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

**Case Reference** : **CAM/34UE/LBC/2014/0017, 18, 19, 20**

**Property** : **7 & 11 Regents Gate and 10 & 11 Kings Walk,  
Crown Street, Kettering NN16 8JF**

**Applicant** : **Powell & Co Property (Brighton) Limited**

**Representative** : **Mr Sean Powell  
Mr Patrick Goubel both of Powell & Co Property  
(Brighton) Limited**

**Respondent** : **7 Regents Gate – Mr I Posh-Mashad  
10 Kings Walk – Mr S M Hosseini  
11 Kings Walk – Mr Posh-Mashad  
11 Regents Gate – Mr D P Patel**

**Representative** : **The Respondents represented themselves**

**Type of Application** : **Section 168(4) of the Commonhold and  
Leasehold Reform Act 2002**

**Tribunal Members** : **Tribunal Judge Dutton  
Mr D Barnden MRICS  
Miss M Krisko BSc (Est Man) FRICS**

**Date and venue of  
Hearing** : **The Court House, Kettering on 10<sup>th</sup> April 2015**

**Date of Decision** : **1st May 2015**

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**DECISION**

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## DECISION

**In all respects the Tribunal declines to make an order that there has been a breach of covenant or condition in the lease in respect of all allegations made against all Respondents.**

**The Tribunal orders that the provisions of Section 20C of the Landlord and Tenant Act 1985 shall apply, it being just and equitable in the circumstances.**

### **BACKGROUND**

1. Four applications were made by the Applicant Company, Powell & Co Property (Brighton) Limited seeking orders under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 (the Act). The four applications were against the three Respondents who between them owned the four flats in the development at Crown Street, Kettering, the subject of these applications. Each application alleges that the Respondents made internal alterations to their flats without the consent of the landlord in breach of clause 3(5) of the lease. In addition it is alleged that each leaseholder has allowed a satellite dish to be erected on the exterior of the property without the landlord's consent. Further, it is alleged that the flats have not been kept in good and substantial repair and condition in particular that the wiring in the flat is dangerous. Finally, it is suggested that new regulations were introduced which are binding on the Respondents under provisions of schedule 2 of the lease and that those regulations have not been complied with.
2. In respect of the internal alterations, it is alleged that Mr Posh-Mashad, the owner of 7 Regents Gate had added a bathroom; that Mr Hosseini, the owner of 10 Kings Walk had converted his property from a two to three bed flat and added a bathroom; that 11 Kings Walk, again owned by Mr Posh-Mashad had been converted from a two to a four bed roomed flat and finally that Mr Patel's property, 11 Regents Gate had also been altered to create an additional bedroom, thus making it a three bedroom property, and that a bathroom had also been added.
3. Prior to the Hearing we were provided with a bundle of papers which contained the applications and directions issued by the Tribunal. Each case was initially dealt with on an individual basis but because there is a commonality of issues and property, the hearing of the case involved all four flats and the three Respondents. It should also be noted that although Mr Posh-Mashad appeared to be accepting responsibility for the flats at 7 Regents Gate and 11 Kings Walk, the Land Registry entries show Saaghar Posh-Mashad as the owner. It is said by Mr Powell in a witness statement that Saaghar Posh-Mashad is in fact the daughter of Mr Posh-Mashad who is in Mr Powell's words "effectively the landlord." Mr Posh-Mashad did not demure from this and indeed in his witness statement, which was in the bundle and which contained a statement of truth, he says that he purchased both 7 Regents Gate and 11 Kings Walk at auction in August of 2011.
4. Included in the bundle were statements from Mr Sean Powell in respect of each flat, although repeating much of the same factual matters, Mr Goubel a fellow director with Mr Powell which confirmed his visit to the flats and a witness statement from Mr R J T Eisler who is the caretaker at the development but also owns a couple of flats.

5. For the Respondents we had witness statements from each of them dealing with the issues and exhibiting a number of documents. We will refer to these documents as necessary during the course of this decision. Further, there was a bundle of photographs, miscellaneous correspondence and some plans, the Land Registry entries and copies of each of the flats' leases.
6. Prior to the Hearing we carried out an inspection of the development and our findings are as follows. We inspected the property on the morning of 10<sup>th</sup> April. It is a converted bakery at the junction of Kings Street and Crown Street in Kettering. It is designated as having been built in 1900 and is shown as the Co-operative Model Bakery now containing some 24 flats. On the ground floor is car parking for residents and on the first floor upwards are the flats. The external condition of the property is fair, although the car parking area and the ceiling above could do with some decorative attention. The same applies to those common parts which we were able to inspect.
7. We were able to internally inspect the four flats. The first we saw was Mr Hosseini's at 10 Kings Walk which is accessed by metal staircase across a flat roof and then by covered stairs to the flat's front door. On the first floor was a kitchen/diner, bathroom, some storage cupboards and two habitable rooms. On the upper floor appeared to be two extra bedrooms.
8. We then inspected 11 Kings Walk owned by Mr Posh-Mashad, or perhaps more accurately, his daughter. At first floor level was a kitchen/diner, bathroom, storage facilities and two bedrooms and on the top floor the same layout as Mr Hosseini's flat. The property was at the time of our inspection undergoing refurbishment work.
9. Next we inspected 11 Regents Gate which had similar access arrangements to 10 Kings Walk although there was a covered mezzanine area affording access to the flat's front door, as well as neighbouring flats. Internally the flat had something of a loft living experience with a large living room having exposed brick walls with a kitchen off and a shower room with a full sanitary suite and bedroom having two external doors. In addition there was a small utility room off the kitchen. There was a mezzanine level leading to a large double bedroom with an en suite bath and shower room and up a further small flight of stairs a second bedroom. We were also able to make a brief internal inspection of 10 Regents Gate a property also owned by Mr Patel which showed us that this also had an internal bathroom and an en suite similar to services provided at 11 Regents Gate.
10. Finally, we inspected 7 Regents Gate, the other property owned by Mr Posh-Mashad. This property had a living room/kitchen and WC at the first floor level with stairs up to a second floor which had a lobby, which lead to two bedrooms one with an en suite shower and WC and on the top floor, a split level substantially-sized bedroom with bathroom off. At the time of our inspection all flats were occupied we understand by tenants of the Respondents.

### **THE HEARING**

11. Prior to the Hearing we had been able to read the statements of Mr Powell, Mr Goubel and Mr Eisler for the Applicants and the statements made by the

Respondents. It is right to record that none of the Applicants' witness statements in the bundle were signed. Mr Powell in his statement told us that his company had acquired the freehold of the Old Bakery in April 2012. Upon acquisition it became apparent there were a number of outstanding issues that needed to be resolved both with the leaseholders and with the local authority. There was also concern that a number of the flats were being used as HMO's. To resolve these problems Mr Powell indicated that an inspection was undertaken, although it is not wholly clear when such inspection took place because in his witness statement it is on 17<sup>th</sup> November 2014 but in Mr Goubel's statement, the person who carried out the inspection, he refers to a date of 9<sup>th</sup> December 2014. It matters little. Suffice to say that Mr Goubel prepared an inspection report, although there is no evidence that he is a surveyor, which was contained behind tab 6 at page 1 of the bundle. This set out what he considered to be the changes that had been made by reference to the original lease plans.

12. Insofar as the electrical issue is concerned, this seems to be based upon a letter from Drage Electrics Limited dated 6<sup>th</sup> November 2014 following an inspection of 12 Kings Walk, a flat owned by the Applicants. The final paragraph of this letter says as follows "*We have already reported elsewhere about the terrible condition of the external wiring to the general site and in the main switch rooms, but judging by our findings in this apartment, it is pretty obvious to assume that the electricians to all the remaining properties are in the same dangerous condition and that the respective owners are made aware immediately.*" This added to the Applicant's wish to inspect. Mr Powell went on to tell us about correspondence he had had with solicitors acting on behalf of a number of leaseholders and in each witness statement he responded to matters raised in each of the Respondent's witness statements, which were again somewhat repetitive.
13. Mr Eisler's statement gave no evidence that was relevant to the issues which we were required to determine. All he could say was that alterations had been carried out as the lease plans differed from that which was found on inspection. However, the evidence he gave at the Hearing was enlightening and we will return to that when we deal with the oral evidence given to us on the 10<sup>th</sup> April. Finally, for the Applicants, Mr Goubel's statement confirmed his attendance and suggested that he has spoken to the previous freeholder who had apparently confirmed that all flats on the development were two bedroom with one bathroom. It is appropriate to record that no evidence of the previous freeholder was given to us at the hearing. The statement then went on to deal with various other matters, making various allegations against in particular Mr Posh-Mashad and raising the name of a Mr Valdeck who appeared to have some close involvement with the development, again a character to whom we shall return later in this decision.
14. The Respondent's witness statement confirmed the dates that they purchased, that they had completion certificates for their respective flats and that since the date of their respective purchases they had made no alterations. The statement then went on to complain about the landlord's failures to implement a fire safety report and to generally look after the building. Mr Hosseini produced an unsigned electrical installation report as well as the gas safety certificate and the completion certificate from the Council. He also produced a fire safety report and other documents, it appears intended to show the Applicants in a bad light. Mr Patel produced a witness statement in similar terms to that of Mr Hosseini and also exhibited a

number of letters and emails of which some are interesting and helpful to us. We also had a gas safety certificate in respect of 7 Regents Gate and the council's completion certificate and the same applied for 11 Kings Walk. At the Hearing Mr Posh-Mashad produced what purported to be an electrical certificate which he said he would make available to the Applicant within 7 days.

15. Before we deal with the oral evidence, it is appropriate to record some of the correspondence that was put before us. The first is a letter to Mr Patel from Kettering Borough Council dated 23<sup>rd</sup> December 2014 which contains the following paragraph *"As a result of this visit and the work subsequently undertaken by the Council's building control service, it has become clear that what has actually been built at the Old Bakery differs significantly from the design that building control originally approved. This is a matter of considerable concern, because the way in which the building has been developed, directly influences the ability of occupants to safely escape from the building in the event of fire."* The letter went on to say that building control need to liaise with the local fire authority as to the design of the communal areas but that such work could not be undertaken without accurate drawings showing what has actually been built on site. The letter sought the assistance of Mr Patel and others in the preparation of these plans. A further email from the council (Mr Harbour, head of Development Services) had replied to Mr Patel giving certain advice but informing him that building regulations drew no distinction between a study and a bedroom as both are classified as habitable rooms but he was not able to confirm whether the main bathroom on the lower floor of 11 Regents Gate had been signed off because they did not hold a set of plans. He did, however, go on to say that given the bathroom on the upper floor was en suite and could only be accessed through one of the bedrooms it seemed logical that there should have been a main bathroom located within the property to be accessed by others. In addition there was correspondence passing between the solicitors acting for the Respondents, Gisby Harrison and Mr Powell. This related to the allegations made as to unauthorised changes and perhaps a telling paragraph in a letter sent on 28<sup>th</sup> November which reads as follows *"(5) If you need plans of the flats as built that would appear to demonstrate that you don't know how they were built. If you don't know how they were built it is hard to see how you can assert that changes had been made, and frankly hard to see how you are able to express an opinion on the state of my knowledge. However, be that as it may, the simple facts are that the flats are as my clients bought them/as the leases were granted."*
16. At the Hearing, Mr Powell told us of the problems he had had trying to involve the Council in inspecting to ensure that the properties accorded with building regulations. He said that there had been a considerable anti-social behaviour at the property and that these four flats had been inspected somewhat as a matter of chance but had to his mind showed the difficulties. The changes to the various flats were based upon the original lease plans. He also was of the view that the wiring had been carried out by an unqualified electrician but we had not evidence as to who had carried out the work. He told us that he had control of flats 1 and 2 Regents Gate and 12 Kings Walk and that Mr Eisler owns flats 7 and 8 Kings Walk. Mr Goubel expressed a view that he was "pretty sure" that most alterations were made before the Respondents had bought their flats. An allegation was made that a gentleman called Mr Valdeck may have caused changes to be made to accommodate HMOs. Apparently, according to Mr Goubel he was well known to the Council. However, we had no statement from Mr Valdeck or any statement from the Council.

Mr Powell opined that the properties were unmortgageable and that people were sleeping on mattresses. He confirmed, however, the only evidence he was able to give to us as to the alterations was the difference between the present layout of the flats and the plans in the lease. Mr Goubel confirmed that they did not really want to re-possess and were likely to give retrospective consent but really wished to resolve the matter with the assistance of the Respondents.

17. We considered the plans with the parties after having heard briefly from Mr Eisler who gave evidence to us. He told us he was one of the first people to purchase their flats having bought them in 2007. He lives in flat 7 Kings Walk and rents out Flat 8. He had been living there whilst the building works were being completed and could say that as far as he was concerned the Respondents had not altered the layout of their flats. He thought this had been done by the previous freeholder. This previous freeholder was Templewood Estates Limited, which had gone into liquidation. He believed, although he did seek to perhaps resile from this, that the changes were either made by Mr Moss, the guiding light behind Templewood, or by Mr Valdeck with Moss's agreement as he was apparently his agent on site. Mr Eisler told us that he had spoken to Mr Moss about the use of flats as HMO's but Mr Moss did not appear to express any great surprise when this was raised with him. He believed that Mr Valdeck was his agent and Mr Moss had never denied that.
18. The Respondents in evidence to us told us that they had not made the alterations but that in their view they had been made by the freeholder, or more accurately Mr Moss, the director.
19. There was a discussion concerning the possibility of a guarantee following the original development which might have assisted in putting right the admitted faulty wiring. Apparently a guarantee had been placed with Premier Guarantee but the warranty had failed because there had been no final inspection and cover had not been put into effect. Steps were, however, now being taken to correct the electrical difficulties as the Section 20 process was now underway.
20. On the question of the satellite dishes, the Respondents did not accept that any of their flats were connected to a satellite dish and no evidence was given to us by the Applicants to show that they were. It was suggested by the Applicants that they would install a communal satellite dish subject to Section 20 procedures which could be set up to provide television reception for a number of East European tenants who appeared to occupy the property. This, however, would result in the satellite dishes which were clearly in situ at the time of our inspection being removed.
21. Finally, we had some evidence on the regulations that were introduced by the Applicant. These were contained at page 15 behind tab 6 in the bundle and were on the face of it pretty uncontentious. The regulations were clearly designed to establish if there was a letting, that the letting was in accordance with the lease and that the details of the tenants were available for better management by the landlord. We do not consider that the requirement to provide a gas safety certificate is one that needs to be included within the lease because as a matter of law the landlord has to do so and if the flat is not sublet but occupied by the leaseholder then there is no obligation. It does seem to us, however, that there is no reason why a copy of the tenancy agreement could not be supplied or any reason why the leaseholder should

inform the landlord of any change of tenant and details of any managing agents they employ. A letting for a minimum term of six months to a family or no more than three individuals would again seem to be reasonable given the accommodation available and the terms of the lease and finally the requirements to be fulfilled if complaints are made.

## **FINDINGS**

22. An order indicating that there has been a breach of condition or covenant of the lease is a pre-requisite to the landlord ultimately seeking forfeiture of the lease. It is, therefore, a very serious allegation and the onus on proving same rests fairly and squarely with the Applicant in this case. We do not believe that the Applicants have discharged that burden of proof in any way. Their case rests on the difference between the lease plans and the layout of the flats. Without exception the lease plans are unhelpful. In two cases, Flats 7 Regents Gate owned by Mr Posh-Mashad and 11 Regents Gate owned by Mr Patel, they purchased from the receivers of the company in liquidation. That would suggest that there was no intervening leaseholder. We accept the evidence of Mr Posh-Mashad and Mr Patel in respect of these two flats, confirmed by Mr Goubel in his evidence to us in the Hearing that they did not make any alterations to these properties and they bought them as seen. It seems to us, therefore, that any changes there may have been from the original lease plans were carried out either by Templewood or by Mr Moss or persons on his behalf. In the case of Mr Patel's property, this change is borne out by the evidence of the drainage system. It appears that the foul water from the bathroom on the first floor of the property passes through the utility room to the side and it seems then out of the flat. Clearly this could not be done if the alterations had been carried out by the tenant. We noted also in the section containing plans that in respect of Kings Walk these plans are shown as 'proposed' and contains a revision suggesting that by February 2008 there was a re-drawn layout. Clarification cannot be obtained from the Council as it believes that the flats are not as originally planned but have no plans that would assist. We found helpful the evidence of Mr Eisler who appeared to be indicating that it would have been Templewood or Mr Moss or Mr Valdeck his agent, who may have made changes to the flats. It may well be that Mr Valdeck did cause alterations to be made to increase the number of bedrooms so that there could be greater income generated from lettings. However, it appears to be accepted that Mr Valdeck was Mr Moss's agent and that Mr Moss was the director of Templewood.
23. Paragraph 3.5 of each of the leases prohibits any structural or external alteration, or to carry out internal, non-structural alterations without the landlord's consent, not to be unreasonably withheld or delayed. Mr Goubel appeared to indicate that such retrospective consent may well be granted. However, whether that is in fact required is a moot point because our finding is that any alterations that may have been carried out to the flats were, on the balance of probability, made by the original developer, Mr Moss the director of the original developer or his agent, Mr Valdeck. In those circumstances we must dismiss the allegation relating to unlawful alterations and we find that there have been no breaches of the lease in that regard.
24. It is quite clear from our inspection that there have been breaches insofar as the erection of satellite dishes is concerned. However, the Applicants were not able to

show that any of the satellite dishes were connected to the Respondents' flats and in those circumstances we must dismiss that allegation as well.

25. Insofar as the electrical system is concerned, the one flat for which there is evidence of poor electrical works is of course one of the Applicants' own flats. It seems something of a quantum leap by the contractor to say that all flats are in a poor condition and as electrical certificates now appear to exist for each of these four flats, we cannot make any finding that there has been a failure to keep the property in good and substantial repair and condition in this regard. This is so even though it appears that in the case of 11 Kings Walk one of the bedrooms on the upper floor appeared to have no light switch, the power supply being controlled by a switch in another bedroom. This property was undergoing re-wiring works at the time of our inspection and we are not willing to make a finding that the wiring was or is in a dangerous condition or that this is evidenced by the fact of the somewhat unusual wiring arrangement.
26. It appears that gas safety certificates now exist. We do not, however, consider that to be a reasonable regulation to include in a lease of this nature. If the Respondents are subletting as a matter of law they need to have a gas safety certificate. If they are owner occupiers they do not. In those circumstances to require a leaseholder to produce this on an annual basis seems unnecessary. We do find, however, that the other regulations are reasonable. We are not convinced, however, it is within our remit to make any findings on those regulations but certainly as guidance we would not have thought that the other regulations proposed by the Applicants are unreasonable and may well assist them in the management of what is clearly a somewhat problematic block.
27. Mr Powell at the end of the Hearing indicated that he would not be seeking to recover his costs of these proceedings and that he was content that an order under Section 20C of the Landlord and Tenant Act 1985 should be made, which we so do. It does seem to us that it would be in the interests of all leaseholders to work with the Applicant to ensure that suitable plans are drawn and can be deposited with the local authority. That would then perhaps encourage the local authority to deal with the development in an appropriate manner. The Council now seem willing to try to deal with outstanding issues and we hope therefore that all leaseholders in the development will work with the Applicant and the Council in that regard.

Judge: Andrew Dutton  
A A Dutton

Date: 1st May 2015



## THE RELEVANT LAW

### **S168 No forfeiture notice before determination of breach**

- (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 (2) is satisfied.
- (2) This subsection is satisfied if—
  - (a) it has been finally determined on an application under subsection (4) that the breach has occurred,
  - (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.
- (4) 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) But a landlord may not make an application under subsection (4) in respect of a matter which—
  - (a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (b) has been the subject of determination by a court, or
  - (c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.