



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

Case Reference : **LON/OOAN/LBC/2016/0048**

Property : **26A Lindrop Street, Fulham,
London SW6 2QX**

Applicant : **The London Borough of
Hammersmith & Fulham**

Representative : **Mr Asghar of Counsel**

Respondent : **UQAB Limited**

Representative :

Type of Application : **For the determination of an alleged
breach of covenant**

Tribunal Members : **Mrs S O'Sullivan
Mr S Mason FRICS**

**Date and venue of
Hearing** : **5 September 2016 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **5 September 2016**

DECISION

Decision of the tribunal

The Tribunal determines pursuant to section 168(4) of the Commonhold and Leasehold Act 2002 that the Respondent has breached the various covenants of the lease as set out in the statement of Mark Arch for the Applicant and as set out below.

The application

1. The Applicant seeks a determination pursuant to s. 168(4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent tenant is in breach of various covenants contained in the lease.
2. The property which is the subject of this application is known as 26A Lindrop Street, London SW6 2QZ (the "Property").
3. Directions were made dated 1 July 2016 which set out the steps to be taken by the parties and provided for this matter to be considered at an oral hearing.
4. In accordance with those directions the Applicant lodged a bundle of documents.

The hearing

5. A hearing took place on 5 September 2016. The Applicant was represented by Mr Asghar of Counsel. He was accompanied by Mr Mahu, the leaseholder of 26b Lindrop Street. The Respondent was not represented.

Application for postponement

6. At the commencement of the hearing the tribunal first considered the Respondent's application for a postponement. On 31 August 2016 the tribunal received an email from the Respondent Company. In this email the Respondent confirmed receipt of a letter from the tribunal of 17 August 2016 and the Applicant's bundle of documents and requested a copy of the directions dated 1 July 2016. It also requested an adjournment of the hearing listed for 5 September 2016. The grounds for the request appeared to be that the documents had been received late because of "*summer closure for holidays, off days, change of director and the postal redirection anomalies*". The tribunal requested that a copy of that email be sent to the Applicant and confirmed that the application for a postponement would not be considered until the tribunal received confirmation that the email had been copied. No such confirmation was received. At approximately 9am on 5 September 2016 the tribunal sent a further email to the

Respondent to confirm that no postponement had been granted and that the hearing would proceed as directed at 10am that morning.

7. The Applicant opposed the postponement on the basis that the Respondent had acknowledged in its email that it had received the Applicant's bundle which included the tribunal's directions and thus was aware of the date by which it had to serve its statement of case and when this matter would be heard. Mr Asghar confirmed that although a search at Companies House showed that there had been a change of director at the Respondent Company, this had taken place on 11 July 2016 and so was not a recent change.
8. The tribunal refused the application for a postponement. It was satisfied that copies of the application and directions had been sent by first class mail to the Respondent at its registered office and had not been returned. At the very least the Respondent had become aware of the hearing date on 31 August 2016 and could have arranged for a representative to attend. The application for a postponement was made very late in the day. It was not proportionate for the tribunal to adjourn a case in such circumstances and not a good use of its limited resources.
9. Mr Asghar also considered making an application for a postponement as his witness had not arrived at the tribunal and was believed to be stuck in traffic. However he did not make any application once the tribunal had confirmed that it was content for him to rely on the statement of case prepared by Mr Arch.
10. The tribunal went on to consider the application.

The Applicant's case

11. The Applicant relied on a bundle of documents and the witness statement of Mark Arch dated 21 July 2016.
12. In this statement it was confirmed that Mr Arch is employed by the Applicant as Interim Property Compliance Surveyor in the Applicant's Housing Property Services Department. The Property is contained in a building known as 26 Lindrop Street which comprises a terraced house divided into two flats. The Respondent is the leasehold owner of the Property pursuant to a lease dated 7 February 2011 and granted for a term of 125 years from 25 September 2010 (the "Lease"). The Property is situated on the ground floor.
13. The Applicant further relies on a report dated 14 March 2016 attached as an exhibit to Mr Arch's statement prepared on its behalf by Ben Burlikowski MRICS of Walker Management Construction Consultants. This was commissioned in response to complaints from the owner of Flat B above the Property of unauthorised works having been carried

out. Mr Burlikowski has compiled a detailed report of his findings in relation to the current structural and internal state of repair of the Property.

14. The report states that the Applicant identified numerous breaches of the Lease comprising in particular of unauthorised alterations and removal of structural walls. By way of example structural walls have said to be having been removed necessitating temporary propping. Mr Asghar confirmed that following structural works the Applicant had carried out some remedial works to the property around 3 years ago. Since then it had attempted to contact the Respondent but had been unsuccessful and these further works have been carried out. It was understood that the Property has remained uninhabited throughout this period.
15. The relevant clauses of the Lease said to have been breached are as follows;

Part II of the Fifth Schedule Clause 1 the Respondent covenants;

“To keep the whole of the Demised Premises and additions and improvements thereto (excluding any portion thereof which the Lessor covenants to repair in the Sixth Schedule hereto) and the Lessor’s fixtures and fittings and the sanitary and heating and electrical apparatus installed in or affixed to the Demised Premises and the door and the window furniture glass and sash cords (if any) thereof in good and substantial repair and condition and in particular (but without prejudice to the generality of the foregoing) to support shelter and protect all such parts of the building which adjoin or lie above or beneath the Demised Premises”.

16. In accordance with Part II of the Fifth Schedule Clause 2 the Respondent covenanted

“At all times to keep the interior of the Demised Premises in good decorative repair”.

17. In accordance with Part II of the Fifth Schedule Clause 3 the Respondent covenanted to;

“To make good all damage caused through the act or default of the Lessee (a) to any part of the Building or to the appointments of the fixtures and fittings thereof and (b) to any other occupier or tenant of the Building and their licensees and in each case to keep the Lessor indemnified from all claims expenses and demands in respect thereof”.

18. In accordance with Part II of the Fifth Schedule Clause 5 the Respondent covenanted as follows.

“Not to do or omit or permit or suffer to be done or omitted upon or in connection with the Demised Premises anything which shall be or tend to be a nuisance or annoyance or cause of damage to the Lessor or the other occupants of the Building or to any of the neighbouring adjoining or adjacent property or the owners or occupiers thereof”.

19. In accordance with Part II of the Fifth Schedule Clause 8 the Respondent covenanted as follows;

“To tend keep clean and tidy and generally to maintain the garden land shown edged green on the said plan and to use the same only as a garden”

20. In accordance with Part I of the Fifth Schedule Clause 14 the Respondent covenanted as follows

21. *“Not at any time without the license in writing of the Lessor first obtained nor except (if such licence shall be granted) in accordance with plans and specifications previously approved by the Lessor and to the Lessor’s reasonable satisfaction to make any alteration or addition whatsoever in or to the Demised Premises either externally or internally or to make any alterations or aperture in the plan external construction height walls timbers elevations or architectural appearance not to cut or remove the main walls or timbers of the Demised Premises nor to do or suffer in or upon the Demised Premises any wilful or voluntary waste or spoil nor to remove any of the Lessor’s fixtures and fittings”.*

22. In accordance with Part I of the Fifth Schedule Clause 14 the Respondent covenanted as follows;

“To keep the floors of the Demised Premises including the passages thereof substantially covered with carpets except that in the kitchen and bathroom a covering made of cork or rubber or other suitable material for avoiding the transmission of noise and which should extend over the whole floor may be used instead of carpets”.

23. In accordance with Part I of the Fifth Schedule Clause 18 the Respondent covenanted as follows

“Without prejudice to the other covenants in this Lease contained not to do or omit or permit or suffer to be done or omitted any act matter or thing on or in respect of the Demised Premises which contravenes the provisions of the Town and Country Planning Act 1990 or any enactment amending or replacing the same and to keep the Lessor indemnified against all claims demands and liabilities in respect thereof”.

24. In accordance with Part I of the Fifth Schedule Clause 26 the Respondent covenanted as follows

“Not to do or permit or suffer to be done or being or permit or suffer to be brought in or upon the Demised Premises anything which may throw on the Demised Premises or any other part of the Building any weight or strain in excess of that which such premises are calculated to bear with due margin for safety”.

25. In accordance with Part II of the Fifth Schedule Clause 4 the Respondent covenanted as follows

“Not to do or omit or permit or suffer to be done or omitted any act deed matter of thing whatsoever whereby the risk or hazard of the Demised Premises or the Building being destroyed or damaged by fire or any other risk against which the Lessor has insured may be increased or which may require any additional premium for insuring the same or which may make void or voidable any policy for such insurance and to give notice to the Lessor of any act thing or matter done or brought on to the Demised Premises which may lead to an increase in the premium attributable to the Demised Premises or the Building by reason thereof”.

26. Both Mr Arch’s statement and Mr Burlikowski’s report set out in detail numerous works which have taken place and identify the alleged breaches. Although there were no pictures of the garden within the report the tribunal heard from the tenant of the upstairs flat who confirmed that the garden is overgrowing into neighbouring gardens. As far as the insurance was concerned although there was no evidence that the insurance premium had been increased as a result of the breaches of covenant the tribunal considered that they may require an additional premium, at the very least as the Property had been vacant for several years.

The Respondent’s case

27. The Respondent has not filed any statement of case or written to the tribunal to set out why the application was opposed.

The Law

28. Section 168(4) provides that;

“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 covenant or condition in the lease has occurred.”

The Tribunal's decision

29. The tribunal accepted the evidence of the Applicant and the numerous and extensive breaches as set out above and in detail in the statement of Mr Arch. Accordingly it finds that the Respondent is accordingly in breach of the provisions of the Lease set out above.

Name: S O'Sullivan

Date: 5 September 2016