



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

Case reference : **LON/00BF/LBC/2023/0024**

Property : **89 Gander Green Lane, Sutton SM1 2EP**

Applicant : **Chancery Lane Investments Limited**

Representative : **Paul Simon of Moreland Property Group Limited**

Respondent : **Acushia Peller**

Representative : **N/A**

Type of application : **s.168(4) of the Commonhold and Leasehold Reform Act 2002– breach of lease**

Tribunal member(s) : **Judge Tagliavini
Ms S Phillips MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **13 March 2024**

DECISION

The Tribunal's decision

1. The tribunal finds the respondent is in breach of clause 13 of the lease dated 3 July 1959 (as varied) due to the construction of hardstanding on the right side of the frontage in place of the front garden area and by reason of the removal of the front (right) boundary wall at 89 Gander Green Lane, Sutton SM1 2EP ('the Property').
 2. The tribunal determines the applicant's costs in the total sum of £4,318.00 are payable by the respondent.
-

Background

3. The subject Property comprises an upper maisonette in a detached house converted into two flats. Since 14/08/2018 the respondent has been the registered leasehold owner of the upper maisonette pursuant to a lease dated 3 July 1959 and a deed of variation dated 25 March 1996.
4. The demise granted to the respondent is described in the leases as,

.....FIRST ALL THAT piece of land situate at Gander Green Lane Sutton in the County of Surrey and which as to its position dimensions and boundaries is particularly shown on the plan annexed hereto and coloured pink AND SECONDLY ALL THAT maisonette known as (sic) intended to be known as 80 Gander Green Lane Sutton aforesaid (being the upper floor of the building now standing upon the piece of land particularly shown on the said plan and thereon coloured blue.....

5. The plan attached to the lease showed a pink area which included the right hand area (looking from Gander Green Lane) coloured pink.

The application

6. The applicant seeks the tribunal's determination as to whether the respondent has breached certain clauses of the lease by the construction of an area of hardstanding and removal of the front boundary wall in order to use the land as a car parking space.

The hearing

7. By a Notice dated 9 October 2023, the respondent was debarred from playing any further role in the application due to her persistent non-compliance with the tribunal's directions dated 17 May 2023 and further

directions dated 12 July 2023 and 14 August 2023. Subsequently, no application for reinstatement was made by the respondent and she remained debarred.

8. As the applicant did not request an oral HEARING, this application was determined on the papers, using the digital bundle of 106 pages provided by the applicant. This included a witness statement of Paul Simon dated

The tribunal's reasons

9. The relevant clauses of the lease state:

Clause 13

NOT at any time during the said term without the licence in writing of the Lessor first obtained to erect or place any additional building or erection on any part of the demised premises other than a shed for domestic purposes only and not without such licence as aforesaid to make any alteration in the plan or elevation of the maisonette building hereby demised or in any of the party walls or the principal or bearing walls or timbers thereof nor construct any gateway or opening in any of the fences bounding the demised premises.

Clause 15

NOT without such license as aforesaid to carry on or suffer to be carried on in or upon the demised premises any upon the demised premises nor to do or permit any act or thing which shall or may be or become a nuisance damage annoyance or inconvenience to the Lessor or his tenants or the tenants of the adjoining premises and in particular of the ground floor maisonette or to the neighbourhood.

10. The tribunal finds that when the respondent purchased her lease the right hand side of the frontage (coloured pink on the plan) was planted with grass and hedges and with a brick front wall separating the frontage from the street. The tribunal finds this was subsequently replaced by hardstanding and part of the wall on the right hand side was removed.
11. The tribunal finds the respondent has not sought to deny having made the alterations alleged by the applicant and finds she did not seek the applicant's permission for these works or notify them of her application for planning permission. In a letter to the applicant dated 29 June 2023, the respondent stated,

'.....all I have done that has changed the front from grass to gravel and removed a broken down wall. Mrs Cannell said she was doing the same so it worked for us to do this to make the property more aesthetically pleasing.'

12. Although the respondent made an application for planning permission from the London Borough of Sutton ('LBS') for the creation of hardstanding to part of the frontage of the Property on 8 August 2019, this was subsequently refused. Although enforcement action was considered by LBS, on 30 March 2023 LBS made the decision that no enforcement action would be taken against the respondent and the case was closed.
13. Despite the lack of enforcement by LBS, the tribunal finds the respondent has carried out works to the front area in breach of the clause 13 where it states:

'...not without such licence as aforesaid to make any alteration in the plan or elevation of the maisonette building hereby demised...'
14. However, the tribunal finds the applicant has failed to demonstrate how the work carried out by the respondent has breached the terms of clause 15

Costs

15. Although no formal application for costs was made in the application, the applicant has sought to claim their costs in the Applicant's Legal Submissions dated 20 December 2023. A Schedule of Costs was attached which claimed the sum of £6,125.00 in legal costs; £300 tribunal fees and £18.00 in land Registry fees. The tribunal considers it is reasonable and appropriate in all the circumstances to determine the issue of costs at the same time as the substantive issues.
16. In its submissions, the applicant submitted that pursuant to clause 3 of the lease the respondent has covenanted to,

FROM time to time during the said term to pay all costs charges and expenses incurred by the Lessor in abating a nuisance on the demised premises ... in obedience to a notice served by a local or other competent authority

And pursuant to clause 17 of the lease, the respondent has covenanted,

TO pay all expenses (including Solicitor's costs and surveyors fees incurred by the Lessor incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than by relief granted by the Court

17. The tribunal finds this application falls within the meaning of clause 17 of the lease but does not accept the lessor has incurred costs in abating any nuisance.
18. In the Summary of Costs, the applicant seeks the costs of Paul Simon, a Grade A Fee Earner fee at the rate of £500 per hour for all work including

the preparation of an index to and compilation of the hearing bundle in a total sum of £4,500. Thereafter, the Schedule jumps without explanation to a sum of £6,125.00. Tribunal fees of £300 are also claimed as well as Land Registry Fees of £18.00. No VAT is claimed.

19. The tribunal determines the reasonable costs payable by the respondent are £4,000 plus £300 (tribunal fees) and £18.00 Land Registry Fees. The tribunal finds it unreasonable for a Grade A fee earner to have prepared an index or hearing bundle and disallows these costs. Further, in the absence of any explanation as to how the figure of £6,125.00 has been reached, the tribunal disallows the difference between this figure and the £4,000 allowed.

Name: Judge Tagliavini

Date: 13 March 2024

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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).