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Residential  
Property  
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**DECISION ON APPLICATION UNDER  
S.168 (4) COMMONHOLD AND LEASEHOLD REFORM ACT  
2002**

**LON/00AU/LBC/2007/0022**

**Property**                    **13 & 14 St Thomas Road, London N4 2QH**

**Applicant/  
Landlord  
Respondent's/  
Tenant**                    **Trustees of North London Mosque Trust  
Liberty Property Management Limited**

**Application**                    To determine, whether, the Respondent has breached terms or  
conditions of the Lease dated 30 April 1999

**Tribunal**                    Ms M Daley LLB.(Hons)  
Mr T.W Sennett MA FCIEH  
Mr E Goss

**Date of Hearings**           **24 & 25 September 2007, 15 & 16 July 2008**

**Appearances**                    Ms V Osler-Counsel instructed by Miles and Co Solicitors for  
the Applicant  
  
Mr C Coney- Counsel instructed by Bolt and Burdon Solicitors

**Date of Decision**           **21 October 2008**

## **1. The Application**

- (i) The Tribunal received an application dated 5<sup>th</sup> April 2007 under Section 168 (4) of the Commonhold and Leasehold Reform Act 2002 to determine whether the Respondent had breached a covenant or condition of his lease.
- (ii) The Directions, given on 10 May 2007 required -: i) the Applicant to prepare a bundle of the relevant documents by 1<sup>st</sup> June 2007.
  - ii) The Respondent was required to prepare a bundle of documents, including details of any challenge to the jurisdiction of the Tribunal and their statement in response by the 29 June 2007, iii) Each party was required to send to the other a list of any documents relevant to the dispute that included an updated Land Registry official copy of the freehold and leasehold titles to the property, the name and address of any known mortgagee of the Respondent and any local authority reports.
- (iii) The matter was set down for hearing on 20 and 21 August 2007. On an application from the parties the matter was adjourned to a hearing on the 24 and 25 September 2007. Subsequently three further requests for an adjournment were agreed and the hearing was reconvened on 15 and 16 July 2008.

## **2. Documents Received**

- I. The Applicant's and Respondent's bundle of documents

## **3. Matters in Dispute**

The burden of proof in this matter rest with the Applicant, and the Tribunal would need to be satisfied-:

- (a) That the lease include the covenant or condition relied on by the Applicant;  
and
- (b) That the alleged facts constitute a breach of that covenant or condition.

#### 4. The Law

The relevant Law is set out below:-

##### S.168 COMMONHOLD AND LEASEHOLD REFORM ACT 2002

(1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection is satisfied.

This subsection is satisfied if-

(a) it has been finally determined on an application under subsection (4) that the breach has occurred,

(2) (b) The tenant has admitted the breach, or

(c) A court in any proceedings, or an arbitral Tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

(3) But a notice may not be served by virtue of subsection (2) (a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(3) A landlord under a long lease of a dwelling may make an application to a leasehold valuation Tribunal for a determination that a breach of a covenant or condition in the lease has occurred.

#### 5. The Lease

The lease dated 30 April 1999 made between The North London Central Mosque Trust and Liberty Property Management Limited was for 25 years at a yearly rent of £20,000. The relevant terms of the lease are set out as follows:-

4.8.1 *Not to make any external structural alterations or additions whatsoever.*

4.8.2 *Not to make or carry out any internal structural alterations or additions whatsoever of in or to the Premises except:*

4.8.2.1 *With the prior written consent of the Landlord(which shall not be unreasonably withheld or delayed);*

- 4.8.2.2 *Subject to such terms and conditions(including provision for reinstatement at the Tenant's cost on the expiration or sooner determination of the Term and the execution of any such works) as the Landlord may require;*
- 4.8.2.3 *In accordance with the drawings and specifications previously submitted in triplicate to and approved in writing by or on behalf of the Landlord(such approval not to be unreasonably withheld or delayed); and*
- 4.8.2.4 *After having obtained and supplied to the Landlord copies of all requisite consents licences and permissions for the carrying out of such works from any local public or other authority or body and after the Landlord shall have notified the Tenants in writing that the same are satisfactory to it ( such notification not to be unreasonably withheld or delayed)*
- 4.10.1 *Subject always to the following provisions of this Clause 4.10 not to use the premises otherwise than for the Permitted Use and in accordance with the requirements and conditions of any planning permission authorising such use from time to time*
- 4.14.1 *Not to do or omit to do anything on or in connection with the premises the doing of which may be a contravention of the Planning Acts and to indemnify the Landlord against all actions proceedings damages penalties costs charges claims and demands in respect of such acts and omissions of any of them*
- 4.14.3 *At all times during the Terms to comply with the provisions and requirements of the Planning Acts and of any planning permissions (and the conditions thereof) relating to or affecting the Premises or the use thereof or any operations works acts or things carried out executed done or omitted thereon and to keep the Landlord indemnified in respect thereof*

## **5 The Inspections of the Premises**

- (i) The Tribunal inspected the premises on the morning of the first day of hearing in the presence of representatives of both parties. The premises which have been formed from two terraced Victorian houses are immediately adjacent to the North London Central Mosque which was constructed in the 1990s.
- (ii) The Tribunal saw a four storey plus basement building of brick construction under an artificial slate roof covering with UPVC windows in good decorative order and repair. The front boundary wall was of recent construction about 2 metres in

height of brick with railings. To the rear the Tribunal saw that the building had been extended and the garden was co-terminus with the rear of the Mosque.

- (iii) Internally the premises were arranged as self-contained studio units with shared hall, landings and stairways. The basement was entered separately from the upper parts of the premises. The Tribunal was also shown the basement level of the Mosque and an area of wall adjacent to the Premises that had been bricked up.

### **The Hearing**

*The Respondent submission on the Jurisdiction of the Tribunal. At the hearing the Applicant was represented by Ms V Osler of counsel and the Respondent was represented by Mr Coney of counsel. At the hearing Mr Coney raised as a preliminary point, the question of whether the Tribunal had Jurisdiction. In his submission, the issues were as follows:-*

- (a) Whether the lease in question was the lease of a dwelling, within the meaning of section 168 (i) "*A landlord under a long lease of a dwelling* "
- (b) Mr Coney stated that section 169 (5) provided that the word dwelling had the same meaning as in the 1985 Act.
- (c) Mr Coney referred to section 38 of the Landlord and Tenant Act 1985 which defined dwelling as "*a building or part of a building occupied or intending to be occupied as a separate dwelling, together with any yard, garden outhouses or appurtenances belonging to it or usually enjoyed with it.*
- (d) Mr Coney submitted that the lease in question was not a lease of a building occupied or intending to be occupied as a separate dwelling. The lease was of a building 13-15 St Thomas Road let under the permitted use clause (1.8) as "*a residential block of flats, studios or hostel*"
- (e) The Tribunal was referred by Mr Coney to the case of *Ruddy-v- Oakfern Properties Ltd EWCA Civ 1389*
- (f) The background of this case concerned whether the subtenant had locus to apply to the LVT and more relevantly whether Head lessee letting individual

flats on sublease occupied the premises as a separate dwelling within the meaning of section 38 of the 1985 Act.

- (g) Mr Coney referred the Tribunal to paragraphs 73 and 74 of the judgement of Jonathan Parker LJ which stated “ *...[U]less the legislative context ( and in particular the relationship, if any, between the service charge provisions in the 1985 Act and the Rent Acts) or the practical consequences of such a construction require otherwise, I can find no satisfactory reason for construing the definition of dwelling in section 38 so as to exclude a tenant from the definition merely because whilst he is the tenant of a dwelling which extends only to part of a building, he is also the tenant of other parts of the building, be such other parts dwellings or common parts or some other type of property altogether(e.g. commercial property) ...*” Parker LJ read the definition as consisting of two parts-: *building occupied or intending to be occupied as a separate dwelling and part of a building occupied or intended to be occupied as a separate dwelling.*
- (h) Mr Coney submitted that the Tribunal should consider the legislative context that is the background in respect of the service charge legislation and the policy that drove such legislation. That is, the way of providing a tenant with a means of challenging unreasonable service charges. Mr Coney distinguished that situation from the facts in this case, where the tenant could still have a remedy in the county court.
- (i) Mr Coney pointed out the provisions in section 169 (4) of the 2002 Act, (which provided a remedy in the county court) however he did not contend that the lease was covered by part 2 of the Landlord and Tenant Act 1954 so as to be excluded. The crux of his submission was that the Respondent did not occupy the dwelling and was therefore outside the jurisdiction of section 168 of the 2002 Act.
- (j) Mr Coney also stated that the Respondent accepted that they were in breach of the clause requiring them to apply for planning permission as required by clause 4.14.1 of the lease. He stated that it was not for this Tribunal to decide on the question of waiver.

*The Applicant's reply to the Submissions*

- (k) Ms Osler's submission was set out as part of her statement of case at page 11 of the bundle of documents. She submitted that the claim was covered by the provisions of the 2002 Act and that the Tribunal had jurisdiction.
- (l) Ms Osler referred the Tribunal to a letter written on the Respondent's behalf by their Solicitors in which they stated that the Applicant could not apply for forfeiture by serving a section 146 notice without complying with section 168 of the 2002 Act.(page 226- letter from Bolt Burdon dated 27.9.05)
- (m) Ms Osler stated that the case before the Tribunal was factually similar to the *Ruddy case* and that paragraphs 73 and 74 supported her position. There was nothing in this case to take the Respondent outside the definition in section 38 of the 2002 Act.

*The Decision of the Tribunal on the issue of Jurisdiction*

- (n) The Tribunal determined that it had jurisdiction to deal with the Application. The Tribunal considered the submissions of both parties and relied upon the decision of the Court of Appeal in *Ruddy-v- Oakfern Properties Ltd EWCA Civ 1389*, which the Tribunal accepted as raising identical issues as those raised in this Application. The Tribunal found that although the property had been sub-let there was no requirement upon the Respondent to be in actual physical occupation. Although the Respondent was not an individual and had sub-let, the Respondent remained the tenant of a building occupied or intended to be occupied as a separate dwelling as set out in section 38 of the 2002 Act.
- (o) The Tribunal considered that to construe the section otherwise, would in all but the most obvious cases (where there was no multiple occupation or no sub-letting) be in a way which was not intended by Parliament under the provisions of the Common hold and Leasehold Reform Act 2002.

*The Applicant's claim*

- 7. Ms Osler set out the applicant's claim which was agreed by the Respondent. The premises were adjacent to the Finsbury Park Mosque. In the mid to late nineties the Finsbury Park Mosque fell under the control of the notorious Abu

Hamza. In 1998 the Premises, which had been occupied as a hostel, had notices served upon it by the Local Authority under the Housing Act 1985 requiring specific works to be undertaken. At the expiry of the notices the Trustees were still unable to carry out the required works due to the serious financial position of the Mosque. The Local Authority was considering a compulsory purchase order. In 1998 the Trustees entered into an agreement for a lease with the Respondent, Liberty Property Management Ltd. Following this the Applicant and Respondent entered into a lease dated the 30<sup>th</sup> April 1999 for a period of 25 years commencing from the 22<sup>nd</sup> February 1999.

*Evidence of Mr Mahmood Hassan*

8. Ms Osler called Mr Mahmood Hassan to give evidence. Mr Hassan was a company director and had been a Trustee of the North London Central Mosque Trust since 1996. He set out the background to the premises which had been extended and refurbished in 1993 to include extensions to the rear, a new roof and windows and alterations such that the premises intercommunicated with the mosque at basement level. He informed the Tribunal that on obtaining approval from the Charity Commission and advice from property advisors a 15 years lease was agreed with Liberty Property Management Ltd at a rent of £15,000 per annum from February 1998.
9. Mr Hassan gave evidence that the property was in a reasonably good condition; he described that it was in need of painting and was suffering from a leak. He stated that tenants were living in the property when the lease was granted to Liberty. He described the property as having 14 rooms in total. On each floor there was also one kitchenette and one bathroom, in addition there was a separate basement and large hall. The main kitchen was located on the ground floor.
10. Mr Hassan stated that because refurbishment was necessary the Respondent was given a 6 month rent- free period. He stated that no work was undertaken in that period and that the condition of the property deteriorated, and that this was predominantly due to the Respondent needing money to fix up the property. Liberty had advised that it was difficult to obtain money from the bank on leases that were less than 25 years. In paragraph 7 of his witness statement Mr Hassan stated that Mr A Asghar and Mr A Barakatullah (other



trustees of the mosque) had in November 1998 briefed the Trustees of their meeting with Tony Beharry of Liberty and of their request for consent of the Board of Trustees to carry out building works. He stated that the Board decided that once Liberty obtained the necessary planning permission they would hold a Board meeting and issue the Board's written consent.

11. A new lease of 25 years was granted from 22.2.99. Mr Hassan asserted that the lease terms were unfair and he considered that Liberty had taken advantage of the Applicant's difficulties at the Mosque. At paragraph 10 of his witness statement Mr Hassan informed the Tribunal that the 10 years lease extension was granted to Liberty for no monetary value, as Liberty had threatened not to meet their lease commitments unless an extended lease was granted. In addition a further four months rent free period was agreed. Mr Hassan stated that Liberty was of the view that the work to the premises would be finished within that period.
12. In paragraph 13 of his statement and in oral evidence Mr Hassan stated that the Trustees were having serious problems at the Mosque at the time from Abu Hamza and his extremist group. The property was the only source of income. Mr Hassan stated that "*Liberty was not paying rent and had already removed most of the plastering, fittings and reduced the property to a shell.*"
13. In his evidence Mr Hassan stated that the property remained in a derelict condition throughout 2002-2003. Mr Hassan stated that Rent was owed for September 2001, December 2001, March 2002 and June 2002.
14. Mr Hassan stated that he was informed that Liberty was also asking various trustees for the Lease to be further extended, and that some of the Trustees had known links with the Respondent. For example, it had been brought to his attention that Mr Patel had benefited with help in saving money when he was purchasing his property under the Right to Buy. As a result of Mr Patel's perceived conflict of interest Mr Patel was informed that he would not be able to participate in any further discussion concerning the lease extension.
15. Mr Hassan further stated that due to on-going investigations from the Charity Commission, the Trustees kept minutes of all the meetings and that he was unaware of any meeting that took place at which the subject of extension of

the lease was discussed. He stated that he was unaware of any meeting having taken place in the first quarter of 2003 and denied a further extension to the lease had been agreed.

16. Mr Hassan stated that the work did not actually commence until sometime after June 2005, after the Trustees had through their solicitor informed Liberty of their intention to take forfeiture proceedings.
17. Mr Hassan gave evidence that once the work *commenced the property was fully covered with scaffolding and protective sheeting and it was impossible to say from the outside the nature of the work being carried out in the property (paragraph 21)*. Mr Hassan stated (paragraph 23) that in October 2005 the Trustees received a copy of a letter that had been sent to Liberty by Islington council which stated that major building work had been carried out without planning permission.
18. At Paragraph 26 of Mr Hassan's statement, Mr Hassan set out the alleged breaches to the terms of the lease and the breaches of planning permission.
  - (i) Changing the building from a hostel to 20 self contained flats;
  - (ii) Creating a wall between the mosque and the premises
  - (iii) Failure to give possession of the basement flat as per the terms of the lease
  - (iv) Reducing the size of the Imam's flat from a family flat to a studio flat.
19. Mr Hassan confirmed that at no point did Liberty provide the Trustees with a copy of the planning application or planning approval of works they intended to carry out.
20. In Cross-examination Mr Coney suggested to Mr Hassan that the Respondent had not had access to the property until 2003, when the police issued a warrant. This was denied by Mr Hassan, who was referred to a copy of a warrant at page 198. Mr Coney stated that witnesses would say that Liberty's access to the property was interfered with by the followers of Abu Hamza. In answer Mr Hassan denied this. Mr Coney stated that the Trustees had been less than helpful with the problems that the Respondent had encountered in accessing the building; again this was denied.

21. Mr Coney referred the Tribunal to a document at page 65, and 66 which was headed *Statement of the Trustees, Why the Mosque is to close?* This document referred to difficulties that the Trustees were experiencing. At paragraph 7 page 66 it stated "*The property of 13-15 St Thomas's road was vandalised and destroyed by Hamza and his group. Barrister Mullah was also sleeping and living in this property without paying any rent.*" Mr Hassan stated that he did not recall seeing this document before, or have knowledge of who produced it.
22. Mr Coney stated that the Respondent was constantly disrupted in particular on Fridays when prayers were said outside the Mosque. Mr Hassan denied that this would have disrupted the building work.
23. Mr Coney referred to the witness statements of Mr Moreea, and stated that at page 355 paragraph 5, Mr Moreea stated that the Trustees had consented to the property being converted. He also pointed to the witness statement of Mr Patel at page 359 which confirmed the truthfulness of Mr Moreea's statement and a document at page 217 which was a note of a meeting which took place in February 2003. This document was signed by Mr Moreea, Mr Patel and Mr Edoo, and was dated 25.2.05. Mr Asghar whose attendance was noted at the meeting was deceased and therefore was unable to sign the document.
24. This document confirmed the Trustees agreement to extend the lease terms and to incorporate the bed-sit in to the existing lease. Mr Hassan denied that the document at page 217 was valid and stated that if this was valid it would have had to be agreed and signed by all the Trustees. Mr Coney stated that there were no documents that confirmed that all Trustees needed to sign in the bundle or indeed nor was this set out in Mr Hassan's witness statement. Mr Hussan was referred to Housing Act notices from Islington Council. Mr Coney suggested that the property had not been in reasonable condition as suggested by Mr Hassan in his evidence in chief. Mr Hassan denied that the property was in poor condition. He also stated that the photographs that had been produced at page 252 were after the Respondent had started work and when in fact the property had been gutted. He was asked to confirm which work undertaken by the Respondent was complained of; he stated that it was the structural work, and the fact that the premises had been converted into flats and the replacement uPVC windows. When asked by Counsel what he understood

would be involved in refurbishment, he stated that it was not the works themselves but the fact that planning permission had not been sought or granted. When asked by Mr Coney whether he had seen the work prior to completion he stated that he had not been to the Mosque whilst it was closed. He stated that the building had been covered up. He was asked about the alleged relationship between the Respondent company and some of the Trustees. He accepted that he was not alleging any impropriety on Mr Patel's behalf, however there was in Mr Hussan's view a conflict of interest. He also accepted that Mr Moreea had revealed that he undertook accountancy work for Liberty and had in fact declared that he had a conflict of interest.

25. In re-examination Ms Osler referred to Paragraph 25 of the Mr Hassan's witness statement. This referred to the fact that no written consent for the conversion of the building was given by the board of Trustees.

*Detective Inspector Lambert*

26. Robert Lambert was a Detective Inspector, Counter Terrorism Command (MPS). His Witness statement at page 336 of the bundle set out that he had specialist responsibilities that had involved close monitoring of the North London Central Mosque (Finsbury Park Mosque).
27. In his evidence he stated that the Metropolitan Police had in January 2002 formed a view that they had not provided adequate support for the Trustees and he was appointed to provide support to the Trustees "*...in their effort to rid the mosque of the extremist influence of Abu Hamza and his hard core supporters*" (paragraph 2 of his statement)
28. He stated that at the time of his involvement security had been a critical issue. He was unaware of any security issues or any activities that had prevented the Respondent from starting work at 13 & 15 St Thomas' Road or that the premises were affected by the issues at the mosque. He was

asked in cross-examination about the letters from the Trustees at pages 65 and 66. Mr Lambert accepted that he had seen the letter at page 65, which discussed the issues that had led to the closure of the mosque, however he had not seen the letter that suggested the premises had been vandalised by Abu Hamza's supporters at page 66.

29. Mr Lambert did not accept that the Respondent had reported difficulties to the local police that he might have been unaware of, as he would have expected the local police to inform him. He also did not accept that the warrant that had been submitted at page 198 of the bundle meant that there had been incursions into 13 – 15 St Thomas' Road as well as the mosque
30. Mr Lambert stated that when Abu Hamza turned up for Friday prayers at first there had been a large police presence but over time a much smaller police presence was in attendance. He did not accept that the police had asked the builders to cease work during Friday prayers. He however stated that if this was so he did not accept that this disruption would have lasted for more than an hour.

*Evidence of Mr Barkatulla*

31. Mr Barkatulla stated that he was a religious scholar and consultant to banks and other financial services and was a Trustee of the Mosque from March 1996 to June 2002. He was responsible for liaising with Liberty and signing the lease. He repeated the fact that Mr Moreea had had a limited involvement due to a perceived conflict of interest
32. He accepted that Mr Beharry had informed the Trustees of the plans to convert the premises at a meeting in November 1998 however he stated that the agreement of the Board of Trustees was subject to planning permission being obtained.
33. He stated that a 10 year lease extension was granted without a premium, due to the fact that Liberty stated that they had difficulties obtaining finance. Mr Barkatulla stated that despite this the work did not commence. During cross-examination by Mr Coney he did not accept that the reason for this was because of interference from factions associated with the Mosque.

34. Mr Barkatulla stated that Liberty as well as failing to progress the work did not pay the rent agreed between the parties on time.
35. He stated that one of the Trustees Mr S Patel had received assistance from Mr Beharry of Liberty and that this had helped save him over £10,000 in the purchase of his property under the right to buy scheme. He gave evidence that in his view undue pressure was put on the Trustees to grant a lease extension. Mr Hassan had informed him that he had been approached by Mr Beharry in terms that if an extension was granted, he Mr Hassan would be well looked after. He accepted that the trustees might not have opposed the conversion; however when asked by counsel he stated that no written consent was given and that it would not have been given without planning permission.
36. He considered Mr Hassan to be acting in the interest of the Mosque in not agreeing the extension and stated that Mr Hassan had understood the commercial and other implications of the extension. He stated that Mr Hassan in contrast to Mr Patel was sounding warnings that if the lease was extended for nothing they, the Trustees would be in breach of Trust.
37. He reiterated that he did not accept that the work was not undertaken because of interference, he considered that the real reason was lack of finance.

*The Respondent's reply*

*Evidence of Mr Mohammed Moreea*

38. Mr Moreea was an Accountant and former Trustee of the Mosque. He was Chairman of the Trustees (between June 1996 to July 2005). He had also undertaken work on behalf of the Respondent
39. In paragraph 4 & 5 of his witness statement Mr Moreea stated "*In order to bring the property back into a habitable condition and to comply with health and safety and building regulations the internal partition walls had to be removed. The Trustees consented to Liberty doing this.*"

40. *The Trustees also consented to Liberty converting the property into 20 individual bed-sitting rooms/studios each with its own kitchen and bathroom...The intention was for the usage to be unrestricted as long as it remained residential throughout the term of the lease."*
41. Mr Moreea also stated that a meeting had taken place in February 2003 at which a lease extension which incorporated the basement flat into the lease, (with Liberty meeting the full cost of conversion) was agreed. He stated that Mr Hassan had been at that meeting but had left early and had said that he would agree with the majority decision of the trustees. Mr Moreea in his statement stated that this meeting took place shortly before Mr Asghar passed away. He also stated that permission had been given by the board of Trustees to build the wall at the front of the building as the old wall was dilapidated and considered a dangerous structure. This wall would be higher to afford privacy to the tenants and it would deter people from sitting on the wall during Friday prayers
42. Mr Moreea was referred by Ms Osler to page 33 of the bundle which contained clause 4.81 of the lease which stated that internal and external alterations were not to be carried out without the written consent of the landlord. This was not accepted as always being applied in practice by Mr Moreea. Counsel referred him to a letter from Liberty at page 202 which had a space at the bottom for all the Trustees to sign. Mr Moreea did not accept that all the Trustees were required to sign. He stated that they sometimes signed an important document; however this was not common practice. Mr Moreea also stated that he had visited the property on more than one occasion when the refurbishment work was being undertaken and that none of the Trustees were excluded and had in fact been invited to visit. In his view there had been no attempt to conceal the nature of the work.
43. He was asked by counsel about his conflict of interest and how he came to know about the decisions concerning Liberty. He stated that he was only absent for the item concerning Liberty, and stated that the secretary to the board always informed him afterwards of decisions taken and any discussion surrounding the decisions.

*Mr Shafullah Patel*

44. Mr Shafiullah Patel was a former trustee of the North London Mosque. He was in his professional capacity Head of Religion and Education and an Imam at the Lugman Institute. In his witness statement he set out that the 25 year lease had been granted to enable the premises to be refurbished and save the building from compulsory purchase and that the Board of Trustees was aware of the proposed work to be undertaken.
45. He stated that he had visited the premises in 1998 and that the property was in a very bad state. In cross-examination from Ms Osler he stated that he could not recall if people were living in the property. Ms Osler asked him why details of the visit was not in his statement and he said it was because it was before Liberty took over and the condition of the property reflected why rent free periods were agreed.
46. He commended the fact that the work had been undertaken "*to a very high standard*".
47. He stated that the Respondent's had been prevented from carrying out the work due to the activities of Abu Hamza. In cross-examination he stated that verbal consent had been given to convert the building and that all the Trustees saw a copy of the plans and were aware of conversion.

*Evidence of Anthony Byrne*

48. Mr Anthony Byrne was a Chartered Architect who along with David Smith Planners was engaged by Liberty to assist in connection with the development of 13/15 St Thomas Road, London N4 2QH. His statement was to clarify certain points regarding planning and building regulations relating to the property.
49. In paragraph 2 of his witness statement "*In or around May 2002 I was instructed by Liberty in conjunction with David Smith Planning to obtain a Certificate of lawful Use or Development and Building Regulations approval in relation to Liberty's development of the property . A Certificate of Lawful Use was issued by the London Borough of Islington*



*on 10 October 2002 for the use of the property as a hostel. On 14 January 2003 the London Borough of Islington Building Control Service granted conditional passing of plans in respect of building regulations for conversion to twenty bed-sit flats.*

50. Mr Byrne stated that the property was upgraded to self contained units rather than individual rooms with shared cooking and bathroom facilities. He stated that Environmental Health standards suggested self containment of the flats was preferable to shared facilities. As shared bathrooms and kitchens promoted antagonism between tenants. Self-containment provide safe and healthy environment. Mr Byrne could not assist the Tribunal whether the plans were shown to the Trustees.
51. The Tribunal was shown a letter dated 21.6.05 written on the Respondent's behalf to London Borough of Islington Development Control at page 223 of the bundle. This letter was in answer to a letter dated 25.5.05 entitled "*Unauthorised works*". In this letter Mr David Baker from Enforcement had written that work had been carried out -: "*Conversion of the building into what appears to be 20 self-contained studio flats, construction of a front boundary wall that exceeds 1.0 metre in height and Replacement of windows to the front elevation with UPVC windows.*"
52. In his letter in reply David Smith set out that there was no 'change of use of the building' as the general design layout and purpose of the building remained the same. The letter stated Mr Smith's view that no planning permission was needed for replacement of the windows. The Letter accepted that planning permission was required for the boundary wall and retrospective planning permission was sought.
53. In response to questions asked by Ms Osler on behalf of the Applicant Mr Byrne stated that the Enforcement Notice was not pursued and that this was significant because the council had no will to pursue it. The Tribunal were referred to a letter dated 19.01.06 from Islington Council. At page 238, "*The Studios are now occupied and we have concluded that at this stage it is considered inexpedient to take formal enforcement action under the Planning legislation.*"

54. The letter also stated that if retrospective planning permission was sought it was unlikely to be granted.

*Evidence of Ms Angela Woburn*

55. Ms Angela Woburn gave evidence, that she was a resident of no 13-15 St Thomas Road; she had lived in the Finsbury area prior to moving into the premises, and was aware of the development because of her knowledge of the local area. She stated that she passed by the development regularly and her evidence was that the site was disrupted on a weekly basis by the Friday prayers. Ms Osler challenged this and stated that the prayer time on Fridays was only from 1.30pm-2.30pm. Ms Woburn refuted this and stated that the disruption went on for most of the day.
56. Ms Woburn also gave evidence that the brick wall that had been built offered the tenants some privacy. Ms Woodburn stated that when the wall was lower, youths from the Mosque congregated, they were loud but not threatening, they smoked cigarettes and threw the butts down. She stated that since the wall was built anti-social behaviour had improved.

*Evidence of Mr Metin Caluda*

57. Mr Caluda was a property manager employed by the Respondent Company. His statement was at page 378. At paragraph 2 he states, "*Over the last eight years, the Respondent has experienced tremendous difficulties in its refurbishment of the Property and suffered substantial increase in costs due to the obstructions caused by Abu Hamza and his Al Qaeda supporters.*"
58. In his evidence he stated that unknown people from the Mosque threatened him and stated that they would kill him if he continued with the work. Windows to the rear were broken and missing from the back and there were occasions when squatters blocked access to the building. Builders were also threatened. Usually on a Friday the police asked them to stop working for 2-3 hours.
59. Mr Caluda stated that when the warrant was issued by the Police the Respondent did not have access to the building for over a year. Mr Caluda

stated that when he did finally enter the building several stolen items such as credit cards and passports were discovered and handed into the police.

60. In cross-examination Ms Osler asked him about the refurbishment work, Mr Caluda stated that the original plans were not for self-contained units, however after discussion with the Board of Trustees it was agreed that the property would be easier to let if it was self-contained. Counsel challenged Mr Caluda's account about difficulties that had been experienced in obtaining access. She referred him to Detective Inspector Lambert's evidence.
61. Mr Caluda stated that the reports had been made to uniformed police. He stated that there were various threats and intimidation from factions from within the Mosque, and that although the Respondent had had sufficient monies at the start of the refurbishment project because of the delays and further deterioration to the property Liberty had not been able to complete the works on budget and had to borrow additional funds. He stated that he had lent Liberty £13,000 to assist in finishing the refurbishment work.
62. At paragraph 9 of his witness statement Mr Caluda stated that a meeting had taken place at the mosque with new trustees and that it was in that meeting that he met Mr Hassan Mahmood. He stated that he had been informed that Mr Mahmood was recently re-appointed. He stated that he had spoken with Mr Hassan about the conversion. Mr Caluda stated that in the course of the conversation Mr Hassan informed Mr Caluda that he was in the property business and would refurbish and convert properties into flats without planning permission. Later on he would apply to the council claiming that the properties had been in that state for several years in order to obtain a certificate of lawful use. He said that Mr Hassan had said that he could do the same with the premises. Mr Caluda stated that he had informed Mr Hassan that they already had permission to convert the Property into twenty bed sitting/studio units.
63. Ms Osler stated that this had not happened and that Mr Hassan's only source of information about the conversion was the letter from Islington Council at page 57.

64. Mr Caluda reiterated that the Trustees were aware of the work and had seen the plans and were not unhappy with the work. Ms Osler referred Mr Caluda to a letter from the solicitors for the Trustees dated 20.01.06 which asked the council to update them as his client had served a 146 notice. Counsel stated that the trustee's were clearly not happy with the work.

*Evidence of Mr Beharry*

65. Mr Beharry's witness statement was at page 344 of the bundle. He stated that he had first become involved with the premises when the Trustees approached Liberty, initially through Mohammed Asghar with a view to Liberty undertaking the management of the building. An initial assessment was carried out in 1997/98. Mr Beharry referred the Tribunal to a letter at page 96-98 of the bundle. The letter dated 1.05.97 paragraph 4 page 2 stated *"In addition to the above 16 or so bed sitting rooms excluding the Imam's flat can be converted into self-contained studio flats by re-designing the three upper floors, this can be done sometime in the future. By self-containing the upper floors, it means therefore, that the utility bills will be paid by the tenants and the trust will not have any liability towards these expenses, this will of course stop wastage of heating and hot water when the units are not occupied..."*
66. Liberty were at that stage willing to provide a full management service, however the position changed as the local authority threatened to compulsorily purchase the premises as the work was not being undertaken as required in the Housing Act notice. The property which was a house in multiple occupation was classified as unfit for a HMO.
67. Mr Beharry at paragraph 3 of his statement stated that this position changed and the Trustees asked Liberty to take the property on with a view to Liberty undertaking the work and leasing the property.
68. Mr Beharry stated that almost immediately following Liberty leasing the property, they experienced problems with access. Although he had been given keys to the property, it was still occupied and he remembered one occasion when it was super glued from the inside. Mr Beharry referred to

his letter dated 28.9.98 at page 100 which referred to difficulties in obtaining access.

69. He stated that these problems continued through until after the warrant was issued in 2003. Mr Beharry stated that several reports were made to the police station at Blackstock Road. He was present when police attended the property as staff had been racially abused by supporters of Abu Hamza.
70. Counsel Mr Coney asked Mr Beharry about the attitude of the Local Authority to the work.
71. Mr Beharry referred to a letter from Audrey Wakerley dated 27.1..99 at page 102 where she stated at the second paragraph of her letter "*I confirm that the conversion to self-contained units as discussed between your architect and the planning department, would meet the Housing Act requirements and enable the notices to be lifted.*"
72. Mr Beharry stated that the Respondents had wanted to extend the lease because of the 3 years that had been lost. They had also been required to pay rent since 1999 without possession. Mr Beharry referred to his letter dated 18.5.01 in which he stated that "*all parties are fully aware of the reasons why the property is still vacant and happily dilapidating.*"
73. Mr Ashgar had answered stating that there was no obstruction from the Trustees (see page 178) and that if there was obstruction he should take it up with the police. He was asked by counsel who had drafted the documents "*To whom it may Concern*" at page 217.
74. Mr Beharry stated that Liberty had problems getting a loan and problems caused by the condition of the property; it had been 'jerry built' in 1993. The Respondents had additional problems as the property had become dilapidated during the time when Liberty had been unable to gain access.
75. Mr Beharry stated that the Trustees were aware of the plans as they had been shown copies of them. He had shown plans to Mr Asghar, Mr Moreea and Mr Patel. Mr Barketella had not seen the plans as Mr Beharry was not aware that he was a trustee.

76. Mr Beharry stated that he had never seen more than 4 trustees at any one meeting. The Trustees had seen the plans and knew of the work being undertaken. The Trustees who had seen the work were Mr Eddo, Mr Moreea and Mr Patel who had on several occasions come separately to look at the work.
77. Ms Osler queried whether Mr Beharry's account was correct as she stated that Mr Lambert had stated no interference and that in any event the interference was only on Fridays. This was not accepted by Mr Beharry.
78. Ms Osler referred to the letter dated 23.2.03 at page 203, she asked why this letter documenting the agreement had been sent prior to the meeting which purportedly took place on 25.3.03 at which Mr Beharry stated the agreement had been reached. Mr Beharry could not confirm the exact date that the meeting took place, although he was adamant that the meeting had been in February 2003.
79. Counsel stated that no written permission had been given to convert the building. Mr Beharry did not accept that this meant that no permission had been given. She referred to the letters at page 177 and 178 and stated that there had been no mention of the conversion work. Counsel stated that the first occasion on which the conversion work was mentioned was in the letter dated 30.03.05.
80. Counsel for the Applicant asked whether Mr Beharry accepted that Trustees did not know of the breach until informed by Islington Council at page 222. Mr Beharry did not accept that there was a breach as he stated in paragraph 14 of his witness statement that the permitted use in the lease was as a residential block of flats, studios or hostel.
81. Mr Beharry referred to paragraph 15 in which he stated that the Trust continued to accept rent until the last quarter of 2005 in the full knowledge that Liberty had carried out a refurbishment.
82. The next alleged breach was that Liberty had not obtained planning permission. This was refuted as there was a Certificate of Lawful use, or Development dated 10 October 2002 and a letter from building control dated 14.01.03 granting conditional passing of plans in respect of building

regulations for the conversion to 20 bed-sit flats. Mr Beharry accepted that no planning permission had been sought for the boundary walls or the changing of the windows.

83. In his statement Mr Beharry set out that the refurbishment of the property had been financed by private loans and that the refurbishment had added considerable value to the property
84. Mr Coney on re-examination referred Mr Beharry to pages 100, and 101 which set out that the Respondents had been obstructed in carrying out the refurbishment.
85. Mr Coney also referred to page 109 in which the council referred to breach of the notices. Mr Beharry agreed that the work was therefore urgent.
86. Mr Beharry stated that the trustees that he had met with namely, Mr Ashgar, Mr Moreea, Mr Patel and Mr Edoo appeared to be representative and that as far as he was aware they knew of the work.

*The Legal submissions of the Applicant*

87. The Applicant's counsel Ms Osler set out in her legal submissions the clauses of the lease which it was alleged had been breached by the Respondent.
88. She alleged that the Respondent was in breach of clause 4.8.2 as the internal structure of the property had been converted without the written consent of the landlord.
89. That the Respondent had converted the property from a hostel to self-contained apartments which was a change of use in breach of clause 4.10.1
90. That the construction of the boundary wall was in breach of clause 4.8.1 and the replacement of the windows was in breach of clause 4.8.2.
91. It was also alleged that the Respondent was in breach of clauses 4.10, 4.14.1 and 4.14.3 in failing to obtain proper planning permission and that in failing to comply with the conditions laid down by Building Control Services of the London Borough of Islington, the Respondent was also in breach of the same clauses.

92. Ms Osler summarised the issues by stating at paragraph 4 of her submission *"The sole issue before the Tribunal is whether on the evidence before it the Tribunal is satisfied that the Respondents have breached the terms of the lease in the manner alleged by the Applicants. Whether the Applicant is entitled to forfeit the lease as a result or, even whether or not the Respondent should be afforded relief from forfeiture are not issues which fall for this Tribunal's consideration. Rather it's competence is limited to deciding the question of whether a breach has occurred at all, not what the landlord may do about it"*
93. Ms Osler submits that on its own case the Respondent accepts that it is in breach of covenant by building the wall and in changing the use from a hostel to self-contained flats. This she submits means that the Tribunal are bound to find for the Applicant in respect of these two breaches. Ms Osler states that the surrounding circumstances set out by the Respondent are for the purpose of this Tribunal's jurisdiction irrelevant.
94. In respect of the breaches that are denied Ms Osler refers the Tribunal to the letter dated 21.6.05 from Mr Smith (the Respondent's Architect). That the Issue of Planning consent for the windows. In this letter Mr Smith states his view which is that the replacement of the window amounts to a repair, and that as such planning permission is not required. This view was not accepted by the Applicant, and reliance is placed on a letter from the local authority dated 5.12.05 which maintained that planning permission was necessary.
95. In respect of the issue concerning the failure to obtain the consent of the Trustees Ms Osler invites the Tribunal to find that the Applicant's witnesses, Mr Hassan and Mr Barkatulla were credible witnesses and that there was evidence that all of the Trustees would have needed to consent in writing to the changes. Ms Osler cited the fact that Mr Hassan had been a trustee since 1996 and was appointed as secretary in 2003 following the death of Mr Asghar. Also Mr Barkatulla had along with Mr Asghar delegated responsibility for negotiations concerning the lease and was therefore unaware of which work the Applicant had asked the Respondent to undertake. Ms Osler stated by implication that Mr Patel, Mr Moreea and



Mr Asghar on their own could not have consented to the changes made to the building.

96. Ms Osler states at paragraph 18 of her submissions that "*The clause of the lease is clear that written consent of the Trustees must be obtained prior to carrying out any external or internal structural alterations...*"
97. Counsel considers that this is not merely a technical breach; she also states that any mitigation is a matter for another forum.
98. Ms Osler further submits that while the Applicant readily admits that they required the Respondent to undertake refurbishment work to the extent that this required the structural alteration consent should have been sought under the lease.
99. Ms Osler refutes the reasons given by the Respondent for the delay in undertaking the work and cites the reason for the delay as being difficulties in obtaining finance.
100. Ms Osler in her submission stated that it was not for this Tribunal to decide on whether oral consent had been given and therefore the Applicant had waived the breach insofar as the lease required consent to be given in writing. Ms Osler submitted that this was not within the jurisdiction of the Tribunal. In her conclusion she stated, "The Applicant therefore succeeds in its application in its entirety and respectfully submits that the Tribunal find accordingly".

*The Respondent's legal submissions*

101. In his submissions Mr Coney invited the Tribunal to consider the overview in which he set out that the building was in a such serious state of disrepair and that the London Borough of Islington had threatened compulsory purchase proceedings. Liberty had then carried out extensive refurbishment works at a cost of £875,000 and the premises were now worth approximately £3 million pounds.
102. Counsel in paragraph 6 of his submissions states "In fact, the reality is that the Trust does not complain about what works Liberty did, but takes

technical points solely in order to make a profit at Liberty's expense by forfeiting the Lease".

103. Mr Coney refers to the fact that making each flat self-contained was of considerable benefit to the tenants and that the London Borough of Islington did not take enforcement action in respect of the alleged planning breach and closed the case. He states that the complaint is disingenuous and that it was clear to all of the parties that Liberty had undertaken the lease to do structural works. He cites in support the fact that Mr Barkatulla's evidence was that he would have been happy provided planning permission had been obtained. He also notes that no complaint was made about the standard of the work.
104. Mr Coney accepts that the Tribunal has to determine whether there are breaches of covenant, technical or otherwise. However he submitted that the matters outlined go to the Tribunal's consideration as to whose evidence to accept.
105. Mr Coney stated that Liberty's position is that it accepts that there is a breach of Covenant in building the wall without planning consent and changing the use from a hostel to self-contained flats,
106. The Respondent's position on the replacement of the new windows was that no planning consent was required. Liberty also denies that the matters complained of were done without the consent of the Trust.
107. In support of the lack of breach of the planning rules concerning the windows counsel places reliance on the letter written by the Respondent's planning consultants dated 21.6.05 (at page 223 of the bundle). Who state that the replacement of the windows was in fact a repair. Counsel states that on this issue the Applicant failed to discharge the burden of proof that there had been a breach.
108. Insofar as consent of the Trustees to the work is concerned Mr Coney cites the following points. He stated that apart from Mr Hassan the Trustees have all changed and he cites the fact that Mr Hassan only had a peripheral involvement during the critical time in which the work was being carried out. It was clear from the evidence that the principal Trustee had been Mr

Asghar. Counsel also refers to inconsistency in Mr Hassan's evidence such as his claim that the property was in reasonably good condition and only needed some refurbishment. Mr Coney invited the Tribunal to contrast this with the document at page 66 which claimed that the premises was vandalised and destroyed by Abu Hamza and his group and the Housing Act notice served under section 189 and section 352. Counsel also urged the Tribunal to consider his evidence concerning the delay, in which Mr Coney states that this ignores the reality that the Respondent was experiencing difficulties with obtaining access to the building because of the activities of Abu Hamza.

109. Mr Coney stated that very similar criticisms can be made of the evidence of Mr Barkatulla. Mr Coney considered that the evidence of DI Lambert does not go to any issue before the Tribunal and flies in the face of the fact that a Detective Superintendent gave evidence on oath to a District Judge to obtain a search warrant for the premises.
110. In Paragraph 18 of his submissions Mr Coney states "*Liberty does not have to show that all the Trustees consented to the works- the internal rules of the Trust are irrelevant, as in respect of third parties each Trustee has ostensible authority to act on behalf of the Trust...*"
111. Counsel refers to the evidence of Mr Moreea in particular paragraph 5 of his witness statement in which he states consent was given. He also refers to the fact that Mr Moreea's position was supported by Mr Patel and that if the Trustees had not changed this case would probably not have been brought to the Tribunal.
112. Insofar as the lease requires written consent, Mr Coney claims that if the Tribunal find that the works were carried out with the consent of the Trustees, and with their knowledge, then it follows that the Trustees waived the requirement for written consent.

### **The Decision of the Tribunal**

113. The Tribunal having been presented with a considerable amount of oral and written evidence has set out below their findings of facts on which the decisions have been made.

*Findings of Fact*

114. The Applicant in their statement of case referred the following breaches to the Tribunal. The tenant had converted the premises from its original layout into 20 self-contained studio apartments. This work included replacing the windows to the front elevation and construction of a boundary wall that exceeded 1.0m in height and that the tenant did not notify the landlord of the conversion nor did the tenant seek any written consent or authorisation from the landlord. And, as submitted by Ms Osler in paragraph 89-91 above, clauses 4.8.1, 4.8.2, 4.10.1, 4.14.1, and 4.14.3 of the terms of the lease were breached.
115. In respect of the Applicant's statement of case it appeared to the Tribunal that the following matters were no longer being pursued. (f) The Tenant had failed to comply with the conditions laid down by Building Control services of the London Borough of Islington in breach of clause 4.10.1 4.14.1 and 4.14.3 and the failure to allow the landlord access to the premises in breach of clause 4.9. No evidence having been presented to the Tribunal at the hearing concerning these breaches, Accordingly the Tribunal make no findings on these breaches.
116. The Tribunal notes that the first point of contact between the Applicant and the Respondent is set out in Liberty's letter dated 1<sup>st</sup> May 1997 at page 96 in which Liberty state in the fourth paragraph "*In addition to the above the 16 or so bed sitting rooms excluding the Imam's flat can be converted into self-contained studio flats by re-designing the three upper floors*".
117. Mr Beharry informed the Tribunal that Liberty's role was initially as potential managing agents, who were then offered the opportunity to enter into a lease by the Trustees. This evidence is not disputed. There is then an agreement to enter into a lease, and evidence that Liberty secured the property and boarded it up. By November 1998 Liberty are complaining about difficulties in obtaining access and the fact that they would like an

extension of the lease. There was also a further letter dated 17-2-99 in which Mr Beharry sets out the difficulties that the Respondent experienced in gaining access, and the monies that have been expended, although the letter does not say so explicitly it appears to be an attempt to re-negotiate the rent free period.

118. The Tribunal note that it is significant that neither of the two letters referred to are responded to in writing by the Trustees. This was because it is clear to the Tribunal from the evidence given by both parties that the Applicant was under pressure from the Local Authority, the Police, the Charities Commission and followers of Abu Hamza. The writing of letters and responding was not uppermost in the mind of the Trustees.
119. The Tribunal acknowledges that there was a great deal of pressure on the Trustees and that pressure can often breed confusion and it was within this climate that the relationship between the Applicant and Respondent needs to be assessed.
120. The Tribunal also consider that it was clear from the Housing Act Notices and the notice to the users of the Mosque at page 66, that the property was in substantial disrepair and that the level of disrepair, resulted in rent free periods being granted by the Applicant. The Tribunal find however that this on its own was not indicative of the amount of work which needed to be undertaken at the premises.
121. The Tribunal in assessing the delay, and the way in which this may have affected the relationship between the parties find that there were two factors that affected the progress of the work undertaken at the property; the Tribunal accept that the political and religious background which meant that there were factions at the Mosque, did affect the ability of the Respondent to carry out the work. However the Respondent had underestimated the amount of work that needed to be carried out, and the difficulties that they would experience in putting the appropriate finance in place to undertake this work and this contributed to the delay in undertaking the work at the Mosque.

122. It was also clear to the Tribunal that the Respondent was aware of the difficulties that the Applicant was under and the potential value of the lease and it was within this climate that they attempted to negotiate the extension of the lease.

*The issues to be considered by the Tribunal.*

123. The Tribunal, although it has made findings of fact on the evidence note the ambit of its Jurisdiction, which does not include relief from forfeiture, although the Tribunal does not accept that it cannot consider the question of whether it can be said on the facts before it that a breach has been waived by the Applicant.

124. The Tribunal has in making findings of fact, does so solely to consider the credibility of the witnesses and the question of waiver.

125. The Tribunal on considering the evidence have made the following determination:-

*The conversion of the internal structure of the property without the written consent of the landlord in breach of clause 4.8.2.*

126. The Tribunal having considered the evidence on this issue have determined that the Applicant knew and in principle had consented to the conversion of the internal structure of the property. The Tribunal consider that this use of the building had been identified by the Respondent before they had entered into the lease, this can be seen from the letter dated 1st May 1997. Also crucially three of the Trustees, Mr Moreea, Mr Patel and for the Applicant Mr Barkatulla agree that all of the Trustees knew of these plans, Mr Barkatulla for the Applicant states that notwithstanding this knowledge, he stated in cross-examination that he would not have opposed the plans, but had not consented.

127. Ms Osler placed some reliance on the internal trust documents that govern the Trust, we accept Mr Coney's submissions that the Respondent could not be expected to have a working knowledge of this document, and that

any of the Trustees would have had ostensible authority to act on behalf of the Trust

128. The Tribunal consider that whilst no written consent was given, there was a climate of informality between the parties and that verbal consent was given to undertake the conversion. However there is nothing about the conduct between the parties that leads the Tribunal to conclude that the Applicants had agreed, that the building plans could go ahead without planning permission being given. Indeed the letters from the Respondent (in particular their letter at page 106 of the bundle) in which they state they had spent a substantial amount of money on consultation with the planning department to secure the premises, and claimed they had expended £1520 on Local Authority Planning fees, would in the Tribunal's view have lead the Trustees to presuppose that planning permission had been granted for the conversion.
129. The Tribunal note that one of the main reasons for the Trustees entering into the lease was to enable work to be undertaken so as to avoid a Compulsory Purchase Order. Given this, the Tribunal find that the Trustees would have wanted everything undertaken "by the book". This was also supported by the evidence from Mr Hassan and Mr Barkatulla.
130. The Tribunal find that there was waiver of the requirement for written consent, however consent was conditional on the necessary planning permission being sought and this did not occur. As the lease contained an obligation in 4.8.2.4, even if the requirement for written consent was waived, there was no waiver of this clause.
131. The Tribunal accepts that there was conditional passing of the plans under the Building Act 1984- Building Regulations 2000, but this did not amount to planning permission.

*The conversion of the property from a hostel to self-contained studio apartments, in contravention of clause 4.10.1.*

132. The Tribunal determine that there is no change of use, in breach of clause 4.10.1, in reaching this decision the Tribunal referred to the permitted use which is state out in clause 1.8 which states "use of the premises as a

residential block of flats, studios or hostel.” The Tribunal find that this clause is wide enough to include the self-containing of the premises and accordingly the Tribunal find no breach of this clause

*The failure to obtain any or proper planning permission in respect of the conversion, wall and windows in breach of clauses 4.10, 4.14.1 and 4.14.3*

133. The Respondent’s position as set out in the legal submission at paragraph 14, in which the Respondent’s counsel Mr Coney states “*It has already been indicated (at the start of the hearing) that Liberty accepts that there is a breach of covenant in building the wall without planning consent and in changing the use from a hostel to self contained flats*” Given this admission the Tribunal find a breach of clause, 4.14.1 and 4.14.3.

134. The Respondent however denies a breach in respect of the windows and refers the Tribunal to the Respondent’s letter dated 223 from David Smith Planning Chartered Town Planning Consultants, in which it is stated “*Regarding the windows planning permission is not required for repairs and maintenance. The Replacement windows fall into this category.*”

135. There is no evidence offered by the Applicant to contradict this position, although reliance is placed on the letters from The London Borough of Islington at pages 236, and 238. There is in this letter no attempt to respond to the point made, although the Authority maintains a blanket assertion that the windows should be reinstated. At page 73 of the bundle the section 189 (1) Housing Act Notice at point 23, and 32 suggest disrepair to the window.

136. The Tribunal does not accept that the position adopted by the Local Authority, without further explanation is irrefutably correct, accordingly the Tribunal are not satisfied, on a balance of probabilities that planning permission was necessary for this work, and the replacement window is therefore not a breach of *clause 4.10, 4.14.1 and 4.14.3*

*Failure to comply with the conditions laid down by Building Control Services of the London Borough of Islington in breach of Building Regulations 2000. In breach of clauses 4.10, 4.14.1 and 4.14.3*



137. The only evidence that was given to the Tribunal on this issue was a one page conditional passing of plans at pages 205. Also reference was made to building control in the letters from the London Borough of Islington at pages 236 and 238. At paragraph 6 of the letter on page 238 Ms Hipkins (a temporary Enforcement Officer stated "*there were numerous conditions and concerns added as a schedule to the conditional passing of plans by the Building Inspectors, One in particular related to the layouts of some of the studios, which were considered to be unacceptable because cooking facilities were adjacent to the exit. This may or may not have been rectified.*
138. No evidence was presented by the Applicant on this aspect of the breach, and the Tribunal were informed that no enforcement action was being undertaken by the Local Authority, this was confirmed by the letter at page 238-239. Given the lack of evidence on this issue, the Tribunal have found, on a balance of probabilities that the Respondent is not in breach of clauses 4.10, 4.14.1 and 4.14.3 in respect of this issue.
139. Accordingly The Tribunal are satisfied that breaches of the lease did occur in respect of the failure to obtain planning permission for the boundary walls and the conversion works at the premises in breach of clause 4.14.1 and 4.14.3. and that the matter has been proved in accordance with section 168 (2) (a) and (b) of the 2002 Act.

Signed

*M. O. Selby*

Dated

*21-10-08*