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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/26UK/LBC/2018/0010**
Property	:	36A Purbrock Avenue, Watford WD 25 0AD
Applicant	:	Goodwyn Realty Limited
Representative	:	Katrina Hanstock (counsel), instructed by Howard Kennedy LLP
Respondent	:	Abdolreza Bahramian (in person)
assisted by	:	Hamed B Mand and Michael Toy
Type of Application	:	For a determination that a breach of covenant or condition in the lease has occurred [CLRA 2002, s.168]
Tribunal	:	G K Sinclair & R Thomas MRICS
Hearing date and venue	:	Monday 16th July 2018 at Holiday Inn, Watford
Date of decision	:	6th August 2018

DECISION

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1. For the reasons which follow the tribunal determines that the respondent lessee has breached the following covenants in the 2nd Schedule to his lease :
   a. Paragraph (7) — Not to injure cut or maim or suffer or permit to be injured cut or maimed any of the walls or timbers of the demised premises and not to exceed the safe floor loading thereof and not save after submission of plans and with the previous consent in writing of the landlord make or suffer to be made any structural alterations or additions whatsoever to or sub-division or partitioning of the demised premises
   b. Paragraph (9) — Not without the consent in writing of the landlord to erect or suffer or permit to be erected or thereafter to remain on any part of the land edged red on the said plan any building or structure whatsoever and not to display on the demised premises or in the windows thereof any placard sign or similar thing
   c. Paragraph (20) — At any time on notices being issued by the local or other appropriate authority relating to the demised premises to comply with the requirements of the same within a reasonable time and to the satisfaction of the said authority and the landlord.

2. The tribunal is not satisfied that the respondent has also breached the covenant in paragraph (24), namely :

   To comply in relation to the demised premises with the requirements of any statute relating thereto or the use thereof and of any regulations or orders issued thereunder and whether responsibility be allocated to the owner or to the occupier of the demised premises and to keep the landlord fully indemnified at all times against all costs claims or demands arising out of the state of repair or condition of the demised premises

   because :
   a. As a matter of planning law the structure erected may, due to its scale, have come within the definition of "permitted development" for which no planning permission was required, and in respect of which enforcement proceedings could therefore have been (but were not in fact) challenged
   b. The respondent had largely complied with the enforcement notice by demolishing the structure and partially reinstating the premises, and
   c. The time limit for complete compliance, including reinstatement to the satisfaction of both local authority and landlord, had not yet expired.

Background

3. The applicant is the freehold owner of what to outward appearances seems to be a semi-detached house on a quiet residential cul-de-sac off the A41 North Western Avenue in Watford. In fact it comprises two flats : one on the first floor and the subject premises on the ground floor, accessed via a door at the side. The premises were let for a term of 99 years from 14th April 1982 by a lease of the same date. By a deed of variation made between the applicant as landlord and Mary Buckley as tenant and dated 12th January 2017 the term was extended so as to expire on 28th September 2141. As this was a non-statutory lease extension the parties agreed to significant periodic increases in ground rent.

4. On 17th August 2017 the respondent, an Iranian national with seemingly limited grasp of English, became tenant by assignment and was registered as such at the Land Registry on 12th September 2017. At pages 126–128 in the hearing bundle appear professionally drawn architectural plans for a substantial rear and side

extension. They are dated 1st November 2017, and were intended to be used in connection with an application to the local planning authority, Watford Borough Council, for planning permission. Before any such application could be made, however, the respondent took it upon himself over the Christmas period to build a temporary timber rear extension, in the course of which he cut through the centre of a bay window to form a doorway from one room into the extension, and created a new opening in the external wall of an adjoining bedroom to form another doorway. He also removed an external shed by the rear corner.

5. At no stage had the respondent obtained the written consent of his landlord to the proposed extension or to the works that he had actually carried out. Alerted by concerned neighbours, the local authority inspected and, after initially writing to the respondent on 5th January 2018 and to the applicant freeholder on 7th February, on 4th April 2018 it issued an enforcement notice which was served on both landlord and tenant. This took effect on 4th May 2018 and required work to be carried out within three months thereafter (i.e. by 4th August 2018) to :
   a. Remove the single storey rear extension shown outlined and hatched lue on Plan A attached to the notice
   b. Reinstate the bay window at the rear of the property
   c. Remove the unauthorised doorway from the existing rear bedroom (as indicated in red on Plan B attached to the notice) and reinstate the external wall
   d. Remove from the land all building materials, rubble and waste resulting from compliance with the requirements of [the above steps].

6. Separately, the applicant wrote to the respondent on 16th January, advising him that any alterations had been undertaken without his landlord's consent, and asking for details of the unauthorised works. No written response was received, so the applicant instructed solicitors and, still without a response, on 20th April 2018 issued this application. Directions for trial were issued on 14th May.

7. Three days previously, on 11th May, the respondent and members of his family attended at the applicant's offices and asked for two months in which to remove the unauthorised works. By email dated 15th May (also copied to the tribunal) the respondents' structural engineer, Mr Vaziri, informed the respondent that it was proposed to demolish the structure on Friday 18th May and both applicant and tribunal were invited to attend and witness this. The tribunal did not attend, and demolition did not take place until much later.

Relevant statutory provisions

8. Section 168 of the Commonhold and Leasehold Reform Act 2002 provides :
   (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 (restriction on forfeiture) 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.

(3) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(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) ...

9. Section 169 contains supplementary provisions, none of which are material to this decision.

10. The question whether a lease is forfeit remains one for the court, as is the exercise of its discretion to grant relief against forfeiture; an issue which in the context of a long lease is usually of considerable concern to any mortgagee of the tenant's leasehold interest.

Inspection and hearing

11. The tribunal inspected the subject premises at 10:00 on the morning of the hearing. Also present were representatives of the applicant, Ms Hanstock (their counsel), Mr Bahramian, and his friend Mr Hamed B Mand. His son was also in bed in a bedroom to which the tribunal required access.

12. The walls and roof of the timber structure visible in colour photographs taken earlier had been taken down and stacked against the side of the garage, which the respondent admitted had also been lifted bodily and moved about 1 metre away from the house and its original position. What was left was a crude timber deck about 200–300mm above ground level, a blocked up and roughcast rendered wall where the door to the bedroom had been, and something similar reinstating the bay window. On the inside of each, however, was timber (which on the inside of the bay had been plastered). Concern was expressed about the adequacy of this supposed reinstatement, and especially whether there were lintels supporting the external walls above. Not having been inspected either by the landlord's surveyor or the local authority's Building Control department, the nature of these structures was now concealed from view. When tapped, however, they sounded hollow.

13. Where once at the rear corner of the building there had been a small shed there were now obvious signs of where its walls had connected with the main rear wall of the building, and of the pad on which it had formerly rested. Along this wall were many large white dabs of adhesive, suggesting that a sheet or sheets of plywood timber lining to the former extension had been glued directly to the wall.

14. At the hearing the tribunal had before it a bundle comprising the application, the tribunal's directions, a copy of the lease, a witness statement by Trisha Cherkis on behalf of the applicant, relevant correspondence between the parties and with Watford Borough Council (including its enforcement notice), and many photos taken by both sides. There was no statement of case by the respondent, nor any witness statement by him.

15. The tribunal was concerned at the outset about the respondent's failure to engage

with the proceedings by setting out any written case, or to seek legal advice, and especially about his ability to comprehend what was going on. He had beside him Mr Toy, who spoke no Farsi but was able to explain to Mr Mand (whose English seemed adequate) what was being said, and Mr Mand then translated this for Mr Babramian. The tribunal adjourned for half an hour to allow the two of them the opportunity to read and explain Ms Cherkis' statement (ignoring exhibits) to him.

16. Given that the respondent had largely removed the unauthorised structure, and could not point to any written consent to its erection, the only dispute between him and Ms Cherkis was really whether, when he attended her offices (more often than she admitted to), he had kept her informed of what he intended to do and that she had (at least implicitly) given him oral permission for it.

17. As a result of the inspection questions were raised, both by the applicant and the tribunal, about who had carried out the work and how exactly reinstatement had been undertaken. Mr Babramian said that he bought the flat in August 2017 and immediately said that he wanted to extend the property. In September he called on the services of an architect, Tomi Adebayo, who measured up and said that 4 weeks after putting in the planning application – which was also communicated to the landlord – the respondent could start. The initial application was for a conservatory, not an extension *per se*. In fact the first mention in the bundle of a planning application appears in a letter dated 18th January 2018 from Watford to the respondent's neighbour at 36 Purbrock Avenue, inviting comment.

18. The respondent had started to erect the temporary wooden structure himself at Christmas 2017. The tribunal queried why he would do so if he knew that he would soon have to take it down again in order to build the permanent extension. It was put to him by the tribunal that if he had no written permission to cut through the bay window and make a door, or to erect a temporary structure, or to remove the shed, then he was in breach of his lease. Asked whether he had permission in writing to do this work he admitted that he had not.

19. The respondent also said that, together with 2 handymen, he was responsible for the reinstatement. The bay window was reinstated using studwork, metal lath and plaster on both the outside and inside. The door in the corner was replaced with bricks, with plasterboard on the inside.

20. For the applicant Ms Cherkis said that it was not satisfied about the quality of the reinstatement. On a previous inspection the door had been blocked up with timber. The window was not secured properly. She had been advised that if the wall had been brick originally then it had to be replaced with brick. If the local authority's Enforcement Notice is not signed off then the landlord is not happy, as it will not be a proper reinstatement.

21. In conclusion Ms Hanstock submitted that the only breach not admitted is that concerning non-compliance with any statutory requirement, namely the need for planning permission. The respondent had denied that there was any need for it, but she argued that there was – and that the work had commenced without it.

Findings

22. Where there was conflict between the respondent and Ms Cherkis about the

number of meetings between them at her office, and whether she had been kept informed of his plans, the tribunal has no hesitation in preferring her account. If she had known of his intention to build a temporary structure one would have expected her to ask for details much sooner than February 2018.

23. The tribunal is also not convinced about the respondent having made an initial planning application for a conservatory. That is most likely not to have needed any permission, as in most cases conservatories are allowed under "permitted development". What puzzles it is why, with plans for a solid and well-designed extension being drawn up at the beginning of November and submitted to the local planning authority at around the end of the year, the respondent should have started to erect a sub-standard "shack" using a timber frame, a mixture of ply and sterling board and no insulation – all of which would have to be cleared in order to start work on the proper extension once permission was granted.

24. There can be no question that the respondent, almost certainly unfamiliar with the limitations imposed on tenants by the terms of their leases, did not have the written or any other form of consent of his landlord to cut through the rear bay window, to create a new opening from the bedroom, and to erect the temporary structure that he began at Christmas 2017. Had he been properly advised he would have asked his architect to submit his plans to the landlord for approval and then apply for planning permission. There is a possibility that the landlord would have approved the architect's plans, if necessary after obtaining answers to some technical queries about the support to be provided when removing the bay window, etc. There would have been no chance of obtaining consent for what was actually erected.

25. As the tribunal comprises a lawyer and a planning consultant the only concern it has is whether, with the scale of what was constructed, planning permission was necessary at all. It seems arguable that it would be permitted development for planning purposes, even if Building Control might be appalled by the quality of what was erected. The respondent, if properly advised, might therefore have successfully challenged Watford's service upon him of an Enforcement Notice. For these reasons only, the tribunal determines that the respondent has breached the covenants set out at paragraphs (7), (9) and (20) of the 2nd Schedule to his lease.

26. However, it is not satisfied that, in building without planning permission being in place, a breach of paragraph (24) has been proved. As at the hearing date the period during which the Enforcement Notice had to be complied with had not yet expired, allowing the respondent ample time to ensure that reinstatement was to a satisfactory – and provably satisfactory – standard. He was urged to have the work inspected and/or to take stage by stage photographs of the progress of such works.

27. Finally, the respondent should note that the court has held that "erect" should be construed as meaning to raise above the level of the ground, and "structure" as comprising static, inert material.[1] The crude decking that remained when the premises were inspected may therefore require the landlord's consent if it is to achieve any degree of permanence.

[1] See *Kemshead v Dutton* (unreported – Chancery Division, 13th December 2002)

Dated 6th August 2018

Graham Sinclair

Tribunal Judge