



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

Case Reference : **LON/OOAC/LBC/2019/0004**

Property : **1462 High Road, London N209BS**

Applicant : **Ferney Auto Engineering Limited
("the Applicant")**

Representative : **Vanderpump and Sykes LP**

Respondents : **JDO Property Limited ("the
Respondent")**

Representative : **In Person**

Type of Application : **Determination of alleged breaches
of covenant.**

Tribunal Members : **Jim Shepherd
John Barlow FRICS**

Date of Decision : **29th April 2019**

DECISION

1. The Respondent has breached the following covenants in the lease dated 3rd February 1992:

Clause 2 (xi)

Clause 2 (xii)

Clause 2 (xiii)

Clause 2 (xiv)

Clause 2 (xv)

The application

2. The Applicant made an application to the Tribunal dated 23rd January 2019 alleging that the Respondent had breached covenants in the lease between the parties dated 3rd February 1992. The Applicant is the freehold owner of premises at 1462 B High Road, Whetstone, London, N209BS ("The premises"). The Respondent is the leasehold owner of the premises.

3. In the application the Applicant alleged that there had been breaches of the following covenants:

Clause 2 (viii): To permit the Lessor or his agents at all reasonable times during the said term with or without workmen or others to enter the demised premises and examine the state of repair and condition thereof....

Clause 2(xi) ...not without such license as aforesaid to make any alteration in the plan or elevation of the maisonette building hereby demised or in any of the party walls or the principal or bearing walls or timbers thereof.

Clause 2 (xii) Not to do or permit or suffer to be done or omitted any act matter or thing in or respecting the demised premises required to be done or omitted (as the case may be) by the Town and Country Planning Acts or any Act for the time being in force amending or replacing the same or which shall contravene the provisions of the said Acts or any of them....

Clause 2 (xiii) Not at any time during the said term to carry on or permit to be carried on any trade manufacture or business of any description on the demised premises or permit the same to be occupied or used in any other manner than as a private residence in single occupation.

Clause 2 (xiv) Not to do or permit any waste spoil or destruction to or upon the demised premises nor to do or permit any act or thing which shall or may become a nuisance damage annoyance or inconvenience to the Lessor or his tenants or the tenants or occupiers of the adjoining premises or to the neighbourhood.

Clause 2 (xv) upon every assignment mortgage legal charge devolution or disposition or underlease of the demised premises or any part thereof whether by express deed or by operation or implication of law within

twenty one days after the assignment mortgage legal charge devolution or disposition to give to the Lessor's solicitors notice in writing thereof...

4. The background to the application is detailed in the witness statements of Deborah Levy, a Director and Shareholder of the Applicant Company and Jill Evans of Gilmartin Ley Limited the managing agents. In summary Ms Evans received notification from David Darby a neighbour of the premises to the effect that the premises had been converted and that there were a number of occupiers. He expressed concern about the apparent modification of the gas and electricity supplies.

5. An inspection was carried out on 17th December 2018. A prior request had been made to the Respondent to provide access without response. In any event Ms Evans was able to enter the premises as she was given access by a tenant. She was accompanied by John Goedecke (FRICS). He subsequently provided a report of his findings. In summary he found three locked rooms at the first floor level and two locked rooms on the second floor level. Access was given by the occupier of the rearmost room on the first floor level where it was found that a room had been formed within the entrance lobby to the unit with a spiral staircase leading to a further room at the second floor level which contained a kitchen and self contained shower room. Access was also given to the second floor front room by

another occupier where it was found that this had been formed into a bedsitting room with a self contained room containing a kitchen and a self contained shower unit. Mr Goedecke further reported that there were five electrical check meters and six mains circuit breakers. There were other signs of multiple occupation including the installation of smoke detectors and alteration of drainage. Finally Mr Goedecke reported that the loft hatch had been sealed shut and the original window in the rear wall of the extension at first floor level had been removed and the opening bricked up.

6. The premises were originally a three bedroom self contained maisonette. This much is clear from the content of Zoopla reports attached to the evidence of Ms Evans.

7. In response to the application, James O' Donnell wrote to the Tribunal on 14th March 2019. In his letter he said there had been a *great number of untrue allegations made*. In particular he took issue with the allegation that he had bricked up the rear window; that he had sealed the roof hatch ; that there were 10-15 people living in the premises and that he had failed to give access. He did not seem to deny that some alterations had taken place and that there were at least three people living in the premises. He attached a letter from his solicitor concerning access, an email from an architect which confirmed that he had been

renting out rooms and a letter from Marbet Building Services to say that work had been carried out in accordance with building regulations.

8. The Tribunal inspected the premises at 10 am on 29th April 2019. We were met by the Applicant's representatives, namely John Yianni of Counsel, Ms Evans and Mr Goedecke. They informed us that the Respondent had written to them on 26th April 2019 making a number of admissions in relation to the alleged breaches of covenant. The letter was copied to the Tribunal by email on the same date. This had not been received by the Tribunal members prior to the inspection. The letter is attached to this decision. In the letter the breaches of Clauses 2(xi) (Alterations); Clause 2 (xii) (Planning Permission); Clause 2 (xiii) (Use as private residence in single occupation); Clause 2 (xiv) (Nuisance and annoyance) and Clause (xv) (Registration of Underleases) are all admitted. The Respondent only took issue with the allegation that he had failed to provide access on 17th December 2018 in breach of Clause 2 (viii).

9. Upon inspection of the premises it was clear that there was work taking place on site apparently to reinstate the premises as a single unit. The spiral staircase had been removed. The workmen on site said that they had been there for 2-3 weeks.

10. In the application made pursuant to s.168(4) of the Commonhold and Leasehold Reform Act 2002 the Applicant seeks a determination that the Respondent is in breach of the lease. In light of the fact that the Respondent has made extensive admissions albeit at the 11th hour there are no remaining issues for the Tribunal to resolve and the Applicant is entitled to the determination as made in paragraph 1 above. In relation to the one disputed breach of the failure to give access the Tribunal makes no determination.

11. For obvious reasons a contested hearing did not take place on 29th April 2019. If the parties wish to make any application in relation to the issue of costs they should make a written application giving reasons copied to the other party. The application should be made within 14 days of receipt of this decision. The application will be considered on the papers unless a hearing is considered necessary.

Name: Jim Shepherd

Date: 29th April 2019