FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AP/LBC/2021/0032**
Property	**:**	**Flat 2, 19 Coniston Road, Muswell Hill, London, N10 2BL**
Applicant	**:**	**Zulfiqar Ali** **Shahida Ali**
Representative	**:**	**Mr C Neilson instructed by Anthony Gold Solicitors**
Respondent	**:**	**Julia Lightle**
Representative	**:**	**None**
Type of application	**:**	**Determination of an alleged breach of covenant**
Tribunal member(s)	**:**	**Judge N O'Brien** **Mr A Morrison MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Determination	**:**	**2 April 2026**

DETERMINATION

---

(1) The Respondent has breached her lease as determined in paragraphs 22 and 23 below.
(2) The remaining allegations of breach are dismissed.
(3) The Tribunal makes orders under both section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 so that none of the Applicants' legal costs may be charged to the Respondent as a service charge or administration charge.

CASE SUMMARY

1. These proceedings concern an application by the landlords of the subject premises for a determination, under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"), that the Respondent leaseholder is in breach of various covenants contained in her lease. In particular, the Applicants asserted that the Respondent has not paid her proportion of the insurance premium for a number of years, carried out unauthorised works of alteration to the subject premises in 2016 and failed to grant access to their surveyor when requested in 2018.

The Proceedings

2. The application has an unfortunate procedural history. It was sent to the tribunal in or about April 2021. The tribunal first issued directions on 6 July 2021. On the 3 September 2021 Ian Mitchell of Anthony Gold Solicitors requested the directions be revised but it appears that the request was not actioned by the tribunal. On the 4 August 2023 Ian Mitchell of Anthony Gold Solicitors wrote to the tribunal regarding the directions. It is not clear if the tribunal responded. On 26 March 2025 Matthew Lyster of the tribunal wrote to the parties asking if the application was still pursued by the applicants. On 27 March 2025 Ali Athsham, the Applicants' son, wrote to the tribunal confirming that the Applicants still wished to pursue the application and the Tribunal directed that the application would be considered on the papers in the week commencing 30th June 2025. That paper determination was adjourned at the Respondent's application, on the grounds that she had not been served with any papers regarding the proceedings either by the tribunal or the Applicants, and that the address which the Applicants had supplied to the tribunal had not been her address for over 15 years and that furthermore the Applicants had been informed of this some time ago. She stated that the first time she was made aware of the proceedings was on or about 25 June 2025 when the Applicants' legal representatives served a hard copy of the bundle on the subject premises which are sublet. This was forwarded to the Respondent by her tenant. Further directions were issued by the tribunal, and the matter was listed for a face-to-face hearing on 25 February 2026, nearly 5 years after it was first sent.

3. At the hearing the Applicants were represented by Mr Nielson of counsel and Ms Lightle represented herself. We heard evidence from Mr Athsham Ali, the Applicants' son, who manages the building on their behalf, and from Ms Lightle. We also heard evidence from a Mr Gary Bettis who was the architect that Ms Lightle engaged to carry out the 2016 works. Ms Lightle had applied for permission to rely on his evidence that of an expert witness however it seemed to us that his evidence was of a factual nature and we admitted it on that basis. We were provided with a 235-page bundle prepared by the Applicants' legal representatives for use in the paper determination, and a further supplemental bundle of 84 pages. We considered a skeleton argument prepared by Mr Neilson and in the course of the hearing admitted into

evidence a more complete copy of WhatsApp exchanges between the Respondent and Mr Athsham Ali from 2016 regarding the Respondent's correspondence address.

4. On 26 February 2026 the Respondent send a number of additional documents to the tribunal by email. We have not considered these documents as they were provided after the hearing had ended.

Factual Background

5. The subject premises consist of a 2-bedroom flat ('the flat') on the ground floor of a substantial Edwardian style villa in Muswell Hill ('the Building'). The Respondent has been the leasehold owner of the flat since 2006. In 2013 the lease was extended via surrender and regrant pursuant to the provisions of the Leasehold and Urban Development Act 1993. At the time the Respondent purchased the flat there were three flats in total in the building. However in 2015 the Applicants carried out works to the top floor/loft of the building and created a 4th flat. In the course of those works a water pipe became damaged and flooded the building and in particular left the flat in an uninhabitable condition. The damage to the flat was the subject of an insurance claim and in 2016 the Respondent carried out various works to her flat ('the 2016 works'). The main issue these proceedings is that the Applicants assert that the 2016 works went beyond works of repair and amounted to alterations to the flat which required their written consent pursuant to the terms of the Respondent's lease.

6. In their statement of case, the Applicants assert that the following unauthorised alterations were carried out by the Respondent;

    (i) the ceiling height had been dropped in the lobby and kitchen areas to create storage space between the existing and new ceiling with access doors to access the storage between the two ceilings;
    (ii) the kitchen area has been extended, and walls have been erected to house the new kitchen;
    (iii) the shower room wall had been extended in line with the new kitchen wall to make the shower area bigger thereby making the lobby/ passage smaller;
    (iv) an outside storage structure had been created with a Perspex roof and a decking floor with gated access;
    (v) the location of the boiler had been altered, and holes for the new boiler flu had been made through the chimney;
    (vi) the washing machine waste and water connection had been run along the outside wall in front of the side store;
    (vii) the structural wall had been drilled to take electricity supply to the store;
    (viii) cutting of the main structural wall and chimney to fit the new kitchen extractor white vent and pipe for the kitchen, the pipe had been installed in the new ceiling storage void created above the new kitchen;

(ix) New kitchen units fitted to both base and the new walls. Kitchen sink location changed, drainage altered; and
(x) Structural walls in the lounge had been chased/ cut to install 4 wall lights

7. In addition the Applicants assert that the Respondent did not allow access to the flat to the freeholder's surveyor on 28 August 2018 following a written request for access, and failed to pay the due proportion of the building insurance costs from 2016/2017 to 2025/2026 totalling £9366.94.

The Lease

8. The lease contains the following covenants:

(i) By 2(5), the lessee covenanted '*to permit the Lessor and their duly authorised agents, upon giving three days previous notice in writing, at reasonable times to enter upon and examine the condition of the Premises'*

(ii) By clause 4(5) the lessor covenanted to insure the building *'subject to the lessee paying one third of the insurance premium within fourteen days of receipt of the Landlord's Notice that the Insurance Premium is due.'*

(iii) By Clause 3(1), the lessee covenanted to observe the restrictions stipulations and conditions set out in the Fourth Schedule.

(iv) Paragraph 1 of the First Schedule defines the demised premises as *ALL THAT ground floor flat aforesaid known as Flat 2 19 Coniston Road London N1 including;*

(1) One half part in depth of the ~~structure (including one half part on depth of the beams~~ joists ~~and main walls) both internal and external of the building~~ between the ceiling of the demised premises and the floor of the adjoining flats

(v) Under Schedule Four, Paragraph 3, the lessee covenanted '*not to maim, injure or make any alteration to any part of the Building forming part of the demise or any part of other premises referred to in Clauses 3(2)(i)-(v) without the consent in writing of the Lessor such consent not to be unreasonably withheld*'.

9. Paragraph 1 of the First Schedule to the lease has been altered by hand so that the words shown struck through above have been manually crossed out and consequently no part of the structure of the building has been demised save for on half in depth of the ceiling joists.

10. Clauses 3(2)(i) of the lease requires the Lessor to keep the main structure of the building in good and substantial repair. It follows therefore that

paragraph 3 of Schedule 4 prohibits alterations to both the demise and to the main structure of the building without consent.

11. It is important to note that the Tribunal's role under the 2002 Act is to determine simply whether there has been a breach of covenant on the evidence before it. Whether there are extenuating circumstances which would allow relief from forfeiture or whether the landlord has waived any breach or has an alternative remedy is irrelevant at this stage.

12. It is common ground that not every change which a leaseholder may make to the demised premises will engage a covenant prohibiting unauthorised alterations. Generally the courts have held that only alterations which change the structure or form of the building or the demised premises will be covered by such a covenant *(Bickmore v Dimmer [1903] 1 Ch 158)*.

Issue 1- Unauthorised Alterations

13. It became clear on questioning Mr Ali that the basis for his belief that the Respondent had carried out the asserted alterations was tenuous in relation to the majority of them. The grounds for most of the asserted alterations was a comparison between a number of sales particulars which he had found on-line, the plan attached to the original lease, and to a deed of variation dated 2005. His evidence is that he carried out an inspection of the premises in September 2016, after the works were completed. We did not consider that his evidence regarding the configuration of the flat prior to the 2016 works was credible, and where it differed from the Respondent's we preferred her evidence.

14. His basis for asserting that a wall between the bathroom/kitchen and the hallway had been moved was based on his view that it was shown in a different position relative to another internal wall on the 2005 deed of variation when compared to the 2016 particulars of sale. However both Ms Lightle and Mr Bettis were quite clear that the position of that wall did not move as a result of the 2016 works.

15. We accept the evidence of Ms Lightle and Mr Bettis in this regard. We note that none of the various floor plans relied on by the Applicants to show a change in the layout have any measurements, and they all differ from each other in one respect or another. Furthermore we consider that the photographs of the kitchen shown at page 173 and 185 of the bundle appear to show that the width of the corridor has not changed.

16. The Applicants assert that the Respondent has constructed a wood and Perspex store/utility area to the side of the flat. Mr Ali believes that the Respondent has constructed the store/utility area because it was not shown on the 2013 sales particulars but was shown on sales particulars from 2016. Ms Lightle informed us that the outside storage area existed

prior to her purchase of the premises in 2006 and that furthermore Mr Ali had seen it on numerous occasions between 2006 and 2016. She exhibited a number of photographs from 2010 which show the outside storage area in situ. It does not look like it has been recently constructed. She told us that the outside storage/utility area had been used to house a washing machine when she purchased the flat, and that any alterations to the exterior wall to provide for water and the wastewater drainage, and to provide electricity to the store area, had been completed before her ownership commenced.

17. Mr Ali's assumption as to the date of construction of the storage/utility area is not correct and we prefer the Respondent's evidence. We have no information as to when the storage/utility area was constructed, who constructed it or whether it was constructed with or without any requisite consent. Consequently we are not satisfied that the Applicants have proved their case in this regard.

18. Mr Ali considered that the fact that there were wall mounted lights in the living room shown in the 2016 particulars which were not shown on the 2013 particulars proved that the Respondent had installed the lights by chasing wires into the wall which is a structural wall. Mr Birtle could not recall how the wall lights were mounted, but considered that most builders would have installed plasterboard lining to the wall, attached the lights to the plasterboard and run the power cables behind it. Ms Lightle told us that the wall lights were mounted on plasterboard and that the cables were behind the plasterboard and had not been cut into the walls.

19. We are not satisfied that the Applicants have proved their case in respect of this allegation. There is no evidence to support it other than the photographs showing that wall mounted lights have been installed at some point between 2013 and 2016. There is no evidence to contradict Ms Lightle's evidence as to how they were installed.

20. Mr Ali based his assertion that the Respondent had altered the position of the boiler flue on a photograph of the condition of the side exterior wall at page 160 which shows a filled area of cement or render above the boiler flue hole. Mr Ali considers that this shows that Ms Lightle must have filled in the old hole and drilled a new one below it. Ms Lightle exhibited to her statement a short letter from the plumber who replaced the boiler in 2016 which confirmed that the position of the flue hole had not been altered. There is no evidence that the Respondent altered the position of the flue or drilled an additional hole in the exterior wall. There is no evidence as to when the area above the flue was filled with cement/render or who caused it to be done or why. Mr Ali, in answer to our questions, asserted that he was sure that the flue had been moved in 2016 because he was able to recall its position prior to 2016. We found his evidence on this point to be unconvincing.

21. Mr Ali's assertion that the kitchen sink had been moved again was based on an analysis of the particulars of 2013 and the sales particulars from

2016. We are not satisfied that the photos show that the sink has been moved to any significant extent such that it might amount to an alteration to the form or structure of the flat. Similarly there is no evidence at all that the sink drainage has been moved. Consequently the Applicants have not proved this aspect of their case.

22. The Applicants assert that as part of the 2016 works the Respondent added additional kitchen units. We do not consider that the addition of additional kitchen units amounts to an alteration to the structure or form of the flat such that it would require the consent of the leaseholder.

23. However in our view the photographs on the sales particulars from 2016 do show that that the Respondent has made some alterations which in our view do amount to a change to the structure or form of the flat and/or the building. Firstly the hood above the kitchen hob in the 2013 photographs does not appear to have an extraction duct above it, indicating that it is a recirculating or ductless fan. The extractor fan shown in the 2016 photographs has a duct above it. Neither Mr Bettis nor Ms Lightle could not now recall whether this vent was installed in the exterior wall as part of the 2016 works. Mr Bettis confirmed that the hood that was installed was vented, and that the photos from 2013 appeared to show a recycling hood. There is a white vent cover which is shown in a photograph of the side exterior wall adjacent to the kitchen of the flat at page 160 of the bundle. In our view, based on the photographs of the kitchen in 2013 and 2016, it is more likely than not that it covers a hole cut in the exterior wall to accommodate a new vented kitchen extractor fan. In our view this was an alteration to the structure of the building which required the consent of the freeholder.

24. The photographs attached to the 2016 particulars show that a storage area with an access hatch has been installed to the underside of the ceiling above the hallway beside the kitchen and above the kitchen itself. Ms Lightle accepted that this was not present before the 2016 works. She told us that it consists of plasterboard and wood and that the original ceiling above it had not been altered. Her evidence is that it could easily be removed. She also accepted that prior to the 2013 works the kitchen and living room had been open plan. As part of the 2016 works the partition walls between the kitchen and the living room were extended to full ceiling height creating a partially enclosed kitchen. In our view these two alterations, the construction of the ceiling mounted storage area above the hallway and kitchen, and the partial enclosure of the kitchen area, amounted to alterations to the form of the demised premises requiring the written consent of the freeholder.

Failure to Give Access

25. It is the Applicants case that the Respondent failed to grant access to its surveyor on 28 August 2018 despite being served with written notice. The request for access is included in the original bundle at page 230 of the bundle. It is dated 6 August 2018 and was addressed to the

Respondent at Flat 8 Fitzwilliam Court. Newson Place, St Peters Road St Albans. This is her address as noted on the official copy of register of title for the flat at HM Land Registry.

26. The Respondent's position is that she did not receive that request and that furthermore she had informed the Applicant that she had left that address and provided her correct address for correspondence via a WhatsApp message which she sent to Mr Athsham Ali on 12 July 2016. A partial copy of that exchange is included in the bundle and Ms Lightle provided us with a fuller print-out of the exchange at the hearing. In her witness statement she says that informed the Mr Athsham Ali of her new correspondence address by letter sent to him in the post on the same day as she sent the WhatsApp message. She confirmed this in her oral evidence. She recalled that she sent it to Mr Ali's address in Finchley. Mr Ali confirmed that he was living in Finchley at the material time. He could not recall receiving the letter. He accepted that he had received the WhatsApp message informing him of Ms Lightle's new address for correspondence.

27. The Applicants' position is that they were entitled to serve all correspondence, and indeed all documents relevant to this application, at the Respondent's old address as noted at HM Land Registry even if the Applicant had provided an alternative address and even if they were aware that she no longer lived there. Mr Neilson relied on the case of *Oldham MBC v Tanna [2017] EWCA Civ 50* and in particular paragraph 28 where Lewison LJ confirmed that if a person wished to serve a notice on the owner of registered property they need not look beyond the address noted on the register of title. However he went on to observe;

> *'If the person serving the notice has actually been given a more recent address than that shown in the proprietorship register as the address or place of abode of the intended recipient of the notice, then notice should be served at that address also'.*

28. We are not satisfied that the Applicants properly served the notice requesting access on the Respondent, or were entitled to assume that she had received it, because they had been informed by text and via the post of a new address for correspondence. We do not consider that the Applicants have proved their case in this regard.

Failure to Pay Insurance Premiums

29. In the course of the hearing the Applicants withdrew their assertion that the Respondent's failure to pay the insurance contributions due in the years 2017/2018 to 2025/2026 amounted to a breach of her lease. This was because they accept that they had never made any demands for payment in respect of those years and consequently no obligation to pay arose. They maintained that the Respondent had breached the terms of her lease by failing to pay the insurance contribution which was demanded for the year 2016/2017.

30. In the course of the hearing we queried whether the clause of the lease concerning insurance amounted to a covenant by the lessee to pay, or whether payment of the premium was merely a condition precedent to the lessor's covenant to insure. However we consider that as this point was not one taken by the Respondent it would not be appropriate for us to consider this point and we make no finding in respect of it.

31. A copy of that demand is included in the bundle at page 74. It is dated 17 June 2016 and was sent to the Respondent's old address at 8 Fitzwilliam Court. On 6 September 2016 the Respondent's solicitors wrote to the Applicants' solicitors noting that a demand for insurance had not been received by the Respondent. They requested confirmation of the amount which the Respondent was liable to pay for buildings insurance. The Applicants' solicitors did not respond to that request. There was a follow-up email sent by the Respondent's legal representative on 24 October 2016 sent to the Applicants' legal representatives which again asked for confirmation of the sum the Respondent owed in respect of buildings insurance. They did not respond to this request either.

32. In our view the Applicants have failed to show that that the demand for payment of the proportion of the buildings insurance was served on the Respondent. Furthermore even if we are wrong on that point any breach was remedied by 6th September 2016 when the Respondent's solicitor confirmed that she was willing to pay and requested confirmation of the outstanding amount.

Final Matters

33. The Respondent has made an application that the Applicants be prevented from recovering any of their legal costs of these proceedings from her. We have treated this as an application made under both Section 20C of the 1985 Act and paragraph 5A of the 2002 Act.

34. Section 20C of the LTA 1985 as amended provides:

> *(1) A tenant may make an application for an order that all or any of the costs incurred or to be encouraged by the landlord in connection with proceedings before the... first tier 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.*
>
> *(2) The court or tribunal to which the application is made may make such order in the application as it considers just and equitable in the circumstances.*

35. Paragraph 5A of schedule 11 to the CLRA 2002 provides:

(1) A tenant of a dwelling in England may apply to the relevant court 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 just and equitable.

36. In *The Tenants of Langford Court (Sherbani) v Doren Ltd LRX/37/2000* HH Judge Riche QC set out the principals upon which the s20C discretion should be exercised:

> 31. *In my judgement the primary consideration that the LVT should keep in mind is the power to make an order under section 20C should only be used in order to ensure that the right claim costs as part of service charge is not used in circumstances that make its use unjust. Excessive costs unreasonably incurred will not in any event be recoverable by reason of section 19 of the Landlord and Tenant Act 1985. Section 20C may provide a short route by which a tribunal which is heard the litigation giving rise to the costs can avoid arguments under section 19 but its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably and properly incurred by the landlord, it would be unjust that the tenants, or some particular tenant, should have to pay them.*

37. In *Re SCMLLA (Freehold) Ltd [2014]UKUT 58 (LC)* Martin Roger QC sitting in the Upper tribunal observed:

> *An order under section 20C interferes with the parties' contractual rights and obligations and for that reason or not to be made lightly or as a matter of course but only after considering the consequences of the order for all those affected by it and all other relevant circumstances.*

38. We make orders under s.20C of the 1985 Act and paragraph 5A of the 2002 Act so that the Applicants may not recover any of their costs of these proceedings as a service charge or an administration charge. We consider that the Applicants have not acted reasonably and it would be unjust for them to recover their costs. The majority of their allegations were based on conjecture. They have let the proceedings drift and it is now some 10 years since the 2016 works came to their attention, and 8 years since their unsuccessful attempt to inspect the property. They provided the tribunal with an address for the Respondent which they knew or ought to have known was no longer occupied by her. We bear in mind the fact that two of the allegations of unauthorised alterations have succeeded but it seems to us that they are of a relatively minor

nature when compared to the number of breaches alleged. Furthermore we were unimpressed with the fact that the Applicants sought a declaration from the Tribunal that the Respondent had breached her lease by failing to pay the due portion of the insurance premium for a 9-year period, but had refused to respond on two occasions when asked how much she owed and thereafter made no further demands. It may be that they were concerned that any demand, or acceptance of sums owed, would amount to a waiver, but this does not explain why they sought a declaration that non-payment was itself a breach. In our view it would be manifestly unfair to permit them to recover any of their costs of these proceedings from the Respondent in such circumstances.

Name: Judge N O'Brien **Date:** 2 April 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).