

Case summary

Issue(s)

Is a landlord of a block of flats entitled, without breach of covenant, to grant a licence to a lessee to carry out work which would breach an absolute covenant contained in a lease of her flat, where the leases of other flats on similar terms require the landlord to enforce covenants at the request of a lessee of one of those other flats?

Facts

The respondent is the lessee of flats 11G and 11H at 11-13 Randolph Crescent W9. She and the lessees of the other flats in the Building hold leases granted for 125 years in similar terms, which contain an absolute covenant prohibiting a lessees from cutting into walls or ceilings (clause 2.7). By clause 3.19 of the lease, the landlord (now the appellant) undertook at the request of a lessee, and subject to the payment by the lessee of the landlord's costs, to enforce certain covenants, including clause 2.7, entered into by the lessees of the other flats. The appellant wished to license works proposed by the tenant of Flat 13 which involving cutting into walls, which would otherwise breach clause 2.7. The respondent sought a declaration that the appellant could not do so as it would put it out of its power to enforce the absolute covenant at the request of a lessee pursuant to clause 3.19.