

Landlord's Consent to Alterations under a Lease

Introduction

A recent Judgment in the Supreme Court has changed the way in which Landlords should review requests for consent to alter the property from Leaseholders. Landlords should take notice of this and ensure that legal advice is sought before negotiations end and consent is given.

This guide should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

It is not uncommon for Leaseholders to approach Landlords with requests for consent for alteration to their Property. Landlords may believe that they have the ability to grant consent on the basis of the Leaseholder's application and consider charging a premium for the licence. However, Landlords should be wary of granting the consent without full consideration of the lease to the Property and the leases of other flats in the building.

The Supreme Court recently decided in the 'Duval' case to provide guidance on a Landlord's liability when granting consent to leaseholders to carry out structural alterations.

The main points considered within the case were:

- (i) the Leaseholder's covenants concerning alteration of Property and
- (ii) the role of Landlord covenants for enforceability.

These are issues that vary from lease to lease and which make the issue of consent less than clear cut. If consent is given without the Landlord seeking legal advice there could be the possibility of the Landlord being in breach of the lease and liable for damages to other leaseholders.

Covenants concerning alteration of Property

To understand the issues in the case the difference between absolute covenants and qualified covenants should be explained. The example of a covenant for alterations will be used to explain this :

1. Qualified covenants

"Not to make any structural alteration or addition to the Property without the Landlord's consent, such consent not to be unreasonably withheld."

It can be seen here that the alteration or addition will be permitted if the Landlord consents. This may allow the Landlord to request information in relation to the alterations in the form of a copies of plans, structural surveys etc. If the covenant then goes on to say that the Landlord's consent should not be unreasonably withheld or delayed the request will need to be considered appropriately.

2. Absolute covenants

"Not to make any structural alterations or additions to the Property."

Briefing Note

Reviewed November 2020

Summary:

A guide and summary of the recent changes to the way Landlords should review requests for consent to alter the property from Leaseholders.

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This is a covenant which prohibits the Leaseholder from undertaking any work to the structural elements of the building or any other areas which fall outside of their demise. This clause will not allow the Landlord to permit the works.

The difference between these covenants, although seemingly small, creates issues for Landlords who are met with requests from Leaseholders. Careful consideration should be given to each individual lease and the Landlord's ability to grant consent.

Landlords Enforceability

Within many modern day leases there will be a covenant on the part of the Landlord to grant any other leases in the Building on the same or substantially the same terms.

This requirement enables all leaseholders to understand the collective rights and promises made between all parties and ensures a certain amount of uniformity.

In addition to this covenant there will usually be what is known as a 'mutual enforceability covenant'. This enables flat owners of other properties within a building to request the enforcement of covenants against other owners if there is a breach. The benefit of this is that any leaseholder within a building should be safe in the knowledge that other flat owners will always abide by the terms of their lease.

The Decision in Duval

In Duval a leaseholder in a building applied for permission from the Landlord to carry out works to her flat. There was an intention to remove a load bearing wall. Within the lease there was an absolute covenant against structural alterations.

One of the other leaseholders in the building, Dr Duval, learned of the request for alterations and objected to the Landlord providing permission and ultimately issued proceedings against the Landlord for a declaration that the Landlord was not permitted to give consent to the works. Dr Duval relied on the clause in the lease which contained the covenant for the Landlord to ensure that each lease contained similar covenants and stated that the Landlord would enforce any leaseholder covenants at the request of another Leaseholder, subject to that Leaseholder indemnifying the Landlord's costs.

The decision in the Supreme Court held that where a lease contained these covenants and the Landlord gives consent to a Leaseholder to carry out works in breach of an absolute covenant that they will be in breach of the lease themselves.

So when can a Landlord be safe in giving consent to alterations?

If consent to works is requested by a Leaseholder it is clear that the Landlord and Leaseholder will now need to carefully consider whether Duval applies.

A Landlord will be in breach of lease if consent to works is given and the following are relevant:

1. The works are prohibited by an absolute covenant;
2. The leases contain a clause that all leases will contain similar covenants;
3. There is a mutual enforceability covenant within the lease.

The works will need to be considered and if these go beyond routine alterations and improvements which may be damaging to or destructive of the building then a Landlord should take care in providing consent and ensure consideration of the terms of the lease.

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It has been suggested that Landlords could protect themselves from liability and grant consent by obtaining agreement from all of the leaseholders in a building before providing consent to the Leaseholder. However, this may be a costly and time consuming activity. Alternatively, if consent is given without this consultation then it would be worth considering whether an indemnity could be sought from the Leaseholder being granted consent. This should extend to a full indemnity to the Landlord against any claims brought by any other Leaseholder in the building.

The ruling has left us in a position where care should be taken by Landlords in giving consent and shows that the contents of leases are important and require careful consideration.

If you would like to know more about this topic or our legal services, please contact Melanie Verth on 01323 435900 or melanie.verth@gabyhardwicke.co.uk

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