RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	:	**67 Chalkhill, Watford, Herts WD19 4DA**
Applicant	:	**Chalkhill (65-67) Management Limited**
Respondent	:	**Maliha Kabir**
Case number	:	**CAM/26UK/LBC/2010/0006**
Date of Application	:	**23rd August 2010**
Type of Applications	:	**Application for determination under s.168(4) Commonhold and Leasehold Reform Act 2002 that the Respondent is in breach of a covenant or condition in a lease**
Date of (Paper) Hearing	:	**20th December 2010**
Tribunal	:	

Mrs. Joanne Oxlade — **Lawyer Chairman**
Mrs. Helen Bowers BSc. (ECON) MRICS MSc — **Valuer Member**

DECISION

For the reasons given below the Respondent ("Lessee") is in breach of the covenant set out in Clause 4(9) of the Lease of the property 67 Chalkhill, Watford, Herts, WD19 4DA dated 30th January 1958.

REASONS

Background

1. On 17th May 2004 Chalk Hill (65-67) Management Limited ("the Lessor") bought the freehold of premises known as 65, 65A, 67, and 67A Chalk Hill, Watford, WD19 4DA, a block of 4 2-bedroom flats.

2. On 5th January 2006 Maliha Kabir ("the Lessee") bought a lease made between Lawrence Read and Arthur Herbert Beacon on 30th January 1958 of 67 Chalk Hill, a ground floor 2-bedroom flat. By clause 4(9) of the lease the Lessee covenanted as follows:

   "Not to make any alteration in the demised premises without the approval in writing of the Lessor to the plans and specification thereof and to make all such alterations in accordance with such plans and specifications....".

3. The Lessor says that the Lessee erected a single storey extension without seeking the approval of the Lessor and so in breach of clause 4(9) of the lease. Further, that she admitted to making the alterations in letters dated 15th February and 10th March 2010 - but said that she had not been aware that she needed the Lessor's consent.

4. The Lessor says that the matter has been ongoing since 2009, without resolution, and wishes to issue a notice pursuant to section 146(1) of the Law of Property Act 1925 which could lead to forfeiture of the lease. However, before doing so a Lessor is required by section 168(4) of the Leasehold Reform and Commonhold Act 2002 to seek a finding from the Leasehold Valuation Tribunal ("LVT") that there has been a breach of the terms of the lease, and which provides as follows:

   "s168(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
   (c) .....
   (3) .....

(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".

5. Accordingly, on 23rd August 2010 an application was issued by the Lessor for the LVT to make a findings that there had been a breach of the lease. The Lessor elected for the matter to be considered on the papers, and pursuant to directions made on 31st August 2010 filed a bundle of documents which we have carefully read and considered.

Evidence

Lessor

6. The Lessor relied on two witness statements of David Michael Fisher made on 20th September and 11th November 2010, and the correspondence between the parties which included photographs showing an internal and external view of the extension.

7. Mr. Fisher says that he is the Lessee of 67a Chalk Hill, a shareholder and Director of the Lessor Company, and that the Ms. Kabir is both the Lessee of flat 67 and also a shareholder of the Lessor Company. In 2009 the Lessee started work on her flat, removing an old porch and having building supplies delivered, although there had been no indication that she planned to do so. No application for planning permission had been made before the work was started, and by November 2009 when the work had been substantially completed, retrospective consent was sought. On 22nd October the Lessor's Solicitors wrote to the Lessee, pointing out that the extension was a breach of the lease, and that she in the first instance she should liaise with the co-shareholders of the Management Company and carry out no further works. It appeared that an application for planning permission was then made, and granted, but that there were issues with compliance with Building Regulations. An additional issue was whether the extension had been built on land which had not been demised to her (but to Mr Fisher). The Lessee admitted that she did not have the consent of the Lessor, that she made a mistake, and that she sought retrospective consent from the Lessor. However, that consent was not given, and despite various meetings and further correspondence, the matter has not been resolved. The Lessee continued with the works, and engaged the services of a structural engineer to try to resolve it, but without success. These proceedings are therefore a continuation of the dispute which the parties have not resolved.

Lessee

8. The Lessee did not make a witness statement, but relies a letter from her dated 1st November 2010 and an unsigned statement of Alan Rigby CEng. MIStructE dated 18th October 2010.

9. Mr Rigby makes the following points;

- the property was built in the 1950's and the leases were drafted then, which are not in keeping with modern standards, and breach the Party Wall Act 1996 and the Human Rights Act as to proper living accommodation and quiet enjoyment
- all flats, though designed as 1-bedroom flats, now have 2 beds, and he is doubtful that the Lessor gave written permission to do so
- Mr. Fisher has a porch of recent construction, and there are appendages on either side of the building which may not have written permission
- The Lessee's extension has been built on her demise, and has obtained retrospective planning consent (though as it came within permitted development rights, this was not necessary)
- Building Regulation approval had been given and it is built to a satisfactory standard
- The Lessee would be content for Mr Fisher to extend his flat, using her extension as the base of this
- The flats are too small by today's standards and all should welcome the opportunity to upgrade
- The Lessee apologises to all for long and protracted discussions
- The Lessee has been subject to the worst discrimination or injustice that he has seen, and has offered his services free of charge.

Decision

10. The Lessee has not disputed that she is bound by a terms of her lease, nor that she is in breach of its terms as alleged. We find that she failed to obtain written permission from the Lessor to carry out works and to do the works according to the plans which should have been submitted to the Lessor.

11. The points made on her behalf by Mr. Rigby are not matters which we can take into account. The case of **GHM (Trustees) Limited v Glass and another [LRX/153/2007]** makes clear that the function of the LVT is simply to determine *whether* a breach of the lease has occurred – not whether or not the breach is continuing, nor whether it is material nor whether the grant of relief from forfeiture should be granted. Those are matters for the County Court to consider once a section 146(1) notice has been served, and once the Lessor issues proceedings there. The County Court will hear the points made by the Lessee or on her behalf and determine whether or not to grant forfeiture, and (if an application is made) the terms on which a relief from forfeiture might be granted.

Summary Conclusion

12. For the reasons given above we have found that the Respondent ("Lessee") is in breach of the covenant set out in Clause 4(9) of the

Lease of the property 67 Chalkhill, Watford, Herts, WD19 4DA dated 30th January 1958.

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Joanne Oxlade
Chairman
20th December 2010