

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/00HN/LBC/2007/0019

REASONS

Application : Section 168(4) Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”)

Applicant/Landlord : Robert George Gates

Respondent/Leaseholder : Paul Gary Halcrow

Premises : 243 Holdenhurst Road, Bournemouth, BH8 8DA

Lease : the lease of the Premises dated the 25 February 1982 and made between Mr Gates (1) and Henry William George Taylor and Rose Ivy Taylor (2)

Date of Application : 2 August 2007

Date of Hearing : considered by the Tribunal on the 6 November 2007 without a hearing

Members of the Leasehold Valuation Tribunal : Mr P R Boardman JP MA LLB (Chairman),
and Mr K M Lyons FRICS

Date of Tribunal’s Reasons : 6 November 2007

Introduction

1. This Application by the Applicant/Landlord is under section 168(4) of the 2002 Act, namely for a determination that a breach of a covenant or condition in the Lease has occurred
2. The Tribunal considered the matter on the 6 November 2007 on the basis of written representations without an oral hearing pursuant to notice dated the 10 August 2007 to the parties to that effect under Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (Amendment) (England) Regulations 2003 as amended by Regulation 5 of the Leasehold Valuation Tribunals (Procedure) (Amendment) (England) Regulations 2004

Documents

3. The documents before the Tribunal are the application and supporting documents numbered 1 to 54 in the Tribunal's bundle
4. References in these reasons to page numbers are references to page numbers in the Tribunal's bundle

The Lease (pages 8 to 18)

5. For the purposes of these proceedings the material parts of the Lease are as follows :

Clause 1

..... ALL THAT piece or parcel of land together with the shop and dwellinghouse erected thereon.....and known as Number 243 Holdenhurst Road Bournemouth.....

Clause 2 [lessee's covenants]

Paragraph d(i)

.....keep in good and substantial and tenantable repair and condition the said shop and dwellinghouse out-buildings and premises and all and singular other erections and buildings which shall or may at any time or times hereafter during the said term be erected or built upon the said piece or parcel of land hereby demised or any part thereof.....

Paragraph (e)

Not to erect any additional buildings walls or fences on the said piece of land or make any alterations in the plans designs elevations or architectural decorations of the said shop dwellinghouse and outbuildings or any or either of them

Paragraph (n)

.....the Lessees and their tenants or occupiers will at all times use occupy and preserve the front of the ground floor of the said premises as a shop for the sale of goods by retail and the upper floors and the ground floor behind the shop as private residential flats.....

The Applicant/Landlord's particulars of case 2 August 2007 (pages 4 to 6)

6. Mr Gates stated that Mr Halcrow had breached covenants 2(e) and 2(n) by converting an outbuilding into a separate unit of residential accommodation now known as 2 The Lane, Lowther Road, Bournemouth

The Applicant/Landlord's statement of case 20 August 2007 (pages 20 to 24)

7. Mr Gates stated that the Premises consisted of a 3-storey terraced unit with a retail shop at the front of the ground-floor, a 1-bedroomed residential unit at the rear of the ground floor shop

(attached), a 2-bedroomed flat at first-floor level, and a 1-bedroomed flat at second-floor level

8. At the rear there was an outbuilding with frontage to The Lane now known as “The Cottage, 2 The Lane”, which comprised at ground-floor level a bathroom and shower and at first-floor level a double bed-sitting room
9. On the 5 July 2006 Mr Halcrow served on Mr Gates a notice of claim to acquire the freehold of the Premises pursuant to the Leasehold Reform Act 1967 (“the 1967 Act”)
10. On the 1 September 2006 Mr Gates served on Mr Halcrow a notice in reply rejecting Mr Halcrow’s claim on the basis that the use of the building known as 2 The Lane as a separate unit of residential accommodation structurally detached from the principal building known as 243 Holdenhurst Road brought that building within the definition of a “house” (section 2 of the 1967 Act) in its own right, so that Mr Halcrow’s claim was in respect of 2 separate houses, rather than a house and “premises”
11. Mr Halcrow did not accept the contents of the notice in reply, but had not clarified the basis of that non-acceptance

Witness statement of Mr Geoffrey Bevans FRICS 18 August 2007 (pages 35 to 36)

12. Mr Bevans stated that on instructions from Mr Gates he inspected the Premises in connection with Mr Halcrow’s claim to acquire the freehold under the 1967 Act
13. It was evident from the plan attached to the Lease [copied at page 11] and the Land Registry title plan attached to Mr Halcrow’s notice of claim [copied at page 27] that the outbuilding known as The Cottage was entirely detached and had a separate postal address, namely 2 The Lane, Lowther Gardens
14. Although the building was separately numbered on the plan attached to the Lease, it appeared that the conversion into a separate residential unit had been fairly recently carried out, although Mr Bevans had not had the benefit of an internal inspection
15. Mr Bevans subsequently inspected the planning register at Bournemouth Council. There were documents for 1 and 3 The Lane, but there was no reference to 2 The Lane. 2 The Lane did not appear of the Council Tax Valuation list. On the contrary, there was reference on the rating list to a garage and premises at the rear of 243 Holdenhurst Road, with a rateable value of £1,125
16. Mr Bevans had reviewed his notes from his instructions to deal with a rent review effective from

the 25 December 2001, and those notes did not record a further dwelling at the rear

17. The conversion of the outbuilding was a breach of clause 2(e) of the Lease

Mr Halcrow' statement of case 11 September 2007 (pages 51 to 53)

18. Mr Halcrow stated that there was no evidence that any conversion had taken place in contravention of clause 2(e) of the Lease. Mr Bevans had merely stated what he had found on visiting the Premises. He had not carried out an internal inspection. He could not say whether there had been any alteration in the plans designs elevations or architectural decorations. The covenant related to structure, not use

19. Clause 2(n) comprised :

- a. a positive covenant to use the building fronting Holdenhurst Road as a retail shop with a private residential flat behind it and private residential flats on the upper floors, but no positive covenant to use the building at the rear for any use whatsoever
- b. restrictions, but no covenant not to use any other buildings included in the demise for residential purposes

20. Mr Halcrow had not been in breach of either covenant :

- a. there was no prohibition on the use of the building at the rear as a residential unit, and no obligation on Mr Halcrow to use that building in any particular way, and he was entitled to use it for residential purposes
- b. there was nothing in Mr Gates's statement of case to show that there had been any alteration to that building

Inspection

21. The Tribunal inspected the exterior of 2 The Lane on the morning of the consideration of the papers on the 6 November 2007. Present at the inspection, but not at the subsequent consideration of the papers, was Mr A C Falck of Preston Redman, solicitors, on behalf of Mr Gates

22. The Tribunal was unable to obtain access to inspect the interior of 2 The Lane

23. The building of which 2 The Lane forms part is a terraced two-storey building of brick construction under a pitched slate roof, at the rear of, and detached from, the Premises, and has the appearance of having been built in about 1900

24. 2 The Lane is mid-terrace, with 1 The Lane at the southern, or right-hand, end of the building, and 3 The Lane at the northern, or left-hand, end (facing the building from The Lane)
25. The Tribunal was able to see through the front door of 3 The Lane for comparison purposes, although the Tribunal did not have access to the interior
26. The front, or western, elevation of 2 The Lane is rendered, whereas the corresponding elevations of 1 The Lane and 3 The Lane are painted brickwork
27. At ground-floor level on the front elevation, 2 The Lane has two door openings
28. On the right, adjacent to 1 The Lane, is a single-door opening with a modern wood-appearance panelled door. There is no corresponding door-opening at 3 The Lane, but there is evidence of a door-opening having been bricked up in a corresponding position at 1 The Lane
29. On the left, adjacent to 3 The Lane, is a door-opening of approximately one metre in width, with a padlocked particle-board door. Above the door-opening is evidence of a beam with a lead tray which extends about one metre further to the right, towards and partly under a window at first-floor level. Behind that door-opening is a storage space of approximately two metres in width leading directly out to the rear of 2 The Lane. In the corresponding location in the elevation of 3 The Lane is a double-door-opening of approximately two metres in width, with a similar beam and lead tray above, and a similar storage space behind
30. The Tribunal noted some evidence of infilling having been carried out to the right of the left-hand door-opening of 2 The Lane
31. The first floor window-opening of 2 The Lane corresponds with the window-openings of both 1 The Lane and 3 The Lane. In each case the windows themselves are modern
32. There is a light in the roof slope of 2 The Lane. 1 The Lane and 3 The Lane each have Velux-type windows instead
33. The Tribunal approached the rear elevation of 2 The Lane through the estate agency in the ground floor of the Premises
34. The roof, brickwork, and window-openings at first-floor level all have the appearance of being unaltered from when the building was originally built, although with new windows in each window-opening
35. At ground-floor level is a dilapidated timber lean-to with particle-board cladding extending across the width of the rear of 2 The Lane
36. On the left, adjacent to 1 The Lane, the Tribunal noted relatively new dimple-faced brickwork and a small window, whereas there was a door-opening in a corresponding location at 3 The

Lane

37. To the right of the small window, the Tribunal noted more relatively new brickwork, whereas there was a window in a corresponding location at 3 The Lane
38. On the rear elevation the Tribunal noted :
 - a. a plastic soil pipe immediately above ground level
 - b. various plastic pipes beneath the small window and the new brickwork to the right of the small window
 - c. a plastic water tank above the small window
39. In the storage area to the right, adjacent to 3 The Lane, the Tribunal noted that the brickwork on the left-hand wall extends only a short way, and ends in a rendered face, and that the remainder of that wall comprises particle-board facing, with a door-opening and a wood-finish door next to the front elevation, whereas the corresponding wall of the storage area at 3 The Lane is entirely of brick construction

Tribunal's findings

40. Having considered all the representations made by the parties in the round together with all the evidence noted by the Tribunal on inspection, and drawing on the Tribunal's collective knowledge and expertise in these matters, the Tribunal makes the following findings
41. 2 The Lane and 3 The Lane were substantially the same as each other when first built, although being "mirror images" of each other
42. The exterior of 3 The Lane is substantially in its original constructional form, which enables the Tribunal to draw inferences about whether alterations have been made to 2 The Lane
43. 2 The Lane is marked as part of the Premises in the Lease plan, and the word "outbuildings" in clause 2(e) of the Lease, although not used in the description of the Premises in clause 1 of the Lease, includes 2 The Lane
44. In relation to the door-opening on the front elevation to the right, adjacent to 1 The Lane, the Tribunal finds that there is insufficient evidence before the Tribunal to be able to make a finding whether or not the door-opening constitutes an alteration within the meaning of clause 2(e) of the Lease. However, and in any event, the Tribunal finds that the modern door in that door-opening, whilst perhaps a replacement for a previous door, does not itself constitute an alteration within the meaning of clause 2(e) of the Lease
45. In relation to the door-opening on the front elevation to the left, adjacent to 3 The Lane, the Tribunal finds that :
 - a. there was originally a double-width door-opening at 2 The Lane corresponding to the

- current double-width door-opening at 3 The Lane
- b. that original door-opening has been replaced with the present padlocked particle-board door and with infilling under the existing beam and lead tray
 - c. those works together constitute an alteration within the meaning of clause 2(e) of the Lease, which the Tribunal estimates has been carried out within the last 20 years
 - d. the rendering to the front elevation also constitutes an alteration of the designs and elevations within the meaning of clause 2(e) of the Lease, which the Tribunal estimates has been carried out within the last 20 years, probably soon after the replacement of the original door-opening
46. In relation to the roof light on the front elevation the Tribunal finds that it is perfectly possible that it is the original rooflight from when 2 The Lane was built, particularly by comparison with the more modern Velux-type windows in 1 The Lane and 3 The Lane, and that it is likely that it does not constitute an alteration within the meaning of clause 2(e) of the Lease, but that there is insufficient evidence before the Tribunal to be able to make a more definitive finding
47. In relation to the roof at front and rear, and the first-floor brickwork at the rear, the Tribunal finds that there is no evidence of any alterations within the meaning of clause 2(e) of the Lease
48. In relation to the brickwork to the left of the rear elevation of 2 The Lane, adjacent to 1 The Lane, the Tribunal finds that :
- a. a door-opening has been bricked up and a small window installed, because of :
 - its own appearance, and, in particular the use of dimple-faced bricks as an infill
 - comparison with the door-opening in a corresponding location at 3 The Lane
 - b. those works constitute an alteration within the meaning of clause 2(e) of the Lease, which the Tribunal estimates has been carried out within the last 5 to 10 years
49. in relation to the brickwork to the right of the small window on the rear elevation, the Tribunal finds that :
- a. a window has been bricked up, because of :
 - its own appearance, and, in particular the use of different bricks as an infill
 - comparison with the window in a corresponding location at 3 The Lane
 - b. those works constitute an alteration within the meaning of clause 2(e) of the Lease, which the Tribunal estimates has been carried out within the last 5 to 10 years
50. In relation to the storage area to the right of the rear elevation, adjacent to 3 The Lane, the Tribunal finds that :
- a. the left-hand wall between the rear and front elevations has been removed, and the resultant opening filled with a partition with a particle-board facing and a door-opening, because of :
 - its own appearance, and, in particular the rendering on the inner side of the brick pier at the rear of the storage area adjacent to the bricked-up window
 - comparison with the corresponding storage area at 3 The Lane
 - b. those works constitute an alteration within the meaning of clause 2(e) of the Lease,

which the Tribunal estimates has been carried out within the last 20 years, probably at the same time as the works to the present padlocked particle-board door, infilling, and rendering to the front elevation

51. In relation to the construction of the lean-to at the rear the Tribunal finds that this constitutes an alteration within the meaning of clause 2(e) of the Lease, which the Tribunal estimates has been carried out within the last 10 years
52. In relation to the plastic pipework and water tank at the rear the Tribunal finds that these works again constitute an alteration within the meaning of clause 2(e) of the Lease, which the Tribunal estimates has been carried out within the last 5 to 10 years
53. In relation to the first-floor window-openings at front and rear, the Tribunal notes that they are of similar construction and appearance to those in 1 The Lane and 3 The Lane, and the Tribunal finds that they do not constitute alterations within the meaning of clause 2(e) of the Lease. Also, and in any event, the Tribunal finds that the modern windows in those window-openings, whilst perhaps being replacements for previous windows, do not themselves constitute alterations within the meaning of clause 2(e) of the Lease
54. Clause 2(e) of the Lease is in absolute terms, in that any alteration within the meaning of the clause constitutes a breach of the Lease
55. The Tribunal accordingly finds that breaches of a covenant in the Lease have occurred as a result of the alterations noted by the Tribunal
56. So far as clause 2(n) of the Lease is concerned, the Tribunal accepts Mr Halcrow's submission in his statement of case that there is no prohibition in the Lease on the use of 2 The Lane as a residential unit, and no obligation on Mr Halcrow to use 2 The Lane in any particular way, and that accordingly its use for residential purposes would not itself result in the occurrence of a breach of a covenant in the Lease

Dated the 6 November 2007



.....

P R Boardman
(Chairman)

A Member of the Tribunal
appointed by the Lord Chancellor