

**LEASEHOLD VALUATION TRIBUNAL  
OF THE  
MIDLAND RENT ASSESSMENT PANEL**

BIR/17UG/LBC/2009/0001

*DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON AN APPLICATION UNDER  
SECTION 168(4) OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002*

Applicant: Queennews Limited (freeholder)

Respondents: Personal Representatives of Charles Crampin  
(Deceased) (leaseholders)

Subject property: 28 Benner Avenue  
Ilkeston  
Derbyshire  
DE7 4DP

Application to LVT: 12 January 2009

Hearing: 5 March 2009

Appearances:

*For the applicant:* Mr Peter Michael (Peter Michael & Co)

*For the respondents:* Not represented

Members of the Tribunal: Professor N P Gravells MA  
J E Ravenhill FRICS

Date of determination:

## **Introduction**

- 1 This is a decision on an application under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") made to the Leasehold Valuation Tribunal by Queennews Limited, the freeholder of the house and premises at 28 Benner Avenue, Ilkeston, Derbyshire DE7 4DP ("the subject property"), for a determination that breaches of various covenants contained in the lease of the subject property have occurred.
- 2 The subject property was included in a lease of 84 properties between (1) B W Goddard and L S Crowder (lessors), (2) A H Lowe and (3) East Ilkeston Estates Limited (lessee). The lease, dated 25 October 1948, was for a term of 99 years from the same date.
- 3 A Land Registry Office Copy issued on 9 March 2000 shows that the applicant is the registered proprietor of the freehold of the subject property and that the freehold is subject to the 1948 lease.
- 4 The present application, dated 9 January 2009, was received by the Tribunal on 12 January 2009. The application named the personal representatives of Charles Crampin (deceased) as respondents. (The respondents had been identified by the applicant when it received a letter dated 16 September 2008 from Walter Scott & Ross (Solicitors), (i) stating that the partners of that firm were the personal representatives of Charles Crampin (deceased), (ii) implying that the 1948 lease of the subject property formed part of the estate of the deceased and (iii) enquiring whether the applicant was prepared to grant a new lease of the subject property or to sell the freehold interest.)
- 5 The application was copied to the respondents at Walter Scott & Ross but neither the Tribunal nor the applicant has received any response to the application or to any of the subsequent procedural correspondence.

## **The background to the application**

- 6 Following the receipt of the letter dated 16 September 2008, on 2 October 2008 Mr Peter Michael of Peter Michael & Co, the applicant freeholder's agent, carried out an inspection of the subject property. It was found to be unoccupied and in a state of considerable disrepair, although it appeared to be in the early stages of renovation. (According to two neighbours, Mrs Sandra Halford and Mrs Antionette Geary, who had looked after Mr Crampin before he died, Mr Crampin had left (the lease of) the subject property to them in his will. In reliance on that information, Mrs Geary's husband had started some renovation work on the property but he had discontinued the work following the visit and inspection of Mr Michael.) On 7 October 2008 Mr Michael gave a notice to the respondents under section 146(1) of the Law of Property Act 1925, requiring the respondents to remedy alleged breaches of the repairing covenant in the 1948 lease (Clause 2(4)) and to pay compensation. However, he was subsequently advised that such a notice was premature in the light of section 168 of the 2002 Act. Section 168(1) provides:

"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 ... in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied."

Subsection (2) may be satisfied by any of three alternative conditions. The relevant condition in the present case is that "it has been finally determined on an application [to the Leasehold Valuation Tribunal] under subsection (4) that the breach has occurred".

By the present application the applicant now seeks such a determination from the Tribunal.

### **Inspection and hearing**

- 7 The members of the Tribunal inspected the subject property on 5 March 2009 in the presence of Mr Michael, Mrs Halford and Mrs Geary's husband.
- 8 The subsequent hearing was attended by Mr Michael, representing the applicant freeholder. The respondents did not attend and were not represented.
- 9 Mr Michael's written representations, which he developed at the hearing, are outlined below in the context of the determination.

### **Determination of the Tribunal**

#### Preliminary issues

- 10 Although Mr Michael produced the Land Registry Office Copy issued on 9 March 2000, showing that the applicant is the registered proprietor of the freehold of the subject property and that the freehold is subject to the 1948 lease, the Tribunal was shown no documentary evidence that Charles Crampin (deceased) was the leaseholder of the subject property. It remains uncertain whether the individual properties included in the 1948 lease were assigned or sublet by the original lessee; it also remains uncertain how (and indeed whether) any such (sub)lease was transferred to Charles Crampin (the uncertainty being compounded by suggestions that the lease of the subject property was initially acquired by the father of Charles Crampin, who was also called Charles Crampin). Those are issues that may have to be explored if the applicant seeks forfeiture of the lease.
- 11 For the purposes of the present application, the Tribunal is satisfied, on the basis of the Land Registry Office Copy (i) that the subject property is subject to the 1948 lease and (ii) that the only issue for determination under section 168(4) of the 2002 Act is whether the alleged breaches have occurred.
- 12 Included in the list of breaches alleged by the applicant is the failure to pay the ground rent in breach of the covenant in Clause 2(1) of the lease. However, as Mr Michael accepted, since any such breach is outside the scope of the procedure set out in section 146 of the Law of Property Act 1925, it is also outside the scope of the Tribunal's jurisdiction under section 168(4) of the 2002 Act. The Tribunal therefore makes no determination on that matter.

#### Alleged breaches of covenant

- 13 The remaining alleged breaches are considered in turn.

*Failure to repair and maintain (Clause 2(4) and 2(5))*

- 14 The Tribunal finds that the overall condition and state of *disrepair* of the subject property provides conclusive evidence of breach of the covenants in Clauses 2(4) and 2(5) of the lease.

*Alterations and additions without the consent of the lessors (Clause 2(11))*

- 15 The first floor of the subject property has been reconfigured by the removal of a wall so as to reduce the number of bedrooms from three to two. New double-glazed windows, front door and patio doors have been installed. The Tribunal finds that these alterations were made without the written consent of the lessors and therefore constitute a breach of the covenant in Clause 2(11) of the lease.

- 16 The applicant also alleges a breach in that a lean-to structure was erected to the rear of the subject property. However, the structure has been removed and, in the view of the Tribunal, any harm caused to the landlord has been remedied. The Tribunal therefore makes no determination as to whether the original erection constitutes an operative breach.

*Storage of rubbish and building material on the land (Clause 2(12))*

- 17 During the inspection the Tribunal noted a significant quantity of rubbish and building material in the rear garden of the subject property (largely the consequence of the renovation work referred to above). However, its mere presence provides conclusive evidence of a breach of the covenant in Clause 2(12) of the lease.

*Nuisance, inconvenience or annoyance (Clause 2(15))*

- 18 In the view of the Tribunal, the presence of the rubbish is a matter that "may be or may grow to be" a nuisance, inconvenience or annoyance to the lessors or the owners or occupiers of adjacent properties (Clause 2(15)). The rubbish constitutes an eyesore, which may well have a deterrent effect on prospective purchasers of adjacent properties (and the Tribunal noted that 30 Benner Avenue is currently on the market). Moreover, its continued presence may well attract vermin and other pests. The Tribunal therefore finds that a breach of the covenant in Clause 2(15) of the lease has occurred.

*Erection of buildings without the submission and approval of plans (Clause 2(18))*

- 19 The applicant alleges breach of covenant by reason of the erection of the lean-to structure to the rear of the subject property. However, the structure has been removed and, in the view of the Tribunal, any harm caused to the landlord has been remedied. The Tribunal therefore makes no determination as to whether the original erection constitutes an operative breach of the covenant in Clause 2(18) of the lease.

Summary

- 20 On the basis of the written representations and evidence, the Tribunal determines that breaches of covenants in Clauses 2(4), 2(5), 2(11), 2(12), and 2(15) of the lease have occurred.

Signed Nigel P Gravells  
(Professor Nigel P Gravells (Chairman))

Dated 10 March 2009