



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

Case reference : **LON/00AW/LBC/2024/0012**

Property : **Flat 6, 19 Palace Gate, London, W8 5LS**

Applicant : **19 Palace Gate Ltd Co. No: 03184817**

Representative : **Mark Gantrey of counsel instructed by
Tom Hopkins and Sophie Ridley of
Russell-Cooke LLP, solicitors**

Respondent : **Pushaun P Chaudhury
Pushaun Paal Choudhury**

Representative : **Did not appear**

Type of application : **Determination of an alleged breach of
covenant**

Tribunal : **Judge Adrian Jack, Tribunal Member
Sarah Phillips MRICS**

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

**Date of decision
and directions** : **1st October 2024
Corrected under the slip rule 9th
October 2024**

DECISION

BACKGROUND

- (1) The Applicant landlord seeks a determination, under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002, that the Respondent tenant is in breach of various covenants contained in the lease of the property dated 1st September 2000 (“the Lease”). In particular, the Applicant asserts in a Statement of Case that the Respondent is:

- i) in breach of clause 5(4) of the Lease, the Respondent has since 2021 failed to permit the Applicant and its agents to enter Flat 6 for the purposes of, amongst other things, inspecting and surveying the roof, clearing the building's gutter, installing a smoke detector and carrying out lift maintenance, whether at all reasonable times in accordance with the aforementioned clause;
 - ii) as set out in the report of Bishop and Associates dated 14 February 2022, in breach of clause 5(2) of the Lease, the Respondent has failed to keep Flat 6, which includes the roof, to the reasonable satisfaction of the Applicant, in good condition and repair, clean and well decorated, and to comply with the notice to remedy his failure so to do issued by the Applicant as a consequence of the Respondent's breach of this clause within 6 weeks of the date of such notice;
 - iii) in breach of clause 5(15)(x) of the Lease, the Respondent has kept a dog in Flat 6 without previous consent in writing of the Applicant; and
 - iv) in breach of clause 5(6) of the Lease, the Respondent has, acted, allowed, caused and/or facilitated in the Building annoyance, nuisance to others, danger and/or prejudice to the Landlord's insurance cover or increase the premium of that cover, by failing to allow access to Flat 6 such that the fire alarm safety panel cannot be certified, lift maintenance work cannot be carried out, lift insurance inspection could not take place and the gutters of the Building cannot be unblocked thus causing mould and damp to develop in Flat 3 of the Building.
- (2) The Tribunal gave directions on 28th March 2024, which were amended on 11th April 2024. In both versions, the Respondent was required to serve his case on the Applicant by 4th June 2024. The Respondent failed to do so.
- (3) The case was listed for final determination on 9th July 2024. The Applicant appeared by solicitor and counsel. The Respondent appeared in person and sought an adjournment. We granted the adjournment for the reasons stated in our decision of that date. We gave directions and reserved all questions of costs until 1st October 2024, the adjourned date of the hearing.
- (4) Since that hearing receivers have been appointed by the second chargee over the flat. The receivers obtained possession of the flat in about August 2024. Both the first and the second chargees are aware of the current proceedings.
- (5) The Respondent did not attend the hearing on 1st October 2024.

BREACHES ALLEGED AND EVIDENCE

1. Pursuant to our directions, the Respondent served his statement of case. The only substantive matter raised by him was a question as to whether

the proceedings had been properly brought by the company. The Respondent is a director of the Applicant. The Respondent referred to a long history of disharmony between himself and two of the directors. Apart from this question as the company's right to bring proceedings, the Respondent merely put the Applicant to proof of its allegations.

2. So far as the question of the company bringing these proceedings is concerned, there was a meeting of directors on 5th September 2024. The Respondent was properly notified of the meeting, but did not attend. At the meeting all steps taken by the Respondent were affirmed, insofar as they needed to be. We are satisfied that these proceedings are properly brought by the Applicant and therefore reject the Respondent's substantive defence.
3. Pursuant to our directions of 9th July 2024, the Applicant was able to gain entry to the Respondent's flat. Paul Kruzycki of Ingleton Wood LLP prepared a report dated 26th July 2024. This states:

“4.0 INSPECTION REPORT

4.1 Existing Structure and Construction

4.1.1 The property is located close to Hyde Park, an area [of] Victorian aged properties dating from 1860 onwards. No. 19 and No. 21 form an independent block.

4.1.2 The external elevations consist of a London stock brickwork elevation. Large windows penetrate the elevation with steel railings forming a front fence separating the property from the street. In addition, decorative brickwork is found above the protruding bay windows forming part of the external façade.

4.1.3 The roof profile is now mostly obscured by the structures constructed by the upper floor apartment; however, the original roof featured a flat section passing along the width of the front elevation and a mansard roof section in the central area. A raised parapet wall passes along the whole of the front elevation with a steel handrail fitted. The rear slope is covered in natural slate tiles, with windows penetrating the mansard.

4.1.4 Communal chimney stack rise out of the roof with rendered finish and lead flashings. Concrete coping stones sit above the parapet wall.

4.1.5 The interior of the property is finished in a variety of finishes - predominantly in painted plastered walls and ceilings. We did not undertake a detailed inspection inside the property.

4.2 Roof Area Inspection

4.2.1 We accessed the roof by passing through the upper floor apartment and utilising a steel staircase installed to gain access to the roof. It should be noted that there are large numbers of birds roosting in and on the roof and the lightweight structures.

4.2.2 Our observations were limited due to the extensive structures constructed on the roof, along with the presence of debris, rubbish and materials on the roof.

4.2.3 The presence of large amounts of rubbish and combustible materials is an urgent concern and risk to the property. Should fire break out in the roof area, there is a large amount of fuel that could cause a fire to quickly spread to adjoining buildings.

4.2.4 The decking formed over the roof area is heavily rotten and the whole area should be reviewed once cleared.

4.2.5 A visual inspection of the roof covering was only possible in very limited areas. We would recommend that when the roof is cleared, a further inspection is carried out. It is likely that debris from the rotten materials will find its way into the downpipes and cause blockages.

4.2.6 Metal items stored on the roof significantly increase the chance of lightning strike and should this occur, the structure and rubbish would likely ignite.

4.2.7 The lightweight structures formed on the roof are in extremely poor condition with extensive rot allowing water ingress. The condition of the lightweight structure means water ingress into the apartment below, and subsequently into the rest of the building is extremely high.

4.2.8 The lightweight structures are not fit for purpose. The level of structural support afforded by their decayed condition could lead to collapse and this would impact the building below.

4.2.9 A hot tub has been installed on the roof. When filled, the deadweight imposed on this section of the roof is being transferred directly to the roof structure. We are concerned that due to the condition of the roof, there is potential for the timber structure of the roof to have been compromised and could collapse.

4.2.10 An assessment of the roof structure and the loads of the hot tub are required, as with all structures placed on the roof to determine if there is adequate when in use. There is also the risk associated with a large volume of water potentially being discharged into the drainage system and overwhelming it.

4.2.11 The handrail installed is not of sufficient height for the safe use of the roof. We are also concerned about the condition and fixings of the railing. Access to the roof should be limited until the suitability of the protection measures is confirmed.

4.2.12 A sauna, currently not in use has been formed on the roof. At present, it is affording birds a place to roost and nest, however, we are concerned that the operation of the sauna in the past could have caused moisture and heat damage to the roof structure. We were not able to determine how the sauna is heated but would recommend that the use of such installations is not permitted going forward.

4.2.13 From the limited inspection available, we noted that the brickwork of the parapet is decaying and cracking in exposed areas.

4.2.14 The adjoining buildings rely upon a means of escape via their roofs to the roof of No. 19.

4.3 Internal Water Ingress

4.3.1 We were made aware of damage to a wall within one of the apartments and undertook an inspection of the location.

4.3.2 On inspection of the external wall from the balcony door, we observed significant staining to the brickwork and evidence of water having been cascading down the rear elevation brickwork.

4.3.3. A flat roof is located adjacent to the area and when inspected there was no indication of the source of water coming from damage to this area. Our observations were limited.

4.3.4 Internally, there is damage to the finishes within an adjacent storage cupboard consistent with water penetration. There is an air vent, which penetrates through the wall, and this provides a route for water to enter the internal areas.

4.3.5 There is some minor damage to the timber cill and floor adjacent to the balcony entry door.

5.0 CONCLUSIONS & RECOMMENDATIONS

5.1 Roof Area

5.1.1 The roof area needs to be cleared of all excess debris immediately to reduce fire risk along with associated risks of disruption to the drainage systems. Neighbouring buildings should be advised, along with the Fire Brigade and your and adjoining building insurers.

5.1.2 The safest and most practical mechanism to facilitate such clearance, would be for a scaffold to be installed on the front elevation. This would afford a safe and efficient way to clear the roof and avoid disruption to the interior of the building, along with damage to the communal parts.

5.1.3 Pest control measures are required to remove nesting birds, guano and debris. Steps should then be taken to prevent them re-establishing themselves on the roof, including along the junction with No. 21.

5.1.4 The presence of vermin in this location, along with their guano is a significant risk to the health and safety of anyone accessing the roof or living in the apartment.

5.1.5 The roof covering would need to be inspected following the removal of rubbish and the temporary structures. It is highly likely that damage has, or will, be caused by the clearing operations and it is our recommendation that a liquid roof membrane system be employed to afford confidence the roof is watertight.

5.1.6 As it stands, urgent steps are needed to provide a waterproof cover to the roof area. Either a temporary roof structure or sheeting needs to be installed.

5.1.7 The lightweight structures should be removed and rebuilt to ensure that the risk of water penetration is removed. Currently, given the condition of the roof structures there is a significant risk of collapse.

5.1.8 The parapet wall brickwork, once exposed, should be inspected and repairs undertaken to the wall. The support of the railing should be assessed, and the railing upgraded should the roof area continue to be used as accommodation.

5.1.9 The blocked means of escape from the adjoining buildings need to be reinstated, maintained and works undertaken to ensure they are safe to use. The adjoining buildings should be contacted and made aware of the situation so that steps can be taken to revise their emergency egress strategy.

5.1.10 The hot tub should be removed, and limitations placed on the installation of similar equipment or the addition of other items that impact the stability of the roof structure without their first being a proper assessment of the risks and additional loading.

5.1.11 The methods employed to adapt the roof structure and the additional items placed on and fitted too the roof make the ongoing inspection and maintenance of the roof impossible and any future modifications should be made under licence.

5.1.12 All future structures constructed, and any works undertaken need to be carried out to ensure there is no damage to the roof covering and that maintenance can take place. Any alterations should be carried out in accordance with the Building Regulations and further consideration given to the ongoing maintenance of the roof area.

5.1.13 Steps should be taken to ensure the lift housing and equipment is adequately protected from water ingress.

5.1.14 The use of the fireplace in the converted area should be established and it removed if no longer in use.

5.2 Internal Water Ingress

5.2.1 Drainage systems are effective in removing rainwater from the external areas of buildings and rarely fail. When they do, it is generally because of becoming overwhelmed due to the volume of water or other factors, such as a blockage.

5.2.2 In this situation, we believe that the drainage system on the upper parts of the building has been compromised because of the conditions above and that this is having an adverse effect on the efficiency of the drainage system, resulting in water cascading down the brickwork.

5.2.3 This water is then coming into the building by the most available route – the penetration for the vent and as it moves down further, is overwhelming the threshold of the door on the exterior.

5.2.4 Our recommendations are to remove any disruption to the effective drainage of the roof above. Stopping overflow will likely result in no further incidents and it is important to ensure that the drainage system designed is not hindered in operating properly.

5.2.5 In addition, we would recommend a flood test of the flat roof area to confirm there is no source of ingress and undertaking limited programme of repointing and remedial maintenance to ensure the elevation brickwork has no defects and all flashings are secure.”

4. The Respondent did not attend the hearing, so this evidence was unchallenged.
5. The history of the attempts to gain access are set out in the Applicant’s statement of claim. The documents identified in this bear out what is alleged and we accept this account of what occurred:

“10. In 2021, the Building was managed by JCF Property Management Ltd (‘JCF’) on behalf of the Applicant. Between August 2021 and November 2023, JCF made several attempts to arrange access to Flat 6 with the Respondent, however, the Respondent failed to provide access at all reasonable times and/or failed to provide access at all.

11. In or around August 2021, JCF wished to plan a maintenance programme for the Building, which necessitated access to Flat 6. By an email dated 26 August 2021, Elena Pletea of JCF contacted the Respondent to explain that a surveyor needed to attend Flat 6 16 5 and requested access be provided on Tuesday 31 August 2021. This email went ignored. On 31 August 2021 a follow up email was sent from Ms Pletea of JCF to the Respondent asking for confirmation that access would be provided on that day to the surveyor. That email also went ignored. As a result, the surveyor was unable to attend and attempts were made by an email from Ms Pletea to the Respondent on 7 September 2021, to confirm a date on which access could be provided to the surveyor. A further email was sent to the Respondent by Ms Pletea on 17 September 2021, requesting a response.

12. A letter was sent from JCF to the Respondent via email on 27 September 2021. The letter requested access to Flat 6 on 11 October 2021 so that a surveyor from the firm Bishop and Associates could assess the condition of the roof, which would be taken into consideration when producing a 10-year planned preventative maintenance programme for the Building. This letter also went ignored. On 11 October 2021 Ms Pletea emailed the Respondent to inform him that the surveyor was in the Building and required access to the roof. Access was again requested but the Respondent failed to provide the same.

13. On 4 November 2021, the Applicant’s solicitors, Russell-Cooke, wrote to the Respondent highlighting that the failure to provide access to the Applicant’s agents on 11 October 2021 for the purposes of accessing the condition of the roof to facilitate the preparation of a 10-year planned preventative maintenance programme for the Building was in breach of the terms of the Lease. The letter requested

that urgent access to the roof of the Building be provided on 9 November 2021. The letter explained that non-compliance could result in court proceedings being commenced. The Respondent, however, failed to provide access as requested. A further email was then sent from Pauline Lam of Russell-Cooke to the Respondent on 9 November 2021, highlighting the failure and requesting confirmation of when access would be provided to the Applicant. Again this correspondence went unanswered...

15. Further to the attendance of the Applicant's surveyors, Bishop and Associates, on 11 October 2021, a report dated 3 December 2021 was produced (the 'December 2021 Report'). As set out in section 1 of the December 2021 Report, the roof could not be accessed and therefore the author of the report made assumptions based on photographs and information provided by JCF. The final bullet point of the second section of the December 2021 Report, confirmed that in view of the available material, the authors view was that the roof would likely require replacement in 2022. However, it was recommended in section 3, that a surveyor accesses the roof in order to make a true assessment of the roof and brickworks condition...

17. A further report was then prepared by Bishop and Associates dated 14 February 2022 (the 'February 2022 Report'). The final bullet point of the second section of the February 2022 Report, confirmed that the roof area was accessed, which was via the roof of a neighbouring property at 21 Palace Gate, and photographs were taken. The items displayed on the roof were dated and consisted of utilities (shower, sauna etc) and broken sections of timber decking. The author concluded that that the roof would likely require replacement in 2022 and therefore, all utilities may need to be removed.

18. A capital expenditure report was annexed to the February 2022 Report. This outlines the state and condition of the different areas of the roof. In particular it states that:

18.1. There is general wear and tear to the decking of the main roofs flat roof coverings and a roof replacement and repair will be required...

18.2. The utilities on the main roof are in a poor condition throughout...; and

18.3. the remaining areas are in a generally satisfactory condition with minor works such as painting, rendering and flaunching required. The estimated cost of carrying out the aforementioned work is also set out in the capital expenditure report and is in excess of £60,000...

20. Further attempts were made in 2022 to gain access to Flat 6, including but not limited to: 14 April 2022, 7 March 2022, 17 March 2022, 21 March 2022, 13 April 2022, 28 April 18 7 2022, 8 July 2022 and 13 July 2022. However, the Respondent failed to provide the Applicant and its authorised agents with access of Flat 6 on each occasion...

21. By a letter dated 24 July 2022, JCF wrote to the Respondent requesting access to the lift motor room via Flat 6 for the purpose of a lift service inspection on 28 September 2022.

22. A letter before claim dated 26 August 2022 was sent to the Respondent, which amongst other things, invited the Respondent to contact JCF to arrange a time, before 12 September 2022, when access would be given to Flat 6 to facilitate an inspection of the lift motor room for the purposes of conducting further necessary repairs to ensure that it was safe to operate the lift.

23. The letter also highlighted the very poor condition of the roof and the fact that the costs of replacement and associated works were in the region of £65,000 - £85,000 plus VAT. It was also explained that until the works to the roof had taken place, other building works could not be carried out. The letter therefore gave notice, pursuant to clause 5(2) of the Lease requiring the Respondent to remedy the breach by carrying out the necessary repair and/or replacement of the roof, clean and keep the roof in good condition within 6 weeks, by 10 October 2022 or a date that is 6 weeks from the date appearing on the first page of the letter, whichever later, failing which, access would be sought for the Applicant to conduct this work pursuant to clause 4(iii)-(iv) of the Lease.

24. By an email dated 15 September 2022, sent on behalf of the Respondent by Suve Banerjee, a friend of the Respondent, it was said that the Respondent was shocked to hear that the roof was in poor condition and did not believe that to be an accurate reflection of the true position. He further indicated that the Respondent would be willing, at his own cost, to have the report updated and shared.

25. By an email dated 23 September 2022, Mr Banerjee contacted Russell-Cooke to outline that he was supporting the Respondent who had been the victim of an attack and in the aftermath, had been unable to engage with the Applicant. The email indicated a willingness to cooperate and invited JCF to liaise with the relevant lift engineers to arrange access to Flat 6. However, by 27 September 2022, Mr Banerjee confirmed that access would not be provided on 28 September 2022 as the Applicant's had previously requested.

26. By an email dated 27 September 2022 a request was made of the Respondent to permit a lift engineer to access the Flat 6 for the purpose of a lift insurance inspection on 3 October 2022.

27. On 28 September 2022, JCF wrote to the Respondent to state that the lift insurance inspection was to be rearranged and requested access on 12 October 2022. This was because the inspector and engineer were no longer available to attend on 3 October 2022. On 30 September 2022, Mr Banerjee emailed to confirm that access would be provided on the 12 October 2022.

28. On 11 October 2022, Mr Banerjee wrote, in response to a request for confirmation from JCF, that access would be provided the following day but that he would confirm for sure later that day.

However, access was not provided. Further attempts were made to arrange a date for access in October 2022 to no avail.

29. On 24 October 2022, JCF requested access to Flat 6 from the Respondent, in relation to the installation of a fire alarm in the Building. This request went ignored.

30. A letter dated 27 October 2022 was then sent to the Respondent requesting access on 3 November 2022 for the purpose of the lift engineer installing an autodialler and to carry out essential lift repairs. The letter also highlighted that a request had previously been made for access on the same day for a fire alarm engineer. This was met with a request by Mr Banerjee, for access to be delayed for a few weeks. Accordingly, the Respondent failed to provide access to the lift engineer or fire alarm engineer on 3 November 2022.

31. On 2 November 2022, JCF wrote to the Respondent requesting access to the lift motor room via Flat 6 on 17 November 2022. The letter explained that the lift had been reported to malfunction in the past few weeks and that there were great concerns that it was not safe for residents to use.

32. On or around 20 November 2023, the Applicant's engaged HLM Property Management ('HLM'), as new managing agents in relation to the Building. On 20 November 2023, HLM emailed the Respondent to request dates in early December for access to be provided to Flat 6. The Respondent did not respond. On 30 November 2023, HLM again wrote to the Respondent requesting access to Flat 6 on 11 December 2023 in order for a full survey of the roof to be carried out and for gutter clearance contractors and lift contractors to attend.

33. On 1 December 2023, HLM sent an email to the Respondent and Mr Banerjee explaining that when the fire alarm was installed at the Building, the engineers were not granted access to Flat 6 to install a smoke detector. As a result, the engineers could not certify the fire alarm panel. Access to Flat 6 was therefore requested as a matter of urgency given the risk posed in the event of fire. The email went on to request access on 11 December 2023, indicating that that the installation would take only approximately 10 minutes. On the same date, Mr Banerjee replied to HLM explaining that he had not been able to contact the Respondent since the summer and as far as he was aware, the Respondent did not read emails regularly, if at all, or answer his phone. He indicated that he was no longer able to provide any further assistance.

34. A letter dated 4 December 2023 was sent on behalf of the Applicant to the Respondent again seeking access to Flat 6 on 11 December 2023, for the purposes of inspecting the roof, clearing the building's gutter and carrying out lift maintenance work. However, this letter also went unanswered and the Respondent failed to provide access to Flat 6 on 11 December 2023 as requested.

35. The Respondent's persistent failure to provide access to Flat 6 has resulted in the Applicant being unable to take steps to unblock the

gutters of the Building. As a result of the blocked gutters, the storage cupboard in Flat 3 of the Building contains damp and mould.”

6. At the hearing before us on 9th July 2024 the Respondent admitted that he had kept a dog at the flat. He had no permission to do so.

CONCLUSION

7. We find that the allegations of breach of covenant are made out.

COSTS

8. At the conclusion of the hearing Mr Galtrey sought an order for all the costs of the proceedings. The Applicant had served a schedule of costs amounting to £55,094.40. The schedule did not separate the costs thrown away by the adjournment of the hearing on 9th July 2024 from the overall costs of the proceedings.
9. Mr Galtrey put the case for making a costs order on the basis of rule 13(1)(b) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, which gives the Tribunal a discretion to order costs “if a person has acted unreasonably in bringing, defending or conducting proceedings.” He submitted (a) that by failing to follow the Tribunal’s directions the Respondent caused the adjournment of the hearing on 9th July 2024, thereby behaving unreasonably, and (b) that by putting the Applicant to proof of its allegations the Respondent acted unreasonably.
10. We agree that the adjournment of the hearing on 9th July 2024 was caused by the Respondent’s unreasonable conduct. We do not accept that putting the Applicant to proof was unreasonable. Because this decision has potential impact on others, such as the first and second chargees, the Tribunal would have needed to be satisfied in any event that the allegations of breach of covenant had been made out.
11. We have considered whether to make any costs order. We note that by clause 5(10) of the lease the Respondent is obliged to pay all the Applicant’s costs “in or in contemplation of any proceedings... under Sections 146 and 147 of the Law of Property Act 1925.” Under this provision, the Applicant is entitled (subject to the costs being reasonable) to all the costs it seeks to claim. It is therefore unnecessary for us to make any costs order. We decline to do so.

DECISION

1. Pursuant to subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 we find that the Respondent is:
 - (a) in breach of clause 5(4) of the Lease, in that the Respondent has since 2021 failed to permit the Applicant and its agents to enter Flat 6 for the purposes of, amongst other things, inspecting and surveying the roof, clearing the building’s gutter, installing a smoke detector and carrying out lift

maintenance, whether at all reasonable times in accordance with the aforementioned clause;

(b) in breach of clause 5(2) of the Lease, in that the Respondent has failed to keep Flat 6, which includes the roof, to the reasonable satisfaction of the Applicant, in good condition and repair, clean and well decorated, and to comply with the notice to remedy his failure so to do issued by the Applicant as a consequence of the Respondent's breach of this clause within 6 weeks of the date of such notice;

(c) in breach of clause 5(15)(x) of the Lease, in that the Respondent has kept a dog in Flat 6 without previous consent in writing of the Applicant; and

(d) in breach of clause 5(6) of the Lease, in that the Respondent has, acted, allowed, caused and/or facilitated in the Building annoyance, nuisance to others, danger and/or prejudice to the Landlord's insurance cover or increase the premium of that cover, by failing to allow access to Flat 6 such that the fire alarm safety panel cannot be certified, lift maintenance work cannot be carried out, lift insurance inspection could not take place and the gutters of the Building cannot be unblocked thus causing mould and damp to develop in Flat 3 of the Building.

2. We decline to make any costs order in favour the Applicant, but this is without prejudice to the Applicant's entitlement to costs pursuant to clause 5(10) of the lease.

Name: Judge Adrian Jack **Date:** 1st October 2024