



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : LON/00AR/LBC/2013/0094

Property : First Floor Flat at 74 Bader Way,
Rainham, Essex RM13 7HR

Applicant : London Borough of Havering

Representatives : Mr A Cooper, Home Ownership
Officer, and Ms J Shaw, Home
Ownership Manager

Respondent : Ms C Humphreys (now known as
Mrs C Dreezer)

Representative : In person

Type of Application : Application for determination
under section 168(4) Commonhold
and Leasehold Reform Act 2002
(breach of covenant in lease)

Tribunal Members : Judge P Korn (Chairman)
Mr J Barlow FRICS

**Date and venue of
Hearing** : 22nd January 2014 at 10 Alfred
Place, London WC1E 7LR

Date of Decision : 5th February 2014

DECISION

Decision of the tribunal

The tribunal determines that a breach of covenant in the Respondent's lease has occurred.

The application

1. The Applicant seeks a determination pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("**the 2002 Act**") that a breach of covenant has occurred under the Respondent's lease.
2. The Applicant is the freehold owner of the Property and the Respondent is the leasehold owner pursuant to a lease ("**the Lease**") dated 7th December 1987 and originally made between the Applicant (1) and Susan Wilks (2).
3. The Applicant alleges that in breach of the terms of the Lease the roof space above the Property has been converted to form a habitable room and that stairs have been added linking the Property with the loft room.

Applicant's case

4. Mr Cooper for the Applicant took the tribunal through the Applicant's written submissions. These included a chronology of events, the Applicant's evidence for the alleged breach, and an analysis of the relevant provisions of the Lease.
5. The Applicant was notified on 8th July 2012 by the leaseholder of a neighbouring property of the fact that the loft had been converted, although Mr Cooper was unable to explain how that person knew about the loft conversion as the fact of the conversion was not something that would be obvious to a passer-by.
6. Having inspected the Property the Applicant was able to confirm that the loft had been converted, and Mr Cooper referred the tribunal to relevant copy photographs in the bundle.
7. Mr Cooper referred the tribunal to clause 4 and paragraph 1(3) of the First Schedule to the Lease. Clause 4 simply contained a covenant on the part of the lessee (i.e. the leaseholder) to observe the covenants contained in the First Schedule. Paragraph 1(3) of the First Schedule contained a covenant "*not to make any structural alterations or structural additions to the demised premises ... or where the Building is served by a communal or district heating scheme to alter add to renew or replace in any manner the appliances for the provision of heating and hot water to the demised premises from time to time provided by the Lessors without the previous consent in writing of the*

Lessors and the Lessee shall at the Lessee's own expense obtain all licences approval of plans permissions and other things necessary for the carrying out of such alterations and comply with the byelaws and regulations and other matters prescribed by any competent authority either generally or in respect of the specific works involved in such alterations”.

8. Mr Cooper also referred the tribunal to the following description of the Property in the Seventh Schedule to the Lease: *“ALL THAT self-contained flat including the concrete floors and beams or the timber flooring and the joists on which the said floors are laid up to the level of the underside of the concrete beams or the ceiling joists with the internal or external walls thereof up to such level situate on the first floor of the Building and known as flat number 74 Bader Way, Rainham ... which said flat ... is shown hatched black on the plan annexed hereto”.* In his view this description demonstrated that the Property did not include anything above the first floor ceiling.
9. Included with the written submissions were the original drawings of flat numbers 82 and 90, which did not show these flats as including a loft area. These were apparently the closest original drawings found by the Applicant, as no original drawings could be located in relation to the Property itself. The hearing bundle also included an email from a Jo Bide of the Applicant's building control department to Mr Cooper stating that the building control records had been checked and no application for permission for a loft conversion had ever been made in relation to the Property.

Respondent's response

10. The Respondent said that she had not received certain key letters from the Applicant. This was by way of explanation that she was not trying to avoid her responsibilities as leaseholder. She accepted the basic factual point that the loft area was being used as part of the Property and that there was a staircase linking the first floor area with the loft area.
11. She said that the structure and layout of the Property was as it had been when she purchased the Property and that the loft conversion was already in place. She did not remember anything about the sale process, for example whether anything was mentioned about the loft in the sales particulars or whether any formal enquiries were raised at the time.
12. In the Respondent's submission the reference to the ceiling in the description of the Property in the Lease was a reference to the loft ceiling.

13. The Respondent made no comments as to evidence of any necessary consents under planning law having been obtained.

The statutory provisions

14. The relevant parts of section 168 of the 2002 Act provide 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 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.*

(4) A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.”

Tribunal’s analysis

15. It is common ground between the parties that the loft area is being used as part of the Property. The slightly curious circumstances in which the Applicant found out about the conversion are not relevant to the tribunal’s analysis as to whether there has been a breach of covenant.

16. As regards whether the loft area forms part of the definition of the Property under the Lease one needs to look at the provisions identified by Mr Cooper, namely the following description of the Property set out in the Seventh Schedule:-

“ALL THAT self-contained flat including the concrete floors and beams or the timber flooring and the joists on which the said floors are laid up to the level of the underside of the concrete beams or the ceiling joists with the internal or external walls thereof up to such level situate on the first floor of the Building and known as flat number 74 Bader Way, Rainham ... which said flat ... is shown hatched black on the plan annexed hereto”.

17. The above description is not as clear as it could be. In particular it does not state which ceiling joists are being referred to. However, there is no suggestion that a loft area is included, and in any event it would be strange to describe the top of the roof area as a ceiling, because it is in

fact the underside of the roof. The copy drawings of flats 82 and 90 – whilst not conclusive by themselves – do also point to the conclusion that these flats did not include the roof area as part of the demise. Furthermore, it was common ground between the parties that when in the main part of the flat a person looking up would only see one ceiling, namely the ceiling above the first floor, as to get to the loft area one needed to leave the main part of the flat and ascend a separate staircase.

18. Taking all the above matters into account the tribunal's view is that the Property did not originally include the loft area and that therefore it has been connected to the main part of the flat by conversion works having been carried out after the Lease was granted.
19. Was the conversion a breach of one or more covenants under the Lease? In the tribunal's view it was. The conversion will at the very least have involved the carrying out of structural alterations, and under paragraph 1(3) of the First Schedule to the Lease structural alterations require the landlord's prior written consent. The lessee was also under an obligation to obtaining any necessary consents under planning law and building regulations, and a conversion of this nature will have required consent.
20. The evidence indicates that neither landlord's consent nor planning/building regulations consent was either sought or obtained. The Applicant's evidence is that none was applied for and the Respondent has provided no evidence to contradict the Applicant's position. In the case of planning consents in particular, if these had been obtained there would be a record which could be accessed by the Respondent. Therefore, the tribunal finds on the balance of probabilities that the conversion was carried out without obtaining the requisite consents under paragraph 1(3) of the First Schedule to the Lease in breach of the covenant to comply with that paragraph.
21. The Respondent has given credible evidence that she did not carry out or organise the conversion herself and that it took place prior to her purchase of the Property. However, the issue before the tribunal is whether a breach of covenant under the Lease has occurred, and in the tribunal's view a breach has occurred.

Costs

22. No cost applications were made.

Name: Judge P Korn (Chairman) **Date:** 5th February 2014