FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BE/LBC/2025/0665**
Property	:	**Flat 9, Pennington Court, 245 Rotherhithe Street, London SE16 5FT**
Applicant	:	**Pageant Steps Limited**
Representative	:	**Mr Barnaby Hope of Counsel, instructed by Northover Litigation**
Respondent	:	**Mr Rami Hashim Hassan Akily**
Representative	:	**In person**
Type of application	:	**Determination of an alleged breach of covenant - S. 168(4) Commonhold and Leasehold Reform Act 2002**
Tribunal members	:	**Judge N Hawkes** **Mr S Mason BSc FRICS**
Date and venue of hearing	:	**27 January 2026 at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**16 February 2026**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 that, in breach of clause 3.1 and paragraph 9 of the Third Schedule to the Lease of the Property, on or around 1 April 2025, the Respondent erected a stud wall at the Property to create a third room, which could be used as a bedroom, without the previous formal licence of the Applicant. Reinstatement took place on or shortly before 19 November 2025.

(2) The Respondent's application for an order under section 20C of the Landlord and Tenant Act 1985 is dismissed.

(3) The Respondent's application for an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 is dismissed.

The background

1. The Applicant is the registered freehold proprietor of Pennington Court, 245 Rotherhithe Street, London SE16 5FT ("the Building"). The Building contains 66 flats including Flat 9, Pennington Court, 245 Rotherhithe Street, London SE16 5FT ("the Property").

2. The Respondent is the registered leasehold owner of the Property, pursuant to a lease dated 29 March 1996 ("the Lease"). The Property, as originally constructed, had two bedrooms and a large living/dining area.

3. The Building forms part of a residential development comprising three residential blocks of flats (Pennington Court, Calder Court and Codrington Court) and 16 freehold houses, known collectively as "Pageant Steps". Each owner of a Flat or a House at Pageant Steps owns a share in the Applicant company.

4. At clause 3.1 of the Lease, the Respondent covenanted:

   "3.1 To Observe and perform the obligations set out in the Third Schedule"

5. The Applicant asserts that the Respondent is in breach of the following obligations which are contained in the Third Schedule:

   "Not to alter

   9. Not to alter the internal planning…or appearance of the Flat nor at any time make any alterations or additions thereto…nor to carry out any development thereto…without the previous formal licence of the

Company PROVIDED THAT such plans and specifications of any such alterations or works as the Company shall deem necessary shall be first submitted to the Company for its approval…"

6. The Applicant seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent is in breach of covenant by virtue of having erected a stud wall at the Property to create a third room, which could be used as a bedroom, without the previous formal licence of the Applicant.

7. The Respondent admits having carried out the alleged alterations, which were reinstated after the issue of these Tribunal proceedings. His defence to this application is that he made an application for consent, which the Applicant unreasonably refused. His case is that a "without prejudice" letter dated 24 February 2025 was an application for consent to carry out the alterations.

The hearing

8. The final hearing took place at as a video on 27 January 2026. The Applicant was represented by Mr Barnaby Hope of Counsel at the hearing. Mr Hope was accompanied by Ms Janice Northover, Solicitor, and by Mr Mark Bondi, a Director of the Applicant company.

9. The Respondent appeared in person from America. He confirmed that all necessary steps contained in the *Guidance Note for Parties: Evidence from Abroad* had been followed to enable him to give evidence from America.

10. The Tribunal heard oral evidence of fact from Mr Bondi and from the Respondent.

11. No party asked the Tribunal to carry out an inspection of the Building, and/or of the Property and the Tribunal did not consider an inspection to be necessary given the nature of the evidence in the hearing bundle and the issues in dispute.

The Tribunal's determinations

Procedural matters

12. The Respondent's initial position was that he did not agree to waive privilege in the "without prejudice" letter dated 24 February 2025. The Tribunal expressed a preliminary view that, without being permitted to see what the Respondent claimed to be the application for consent, it was

likely to be difficult for the Tribunal to be satisfied on the balance of probabilities that any valid application for consent had been made.

13. After having been given time to consider the matter, the Respondent stated that he wished to waive privilege in this letter. The Applicant's initial position was that any waiver of privilege would have to be joint and that, if the Respondent agreed to waive privilege in the letter of 24 February 2025, the Applicant would refuse. However, after some further discussion at the hearing, the Applicant also agreed to waive privilege in this letter.

The substantive application

14. Mr Bondi gave oral evidence that he was personally present at an inspection of the Property which took place on 10 April 2025. He agreed with an account put forward by the Respondent concerning the position of the stud wall which the Respondent erected.

15. The Respondent also gave oral evidence. He accepted that the Property was a two-bedroom flat when he bought it. He stated that he has lived in America since the end of 2018, and that he has rented out Property since moving to America. He said that he has received newsletters from the Respondent but stated that he did not read the newsletters in sufficient detail to see that it is the Applicant's policy to refuse permissions for alterations which create a third bedroom.

16. The Respondent agreed that, in 2024, he fell behind with his service charge payments and that, by January 2025, the service charge arrears had substantially increased, and he was engaged in ongoing discussions with the Applicant concerning the arrears and a challenge which the Respondent was making to the reasonableness of the service charge.

17. The Respondent also agreed that, by email dated 20 December 2024, he put forward a three-part offer to clear the arrears which included a proposed monthly payment plan, a proposal to remove legal fees, and a proposed lump sum reduction to resolve a dispute concerning the reasonableness of the service charges. His stated that if the Applicant had replied saying "yes" the service charge dispute would have been settled on the terms of his offer.

18. His offer was not accepted and, by letter dated 19 January 2025, the Respondent provided what he described as further clarification of his earlier offer. He agreed that, if this clarified offer had been accepted, the service charge dispute would have been settled on the terms of his letter. However, the Applicant again did not accept the offer.

19. The Respondent gave evidence that, at this time, he was struggling to sell the Property, due to the high level of the service charges. He stated that

he could not afford to keep the Property whilst also being unable to sell it. He therefore came up with what he said was a creative solution which would have enabled him to clear the arrears within 12 months. His proposed solution is set out in his letter to the Applicant dated 24 February 2025 which is in the following terms:

"WITHOUT PREJUDICE

24 Feb 2025

Dear Sir/Madam,

Re: Flat 9 Pennington Court, 245 Rotherhithe Street, London, SE16 5FT

I acknowledge receipt of your letter dated 31 January 2025, rejecting my proposed installment plan. Given the significant financial burden I face as a direct result of the unprecedented service charge increase, I wish to make a final attempt at reaching a reasonable and practical resolution before legal proceedings are pursued.

Clarification on Salability Issues

You have dismissed my concerns regarding the impact of the service charge increase on my ability to sell the property. However, this is not a matter of opinion but a demonstrable fact:

• Shortly after the 250% increase in service charges, I listed the property for sale at the same price I purchased it for seven years ago.

• Despite being listed for nine months across two different estate agents, the property did not sell.

• I have correspondence from agents confirming that the service charge is the key deterrent for buyers.

• The only way to attract a buyer would be to significantly reduce the price, leaving me in negative equity—something I cannot afford.

I am therefore in an untenable position: unable to keep the property due to the excessive service charges yet unable to sell it without incurring substantial financial loss.

Proposed Solution

Given my limited options, I am proposing a final alternative resolution that would allow me to clear the arrears within 12 months enabled by certain permissions from your client. These permissions would enable me to increase my rent income and bring the balance up to date.

To that end, I request written consent from your client for the following:

1. Permission to Short-Let the Property

o Allowing short-term rentals would significantly boost my rental income, enabling me to clear the arrears much faster.

o The short-lets would be fully managed by a professional property management company that conducts thorough background checks, personally checks in guests, and ensures there are no disturbances to neighbors.

2. The Option to Partition the Spacious Living Room to Create a Small Study

o The living room in the property is quite spacious, making it feasible to introduce a non-structural partition to create a small study.

o This minor modification would increase the rental yield, improving affordability and ensuring I can keep up with service charge demands.

o I will see to it that this partition will not interfere with any structural elements or impact neighboring properties in any way. Attached is a drawing of what I have in mind.

o If required, I am happy to arrange a survey to confirm compliance with all relevant property regulations.

With your client's consent to these practical and non-disruptive solutions, I project to be in a position to repay the full outstanding balance within 12 months.

Next Steps

I trust that your client will give serious consideration to this proposal, as rejecting it would leave me in an untenable situation with no viable recourse. Given that I am in London for the next two weeks,

I would appreciate a response ***by close of business on Friday, 28 February 2025****, so that I can assess my options while I am here.*

I look forward to your response.

Yours faithfully,

Rami Akily"

20. The Respondent believed that he had attached a drawing to this letter. However, having seen a copy of the email which was received by the Applicant which does not include any attachment, the Tribunal finds on the balance of probabilities that no attachment was received by the Applicant. On being shown a copy of the email, the Respondent agreed that the plan was not there and said that this was surprising. He also noted that his letter expressly states "attached is a drawing of what I have

in mind" but, despite this, the Applicant did not ask him for a copy of the drawing.

21. By letter dated 1 April 2025, the Applicant gave notice that it wished to inspect the Property on 7 April 2025. The Respondent accepted that, at the time of the Applicant's inspection, a partition wall was in place which created a further small room in what had previously been the part of the living room area, and that this room had a bed in it.

22. The Respondent accepted that the stud wall had been erected by 1 April 2025. It is common ground that between 24 February 2025 and the completion of the work to create an additional room at the Property, on or before 1 April 2025, the Applicant had not replied to the letter dated 24 February 2025 and the Respondent had not chased the Applicant for a reply.

23. The Respondent agreed, on being shown relevant evidence, that his then estate agents had marketed the Property as a three-bedroom flat. He expressed the view that the additional room could have been used as a study, a bedroom, a nursery, a storage room, or however the occupants wished to use the space.

24. The Respondent said that the Property was let furnished and that when the prospective tenants had asked for a bed to be installed in the additional room as he had had no objections. He stated that the Property was let to a family who probably needed the bedroom for their children. He did not dispute that there are 66 similar flats in the Building to which additional rooms could potentially be added in the same manner.

25. Unless overwise stated above, the Tribunal accepts the oral evidence of both witnesses on the balance of probabilities.

26. The Respondent agreed that the Lease contains the covenants which are relied upon by the Applicant but submitted that his actions do not breach the Lease, relying upon section 19(2) of the Landlord and Tenant Act 1927, which provides:

"In all leases whether made before or after the commencement of this Act containing a covenant condition or agreement against the making of improvements without a licence or consent, such covenant condition or agreement shall be deemed, notwithstanding any express provision to the contrary, to be subject to a proviso that such licence or consent is not to be unreasonably withheld; but this proviso does not preclude the right to require as a condition of such licence or consent the payment of a reasonable sum in respect of any damage to or diminution in the value of the premises or any neighbouring premises belonging to the landlord, and of any legal or other expenses properly incurred in connection with such licence or consent nor, in the case of an

improvement which does not add to the letting value of the holding, does it preclude the right to require as a condition of such licence or consent, where such a requirement would be reasonable, an undertaking on the part of the tenant to reinstate the premises in the condition in which they were before the improvement was executed."

27. The Tribunal accepts the Mr Hope's submission that the multi-faceted "without prejudice" offer of settlement dated 24 February 2025 is not a valid standalone application for consent to the alterations because acceptance would have compromised the dispute concerning the service charges on specified terms, which include giving the Respondent 12 months in which to pay off the service charge arrears.

28. If the Applicant had responded by stating that it did not accept the proposal to discharge the arrears within 12 months or the request for consent to short term letting but that it did consent to the proposed alterations, this would be a counter-offer to settle a service charge dispute rather than a response to a request for consent to alterations. Whether or not it is reasonable to accept a settlement offer engages different considerations from the issue of whether or not it is reasonable to consent to proposed alterations.

29. The Respondent could have made a standalone application for consent to the proposed alterations on an open basis, alongside a without prejudice offer to settle the service charge dispute if consent were granted. However, he did not do so, and the Tribunal does not accept his contention that the wording of his letter is sufficient to put the Applicant on notice that a separate standalone application for consent to alterations is being made as well the offer to compromise the service charge dispute.

30. The Tribunal also accepts Mr Hope's submission that the "without prejudice letter" does not contain sufficient accurate information to amount to a valid application for consent to the proposed alterations.

31. Mr Hope referred the Tribunal to [26] of *Iqbal v Thakrar* [2004] EWCA Civ 592, for the following propositions:

    (i) The purpose of the consent is to protect the landlord from the tenant effecting alterations and additions which damage the property interests of the landlord.

    (ii) It is for the tenant to show that the landlord has unreasonably withheld consent to the proposals which the tenant has put forward and, implicit in that, is the necessity for the tenant to make sufficiently clear what his proposals are, so that the

landlord knows whether he should refuse or give consent to the alterations or additions.

32. Accordingly, in order to show that the Applicant has unreasonably refused consent, the Respondent must demonstrate that he made it sufficiently clear to the Applicant what his proposals were so that the Applicant could know whether to refuse or give consent.

33. The Tribunal accepts the Applicant's contention that, in the case of the proposed installation of a stud wall at this Property to create an additional room, a professionally produced specification and technical drawing are required to provide the Applicant with sufficient information to know whether to refuse or give consent. Reference to both "plans and specifications" is made at paragraph 9 of the Third Schedule to the Lease. The plan which the Respondent had intended to send the Applicant is not a technical drawing but rather it a floor plan with a red line drawn by the Applicant over the top. No specification for the proposed work was provided or referred to in the Respondent's letter.

34. Further, the proposal to add a non-structural wall to "create a small study" does not make it sufficiently clear that the Property may be marketed as a three-bedroom flat and that the tenants will be permitted to use the additional room as a third bedroom, if they wish to do so.

35. The Respondent stated that he referred to a study because he would personally have used the additional room as a study and that, if the use of the room as a bedroom was a concern, this should have been raised by the Applicant because conditional consent can be granted. However, there was nothing in the letter to put the Applicant on notice of the potential use of the additional room as a bedroom. A landlord cannot be said to have unreasonably refused consent where the consent sought did not adequately reflect the tenant's intentions.

36. The Respondent has a policy of not permitting alterations to a flat which increase the number of bedrooms. The potential use of the additional room as a bedroom is material because granting consent would require a change to this policy which, if applied equally to the 66 similar flats, would potentially significantly increase the intensity of use of common areas; the level of the inevitable noise created by household activities and people entering and leaving the Building; and it could significantly alter the character of the Building.

37. The Tribunal also accepts the Applicant's submission that, if a valid application for consent for the alterations had been made on 24 February 2025, insufficient time had elapsed between that date and the

completion of the work on or before 1 April 2025 to give rise to a deemed refusal of consent.

38. Given the policy considerations set out above, it could have reasonably taken more than 5 to 6 weeks, on the specific facts of this case, to consider whether or not to consent, if the application had been validly made.

39. For these reasons, we are not satisfied that the Respondent's defence to the application is made out.

Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the 2002 Act

40. Section 20C of the Landlord and Tenant Act 1985 provides that a tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a Residential Property Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

41. Paragraph 5A of Schedule 11 to the 2002 Act provides that:

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

42. The question for the Tribunal under both section 20C and paragraph 5A is what is "just and equitable". These provisions provide the Tribunal with a wide discretion to exercise having regard to all the circumstances of the case.

43. In the present case, the Applicant has been successful in its application. We note that reinstatement took place after the issue of these proceedings and we do not accept that the fact that the Applicant is a corporate freeholder and may have greater recourses than the Respondent is, of itself, a material consideration.

44. Accordingly, the Tribunal is not satisfied, in all the circumstances, that it is just and equitable to make orders under section 20C of the Landlord and Tenant Act 1985 or under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

Name: Judge N Hawkes **Date:** 16 February 2026

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).