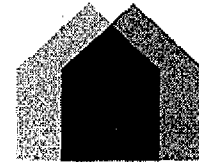


LON/00AC/LBC/2006/0014



Residential  
Property  
TRIBUNAL SERVICE

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
FOR THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
ON AN APPLICATION UNDER SECTION 168(4) OF THE  
COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

**Applicant:** Mrs L M Matthey

**Respondents:** Mr Shkelqim Mahmutaj  
Mrs Alketa Mahmutaj

**Address of Property:** 47 Luther Close  
Edgware  
Middx  
HA8 8YY

**Application date:** 13 March 2006

**Hearing date:** 22 May 2006

**Appearances:** Ms A Becker, solicitor  
Mr A Norman

For the Applicants

For the Respondents

**Members of the Residential Property Tribunal Service:**

Ms E Samupfonda LLB (Hons)  
Mr F L Coffey FRICS  
Mrs L Walter MA (Hons)

## **In the Leasehold Valuation Tribunal**

**Ref Lon/00AC/LBC/2006/0014**

Applicant	Ms L M Matthey
Represented by	Ms A Becker, Solicitor
Respondent	Mr & Mrs S Mahjutai
Represented by	Kidd Rapinet, Solicitors
Premises	47 Luther Close, Edgware, Middlesex HA8 8YY

### **Tribunal**

Ms E Samupfonda  
Mr F Coffey  
Mrs L Walter

### **Introduction**

1. This was an application by the landlord, the freehold owner of the premises, for a determination under section 168(4) of Commonhold and Leasehold Reform Act 2002 (the Act) that breaches of the lease have occurred. It was alleged that the respondents had erected a building without the landlord's consent or planning permission. The respondents had also erected a satellite dish and spotlight to the building causing a nuisance to the upper floor lessee.
2. An oral pre trial review was held on 6<sup>th</sup> April 2006. Neither party attended but submitted suggested directions. Directions were accordingly issued.

### **Hearing**

3. At the hearing on 22<sup>nd</sup> May 2006, the applicant was represented by Ms Becker, accompanied by Mr Norman, the applicant's property manager. The respondents were not present or represented. The Tribunal had before it their representations and statement of case as well as their solicitors additional correspondence dated 17<sup>th</sup> and 18<sup>th</sup> May 2006, The Tribunal considered the respondents' request that this hearing be adjourned until the outcome of their pending appeal is known. It decided that the respondents' planning appeal was not a relevant issue for the purposes of the Tribunal's jurisdiction in determining whether or not a breach has occurred under section 168 of the Act.

4. In summary Ms Becker explained that the respondents had erected a ground floor rear extension (the building) to the demised premises without the landlord's consent or requisite planning permission in breach of clause 2 (l) of the lease dated 18<sup>th</sup> January 1972. She produced a draft deed of variation that the landlord produced in response to the respondents' initial request for the landlord's permission. She added that there was no further communication between the parties regarding this deed and the landlord did not consent or grant a licence permitting the extension.
5. Mr Norman explained that the Local Authority granted planning permission initially but the building that was in fact erected did not comply with its terms. He added that the respondents applied for planning permission for the redesign and consent was refused. The respondents are now in the process of appealing that decision.
6. Ms Becker added that the applicant does not wish to pursue the application regarding the satellite dish and spotlight.
7. Mr Norman said that the landlord did not wish to have the building demolished. He added that, in the event that the Local Authority grants planning permission, the landlord was reluctant to grant a licence if the respondents failed to move the spotlight as this was the source of complaint from Mrs Hyams, the lessee of flat 48 upper floor. His view was that the spotlight was a nuisance even though he had not visited the premises at night or seen the light in operation.

#### 8. Decision

In determining the application the Tribunal had regard to the terms of the lease in particular clause 2(l) and section 168 (4) of the Act. It also had regard to the respondents' correspondence in particular their explanation of events and acceptance that the extension in its current form does not have either planning permission or the landlord's consent. By their solicitor's letter dated 18<sup>th</sup> May 2006 stated that their view was that "they have not flouted, even if they have infringed the lease and/or planning law." They did not expressly admit that there was a breach as such.

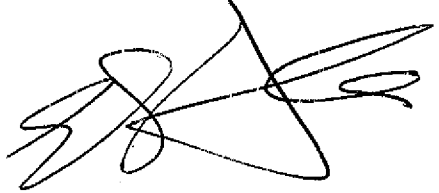
Clause 2(l) provides that the lessee covenants " Not at any time during the said term without the licence in writing of the Lessor first obtained and upon the payment of the sum of five pounds or such additional fee as maybe required by the Lessor.....to erect or place any additional wall, fence building or erection on any part of the demised premises....."

The Tribunal noted the respondents' explanations and reasons for their conduct. However, in determining whether or not a breach has occurred, the facts are that the respondents sought the landlord's

permission and without a licence being granted proceeded to erect the extension. In our view we did not consider that the draft variation of the deed was sufficient to imply that the landlord had in fact granted a licence in accordance with clause 2(l). In addition the respondents made no payments as required by the said clause. In the light of this and upon the strict interpretation of clause 2(l), the Tribunal is bound to determine that the respondents are in breach of clause 2(l) of the lease.

Chairman

Evis Samupfonda



Dated

22<sup>nd</sup> May 2006.