FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LBC/2025/0652**
Property	**:**	**Flat 3, Hinde House, 16 Thayer Street, London W1U 3BG**
Applicant	**:**	**Hinde House Management Company Limited**
Representative	**:**	**Gateway Legal Limited**
Respondent	**:**	**Rachel Oatley**
Representative	**:**	**S A S Daniels LLP**
Type of application	**:**	**Application for a declaration under section 168(4) Commonhold and Leasehold Reform Act 2002**
Tribunal	**:**	**Deputy District Judge Samuel sitting as a Tribunal Chair** **John Naylor FRICS, Valuer Chairman**
Date of Decision	**:**	**30 March 2026**

DECISION

Decisions of the Tribunal

1. The Tribunal dismisses the application of 18 July 2025 for a declaration under section 168(4) of the Commonhold and Leasehold Reform Act 2002.

The Application

2. The Applicant seeks a declaration under section 168(4) of the Commonhold and Leasehold Reform Act 2002 that there has been a breach of a covenant or condition of the lease.

3. The Application claims that the Respondent is in breach of Clauses 12 and 16 of the Fifth Schedule of the lease in that *"they have replaced the window in the rear elevation of the mansard extension with a door and removed a section of the parapet wall, without the Applicant's consent, without planning permission or building regulations approval."*

4. In the Applicant's witness statement additional breaches are referred to namely: alteration of the internal configuration and unauthorised decking.

The hearing

5. The hearing took place on 24 February 2026. The Applicant and Respondent were both represented by Counsel and there was an electronic bundle of 377 pages, skeleton arguments and legal authorities.

6. The Tribunal heard evidence from three witnesses; Molly Williams, the Respondent and Gillian Pickering

7. Submissions were made but Counsel for the Respondent requested the right to make submissions on a legal point that had arisen on receipt of the Applicant's skeleton argument on the morning of the hearing. The parties were directed to provide additional written argument, limited to that discrete issue, within 14 days of the hearing. The parties complied.

The issues

8. Applicant's Counsel, Mr Tetstall put the issues in the following order:

    (i) Were the works done at Flat 3 done in breach of the lease and without consent?

    (ii) Was there a breach of covenant for the failure to get planning permission or other permissions?

(iii) Has the Applicant waived the right to rely on those breaches?

9. Counsel for the Respondent, Ms Wilson-Barnes puts the questions the other way round starting with whether the Applicant has waived its rights and is estopped from relying on the covenants.

10. An additional issue was the status of a deed of variation of the lease from 28 May 2010 under which the Respondent occupies the property under a 999 year lease. The Applicant disputes the validity of the 2010 variation and maintains that the Respondent occupies the property under a 125 year lease dated 26 February 1998.

The Lease

11. Clause 12 of the Fifth Schedule to the lease:

"Not at any time without the licence in writing of the Landlord first had and obtained or except in accordance with plans and specifications previously approved by the Landlord to make any alteration or addition whatsoever in or to the Demised Premises either externally or internally or to make any alteration or aperture in the plan external construction height walls timbers elevations or architectural appearance thereof nor to cut or remove the main walls or timbers of the Demised Premises unless for the purpose of repairing and making good any defect therein. The Tenant shall at his own expense in all respects obtain all necessary licences approvals permissions and other things necessary for the carrying out of such alterations and comply with the bye-laws and regulations and other matters prescribed by any competent authority in respect of the specific works involved in such alterations"

12. Clause 16 of the Fifth Schedule to the Lease:

"Without prejudice to the other covenants in this Lease contained not to do or permit to be done any matter or thing on or in respect of the Demised Premises which contravene the provisions of the Town and Country Planning Act 1971 or any enactment amending or replacing the same and to keep the Landlord indemnified against all claims demands and liabilities in respect thereof"

13. These Clauses were not affected by the 2010 variation.

The evidence

14. The Tribunal heard from Molly Williams. Ms Williams is a property manager for Gateway Property Management Limited. She became aware of the alterations to Flat 3 when she saw an advertisement on Rightmove which she compared with the original lease. They wrote to the

Respondent in December 2024 making them aware of the breaches of lease and requesting immediate action to remove the decking outside flat 3.

15. The Respondent had then referred her to the 2010 lease variation and that alterations had been done in 2011. Ms Williams also refers to the refusal by Westminster City Council for an application for a certificate of lawful use of an existing use or development but that this was refused on 28 August 2025.

16. In oral evidence she confirmed that Gateway took over the management in 2024 and that none of the Directors of the Applicant Company were in post at the time of the works to Flat 3. She was asked whether they had done any investigations either with the architect who drew up the plans with the 2010 lease variation or the Solicitor involved at that time. She said they had not.

17. She accepted that from the plan with the 2010 lease variation, it could be seen that the property had been reconfigured and there was a roof terrace outside Flat 3.

18. She said she could not comment on various emails from 2010 between the former Directors of the Company and the Respondent. She also confirmed she had no knowledge of events between 2008 and 2019.

19. The Tribunal heard from the Respondent. Her evidence was she purchased Flat 3 in 2005. She held 1 ordinary share in the Applicant Company, which had been formed in 2007, to challenge the existing freeholders, Starclass Properties Limited, over the purchase of the freeholder. This process resolved in the granting of 999 year leases to those within the Company. She said that since the 2010 lease variation had been executed it was treated as the governing lease of the property by both the Applicant and herself. It was only in 2024 that this had changed. She also said she spent considerable costs on the property on the basis of the 2010 lease variation.

20. The Respondent states that in 2010 she removed the window in the mansard extension, lowered the parapet wall and put in the doors. She denied that the first the Applicant knew about this was in 2024 and that the Applicant had consented to the works when it executed the 2010 lease variation. Her statement details some of the background to the works and the liaison with the Applicant's Directors at that time.

21. She makes the point that she has not been billed for Ground Rent since the 2010 lease variation.

22. The copy of the deed of variation exhibited in the bundle was given to her by one of the former directors of the Applicant in September 2025.

23. She accepts the 2010 lease extension has not been registered but thought this was being done at the time by the Solicitor who drafted the document.

24. She details the history of the works and the involvement of Directors of the Applicant Company in that process in 2010.

25. She also explains that the windows and doors in the photographs from Rightmove were not the original ones from 2010 and that in 2022 these were replaced. The managing agents had ordered the windows on behalf of the leaseholders and then charged them for their individual costs. This included the door leading onto the terrace. There was also communication at this time about the decking outside her flat.

26. She explains that as a result of the demise of the outside area, she became liable for the costs of maintaining that part of the roof and this included investigating leaks from the roof, which in one invoice, cost her £8,400.

27. In cross examination she accepted the 2010 lease extension was not registered but was unable to explain why. She was asked about the apparent differences between the copy of the deed of variation within the bundle and another one she had sent recently to the Applicant. She said she had found the document only recently and could not explain the slight differences.

28. She accepted that she carried out works to remove the window, lower the parapet wall, changed the internal configuration and put down decking. She said that she had replaced the existing railings and had paid for everything herself including later removing and then replacing the decking to allow for major works.

29. She accepted that she needed consent for the works but said she had this from the Applicant. She accepted that the deed of variation did not show the height of the door or how it related to the parapet wall and that there were no works specifications.

30. She accepted that she did not have express written consent for the works, did not have planning permission or building regulation approval.

31. Her position was the Applicant was fully aware of the works and that she was reliant on their architect.

32. The Tribunal heard from Gillian Pickering. Her evidence was she was a leaseholder of a flat in the building and that she was a Director of the Applicant Company from 2005 to 2012. She provides detail of the process by which the Applicant Company came into being and that the shareholders paid £85,000 as well as legal fees for the deed of variation.

33. One of the other directors organised architects to draw up floor plans of each flat. That director also was a key contact with the Solicitor they instructed to draw up the lease variation, executing them and registering them. She only learned in 2024 that the Respondent's lease had not been registered.

34. She refers to a Board meeting on 5 June 2009 where it was agreed that the terrace outside flat 3 would become part of the demise to the Respondent.

35. She states that it was the Board and not the Respondent who initiated offering the roof terrace as part of the demise.

36. She said the board offered to help her with the works and that she herself arranged two quotes to have the flat renovated which included the reconfiguration of the internal layout of the flat. This was necessary because of plumbing issues.

37. She refers to an email from herself to the Respondent about the cost of the French windows leading onto the terrace.

38. She explained she herself supervised the works to the Respondent's flat but that this was done on behalf of the Applicant and not the Respondent. The works included lowering the parapet wall to allow use of the terrace and the installation of the doors.

39. She explained that lowering the parapet wall was also done to try and resolve a persistent leak to the flat below. The leak went on for years and the Respondent had to pay for works as it was thought the terrace was the cause, though this was later found not to be the case.

40. She also explains that she was personally involved when the decking was put down in 2010 and the Applicant has always considered the terrace to be part of the demise.

41. Her witness statement then deals with matters subsequent to a time when she was no longer a Director of the Applicant.

42. In cross examination she accepted that there was no note of permission for the roof but that this was shown on the plan with the lease variation. In response to questioning on the absence of consents she said they had used the plan with the lease variation and that the Applicant organised the works. She said that any contractors used were approved by the Applicants.

43. She did not really deal with the issue of planning other than to say that it had been effectively overlooked.

44. She confirmed at the time of the works in 2010 that she was being paid by the Applicant to supervise the works and not the Respondent.

Findings of fact

45. The difficulty for the Applicant is that the evidence of Ms Williams starts in 2024 and given there was apparently no investigation of what had happened in 2010 or after, the evidence as to the events at that time is dependent on the evidence of the Respondent, her witness Ms Pickering and the documents.

46. The passage of time, nearly 16 years, since the events that are central to this decision means that The Tribunal cannot expect perfect recall from witnesses and the Tribunal did not consider the Respondent or Ms Pickering were making matters up to fill any lacuna in their memories. They accepted various issues that were contrary to the Respondent's case and the Tribunal found they were both telling the truth as they remembered it from nearly 16 years ago.

47. On the balance of probabilities the Tribunal finds:

(i) As a result of the need for major works and in order to shift responsibility for the roof area to the Respondent, the Applicant's agreed to extend the demise over the terrace area outside the rear of Flat 3.

(ii) The Applicant was the driving force of the re-configuration of the internal arrangement of Flat 3.

(iii) The Applicant took over responsibility for supervising the works, the lease extension and the plans for Flat 3.

(iv) The Applicant proposed contractors to the Respondent.

(v) The Applicant was fully aware in 2010 and thereafter that the parapet wall was lowered, that French doors were put in place and decking put on the outside terrace.

(vi) The Applicant was responsible in 2022 for ordering new doors for the rear of Flat 3 and then re-charged the Respondent.

(vii) The Respondent has paid significant amounts of money for repairs to the terrace area at the rear of Flat 3 because of issues over leaks.

(viii) The Respondent's lease variation has not been registered.

(ix) The 2010 lease variation binds the parties in equity

(x) There has never been planning or building regulation permissions in relation to the works at the rear of Flat 3.

(xi) The current stance of the Applicant is a change of position.

(xii) There has been a breach of Clauses 12 and 16 of the Fifth Schedule of the original lease but the Applicant has waived its right to now insist on its strict rights under those clauses.

The Law

48. The Respondent relies on Swanston Grange (Luton) Management Limited v Langley-Essen [2008] L.&T.R 20 for the Jurisdiction of the Tribunal to consider waiver and or estoppel and principles to be applied in this case.

*16. For the reasons set out below I agree with the LVT that it did have jurisdiction to consider this question of waiver of the covenant? using this expression in the sense mentioned above. Nothing I say is intended to indicate any jurisdiction in the LVT to consider the separate question of waiver which arises when it is necessary to decide whether a landlord has waived the right to forfeit a lease on the basis of a breach of covenant. The latter question is dealing with the remedies available to a landlord on the basis of a breach of covenant which has been determined to have occurred or has been admitted by the tenant. The question with which this case concerned is the question of whether the landlord is estopped *326 from asserting against the tenant that there has been a breach of covenant at all. This in my judgment is a wholly different question and I do not accept Mr Clargo's argument that, if the LVT does not have jurisdiction to consider questions of waiver of the right to forfeit, it necessarily cannot have jurisdiction to consider questions of waiver in the sense of being estopped from relying upon a covenant at all.*

19. These passages show that if a landlord has waived or become estopped in the foregoing sense from relying as against a tenant upon

a covenant, then for so long as this waiver or estoppel operates the obligation is suspended. It is wrong to conclude that a tenant who performs acts which strictly would be a breach of the suspended covenant has breached this covenant….

23. For the appellant to be prevented by waiver or promissory estoppel from relying on the relevant covenants the respondent would need to be able to show an unambiguous promise or representation whereby she was led to suppose that the appellant would not insist on its legal rights under the relevant covenants regarding underlettings either at all or for the time being. The respondent would need to establish that she had altered her position to her detriment on the strength of such a promise or representation and that the assertion by the appellant of the appellant's strict legal rights under the relevant covenants would be unconscionable, see Halsbury's Laws , 4th edn, reissue Vol.16(2) para.1082 and following.

49. The Applicant referred the Tribunal to a passage from Woodfall on Landlord and Tenant

11.044.3

It must not be supposed that mere passive acquiescence in one breach of covenant is a waiver for all future time of the right to complain of any other breach.[12] The question, which has to be decided upon the facts of each case, is whether the conduct or omissions of the plaintiff have put him in such an altered relation to the covenantor as, makes it manifestly unjust for the court to grant him the relief he asks for.[13] The question is not whether breaches have been overlooked in individual cases, but whether those omissions can be said to amount to a representation that the covenants are no longer enforceable.[14]

Reasons

50. The evidence before the Tribunal was that the Applicant was, before the works in issue, in the process of providing 999 lease extensions to those who were shareholders in the Applicant Company and who had paid for a fighting fund for removing the existing freeholder.

51. This meant that the Applicant was providing both architectural and legal services to the leaseholders which included the re-design of Flat 3 and the drawing up of plans to be registered with the lease extension.

52. The email correspondence and the evidence of Ms Pickering is clear that the roof terrace to the rear of Flat 3 was to be demised to the Respondent.

53. The lease extension was paid for but not registered.

54. The Tribunal finds the 2010 lease variation binds the parties in equity for the following reasons and the parties have been working on the assumption that it governs their relationship:

(i) The Applicant has not sought Ground rent from Respondent since the 2010 lease variation.

(ii) The former director of the Applicant was the one to supply the copy of the deed of variation to the Respondent in 2025.

(iii) The evidence of the Respondent and Ms Pickering detailed above.

(iv) The emails relating to getting permissions from mortgage companies, specific emails over changing the plans for Flat 3 which needed to be included in the lease variation.

(v) The background and reasons for varying the lease.

55. Given that finding, the plan with the lease variation shows the terrace at the back of Flat 3 edged as part of the demise. It also shows the internal re-configuration of Flat 3 as well as a symbol showing doors opening outward.

56. The Tribunal reject the idea that this was a case of mere passive acquiescence. The evidence and findings of fact above show that the Applicants were the promoters of the works, supervised the works and took many matters out of the Respondent's hands such as design, the contractors used and paying for the supervision of those works. When the windows were replaced in 2022 it was the Applicant who ordered the door for flat 3 and then re-charged the Respondent.

57. Given the Applicants were responsible for providing both architectural and legal services to the Respondent, it was incumbent on them to ensure relevant permissions were granted. They drove the development.

58. The Tribunal finds that the actions of the Applicant in relation to the works were clearly unambiguous and were more than promises or representations; they were directly involved.

59. The Tribunal also accept that the Respondent has acted to her detriment in taking over responsibility for the part of the roof behind Flat 3. She has expended a lot of time and money in trying to find leaks and the expense of the works that the Applicant was encouraging, designing and supervising.

60. The Tribunal finds it would be unconscionable for the Applicant to change their position now and insist on compliance with Clauses 12 and 16 of the original lease.

Post hearing submissions

61. After the hearing, submissions were permitted on whether or not a failure to get planning permission was a one off breach or a continuing one. The Tribunal is grateful for Counsel's learning on the matter but given the findings of the Tribunal the matter is academic. While no disrespect is meant to the extra work done, a finding by this Tribunal one way or the other would be of no practical or legal significance.

Name: Judge Samuel **Date:** 26 March 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).