

		PROPERTY CHAMBER (RESIDENTIAL PROPERTY)
Case Reference	:	LON/OOAH/LBC/2014/0056
Property	:	Flat F, 124 Church Street, Croydon CRO1RF
Applicant	:	Kallarview Homes Limited (landlord)
Representative	:	Ms Mattison of counsel instructed by Machins LLP, solicitors
Respondents	:	Mr M Gold (leaseholder) and Capital Housing Limited
Representative	:	Ms Bleasedale of counsel instructed by Quality Solicitors
Type of Application	:	An application under section 168 of the Commonhold and Leasehold Reform Act 2002 seeking a determination that the leaseholder has breached the lease.
Tribunal Members	:	Professor James Driscoll (Tribunal Judge) and Mrs Evelyn Flint FRICS
Date and venue of Hearing	:	The application was heard on 5 December 2014 at 10 Alfred Place, London WC1E 7LR

Date of Decision	:	21 January 2015
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DECISION

The Decision summarised

1. The leaseholder is in breach of the covenant on internal alterations contained in paragraph 5-6 of the lease.

Background

2. The applicant in this case is the owner of the freehold of the subject property which it acquired in 2007. It has applied for a determination that the respondent leaseholder is in breach of the terms of his lease of part of the property described as Flat F which is on the ground floor of the building. The application is made under section 168 of the Commonhold and Leasehold Reform Act 2002. It alleges breach of a number of covenants, that is the covenant against alterations, the covenant to comply with statutory obligations, the covenant against alterations, the covenant to comply with planning laws and the covenant not to prejudice the insurance cover.
3. The respondent to the application is the current owner of Flat F. He purchased the flat at an auction and the lease was granted to him by the landlord on 13 March 2013. A copy in the landlord's bundle includes a plan for two flats, Flat E and Flat F. It shows Flat 5 (the subject flat) having one bedroom, a kitchen and a bathroom/WC. It appears that the leaseholder is planning to sell the lease. This does not, however, prevent us from considering whether the leaseholder is in breach of covenant.
4. The building was previously a public house bearing the name the 'Rose and Crown'. Later the upper floors were converted into flats to be sold on long leases. It appears that formerly the ground floor of the building consisted of a licensed ground floor area used as a public house bar. We will refer to this as the 'bar area'. The bar area has listed building status.

5. Following receipt of the application the tribunal gave directions on 18 July 2014. The hearing eventually took place on 5 December 2014 when both parties were represented by counsel. At the hearing a Mr L Kallar a director of the landlord company was present and he was able to speak to a witness statement he signed on 29 August 2014. Mr Gold was also present at the hearing but he did not give evidence.
6. Each of the parties produced a bundle of documents. The landlord's bundle included the statement of Mr Kallar. It also included photographs of Flat 5 when it still had its features as a bar area. In the case of the respondent his bundle included a statement of case signed by Mr Gold and a director of London and Capital Housing Limited to whom it appears he intends to sell the property.
7. Mr Kallar gave evidence, he was cross-examined and he answered questions from the tribunal. His counsel made various submissions. For the leaseholder we were shown the statement of case and we heard submissions from his counsel.
8. Having considered the oral evidence, the extensive documentation and counsel's submissions we find the following facts.
9. It is agreed that the building was originally constructed for use as a public house and that planning permission was given by the London Borough of Croydon Council (the 'Council') for conversion into flats. However, the ground floor has listed building status to preserve the bar and its associated features and fittings as well as listed public house signs on the exterior of the building. Included in the landlord's bundle of documents are photographs of the bar area. Planning permission was granted on 17 December 2009 for use of the ground floor as a studio flat and conversion of the upper floors into 2 two bedroom flats and 2 one bedroom flats.
10. The landlord has with planning permission converted the upper part of the building into flats which it is in the process of selling on long leases. As to the ground floor the landlord does not have planning permission to convert it into a single flat presumably as the bar area is preserved as a public house bar area with listed building status.
11. Because of the unusual features of the ground floor it was decided that it would be difficult to sell with the listed building element of the ground floor so the decision was taken to sell it at auction. During his cross examination Mr Kallar admitted that the landlord had applied unsuccessfully for planning permission to convert the bar area into a flat. Planning permission was granted for a small studio flat to be built with the existing bar area being retained.
12. Before the sale the landlord let the ground floor bar area on an assured shorthold tenancy to a Trevor Lane for 6 months expiring on 13 June 2014. Before doing this the landlord removed the public house internal toilets and installed both a kitchen and a bathroom. This was done without any planning or listed building consent. A copy of the auction details was

included on page 6 of the respondent's bundle. It is described as '...a self-contained ground floor commercial unit situated within an end of terrace building internally arranged to provide five self-contained flats. The property is currently occupied as a residential unit'.

13. Mr Gold purchased it at an auction in March 2014 without apparently viewing the property before the auction (though other potential purchasers did). It was purchased subject to the assured shorthold tenancy. We were shown photographs of the bar area.
14. It is also evident that the bar area has been cleared of the bar and other fittings and that the area has now been converted into a number of rooms. Mr Kallar denies that he removed the bar area and he accuses Mr Gold of doing this and carrying out works of conversion without the consent of the landlords.
15. In his evidence he told us that the first he knew of the removal of the bar and the conversion of Flat F into four bedrooms when he received the letter of complaint from the council dated 11 June 2014 and the later enforcement notice. He wrote to the leaseholder's solicitors and on 4 July 2014 he visited the premises with Mr Gold and a Mr Baum who was introduced as the new owner. This is when he discovered that bar area had been removed and that there had been alterations to the studio and bar areas by creating four bedrooms. Using his mobile phone he took some photographs of the flat copies of which are in his bundle of documents.
16. His solicitors wrote to the leaseholder's solicitors by email on 11 June 2014 to complain about the flat being advertised for sale at auction. A notice served under section 146 of the Law of Property Act 1925 was also given and the lender's solicitors complained in an email dated 24 June that no consent had been obtained from the landlord's mortgagee. On 8 July 2014 the landlord's solicitors emailed the leaseholder's solicitors inviting them to admit the breaches of the lease failing which an application would be made to this tribunal.
17. On page 47 of the applicant's bundle are details of an auction by Savills of '124F Church Street...') claiming that it would be of interest to owner occupiers and rental investors and describing it as a ground floor flat forming part of a three storey end of terrace building stating that the flat requires upgrading. It also describes it as having a reception room, kitchen/reception room, four bedrooms and a bathroom/WC. We were told that the auction was scheduled for 16 June 2014. On 11 June 2014 Machins, the landlord's solicitors, received a letter from SJC, the leaseholder's solicitors enclosing a notice of the transfer of the lease to London & Capital Limited. The same day Mr Kallar received an email from the Council complaining that there had been breaches of planning laws.
18. On the 24 June 2014 Mr Kallar was served with a contravention notice by the Council under section 171A(1) of the Town and Country Act 1990 relating to the 'ground floor, Rose and Crown', the removal of the listed pub sign boards and the conversion of the ground floor into a four bedroom flat'.

19. Mr Gold is shown in the Land Registry details as having been granted a long lease of a ground floor flat by a lease dated 23 April 2014.
20. For this application the leaseholder has appointed the firm of Quality Solicitors. In the statement of case the leaseholder denies all the allegations of breach of the lease. He submits that any alterations did not need consent as they were to do with using the premises for residential purposes and that even if they are the landlord is estopped from relying on the breach claim.
21. The leaseholder also does not accept that the bar or other furniture was listed or protected. Nor does he admit that any of the internal alterations required planning consent. Further he stated that he and his advisors are negotiating with the Council and that it would be premature for the tribunal to make any determinations before the Council has completed its enquiries and and for as long as he is negotiating.
22. His bundle of documents includes an undated transfer of the lease to Capital Housing Limited.
23. His counsel did not call him to give evidence. Nor did she call any other witnesses.

Our decision

24. First, we find that the section 146 notice given on behalf of the landlord to the leaseholders has no effect a under section 168 of the 2002 Act such a notice may not be given unless the landlord has either had a determination from this tribunal that a breach has occurred or the leaseholder admits the breach.
25. It seems to us that the most serious of the allegations of breach of covenant (see the completed application page 3 and at page 3 of the bundle) is that of alterations to the property in breach of clauses 5.6 and 5.24 of the lease and 5.28 that the works were carried out without relevant planning consents. The landlord did not advance any evidence that what it alleges the leaseholder has done has imperiled the insurance.
26. The essence of this determination is first whether as a matter of fact the leaseholder carried out any works to the flat in breach of clauses 5.6 and 5.24 of the lease. Mr Kallar told us that he was unaware that the bar area had been removed or that works had been carried out to the flat until he received notices from the council and then inspected the property with Mr Gold.
27. It would have been helpful if Mr Gold had given evidence when he could have answered questions. We have in the bundles that the flat was advertised for sale at auction by Savills with four bedrooms and that this was done during the leaseholder's period of ownership. As it is we are left with the evidence of Mr Keller supported by some poor quality photographic

evidence and the fact that the flat was described by Savills as having a reception room/kitchen, four bedrooms and a bathroom/WC

28. In the absence of any other evidence or information we have concluded that on the balance of probabilities that the leaseholder had works carried out to the flat. At the very least he had the flat converted into a four bedroom flat. It appears also the bar area and bar furniture have been removed and we conclude that this must have occurred after his lease was granted.
29. Under clause 5-6 of the lease the 'tenant' must not make any internal structural alterations and any non-structural alterations may not be made unless any consents have been obtained from the 'competent authority' and an application to the landlord is made. It was not argued on behalf of the leaseholder that such a consent was sought whilst in his evidence Mr Kallar told us that he was unaware of the works until after they had been completed.
30. Moreover, the removal of the bar without the consent of the Council was also in breach of the covenant in clause 5.6 of the lease.
31. Paragraph 5-24 of the lease forbids external additions and alterations. We do not consider that the landlord has produced evidence that this covenant was broken.
32. Turning to the alleged breach of clause 5-28 which requires the leaseholders to comply with relevant planning requirements the landlord in our view failed to show which planning requirements were broken. The removal of the bar area, referred to in paragraph amounts to a breach of the covenant in 5-6 of the lease.
33. We were not impressed by the submissions by counsel to the leaseholder that any such works were in conformity with the lease being a residential lease. Any alterations required the agreement of the landlord and the works were not undertaken with such a consent.
34. It is regrettable that both the landlord in this case and the leaseholder have committed breaches of the relevant planning laws. Mr Kallar admitted that selling the flat with the bar area was in breach of planning, however, the removal of the bar area occurred during the leaseholder's period of ownership. We have also noted that the landlord converted the original pub toilets before he sold the flat and before he rented it out on an assured short-hold tenancy.
35. Questions of enforcement are clearly not for this tribunal but we will arrange for the case officer to send a copy of this decision to the Council.
36. To summarise we determine that the leaseholder is in breach of his covenants in the lease.