

It is not unknown for a landlord to covenant that every lease across a development will contain identical/similar covenants. It is also not unknown for the same landlord to covenant to enforce those covenants at a lessee's request, subject to an indemnity on costs from that lessee.

In *Duval v 11-13 Randolph Crescent Ltd* [2018] EWCA Civ 2298, those covenants appeared in Dr Duval's lease at clauses 2.7 and 3.19 respectively.

The Court of Appeal held that where a lease contained both such covenants, a landlord was in breach if it granted consent to another lessee to carry out works against which there was an absolute prohibition in that lessee's (and everyone else's) lease. By consenting to works that were absolutely prohibited, the landlord could not take enforcement action if requested to do so by the other lessees in the development.

Lewison LJ observed that "the vice lay not in clause 3.19, but in the fact that clause 2.7 was drawn as an absolute covenant". If clause 2.7 had been drawn as a qualified covenant (i.e. not to do the prohibited acts without the landlord's consent), the grant of consent would not have put the landlord in breach of clause 3.19.

