



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

Case reference : **LON/00BK/OLR/2024/0215**

Property : **Flat 3, Cecil House, 97-100 Marylebone High Street, London W1**

Applicant : **Timothy Lawrence (as personal representative of JOAN LAWRENCE deceased)**

Representative : **Ms C Burzio, counsel**

Respondent : **Howard De Walden Estates Limited**

Representative : **Ms E Gibbons, counsel**

Type of application : **Leasehold Reform, Housing and Urban Development Act 1993**

Tribunal members : **Judge Tagliavini
Mr I B Holdsworth BSc MSC FRICS**

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

Date of hearing : **8 October 2024**
Date of decision : **6 November 2024**

DECISION

Decisions of the tribunal

1. The tribunal determines that the terms of the existing lease are to be the terms of the new lease that is due to be granted to the applicant.
-

The application

1. The Applicant seeks a determination of the terms of the new lease that is to be granted to the applicant pursuant to the Leasehold, Reform, Housing and Urban Development Act 1993 ('the 1993 Act'). All other terms of the lease extension were agreed between the parties.

Background

2. The applicant served a Notice of Claim (amended) dated 13 March 2023 seeking the grant of a new lease of the premises situate at Flat 3, Cecil House, 97-98 Marylebone High Street, London W1U 4RJ ('the premises'). By a Counter-Notice dated 25 May 2023 (amended 12 October 2023) the right to the grant of a new lease was admitted but the terms on which it was to be granted were disputed. Subsequently, all terms were agreed between the parties except for the terms to be included in the new lease and an application was made to the tribunal seeking its determination.

The hearing

2. The Applicant was represented by Ms Burzio of counsel at the hearing and the Respondent was represented by Ms E Gibbons of counsel. The tribunal was provided with a Revised Hearing Bundle of 131 electronic pages.

The issues

3. At the start of the hearing the parties identified the relevant clauses in the existing lease made between Joan Lawrence and Howard De Walden estates Limited and dated 22 November 2022, that remained in dispute. These clauses in dispute and the modification/additions to them were identified as:

Clause 3.7.3 Modernisation of the current clause so that it states, '*Not to assign sublet charge or part with possession of the Demised Premises without the previous consent of the Landlord such consent not to be unreasonably withheld.*'

Clause 5.2 The inclusion of the wording ‘*so far as the same and circumstances will then permit.*’

Clause 5.3 The inclusion of the wording ‘*The Landlord may at any time hereafter in the interests of good estate management impose such regulations of general application regarding the Building or the flats therein as it may reasonably think fit (but so that such regulations shall not conflict with the terms of this Lease) and the Landlord shall have the power to waive revoke amend or add to the regulations set out in the Fourth Schedule if it shall reasonably consider it desirable to do so and...*’

Clause 10.1 The inclusion of the wording ‘*Howard de Walden Estates Limited shall not be personally liable under any of the covenants on its part herein contained otherwise than in respect of breaches thereof for which it is responsible*’

Clause 10.3 The inclusion of the wording ‘*The exceptions and reservations herein contained and any rights reserved to the Landlord shall enure for the benefit of any superior landlord and for the personal benefit of Howard de Walden Estates Limited and its assigns*’

Paragraph 2, Fourth Schedule

The inclusion of the wording ‘*Not to use or allow the Demised Premises or any part thereof to be used as a brothel*’

Paragraph 1.2, Fifth Schedule

In the definition of ‘Service Charge’ the addition of the wording ‘*(or such other proper percentage as the Landlord reasonably determines and previously notifies the Tenant in writing)*’

The applicant’s case

4. The applicant submitted that the terms of the existing lease are sufficiently clear, unambiguous and where appropriate, are restrictive so as to protect the interests of the landlord, so as to not require any alteration or addition.
5. The current clauses that are in dispute state:

Clause 3.7.3

The Lessor may as a condition of consent to an assignment of this Lease require the Tenant to enter into a covenant by deed with the Lessor to

pay the rents hereby reserved and perform and observe all the covenants on the part of the Tenant herein contained for the residue of the Term hereby granted or until completion of an assignment (other than an excluded assignment within the meaning of Section 11(i) of the 1995 Act) and non-compliance with such condition shall be deemed to be a reasonable ground for refusing such consent notwithstanding the respectability and financial responsibility of the proposed assignee

Clause 5.2

That every lease or tenancy agreement of a flat in the Building hereafter granted by the Lessors shall contain regulations to be observed by the tenant thereof in similar terms as those contained in the Fourth Schedule hereto and also covenants of a similar nature to those contained in clause 4 of the Lease

Clause 5.3

As to the parts of the Building retained by the Lessors or which may come into the possession of the Lessors by the determination or expiration of the lease or tenancy of any part of the Building at all times during the Term hereby granted to observe and perform the regulations specified in the Fourth Schedule hereto

Para 26, Fourth Schedule: At all times to observed and perform all such variations or modifications of the foregoing regulations and all such further or other regulations as the Lessors may from time to time in their absolute discretion think fit to make for the management care and cleanliness of the Building and the comfort safety and convenience of all the occupiers thereof

Clause 10

Only deals with third party rights

Para 2, 4th Schedule

Not at any time to use or permit the use of either the Demised Premises or any part thereof for business purposes

Para 1.2, 5th Schedule

The **Service Charge** means such percentage of Total Expenditure as is specified in paragraph 7 of the Particulars or (in respect of the Accounting Period) during which the Lease is executed) such proportion of such percentage as is attributable to the period from the date of this Lease to the Thirty First day of December next following

The respondent's case

5. The respondent made the following submissions in respect of its reasons for seeking the suggested changes and additions to the existing lease.

Clause 3.7.3: Existing clause lacks clarity; s.57(6)(a) and does not reflect modern legislation and the difficulty associated in collecting rent from unknown persons/assignees.

Clause 5.2: The provisions of the new lease are not sufficiently 'future proof' s.57(6)(b)

Clause 5.3: This is a proposed change in form only, not in substance.

Clause 10.1: The landlord is entitled to this provision by virtue of s.57(8A).

Clause 10.3: The change affects the suitability of the provisions of the existing lease, which are not sufficiently future proof given the likelihood of the title structure being altered during the term s.57(6)(b).

Para 2, 4th Schedule: The respondent has experienced an increasing number of problems due to the way flats are being used and the current lease is insufficient to restrict this type of behaviour s.57(6)(b).

Para 1.2 5th Schedule: There is an increased likelihood of a rooftop development and therefore an increase to the number of flats s.57(6)(b).

The tribunal's reasons

6. Having heard submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

7. Section 57 provides, so far as is relevant, –

(1) Subject to the provisions of this Chapter (and in particular to the provisions as to rent and duration contained in section 56(1)), the new lease to be granted to a tenant under section 56 shall be a lease on the same terms as those of the existing lease, as they apply on the relevant date...

(6) Subsections (1) to (5) shall have effect subject to any agreement between the landlord tenant as to the terms of the new lease or any agreement collateral thereto; and either of them may require that for the purposes of the new lease any term of the existing lease shall be excluded or modified in so far as—

(a) it is necessary to do so in order to remedy a defect in the existing lease; or

(b) it would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease.

...

(8A) A person entering into any covenant required of him as landlord (under subsection (8) or otherwise) shall be entitled to limit his personal liability to breaches of that covenant for which he is responsible.

8. The tribunal determines the following in respect of the disputed clauses:

Clause 3.7.3 The tribunal finds there was no evidence of a defect in the operation of this clause, either from the landlord or its managing agent.

Clause 5.2 The tribunal finds the respondent did not satisfy it that s.57(6)(b) of the 1993 was made out in so far as it failed to establish the existing clause was unreasonable or defective.

Clause 5.3 The tribunal determines has no jurisdiction under the 1993 Act to determine this disputed issue as it purports to deal with possible future events.

Clause 10.1 The tribunal finds s.57 (8A) is not engaged as the lease in its current form does not make sufficient provision for liability.

Clause 10.3 The tribunal finds there was no evidence relied on by the respondent that showed that the lease, in its current form was not working sufficiently well.

Para 2, 4th Sch. The tribunal finds the use of the term 'business' is sufficiently wide to incorporate the term 'brothel.'

Para 1.2, 5th Sch. The tribunal finds the service charge proportion charge is clear and unambiguous and that s.57(6)(b)

is not satisfied as the possible construction of additional flats is in the future and uncertain.

9. In conclusion the tribunal rejects the respondent's arguments and submission in respect of the proposed terms of the new lease. The tribunal therefore determines, the new lease should be in the same terms as the existing lease subject only to the usual and essential changes.

Name: Judge Tagliavini

Date: 6 November 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 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).