FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAN/LBC/2017/0043**
Property	:	**65 William Morris House, Margravine Road, Fulham, London W6 8LR**
Applicant	:	**The London Borough of Hammersmith and Fulham**
Representative	:	**Mr T Asghar, in-house Counsel** **Miss S Whittaker, Project Surveyor**
Respondent	:	**UQAB Limited**
Representative	:	**Mr J da Rocha of Martyns Rose Solicitors**
Type of Application	:	**Application for an order that a breach of covenant or condition in the lease has occurred**
Tribunal Members	:	**Tribunal Judge Dutton** **Mrs E Flint DMS FRICS IRRV**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR on 20th September 2017**
Date of Decision	:	**2nd October 2017**

DECISION

DECISION

The Tribunal determines that there have been breaches of covenant and conditions of the lease for the reasons set out below.

BACKGROUND

1. By an application made on 12th April 2017, the London Borough of Hammersmith and Fulham (the Council) sought a determination that the Respondent, UQAB Limited had breached conditions and terms of their lease, full details of which were set out in the Applicant's grounds attached to the Application.

2. Within the bundle before us was a reply and defence to the grounds of the application and a supplementary reply to that defence made by the Council was also filed and included within the papers.

3. Directions had been issued on 27th April and subsequently amended on 7th July and the matter came before us for hearing on 20th September 2017.

4. In addition to the papers referred to above, the bundle contained a witness statement of Miss Sue Whittaker, a Project Manager with the Council which was dated 10th April 2017 and had a number of exhibits attached. These exhibits included copies of the freehold and leasehold title, the lease and a very detailed survey which had been carried out with photographic evidence attached.

5. We also had in the bundle a witness statement from Miss Fatimah Nofarest, a Director of the respondent company but she did not attend the hearing to speak to her witness statement. Indeed, the witness statement appears to have been signed by Mr da Rocha her solicitor. It appeared to include photographs of the state of the property prior to the Respondent's purchase.

6. We noted all these documents and have borne them in mind in reaching our decision.

APPROPRIATE LEASE TERMS

7. Fifth schedule part 1 lessee's covenants paragraph 15.

   Not at any time without the licence in writing of the lessor first obtained nor except (if such licence shall be granted) in accordance with the plans and specifications previously approved by the lessor and to the lessor's reasonable satisfaction to make any alteration or addition whatsoever in or to the demised premises either externally or internally nor 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 nor to do or suffer in or upon the demised premises any wilful or voluntary waste or spoil nor to carry out or permit to be carried out any alteration to the general plumbing system and or any conduits connected thereto nor to remove any of the lessor's fixtures and fittings.

8. At paragraph 19 of the same schedule the following clause is found.

Without prejudice to the other covenants in this lease contained not to do or permit or suffer to be done or omitted any act matter or thing on or in respect of the demised premises which contravenes the provisions of the Town and Country Planning Act 1990 or any enactment amending or replacing same and keep the lessor indemnified against all claims demands and liabilities in respect thereof.

9. At paragraph 25 in the schedule the lease says as follows.

To obtain all licences permissions and consents and to do and execute all works and things and to bear and to pay all expenses levies and taxes required or imposed by any existing or future legislation in respect of works carried by the lessee in the demised premises or any part thereof or any user of the demised premises during the said term.

HEARING

10. At the hearing, we asked Mr da Rocha what his client's position was on the question of the consent required under paragraph 15 of the lease. He told us that they had asked for permission through their builders but this seemed to relate to planning and building regulation requirements and was not in any event supported by any evidence. Mr da Rocha produced a copy of an application purportedly dated 26th June 2017 seeking consent from the Council under the terms of the lease. Miss Whittaker, however, was the party who would have been required to deal with the matter, it having first gone to the compliance department. No such application has passed before her and in any event, the application post-dated the commencement of the works. Mr da Rocha admitted that he did not think an earlier consent had been obtained and he could certainly put no evidence to us that that was the case. He also accepted that some works required building regulation consent and again that had not been obtained.

11. The witness statement from Miss Whittaker went into great detail as to faults she had discovered within the building works themselves. We noted what was said.

12. Miss Nofarest's statement does not address the question of consent but merely seems to rely on the poor condition of the property when they obtained it and she says the number of occasions she had attempted to make contact with the Council to ascertain the issues the Applicant says had arisen. Indeed, in the witness statement she indicates that they relied on the services of an engineer and professional building contractors to obtain any building or planning permission and that their failure to do so in her view required to the joinder of B Z Horizon Construction Limited as Co-Respondents.

THE LAW

13. The law applicable to this application is set out below.

FINDINGS

14. We have noted all that has been said both in the papers and in submissions made to us. In our finding, there is no doubt that the Respondent have failed to obtain

the consent of the Council to these works as required by paragraph 15 of fifth schedule of the lease. Further, there appears to be little doubt in our mind that the Respondent has failed to obtain the necessary permissions that are required either under paragraph 19 or under paragraph 25. In those circumstances, it seems unnecessary for us to make any findings on the various other complaints raised by the Applicants. Those for example related to the installation of a kitchen in a corridor which may be a matter that should be dealt with under the Housing Act 2004. There are other issues relating to compliance with fire requirements, loading and, for example, the failure to lay down floor covering. It seems to us that these all flow from the works which have been carried out without permission. In the circumstances, it seems unnecessary for us to make findings in respect to these extraneous issues and certainly not to go into any detail with regard to the report prepared by Miss Whittaker. We confine our findings, therefore, to say that we are satisfied that there have been breaches of the lease as set out above. Mr Asghar for the Council confirmed he was content with the matter being dealt with in this manner.

15. We understand from Mr da Rocha his clients would wish to get in touch with the Council to try and reach some agreement which could enable certain refurbishment works to be undertaken. The evidence before us, although denied, is that the intention is to create four en-suite bedrooms in this building presumably for some form of HMO it being close to the local hospital. It is clearly for the Council to consider whether such accommodation is appropriate but there do clearly appear to be issues if that route is followed. In those circumstances, it seems to us that the Respondent should re-submit their application for consent, which was originally dated 26th June 2017, and include with that all necessary supporting documents. It is hoped then that they can work with the Local Authority to come up with a scheme for which consent can be given and the matter can then progress from there.

16. Finally, no application for costs was made to us, although it appears that the Local Authority may rely on the provisions contained in the lease insofar as that matter is concerned.

Judge: Andrew Dutton

A A Dutton

Date: 2nd October 2017

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.

3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.

The Relevant Law

168 No forfeiture notice before determination of breach

(1)A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.

(2)This subsection is satisfied if—

(a)it has been finally determined on an application under subsection (4) that the breach has occurred,

(b)the tenant has admitted the breach, or

(c)a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

(3)But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(4)A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.

(5)But a landlord may not make an application under subsection (4) in respect of a matter which—

(a)has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(b)has been the subject of determination by a court, or

(c)has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.