Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF SECTION 168 (4) OF THE COMMONHOLD and LEASEHOLD AND REFORM ACT 2002

REFERENCE: LVT/0020/08/17

PROPERTY: Ground Floor Flat, 45 Rhos Road, Rhos on Sea, LL27 47S

Applicant Landlord: Mr. Dean Hughes

Respondent Tenants: Mr. and Mrs. Pearce

TRIBUNAL: Mr. Andrew Grant
Mr. David Jones
Mr. Eifion Jones

<u>DECISION</u>

1. The Tribunal determine that the construction of the extension at the rear of the Ground Floor Flat is not a breach of the Lease.

2. The Tribunal determine that the construction works carried out to the front wall of the property is a breach of the Lease.

3. The Tribunal determine that there has been no parking at the property by the Tenants without the Landlord's permission and accordingly there is no breach of the Lease.

4. The Tribunal determine that the replacement of the concrete area at the front of the property by the Tenant is not a breach of the Lease.

5. The Tribunal determine that the placing of the wooden shed in the garden of the Ground Floor Flat is not a breach of the Lease.

REASONS

1. This is an application by Mr. Dean Hughes ("The Applicant") which is made pursuant to section 168 (4) of The Commonhold and Leasehold Reform Act 2002 wherein the Applicant seeks a determination by the Tribunal that a breach of a covenant contained in a lease has occurred.

Background

2. Mr. Hughes is the Freehold owner of a property known as and situate at 45 Rhos Road, Rhos on Sea, LL28 4RS ("The Property").

3. The Property is a detached House which has been converted into 2 separate flats.

4. One flat is situated at Ground Floor Level and another is situated at First Floor Level.

5. The First Floor Flat ("FFF") is retained by Mr. Hughes and is let to tenants.

6. The Ground Floor Flat ("GFF") is occupied by Mr. and Mrs. Pearce ("the Respondents"). They occupy the GFF pursuant to the terms of a long lease made between The Trustees for Methodist Church Purposes and Mr. and Mrs. M Kwiczka which commenced on the 11th December 1985 for a term of 999 years ("the Lease")

7. Mr. Hughes states that the Respondents have broken several of the covenants contained within the Lease under which they hold the property.

The Application

8. On the 10th August 2017 the Applicant submitted an application to the Tribunal seeking a determination that the Respondents, in breach of the terms of the lease, had –

    a) Without permission, built a rear extension at the property and

    b) Without permission, knocked down a wall so as to create an additional entrance for additional parking.

9. The Application was received by the Tribunal on the 14th August 2017.

10. Directions were issued by the Tribunal on the 24th August 2017 which were subsequently amended on the 22nd December 2017.

11. The matter was listed for hearing on the 20th February 2018.

The Inspection

12. The Tribunal met at the property at 9-30am on the 20th February 2018.

13. Present at the inspection were Mr. and Mrs. Pearce and their solicitor, Mr. Edmondson. The Applicant did not attend the inspection.

14. The GFF consists of Porch, Hall, Lounge with Sun lounge off, fitted kitchen / Diner (being extended), bathroom, and 2 bedrooms. Block paving to the front garden area and enclosed rear garden. The property was built circa 1935 and is of traditional construction with double glazing. It is connected to the mains services and has the benefit of gas fired central heating. Number 45 is located within a quarter of a mile of the sea front and the Centre of Rhos on Sea with its local shops. The nearby town of Colwyn Bay is about a mile distant as is the A55 expressway.

The Hearing

15. The hearing was held at The Colwyn Bay Town Council Offices, Rhiw Road, Colwyn Bay, LL29 7TE.

16. The Applicant appeared in person. The Respondents were represented by their solicitor, Mr. Gareth Edmondson. Mr. and Mrs. Pearce were also in attendance.

17. The Tribunal noted from the papers that there had been previous attempts by the parties to resolve the matter. Set against that background the Tribunal asked the parties whether they would like some time to continue their discussions to see if they could resolve their differences. The Applicant declined the invitation and said that he wanted the Tribunal to determine the matter. The Respondents agreed.

18. The Tribunal had before it the following documents - A copy of the application dated the 10th August 2017 together with supporting papers, The Applicant's witness statement dated the 2nd January 2018, the witness statement of Mr. Pearce and exhibits dated the 16th January 2018 and the witness statement of Mrs. Pearce dated the 16th January 2018.

19. The Tribunal noted that the Applicant's witness statement indicated that he was seeking a determination in respect of 3 breaches as opposed to the 2 breaches outlined in his initial application to the Tribunal. His witness statement stated that in addition to the other matters complained of, the Respondents had erected a shed in the garden of the property and that this was in breach of the terms of The Lease. This was a new breach that had not been raised in the initial application.

20. The Tribunal asked the Applicant if he wished the Tribunal to address this issue as well and he confirmed that he did.

21. The Tribunal invited submissions form Mr. Edmondson on the point. He said that the introduction of the shed was not in the initial application and he objected to its introduction today.

22. After considering the matter the Tribunal decided that they would determine this issue along with the issues raised in the initial application. The issue was clearly raised in the Applicant's witness statement which was made in January 2018 so the Respondents had clearly known for some time that this was to be in issue. Indeed, the issue was addressed by Mr. Pearce in his witness statement. There was no prejudice to the Respondents in dealing with the matter today.

23. The Tribunal dealt with each issue in turn.

<u>The construction of the rear ground floor extension</u>

24. The Applicant alleged that in or about 2007 The Respondents had constructed a ground floor extension to the rear of the property and that prior to the construction the Respondents had not sought or obtained the Landlord's permission as required by the terms of the Lease.

25. For the purpose of this part of the Application the relevant provision appears at Clause 2 of the Third Schedule to the Lease. This contains the covenants, conditions stipulations and obligations to be observed by the Tenants which, among other things, includes an obligation

    "*Not at any time to make any structural alterations modifications or additions to the Ground Floor Flat which shall not have previously been approved by the Board and the Managing Trustees or their successors in title such approval not to be unreasonably withheld and by the grant of all necessary consents and permissions by any competent authority "*

26. The Ground Floor Flat is defined in clause 1 of The Lease as consisting of -

    ALL THAT Ground Floor Flat TOGETHER with the gardens at the front and rear (hereinafter called "The Ground Floor Flat")

27. In evidence it was accepted by the Respondents that the rear extension had been constructed without the permission of the Applicant. However, the Respondent asserted that at the time they were not aware that they required the Applicant's permission to carry out the work.

28. In his submissions, Mr. Edmondson stated that the work in question had been carried out a long time ago and, both at the time of the construction and in the years subsequently, The Applicant had never raised any concerns until about a year ago when the parties had a falling out.

29. The Applicant confirmed in his evidence that he became aware of the construction "mid - way through the build "after being notified of the work by the tenant that resided in the FFF at the time in question.

30. The Applicant went on to state that he had not had time to address the issue previously but submitted that he was entitled to rely upon the terms of the Lease which he said were "as plain as day".

31. Whilst acknowledging that the Respondents had not sought the permission required by the terms of the Lease, Mr. Edmondson submitted that the Applicant's conduct over the years had effectively waived the breach or alternatively, The Applicant's conduct had given rise to an estoppel such that he could not now rely upon the breach.

32. It is clear from the evidence that the Applicant was aware of the work being undertaken by the Respondents at an early stage in the construction. He accepted that he had not taken any action at the time but thought he was entitled to do so at any time as the terms of the lease were "as plain as day". The work in question had been carried out in excess of 11 years ago.

33. For their part the Respondents said that had they been aware that permission was necessary it would have been sought. They continued with the work as the Applicant had seen the work but not attempted to stop the work in any way or inform them that they needed his permission. In consequence they had spent large sums, Mr. Pearce says £70,000 in his evidence.

34. Accordingly, having heard the evidence The Tribunal determines that in the circumstances the Applicant has waived his right to rely upon clause 2 of the Third Schedule to the Lease. Having clearly acquiesced to the work being carried out he is estopped from relying upon what would otherwise have been his legal rights under this clause in respect of this issue.

35. Accordingly, the erection of the rear extension at the property is not a breach of` the lease.

<u>Demolition of front wall, extraction of front garden and unauthorised parking.</u>

36. The Applicant further asserted that the Respondents had opened up a gap in the front boundary wall of the property, created a hard-standing area and were using the area to park their vehicles.

37. He submitted that opening up the gap in the wall, creating a hard-standing area for parking and using the area to park vehicles amounted to a breach of the terms of the lease because the Respondents had not obtained his permission to carry out such activities.

38. The Applicant informed the Tribunal that he sought to rely upon clause 2 of the Third schedule to the Lease (as appears at paragraph 25 above) as well as Clause 18 of the Third Schedule to the Lease which required that the Tenants were to -

"keep in good order and condition the front and rear gardens of the house and keep the same properly planted rolled or mown ".

The demolition of the front wall

39. Mr. Edmondson acknowledged that the wall had been opened up and that a hard-standing area had been created but insisted that this did not amount to a breach of the terms of the lease because Clause 2 of the Third Schedule to the Lease only applied to the house itself and not the gardens.

40. The Tribunal reminded itself of the definition of the GFF as appears at Clause 1 of the Lease. It is clear that the definition expressly includes both the gardens at the front and rear of the property and accordingly the Tribunal did not accept Mr. Edmondson's submission on this point.

41. The work to the wall had been carried out on or around August 2017. In his evidence Mr. Pearce acknowledged that the Applicant's permission was not sought or obtained before the work was carried out.

42. It was not disputed that the Applicant had complained about the wall being opened up shortly after the work had been undertaken.

43. The Tribunal determines that the opening up of the front wall without the Applicant's permission was a breach of the lease.

Extraction of front garden

44. It was further submitted on behalf of the Respondents that replacing the front garden with block paving did not amount to a structural alteration or modification and as such did not require the Landlord's consent.

45. The Applicant submitted that the Respondents had dug up the garden in order to lay the block paving and that previously the garden had been largely turfed. This was a point which was denied by the Respondents in their evidence. They maintained that at all times throughout their period of ownership the area at the front of the house had consisted of a hard-concrete surface.

46. In support of this assertion the Respondents drew the Tribunal's attention to the sales particulars which were included within the bundle. It was submitted that the particulars were prepared before the recent block paving was laid. It was clear from the photographs in the sales particulars that previously the area consisted of

concrete rather than turf as the Applicant suggested. The Tribunal preferred the Respondent's evidence on this point.

47. The block paving laid by the Respondents replaced the older concrete covering which had been in situ for many years and as such it did not alter the form or structure of the area situated to the front of the property. In consequence whilst the work amounted to an alteration the Tribunal determine that it did not amount to a structural alteration and did not require the Landlord's consent.

48. Accordingly, the laying of the block paving to the front of the property was not in breach of the terms of the lease.

<u>Car Parking</u>

49. The Applicant further asserted that the Respondents had no right to park their vehicles in front of the property. He relied upon clause 4 of the First Schedule to the Lease which reads as follows –

    A right of way but on foot only at all times and for all purposes connected with the access to and egress from the ground floor flat over and along the driveway edged blue on the said plan ".

50. The Applicant also relied on clause 18 of the Third Schedule to The Lease which states that the Tenants must -

    "Keep in good order and condition the front and rear gardens of the house and keep the same properly planted rolled or mown"

51. It is correct that if the Respondents were to access their front garden by way of the established entrance, then that access would be restricted to a right of way across the Applicant's land on foot only.

52. However, there is nothing in the lease per se that prevents the Respondents from parking on the land which forms part of their demise. Had they obtained Landlord's consent to the alterations to the front wall this would have given the access required to park their vehicles at the front of the house. This would not be a breach of the Lease.

53. The Tribunal takes the view that clause 18 of the Third Schedule to the Lease does not assist the Applicant as at all relevant times the area of garden with which this application is concerned has never been cultivated (save for a small border area at the edge of the hard-standing area). The Tribunal determined as a matter of fact that the area in question had a concrete base during the period of the Respondents ownership.

54. The Tribunal was informed by the Respondents that up until the date of these proceedings the Respondents parked their vehicles in front of the property with the agreement of the Applicant. Thereafter, when permission was removed they have not sought to park their vehicles on the area in question pending the outcome of these proceedings.

55. Accordingly, the Tribunal determines that there has been no breach of the terms of the Lease occasioned by unlawful parking.

The Shed

56. The issue of the siting of the garden shed was first raised by the Applicant in his witness statement dated the 2nd January 2018. It was not raised as an item to be determined in the initial application.

57. In any event the Tribunal decided to deal with the issue.

58. The Applicant asserted that the Respondents had no right under the terms of their lease to site a garden shed in the garden of the property. Accordingly, by placing a garden shed in their garden they were in breach of the terms of the lease.

59. In support of this assertion, the Applicant relied upon 2 separate clauses in the Lease.

60. Firstly, the Applicant cited Clause 18 of the Third Schedule to the Lease. This Clause has been set out fully at paragraph 38 of this decision.

61. Secondly, the Applicant submitted that the siting of the shed restricted his rights under Clause 4 of Schedule 2 of the Lease which reads that the Landlord retains –

"*A right of way but on foot only at all times and for all purposes connected with the access to and egress from the First Floor Flat over and along the pathway leading from the front gate of the house to the entrance to the house and over the hallway and a right to enter the rear garden for the purpose of maintaining and repairing the walls of the garage which said garage is edged green on the said plan".*

62. The Applicant asserted that the shed had been placed so close to the side of the property that it prevented him from maintaining the side of the House.

63. Mr. Edmondson submitted that neither Clause assisted the Applicant. There was no restriction in the lease preventing the Respondents from placing a shed in their garden. The Clauses cited by the Applicant did not create such a restriction.

64. He further submitted that on a proper interpretation of Clause 4 of Schedule 2 to the Lease, it only granted a right of way to the rear garden to enable the Applicant to maintain the walls of the garage and not the walls of the House itself.

65. The Tribunal accepted Mr. Edmondson's submissions on this point. Accordingly, The Tribunal take the view that placing a shed in the Respondents garden does not amount to a breach of the Lease. Neither Clause cited by the Applicant support his submission that it constitutes such a breach.

Other matters

66. The Applicant then raised the issue of non - payment of the ground rent and requested that this issue be addressed by the Tribunal.

67. As this was another issue that was not in the initial application the Tribunal invited submissions from Mr. Edmondson on the point.

68. Mr. Edmondson objected to the issue being dealt with because it had not formed part of either the initial application or the Applicants subsequent witness evidence.

69. After considering the matter the Tribunal declined to deal with this issue as there were no details of the ground rent or any arrears before the Tribunal and raising the matter so late in the day would have clearly been prejudicial to the Respondents.

Decision

70. The Tribunal determines that the construction of the ground floor extension to the rear of the GFF is not a breach of Clause 2 of The Third Schedule of the Lease.

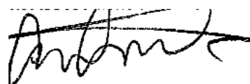
71. The Tribunal determines that the opening of the front garden wall without first obtaining the Landlord's consent is a breach of Clause 2 of The Third Schedule to the Lease.

72. The Tribunal determines that the replacement of the front area of the property with block paving is not a breach of the terms of the lease;

73. The Tribunal determines that there has been no unlawful parking at the property.

74. Finally, The Tribunal determines that the placing upon the land of the garden shed is not a breach of the terms of the Lease.

Dated the 11th day of April 2018.



Andrew Grant
Chairman