



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

Case reference : LON/00BH/LVT/2021/0006

**HMCTS code
(paper, video,
audio)** : P: PAPERREMOTE

Property : 35 Chingford Road, London, E17 4PW

Applicant : Estival Limited

Representative : Property Management Legal Services
Limited

Respondent : Hadleigh Investments Group Limited (1)
Manjit Mandra (2)

Representative :

Type of application : Variation of a lease under s35 Landlord
and Tenant Act 1987

**Tribunal
member(s)** : Judge Dutton
Mr C Gowman MCIEH MCMI
BSc

Venue : 10 Alfred Place, London WC1E 7LR by
paper determination

Date of decision : 8 December 2021

DECISION

Covid-19 pandemic: description of hearing

This has been a remote determination on the papers which has been consented to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on paper. The

documents that the Tribunal were referred to are in a bundle of 66 pages, the contents of which have been noted.

DECISION

The tribunal agrees to the amendments to the leases of flats 35A and 35B Chingford Road, London E17 4PW (the flats) under the provisions of section 35(2) of the Landlord and Tenant Act 1987 as set out on the schedule annexed to the applicant's undated further submissions received at the tribunal on 5 October 2021 and as annexed hereto.

We exercise our powers under Rule 50 to correct the clerical mistake, accidental slip or omission at paragraph 14 of our Decision dated 8 December 2021. Our amendments are made in red. We have corrected our original Decision because of the difficulties with dealing with the variation raised by the HM Land Registry, in the hope that the correction will resolve the issue.

Signed: Judge Dutton

Dated: 19 October 2023

BACKGROUND

1. By an application dated 1 June 2021 the applicant, Estival Limited, through Property Management Legal Services Limited (Ms Cassandra Zanelli, solicitor), sought to amend the two leases at the property 35 Chingford Road, London E17 4PW (the Property).
2. In Preliminary Submissions it is asserted on behalf of the applicant, who is the owner of the freehold of the Property, that the two leases fail to make satisfactory provision for the matters referred to at section 35(2) of the Landlord and Tenant Act 1987 (the Act),
3. In particular, it is said that following the Grenfell tragedy greater emphasis has been placed on fire safety and that the leases are deficient in this regard. This is set out fully at paragraph 3 of the Preliminary Submissions where it is said that section 35(2)(c), (d) and (e) are relevant. In respect of subsections (c) and (d) the factors to be considered are to be found at section 35(3) and in particular the safety and security of the flat and its occupiers and of any common parts of the building containing the flat.
4. It is said that the Regulatory Reform (Fire Safety) Order 2005 (FSO) as amended by the Fire Safety Act 2021, whilst not generally applying to domestic premises, does have relevance in this case there being two or more domestic premises in the Property, and is in relation to the structure, common parts and doors between the

flats and the common parts. The submission goes on to highlight the responsibility of the applicant in regard to the FSO and the liability that the respondents may also have.

5. There is concern as to the lack of access to the flats and the lack of responsibility on the part of the respondents and their successors to comply with the FSO and the potential difficulty in the recovery of any costs the applicant may incur in fulfilling its obligations. It is said that the variations sought would
 - Place obligations on the parties to comply with all statutory provisions relating to the flats, and the Property
 - Enable the recovery by one party from another of expenditure incurred or to be incurred in compliance
 - Allow the applicant to carry out inspections and or works it is required to undertake and
 - The recovery of any costs incurred in such work
6. When the matter first came before us for consideration on 1 September 2021 there were concerns about the numbering of the proposed variations, which did not accord to the numbering of the existing leases for the flats. In addition, having reviewed the two leases there appear to be wrongful use of 'upper' and 'lower' flat as well as some duplication of wording. We therefore adjourned the determination and wrote to the applicant's representative seeking clarification on these points.
7. Such clarification came in the form of further submissions, which were undated, but received at the tribunal on or about 5 October 2021. It is following these further submissions and a revised schedule of variations that we met to consider the matter further on 8 December 2021. The further submissions corrected the numbering issue, removed some duplicity of terms and combined a clause.
8. Under the heading 'cut and paste' errors we were told that these had been reviewed. As to flat 35A these errors had been picked up in 2014 and a Deed of Variation entered into correcting the erroneous use of 'upper' and 'lower' flat. We have had the chance to see the Deed which is dated 23 September 2014 and made between Dalkator Limited (1) And Mr Shafaqat Hussain (2). It would seem that these may have been the predecessors in title of the applicant and Hadleigh Investment Group. It would appear to correct these errors and includes an amended clause 1(f).
9. In fact, the lease for flat 35B does not appear to be so inflicted with the erroneous use of 'upper' and 'lower' flat definitions and requires little in the way of variation to amend these drafting errors.

FINDINGS

10. We have considered the provisions of section 35(2) and (3) of the Act. We are satisfied that the parties do have responsibility under the FSO and indeed other regulations that may impact on the use of the Property. It is unclear whether there are satisfactory fire prevention elements at the Property in the way of fire doors between the flats and common parts. In addition, it may be that some form of smoke/fire alarm system needs to be considered. The obligation in respect of such works can now be covered under the variations as can the recovery of the costs of compliance.
11. Accordingly, we are satisfied that the provisions of section 35(2)(c), (d) and (e) apply and that the basis for such determination under section 35(3) are made out. We have also had confirmation from Dr Khan on behalf of Hadleigh Investment Group that the respondent does not challenge the variations sought, although this would appear to relate to variations under section 35 rather than the 'cut and paste' changes, remembering of course that the lease to flat 35A has already been corrected.
12. As to the 'cut and paste' errors we find that we can approve the variations under the terms of section 35(2)(a) to remove any uncertainty as to the repair and or maintenance of the Property.
13. We do not appear to have representations from Mr Mandra nor his mortgagees Birmingham Midshires, who acknowledged receipt of the application, but it is unclear whether they have been advised of the proposed 'cut and paste' corrections. Accordingly, we direct that they must be provided with a copy of this decision and the schedule of changes within 14 days of the date the decision is sent to the applicant's representative who must confirm with us that this has been done.
14. The changes we endorse, with some amendments are shown on the attached schedule. It will be for the applicant to ~~complete the varied leases and lodge them at the Land Registry.~~ *lodge the Tribunal's determination and schedule of variations so the variations can be recorded at the Land Registry.*

Andrew Dutton

Judge Dutton

8 December 2021
19 October 2023

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).

Schedule of Variations/amendments

Insertion of Clause	Clause wording
Insertion of Clause 2 (v) We have inserted the wording from 2(v) below, in part as the obligation to repair and maintain the Building is set out in clause 2(g). We have also changed the order of the clauses	<i>“The Lessee hereby covenants with the Lessor to comply at the Lessee’s own expense with all relevant statutes bye-laws regulations guidance and any other requirements of any competent authority requiring any alteration addition works or modification to the Building PROVIDED THAT if the Lessee shall at any time make default in the performance of any of the covenants hereinbefore contained relating to the compliance with any statute bye-law regulation guidance or any other requirement of any competent authority the Lessor may in its absolute discretion perform such services the cost thereof shall be a debt due from the payable to the Lessor on demand and forthwith recoverable by action.” ”</i>
Insertion of Clause 2 (u)	<i>“The Lessee hereby covenants with the Lessor and as separate covenant severally with the Lessee of the other flat to pay on demand to or to the order of the Lessor without any deduction all reasonable costs and expenses of whatever nature incurred or to be incurred by the Lessor by reason of any requirement on the Lessor to comply with any relevant statute bye-laws regulations guidance or requirements of any competent authority such payment to be made without deduction or set</i>

	off.”
Insertion of Clause 3(f)	“Subject to payment by the Lessee of all reasonable costs charges and expenses the Lessor agrees to comply with all orders notices bye-laws regulations guidance statutes or requirements of any competent authority requiring any inspection assessment alteration addition modification or any other work on or to the Building PROVIDED THAT this shall not operate to convey an obligation on the Lessor to do so.”
Insertion of Clause 2(v)	“To the reasonable satisfaction in all respects of the Lessor the Lessor’s agent or surveyor keep the Building and all parts thereof and all additions thereto in a good and substantial state of repair maintenance and condition through the continuance of the Lease including the renewal and replacement of any parts of the Building that may be required and to comply with any statutes bye law regulation guidance or any other requirement of any competent authority PROVIDED THAT if the Lessee shall at any time make default in the performance of any of the covenants hereinbefore contained relating to the compliance with any statute bye law regulation guidance or any other requirement of any competent authority the Lessor may in its absolute discretion perform such services the cost thereof shall be a debt due from the payable to the Lessor on demand and forthwith recoverable by action.”
Insertion of Clause 2(t)	“To permit the Lessor or anyone acting on authority of the Lessor to enter upon the demised premises to carry out any inspection assessment or work which the Lessor is required to do by notice regulation guidance statutes bye-law or requirement of any competent authority.”

Current clause	Variation of clause shown in red
<p>Clause 2(g) of the lease for 35A Chingford Road, London E17 4PW Ground Floor Flat</p> <p>At all time during the said term to pay and contribute (a) one equal half part of the expense of repairing maintaining and rebuilding the roof foundations and main structure of the building of which the demised premises form part (b) a rateable or due proportion of the expense of making repairing maintaining supporting rebuilding and cleansing all ways passageways pathways sewers drains pipes cisterns gutters party walls party structure fences easements and appurtenances belonging to or used or capable or being used by the Lessee in common with the Lessor or the tenants or occupiers of the premises</p>	<p>At all time during the said term to pay and contribute (a) one equal half part of the expense of repairing maintaining and rebuilding the roof foundations and main structure of the building of which the demised premises form part (b) a rateable or due proportion of the expense of making repairing maintaining supporting rebuilding and cleansing all ways passageways pathways sewers drains pipes cisterns gutters party walls party structure fences easements and appurtenances belonging to or used or capable or being used by the Lessee in common with the Lessor or the tenants or occupiers of the premises</p>

<p>near to or adjoining the demised premises including the lower flat or of which the demised premises including the lower flat or of which the demised premises form part such proportion in the case of difference to be settled by the surveyor for the time being of the Lessor whose decision shall be binding and to keep the Lessor indemnified against all costs and expenses as aforesaid.</p>	<p>near to or adjoining the demised premises including the upper flat of which the demised premises form part such proportion in the case of difference to be settled by the surveyor for the time being of the Lessor whose decision shall be binding and to keep the Lessor indemnified against all costs and expenses as aforesaid</p>
<p>Clause 2(g) of the lease for 35B Chingford Road, London E17 4PW First Floor Flat</p> <p>At all time during the said term to pay and contribute (a) one equal half part of the expense of repairing maintaining and rebuilding the roof foundations and main structure of the building of which the demised premises form part (b) a rateable or due proportion of the expense of making repairing maintaining supporting rebuilding and cleansing all ways passageways pathways sewers drains pipes cisterns gutters party walls party structure fences easements and appurtenances belonging to or used or capable or being used by the Lessee in common with the Lessor or the tenants or occupiers of the premises near to or adjoining the demised premises including the lower flat or of which the demised premises including the lower flat or of which the demised premises form part such proportion in the case of difference to be settled by the surveyor for the time being of the Lessor whose decision shall be binding and to keep the Lessor indemnified against all costs and expenses as aforesaid</p>	<p>At all time during the said term to pay and contribute (a) one equal half part of the expense of repairing maintaining and rebuilding the roof foundations and main structure of the building of which the demised premises form part (b) a rateable or due proportion of the expense of making repairing maintaining supporting rebuilding and cleansing all ways passageways pathways sewers drains pipes cisterns gutters party walls party structure fences easements and appurtenances belonging to or used or capable or being used by the Lessee in common with the Lessor or the tenants or occupiers of the premises near to or adjoining the demised premises including the lower flat or of which the demised premises form part such proportion in the case of difference to be settled by the surveyor for the time being of the Lessor whose decision shall be binding and to keep the Lessor indemnified against all costs and expenses as aforesaid</p>
<p>Clause 3(c) of the lease for 35B Chingford Road, London E17 4PW First Floor Flat</p> <p>That in the event of any sale of the upper flat such sale shall be effected by means of a grant of a lease of the same in the same or similar form to these presents (mutatis mutandis) and containing the like covenants on the part of the Lessee and exceptions and reservations and provisos as are herein contained and until such lease shall have been granted or in the event of any such lease being determined in any ways the Lessor hereby covenants with the Lessee and their successors in title that if the Lessor will observe and perform all the restrictions and covenants in respect of the</p>	<p>That in the event of any sale of the lower flat such sale shall be effected by means of a grant of a lease of the same in the same or similar form to these presents (mutatis mutandis) and containing the like covenants on the part of the Lessee and exceptions and reservations and provisos as are herein contained and until such lease shall have been granted or in the event of any such lease being determined in any ways the Lessor hereby covenants with the Lessee and their successors in title that if the Lessor will observe and perform all the restrictions and covenants in respect of the</p>

lower flat for the time being or from time to time as if the Lessor were a tenant thereof subject to such like covenants exceptions reservations and provisos as are herein contained Provided that prior to any such sale of the flat or in the event of the lease granted on such sale being determined as aforesaid and prior to any re-sale of such flat the Lessor shall not be liable for any breach of the said covenants by an tenant or occupier for the time being of such flat so far as such tenant occupier is in breach if his or her tenancy agreement so long as the Lessor shall use its best endeavours to ensure that such tenant or occupier conforms to the terms upon which he or she holds such tenancy.

upper flat for the time being or from time to time as if the Lessor were a tenant thereof subject to such like covenants exceptions reservations and provisos as are herein contained Provided that prior to any such sale of the flat or in the event of the lease granted on such sale being determined as aforesaid and prior to any re-sale of such flat the Lessor shall not be liable for any breach of the said covenants by an tenant or occupier for the time being of such flat so far as such tenant occupier is in breach if his or her tenancy agreement so long as the Lessor shall use its best endeavours to ensure that such tenant or occupier conforms to the terms upon which he or she holds such tenancy.