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

Case Reference : **LON/OOBB/LBC/2013/0080**

Property : **20A Howards Road, Plaistow,
London E13**

Applicant : **Navy Properties Ltd.**

Representative : **Circle Residential Management
Ltd.**

Respondent : **Ms Europa During**

Representative : **None notified**

Type of Application : **Determination of an alleged breach
of covenant**

Tribunal : **Judge Goulden**

**Date and venue of
Paper Determination** : **Wednesday 27 November 2013 at 10
Alfred Place, London WC1E 7LR**

Date of Decision : **27 November 2013**

DECISION

BACKGROUND

- (1) The Applicant landlord seeks a determination, under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”), that the Respondent tenant is in breach of Clause 2(3) of the lease dated 7 February 2006 under which 20A Howards Road, Plaistow, London E13 8AY (“the property”) is held, in that the Respondent has failed to maintain the premises, and allowed two conifer trees to grow in the rear garden resulting in root damage to the boundary brick wall.
- (2) The Tribunal’s Directions were issued on 2 October 2013. The dates in those Directions were varied, at the request of the Respondent. The paper determination was due to take place on 27 November 2013, neither side having requested an oral hearing.
- (3) Written representations were received from both sides.
- (4) The written representations from the Respondent were dated 25 November 2013. A written request dated 26 November 2013 was made by the Applicant’s managing agents that the Respondent’s letter of 25 November 2013 should be disregarded “*given the serious misrepresentation of various telephone conversations*”.
- (5) The paper determination took place on Wednesday 27 November 2013.
- (6) In the main, and particularly insofar as telephone conversations were referred to in the Respondent’s representations dated 25 November 2013, the Respondent’s representations have been disregarded by the Tribunal.

The Tribunal’s Decision

- (7) As stated in the Tribunal’s Directions of 2 October 2013, the Tribunal must reach its decision on the basis of the evidence produced to it. The burden of proof rests with the Applicant. The Tribunal will need to be satisfied:
 - (a) that the lease include the covenants relied on by the Applicant; and
 - (b) that, if proved, the alleged facts constitute a breach of those covenants.
- (8) The Applicant has relied on Clause 2(3) of the lease dated 7 February 2006 under which the property is held. That clause states “**at all times during the said term at the Lessees own cost when and as often as need or occasion shall require well and substantially repair renew uphold support maintain paint grain varnish paper whitewash clean polish and renovate the**

Flat and the windows and doors thereof and the fixtures fittings and the appurtenances belonging thereto”

- (9) The demise in the lease is **“the ground floor of the premises situate at and known as 20a Howards Road, Plaistow, London E13 at ground floor level coloured red on the same plan as the same is more particularly described in the Fourth Schedule hereto”**
- (10) The Fourth Schedule refers to **“ALL THAT ground floor flat and garden including the structure thereof”**
- (11) The lease plan has not been coloured, but it appears that the edging relates to the ground floor flat only. There is no indication of a garden and no indication within the demise as to whether the garden is to the rear or front of the flat.
- (12) The Tribunal does not consider that the clause relied on by the Applicant covers the garden (whether front or rear). The office copy entries of the freehold title which lists a schedule of leases affecting the freehold title refers to the property as being the ground floor flat only.
- (13) No expert evidence has been produced by the Applicant to support the contention that the conifer trees are the cause of any root damage to the boundary brick wall.
- (14) Based on the paucity of evidence, the poor drafting of the lease and the lack of expert evidence, the Tribunal determines that there has been no breach of the clause of the lease relied on and therefore there has been no breach of covenant under the Act.
- (15) In view of the Tribunal’s findings, it may be inappropriate for the Applicant to seek to place costs in this connection on the service charge account.

Name: J Goulden

Date: 27 November 2013