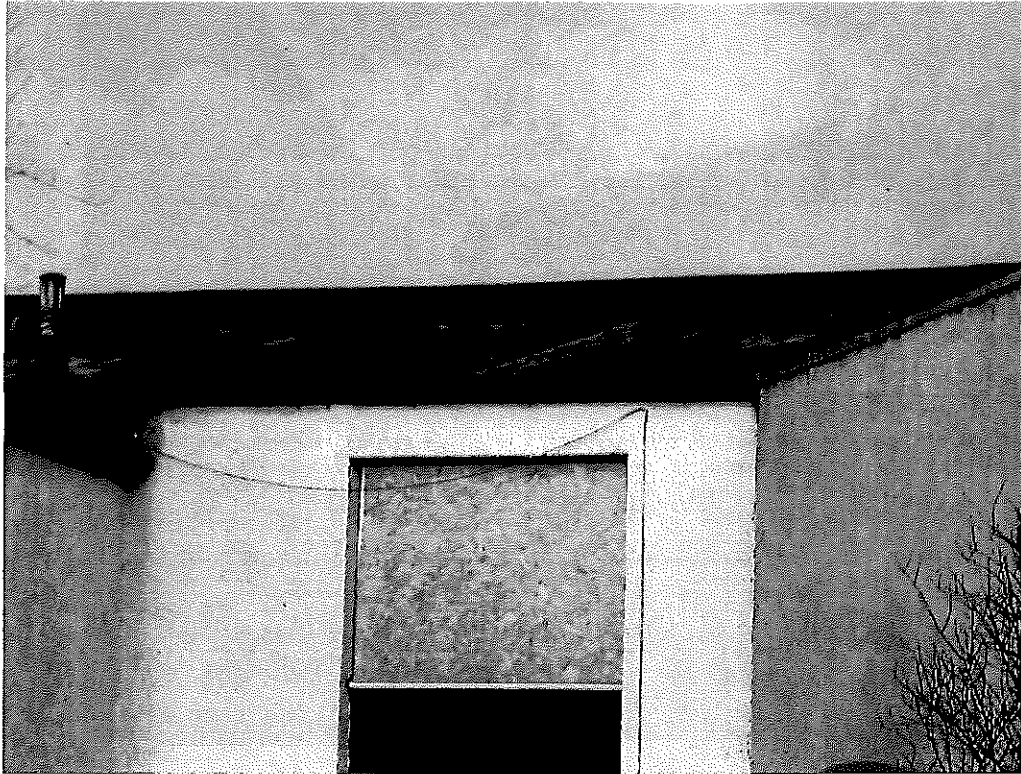


Rear

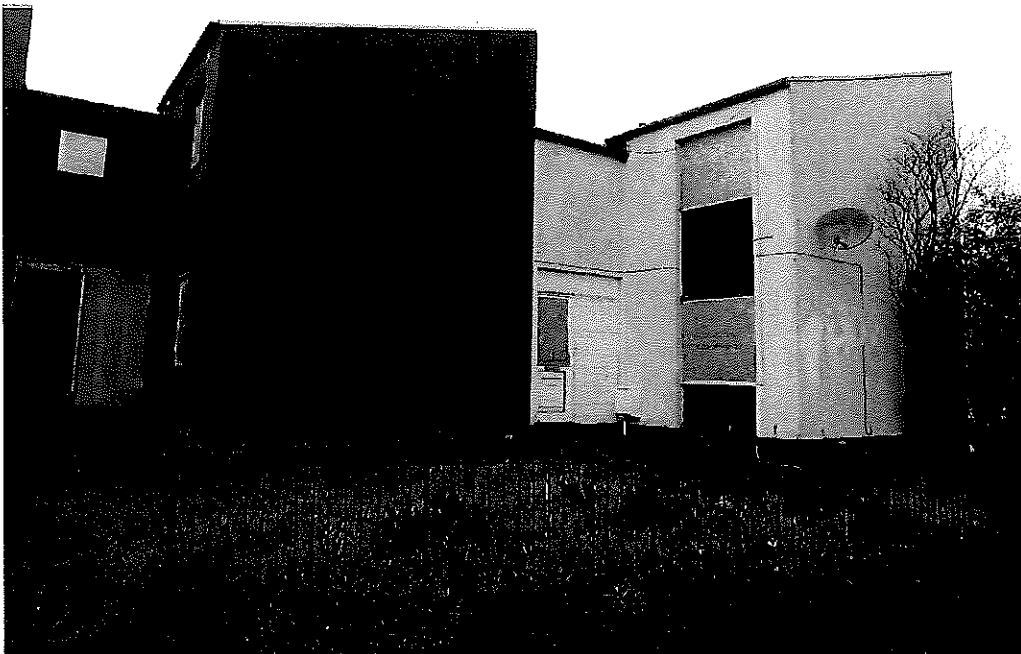


Side

107 Deans South, Livingston, EH54 8DU



The roof



Next door property

107 Deans South, Livingston, EH54 8DU



The Terrace



Registers Direct - Land Register: View Title WLN6661

Search Summary

Date:	09/06/2014	Time:	12:23:17
Search No.:	2014-01762984	User Reference:	

Sasine Search Sheet:

A. PROPERTY SECTION

Title Number:	WLN6661	Date of First Registration:	02/08/1995
Date Title Sheet updated to:	14/01/2014	Date Land Certificate updated to:	14/01/2014
Hectarage Code:	0	Interest:	PROPRIETOR
Map Reference:	NT0268SE		

Description:

Subjects 107 DEANS SOUTH, DEANS, LIVINGSTON EH54 8DU edged red on the Title Plan, Together with the whole rights specified in the Deed of Declaration of Conditions in Entry 1 of the Burdens Section.

Notes:

1. The minerals are excepted. The conditions under which the minerals are held are set out in the Deed of Conditions in Entry 1 of the Burdens Section.

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It does not have the evidential status of an Office Copy.

B. PROPRIETORSHIP SECTION

Title Number: WLN6661

Entry Number	Date of Registration	Proprietor	Consideration	Date of Entry
1	14/01/2014	KAREN WALSH 74 Falconer Rise, Livingston.	£8000	10/01/2014

Notes:

1. There are in respect of the subjects in this Title no subsisting occupancy rights, in terms of the Matrimonial Homes (Family Protection) (Scotland) Act 1981, of spouses of persons who were formerly entitled to the said subjects.

2. There are in respect of the subjects in this Title no subsisting occupancy rights, in terms of the Civil Partnership Act 2004, of partners of persons who were formerly

entitled to the said subjects.

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C. CHARGES SECTION

Title Number:

WLN6661

There are no entries.

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D. BURDENS SECTION

Title Number:

WLN6661

Number of Burdens:

2

**Entry
Number**

Burden Preamble

- 1 Deed of Declaration of Conditions, recorded G.R.S. (West Lothian) 17 Mar. 1977, by Livingston Development Corporation, Proprietor of 9.28 hectares of ground (hereinafter referred to as "the feuing area"), contains burdens &c. in the following terms
- 2 Feu Contract containing Feu Disposition by Livingston Development Corporation (who and whose successors are hereinafter referred to as "the Superiors") to James Stewart Little (who and whose executors and assignees are hereinafter referred to as "the Feuars") recorded G.R.S. (West Lothian) 21 Sep. 1989 of the subjects in this Title ("the Feu") contains the following burdens

**Entry
Number**

Burden Detail

- 1 Deed of Declaration of Conditions, recorded G.R.S. (West Lothian) 17 Mar. 1977, by Livingston Development Corporation, Proprietor of 9.28 hectares of ground (hereinafter referred to as "the feuing area"), contains burdens &c. in the following terms: Considering that we intend to feu the feuing area in separate lots and that for this purpose we shall be executing Feu Contracts or other writs and that it is proper and expedient to set forth and declare the various reservations, real burdens, conditions, prohibitions, declarations, obligations, stipulations and others incumbent on all parties to whom we may hereafter feu the feuing area or any part thereof (which parties and their successors in the dominium utile of the feuing area or any part thereof so feued are hereinafter referred to as "the feuars") THEREFORE we the said Livingston Development Corporation (we and our successors in the dominium directum or superiority of the said feuing area or any part thereof feued as aforesaid being hereinafter referred to as "the superiors") hereby provide, set forth and declare but without prejudice to the addition in specific cases of further reservations, real burdens, conditions and others or to the real burdens, reservations, conditions and others, if any, already affecting the feuing area. FIRST There shall be reserved to the superiors so far as not previously reserved to others the whole mines, metals, minerals and other substances in and under the feuing area (other than "petroleum" as defined in the Petroleum (Production) Act 1934 and coal or mines of coal and rights annexed thereto, as defined in the Coal Act 1938, and now vested in the National Coal Board, in virtue of the Coal Industry Nationalisation Act 1946) with full power of the superiors by themselves or their mineral lessees to search for, work, win and carry away the same and those in and under

adjacent subjects, in such manner as the superiors or their said lessees may in their uncontrolled discretion think proper, except that there shall be no entering upon or breaking of the surface of the feu for the purpose of any such workings; declaring that the feuars shall be entitled to compensation for all damage that may be done to the feu, including the buildings and others erected thereon and the walls, fences, roadways, pathways and drains thereof, by any of such workings, payable either by the superiors in the event of such workings being carried out by them or by their said lessees who shall be taken bound by the superiors to make good all such claims by the feuars and against whom only in that event the feuars' claim shall lie; and all questions as to the liability for and the amount of compensation which may be payable to the feuars shall, failing agreement in writing between the parties concerned, be determined by arbitration in manner after specified. SECOND There shall be reserved to the superiors (a) all coins or other articles of value intrinsic or otherwise, which may be found beneath the surface of the feuing area and (b) power to communicate to the feuars and/or tenants of any ground adjoining the feuing area, joint rights of use and maintenance regarding any part or parts or the whole of the boundary walls or fences of the feuing area. THIRD There shall be reserved in favour of each feuar (a) a heritable and irredeemable servitude right of access over the adjoining subjects on both sides, or where appropriate on one side only, for the purposes of maintaining, repairing and renewing the buildings (including the cleaning of windows) boundary walls and fences subject to the said servitude right of access being exercised at a reasonable time and upon reasonable notice and subject also to the feuar indemnifying the superiors and their successors and the adjoining proprietor or proprietors in respect of all and every damage or loss occasioned by the exercise of the said right of access and (b) such rights of eavesdrop over the adjoining feu or feus as presently exist, each to the extent to which it presently encroaches on the adjoining feu or feus. FOURTH There is reserved to the superiors and their successors as proprietors of any unsold subjects in the feuing area a heritable and irredeemably servitude right of access over any and every feu adjoining unsold subjects for the purposes of maintaining, renewing or repairing the gables of said unsold subjects, subject again to the said servitude right of access being exercised at a reasonable time and upon reasonable notice and subject also to the superiors and their successors as proprietors of said unsold subjects indemnifying the feuar or feuars in respect of all and every damage or loss occasioned by the exercise of the said servitude right of access. FIFTH There shall be reserved to the superiors and their disponees or lessees and any other party deriving right from the superiors and to any local or public authority or statutory undertaker concerned for their respective interests all (if any) water pipes and mains, drains pipes, gutters, foul and surface water sewers, gas pipes, electricity lamp standards, cables and transformers, telephone cables or wires, television and wireless relay cables and wires existing or to be provided and all if any other services in, on, under, through or over the feuing area with right of access at all reasonable times for the purpose of inspecting, repairing, improving, cleansing, emptying, maintaining, renewing, removing or altering the levels of the same and there shall be reserved to them also a right of wayleave in, on, under, through or over the feuing area for such water pipes and mains, drain pipes, gutters, foul and surface water sewers, gas pipes, electricity lamp standards, electricity cables and transformers, telephone cables or wires, television and wireless relay cables and wires and all other services as the superiors may hereafter consider necessary for the proper servicing of any land or buildings within the said New Town of Livingston and that by such route or routes and in such manner as the superiors in their absolute discretion see fit with power to the superiors and their officers, servants and others duly authorised by them to enter at all reasonable times upon any part of the feuing area or any of the buildings erected or to be erected thereon for the purpose of laying, inspecting, repairing, improving, cleansing, emptying, maintaining, renewing, removing or altering the levels of the same provided that the superiors and

their foresaids in exercising any of the foresaid rights shall be bound (but only insofar as applicable to their own actings) to restore all damage caused by their operations to the surface of the feuing area and to fences and walls erected on the feuing area up to a standard reasonably equivalent to that in which it was prior to the commencement of their operations. SIXTH Each feuar shall be bound to uphold and maintain in all time coming and when necessary to re-erect the dwellinghouse or in cases where a garage forms an integral part of the dwellinghouse, the dwellinghouse and garage and other buildings, if any, erected or to be erected on his feu all to the satisfaction of the superiors; and the said dwellinghouse and others shall not be erected or re-erected unless and until full and detailed plans and specifications thereof, showing inter alia but without prejudice to the generality, the sites, building lines, elevations, floor plans, chimney plans, designs and colour schemes of the said dwellinghouse and others, and the materials to be used in the construction of the same, shall have been submitted to and approved by the superiors, in writing, in all respects, prior to the commencement of any building operations; and the feuars shall not make any external alterations or additions to the said dwellinghouse and others after the erection thereof as aforesaid, nor erect any additional buildings and others on any part of the feu, nor make any internal alterations to any of such buildings and others which would affect or be likely to affect the external appearance thereof, without the prior submission and approval as aforesaid of plans and specifications of all such altered or additional buildings and others, which shall all be maintained by the feuars in manner above provided; without prejudice to the foregoing generality it is hereby expressly provided (a) that no external aerials for television or radio reception or transmission shall be erected or installed in or about any of the feus or the buildings thereon and (b) that no permanent buildings will be erected over the line of or in close proximity to the sewers. (SEVENTH) In respect that boundary walls and/or fences have been erected by the superiors insofar as is considered necessary each of the feuars shall maintain and when necessary renew at his own expense in all time coming the boundary walls and/or fences bounding his particular feu: No new boundary walls or fences shall be erected and no alterations or additions shall be made to the existing boundary walls and/or fences nor shall any new openings or gates be made therein except with the prior written consent of the superiors and no trellis work, ornamental fencing, draughtboarding fencing or other fencing shall be erected along or adjoining any of the boundaries of the feu without the like consent nor shall any of the boundary walls be used as strengthening or supports for such trellis work or fencing; all walls and/or fences forming the boundaries between adjoining feus are or shall be erected as to one half the breadth or thickness thereof on each of the adjoining feus and shall be maintained by the adjoining feuars jointly in all time coming except where specially provided otherwise in any Feu Writ to be granted by the superiors; the feuars quoad their respective feus shall free and relieve the superiors of all liability and responsibility in respect of all walls and fences; where the dwellinghouse or the dwellinghouse and garage or any other building which the superiors may consent to the erection of on any particular feu is/are attached to a dwellinghouse or dwellinghouse and garage or any other building on an adjoining feu the mutual gable between the house or house and garage or other building and the adjoining house or house and garage or other building shall be maintained at the joint expense of the adjoining feuars. (EIGHTH) Each of the feuars shall be bound to keep all buildings and others erected on his feu insured against loss or damage by fire, explosion, storm and tempest (including lightning) and (in peacetime) aircraft and any articles dropped therefrom with an established Insurance Company, for the full rebuilding value thereof all as approved, in writing, by or on behalf of the superiors and to produce to the superiors from time to time when required, the Policy or Policies of Insurance and the receipts for payment of the renewal premiums thereon; and in the event of the said buildings and others or any of them being destroyed or damaged by fire or other aforementioned risks, all sums to be received by the feuars in respect of such Insurance shall

be in the first instance applied towards the payment of any sums of money due by the feuars to the superiors and as regards the balance thereon only expended at the sight and to the satisfaction of the superiors in making good and restoring all loss or damage caused by such fire or other aforementioned risks to the said buildings and others, which shall in any event be restored or if necessary re-erected by the feuars so as to be in all respects consistent with the provisions and obligations herein contained and in the event of the feuars failing to effect the Insurance, or at any time failing to exhibit the Policies, or to pay the renewal premiums thereon and exhibit the receipts therefor within fourteen days after the due date thereof according to the Policies, the superiors shall be entitled to effect or maintain such Insurance and the superiors shall be entitled to exact and receive from the feuars all expenses so incurred together with interest on all such expense at the rate of ten per centum per annum from the date when incurred until paid. NINTH The feuars shall be responsible for ensuring that their respective feus and the buildings thereon are properly drained and for this purpose they shall maintain the necessary gutters, downpipes, branch drains and connections for the removal of foul and surface water to the common or public sewers and repair, renew and cleanse the said gutters and others as may be necessary from time to time to the satisfaction of the superiors and of the Local Authority declaring that where any gutter, downpipe, drain (or any part thereof) or connection is common to two or more of the feus the expense of repairing, renewing and cleansing the same shall be shared equally by the feuars using such common gutters and others and where drainage or sewerage pipes pass from one of the feus through any of the other feus in order to connect up with any common or public sewer or drain, the feu or feus through which the connecting drainage or sewerage pipes pass shall be subject to servitude rights of wayleave for such connecting drainage or sewage pipes and that in favour of the feuars using the said connecting drainage or sewage pipes who shall be entitled to access thereto when required for the purpose of inspecting, maintaining, renewing, cleansing and emptying the same subject always to making good and restoring all damage to the surface occasioned thereby. TENTH The feuars shall be bound to maintain the water supply pipes and connections leading from the water main all to the satisfaction of the local water authority and where the said water supply pipes and connections are common to two or more feus all costs including the cost of repairing and renewing the same shall be shared equally by the feuars using such common pipes and connections and where water supply pipes pass from one of the feus through any of the other feus the feu or feus through which the said pipes pass shall be subject to servitude rights of wayleave in favour of the feuars using same and they shall be entitled to access thereto when required for maintenance and renewal and any other necessary purposes subject always to making good and restoring all damage to the surface occasioned thereby. ELEVENTH Each of the feus and the buildings thereon shall be used for private residence only and for no other purpose whatsoever; and none of the said dwellinghouses shall be sub-divided or occupied by more than one family at a time; and no trade, business, profession or occupation of any kind shall be carried on in or upon any of the feus or any of the buildings thereon and no business nameplate, board, card, sign, notice or advertisement of any kind shall be affixed or displayed in, on or about any of the feus or the buildings thereon without the prior written consent of the superiors; each feu so far as not occupied by buildings shall be used as ornamental or garden ground and shall be maintained in a neat and tidy condition and free from all rubbish and refuse and weeds to the satisfaction of the superiors in all time coming and it is hereby expressly declared that there shall be no alteration to the layout, landscape treatment and planting on the front garden ground of any feu. TWELFTH Each feuar shall be bound to take all necessary measures for the preservation of all trees and shrubs within his feu and there shall be no felling or removal of any trees or shrubs existing on any feu without the written consent of the superiors. THIRTEENTH Each feuar shall be bound to maintain the external paintwork of the dwellinghouse and dwellinghouse and

garage or other building erected or to be erected on his feu in good condition to the satisfaction of the superiors; so long as the superiors are the owners of the majority of the dwellinghouses in the feuing area the feuars shall be bound to comply with a colour scheme approved by the superiors in writing after consultation with the feuars or a body representing the feuars. FOURTEENTH No poultry, ducks, pigeons, rabbits, bees or other animals or livestock shall be kept in, on or about the feus or the buildings thereon except with the consent of the superiors; each feuar may keep not more than one dog (unless with the consent of the superiors) in, on or about the feu or the buildings thereon but only provided that such dog shall not occasion any nuisance to the adjoining feuars or proprietors. FIFTEENTH The feus and the buildings thereon shall not be occupied or used in any manner or form or for any purpose which may be an injury to the amenity of the neighbourhood or a nuisance to nearby feuars, proprietors, tenants and others; declaring that it shall be within the power of the superiors to determine what constitutes such injury to amenity or nuisance and all such injury to amenity or nuisance on being so determined and intimated to the feuars responsible shall be discontinued or removed forthwith at the expense of the feuars. SIXTEENTH All matters which fall to be determined by arbitration in accordance with the specific provisions to that effect herein contained shall be submitted to the amicable and final decision of a single arbiter to be appointed by the parties or failing agreement as to such appointment of an arbiter to be appointed by the Sheriff of the Lothians and Borders upon application of either party; and the parties bind themselves to implement to each other whatever the arbiter shall determine by decree or decrees-aribtral interim, partial or final and the parties consent to the registration of all such decrees-arbitral for preservation and execution. SEVENTEENTH It is hereby expressly provided and declared that there is hereby retained full power to the superiors to make or allow whatever alterations or deviations they may consider proper upon any feuing plans of the feuing area or of the roads, footpaths, sewers and drains and other services within or outwith the same or even to depart entirely therefrom and the superiors expressly reserve to themselves the right and power to develop and dispose of any land or said open spaces and others belonging to them for such purposes as they may think fit and to alter and modify in whole or in part the foregoing burdens, obligations, conditions and other clauses and in the event of their so doing the feuars shall have no right or title to object thereto nor shall they have any claim in respect thereof; And it is further declared that nothing herein contained shall be held to imply any right of common property or common interest in favour of any of the feuars in, or to any of the feuing area excepting their particular feus and the buildings erected or to be erected thereon. EIGHTEENTH It is declared that in the event of any contravention of or failure to fulfil the foregoing burdens, reservations, provisions, conditions, declarations and others or the foregoing direction all acts and deeds of contravention shall be null and void and any of the feuars so contravening or failing to fulfil the same shall forfeit all right to their feus and the buildings thereon, which shall revert and fall to the superiors free from all burdens:

**Entry
Number**

Burden Detail

2

Feu Contract containing Feu Disposition by Livingston Development Corporation (who and whose successors are hereinafter referred to as "the Superiors") to James Stewart Little (who and whose executors and assignees are hereinafter referred to as "the Feuars") recorded G.R.S. (West Lothian) 21 Sep. 1989 of the subjects in this Title ("the Feu") contains the following burdens:- Declaring that if the feuars shall at any time contravene or fail to implement any of the burdens, conditions, restrictions, provisions, or others in the Deed of Declaration of Conditions in Entry 1 then this feu right and all that may have followed thereon shall, in the option of the superiors become null and void and the feuars shall forfeit all right and interest in the feu and

buildings thereon which shall in that event revert to the superiors as if these presents had never been granted and in addition the feurs shall remain liable to the superiors for performance of the whole prestations incumbent on the feuars under these presents prior to the date of such forfeiture.

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