



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

Case reference : LON/00AM/LBC/2016/0109

Property : 60a Geldeston Road, London, E5
8SB

Applicant : Born Property Developments Ltd

Representative : Ms McKearney of Counsel

Respondent : Quantatative Ltd

Representative : Mrs Creer of Counsel

Type of application : Application under s168
Commonhold and Leasehold
Reform Act 2002

Tribunal member(s) : Judge Evis Samupfonda
Sue Coughlin MCIEH

**Date and venue of
hearing** : 25 January 2017 at 10 Alfred Place,
London WC1E 7LR

Date of decision : 6 February 2017

DECISION

Decisions of the tribunal

- (1) The tribunal determines that breaches of the covenants set out paragraphs 8.1 and 11.1 of Schedule 4 to the lease have occurred in that the respondent has replaced the external metal staircase with a wooden one and has installed uPVC window frames and door without the landlord's written consent and without planning permission.
- (2) The tribunal makes the determinations as set out under the various headings in this decision.

The application

1. The applicant seeks a determination pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002, which provides:

“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.”

This is a necessary pre-cursor to the service of a notice under section 146 of the Law of Property Act 1925 prior to the forfeiture of the lease by the landlord.

The premises and the lease

2. 60a Geldeston Road is an upper floor flat situated in a terraced Victorian age property comprising two flats. The applicant is a limited family run company that purchased the freehold including that of the ground floor No. 60 at an auction on 9 January 2015. The respondent is the leasehold owner of the 1st and 2nd floor upper flat. The lease was made between Olive Ada Rice, the previous freeholder who had previously occupied the ground floor flat and London & District Housing Ltd for a term of 125 years from 30 October 2013. At the time of purchasing the freehold, Mr Harkins, Director of the applicant said that he was aware that the respondent had approved planning permission to convert the loft space.
3. The tenant covenants to observe and perform the covenants set out in Schedule 4 of the lease. In support of its application the applicant relies on Paragraphs 8.1 and 11 of Schedule 4 to the lease. At Paragraph 8.1 the tenant covenants “Not to make any external or structural alterations or additions to the property.....without the prior written consent of the Landlord, such consent not to be unreasonably withheld or delayed and subject to all planning and other statutory consents required for the works being obtained by the tenant before such work is commenced provided that no such consent shall be required to convert

7. Each party prepared their own hearing bundle that contained witness statements and attached various correspondence and photographs. Mrs Creer provided a skeleton argument on the day of the hearing. After the hearing had concluded, the tribunal received additional representations via an email dated 26 January 2017 from the respondent's solicitors. This was copied to the applicant who was invited to make written representations on it. In an email dated 27 January 2017, the applicant objected to the tribunal receiving further evidence in this manner. The tribunal considered the parties submissions and decided that it was neither fair nor just for it to permit this document at this stage as it was provided after the hearing had concluded and therefore the respondent had not complied with the directions dated 8 December 2016. Furthermore there was no explanation given as to why this information could not have been provided earlier.
10. The tribunal heard detailed evidence and submissions made by Counsel. We also had the benefit of substantial background information and historical chronology of events as well as photographic evidence. However, given the rather narrow question that the tribunal is required to determine by the application that is; whether or not breaches of covenants of the lease have occurred, this decision focuses only on the salient points made that the tribunal considered relevant in assisting it to determine that question. The tribunal has also set out below a summary of the evidence that the tribunal relied upon.
11. Mr Harkins gave evidence to the tribunal that alterations were carried out without the applicant's consent and in breach of planning permission. The salient points that he made were that he visited the property on the day it was purchased, he did not notice the condition of the windows and doors at that stage but the staircase in situ was made of wrought iron with minor dilapidations. At subsequent visits, he noticed that the staircase had been replaced by a softwood version, white uPVC cladding and uPVC windows fitted to the dormer extension and the original timber sash windows had been replaced with white uPVC. He told the tribunal that he sought advice from the planning department and noted that planning permission had not been granted in respect of the uPVC windows and door. He explained that he had discussions with Mr Page acting on behalf of the respondent about rectifying the breaches but for various reasons the only breach that was remedied was the change of the cladding around the dormer from uPVC to tile to match the roof. He said that the applicant has now taken the decision to reinstate the metal staircase. Mr Harkins produced a property information pro-forma completed by the previous freeholder at the point of sale of the freehold dated 10 November 2014, which he relied upon in asserting that the freeholder could not have granted permission in light of the answers that she had provided on that form as well as the fact that there were arrears on the service charge account.
12. Mrs Sullivan said that she also visited the property several times and had discussions with Mr Page about rectifying the breaches. She said

that she did not notice the condition of the windows at her initial visit as at that stage her primary concern was in inspecting the ground floor that the applicant was considering letting out. She said that she did not know when the alterations to the windows and staircase were carried out.

13. Mr Page did not dispute that the respondent had carried out the alterations in issue. He showed the tribunal a photograph of the property as described in the Saville auction catalogue with uPVC windows and a photograph with timber sash windows. He said that the uPvc windows and door were installed before the applicant purchased the freehold. He said that the respondent was granted verbal consent by the former freeholder. He said that this information was not previously disclosed to the applicant on the advice of the respondent's lawyers as they advised that verbal consent could not be used. He then referred the tribunal to a letter dated 9 January 2017 from Ravi Patel whom he described as being an employee, a foreman of the respondent responsible for visiting sites to manage any work being carried out. He could not explain why Mr Patel had not provided a witness statement or attended this hearing, as he remains so employed. He added that he had no first hand knowledge of whether or not verbal consent was granted by the former freeholder. He also said that as far as he was concerned, he was not aware of any breach of planning in relation to the new windows or that the respondent had received any enforcement notice or other notice from the local planning department relating to the windows.

Tribunal's decision

14. The tribunal considered the terms of the lease in particular the tenant's covenants as set out in paragraphs 8.1 and 11.1 of Schedule 4 to the lease. On the evidence before the tribunal, the tribunal determined that the following breaches of covenant have occurred:
 - (i) In relation to the staircase and uPVC window frames and door, the tribunal determined that the respondent had breached both paragraphs 8.1 and 11.1 of the lease. There was no dispute between the parties that the respondent had carried out the alterations as set out above. The tribunal was provided with photographic evidence of the metal staircase and timber sash windows before and after the respondent had replaced staircase with a wooden one and installed the uPVC window frames and door. The tribunal formed the view that these are clearly structural alterations that required the landlord's consent in accordance with paragraph 8.1. Therefore the issue for the tribunal is whether the landlord granted that consent. Mr Harkins, on behalf of the current landlord confirmed that the applicant did not consent to these works being carried out. He also said that he did not believe that the previous Freeholder granted consent. The respondent asserted that the former Freeholder granted oral consent. At the hearing, the only

document relied upon by the respondent is the letter dated 9 January 2017 from Ravi Patel as evidence that the former Freeholder, Olive Ada Rice granted verbal consent for the alterations to be carried out. This letter stated as follows:

“Dear Sir,

I visited 60a Geldeston Road to discuss the property with the Freeholder Olive Ada Rice. I met her in person and we spoke about the property.

We discussed the windows at the property which were old and damaged. I told her we would be replacing all the windows with new uPVC double -glazing, she had had no objection to this and was happy for us to do so.

We also discussed the rear staircase which was rusted and unsafe, she told me she was also happy for us to replace this staircase with a new timber staircase.

Yours sincerely

Ravi Patel.”

In the tribunal’s judgement, very little weight can be attached to this document for a number of reasons. Mr Patel did not attend the hearing and was therefore not available to give evidence and be cross-examined in order to provide any explanation regarding the circumstances that led to up to the said verbal consent being granted. There is very little detail in the letter. For example, it does not explain under whose instructions Mr Patel was acting, in what capacity he was acting and whether he had the respondent’s authority to so act. The letter does not provide any detail of when and where they met, what transpired between Ravi Patel and Olive Ada Rice or when she gave her consent. The lease requires written consent and it is unclear whether Ms Rice waived her legal right under the lease to grant written consent. In fact there is no independent evidence to establish that the meeting ever took place. In addition, the tribunal considered the letter with a degree of circumspect in the light of the fact that despite lengthy correspondence between the parties regarding the issues in dispute, this information was only recently disclosed and Mr Patel did not make a signed witness statement. Whilst the tribunal accepted that in certain circumstances, verbal agreement could be legally binding, we considered that given the paucity of detail in the letter provided, there is insufficient evidence upon which the tribunal could be satisfied that that the former Freeholder gave verbal consent for the alterations to be carried out and the letter does not go far enough to support the respondent’s assertion that verbal consent was granted.

Mr Harkins and Mr Page gave evidence regarding their views of Ms Rice's conduct from which they invited the tribunal to infer (from Mr Harkins' point of view) that she did not grant verbal consent and (from Mr Page's point of view) that she did grant consent. Neither Mr Page nor Mr Harkins managed to persuade the tribunal because very little weight could be attached to the evidence as it was no more than mere speculation on both their parts.

Therefore in the absence of any evidence to demonstrate that the landlord granted written consent as required by paragraph 8.1, the tribunal was bound to conclude that the alterations were carried out in breach of the said paragraph. The tribunal noted the reasons advanced by the respondents for carrying out the alterations but considered that whether or not the actions were justified was not a relevant factor for us to take into account in determining whether or not a breach of the lease has occurred. Furthermore, the tribunal did not consider the parties' subsequent conduct and discussions as to how the breaches could be remedied were relevant factors in determining this question.

15. In relation to paragraph 11.1 "Compliance with Laws and Notices" the tribunal relied on the emails from the London Borough of Hackney Planning Department dated 25 January 2016 and 13 April 2016. In the email dated 25 January 2016, to the applicant, a planning officer confirmed that "the replacement of a period feature cast iron staircase to the rear of the property for a timber framed staircase is considered to be a material change.....is unlawful without planning consent." It also stated "failure to install timber sash windows in favour of uPVC to the rear extension... and additional installation of uPVC windows to the first floor is unlawful." The email dated 13 April 2016 referred to the replacement staircase as an "unauthorised development" and regarding the windows the email stated, "unfortunately the existing has been replaced with uPVC windows which required planning permission. Thus again this is an unauthorised development rather than breach of a condition." The tribunal considered that the emails constituted reliable and sufficient evidence for it to conclude that planning permission was required prior to the alterations being carried out.
16. The tribunal also noted that the respondent has now made a retrospective consent planning application that has been described as a "belt and braces approach" to resolve all matters and not an admission of any breaches. We were informed that the application has been recommended for approval and a decision to that effect is imminent.
17. With regards to the loft conversion, the tribunal determined that a breach of paragraph 11.1 had occurred in respect of the installation of uPVC windows. The planning decision notice dated 14 November 2013 clearly indicated that permission was granted on the condition that the "Development was carried out and completed strictly in accordance with the submitted plans." The materials proposed in the submitted

plans proposed timber double hung sash windows. The applicant conceded that the loft conversion did not require the landlord's consent.

18. The tribunal therefore concluded that breaches of covenant have occurred for the reasons set out above.

Name: Judge Evis Samupfonda **Date:** 6 February 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office, which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).