

womblebonddickinson.com



Property Managers Association Consents for alterations

19 June 2024

Mark Barley



Consents for alterations

- Two recent cases on landlord's consent for alterations
- Reasonableness of the landlord
- Need to be clear as to the reasons for refusing consent

Statutory provisions (1)

- Section 19(2) Landlord and Tenant Act 1927
- Implied into all leases containing a covenant not to carry out alterations without the landlord's consent so as to provide that consent to improvements will not be unreasonably withheld
- *“In all leases whether made before or after the commencement of this Act containing a covenant condition or agreement against the making of improvements without a licence or consent, such covenant condition or agreement shall be deemed, notwithstanding any express provisions to the contrary, to be subject to a proviso that such licence or consent is not to be unreasonably withheld”*

Statutory provisions (2)

- Other provisions:
 - any consent may require payment of a reasonable sum for diminution in value of premises or neighbouring premises
 - consents may require payment of legal or other expenses properly incurred in connection with giving the consent
 - if improvement does not add to the letting value of the holding, consent may require tenant's undertaking to reinstate

Most leases provide for consent not to be unreasonably withheld anyway, and some are more generous to tenant in providing that consent be not unreasonably delayed

Case 1 - Messenex Property Investments Limited v Lanark Square Limited [2024] EWHC 89 (CH)

Facts (1)

- Messenex was tenant and Lanark freeholder of Marina Point, a mixed-use building on the Isle of Dogs
- Lease contained covenant requiring landlord's consent before tenant could make alterations "*such consent not to be unreasonably withheld or delayed*"
- Tenant wanted to do two sets of works
 - rooftop extension (Rooftop Works)
 - change of use to residential on the ground floor (GF Works)
- consent for these works sought by letters of 26 May 2020 and email of 24 June 2020 respectively
- 10 July 2020, landlord requested information as to works in a "submission document" and sought undertaking for fees

Case 1 - Messenex Property Investments Limited v Lanark Square Limited [2024] EWHC 89 (CH)

Facts (2)

- Considerable correspondence between the parties up to March 2023 when proceedings were issued
- Issues between the parties for court's decision:
 - (1) scope of applications for consent made by tenant;
 - (2) what were the reasons for withholding consent?; and
 - (3) were they reasonable?

(1) scope of applications for consent made by tenant

- The answer to this question frames whether any refusal is reasonable
- Lanark's solicitors circulated engrossments on 22 February 2022
- Court decided that the scope of the applications were defined at that point
- The scope of request could vary over time from when application first made

(2) What were the reasons for withholding consent and (3) were they reasonable?

- This must be an actual reason that influenced the landlord at the time, not a reason subsequently dreamt up
- Need not have been communicated to the tenant however
- Requires a subjective enquiry into the landlord's mind

(2) What were the reasons for withholding consent and (3) were they reasonable?

- (1) Tenant failed to provide structural engineers' drawings to demonstrate Rooftop Works were structurally sound
- Landlord's evidence was failure to provide structural engineers drawings was reason for withholding consent to both sets of works
- Reasonable for landlord to have concerns as to structural integrity in respect of Rooftop Works (though not GF Works)
- Works came as a package, however, so landlord reasonable in withholding consent to both sets of works as a package



(2) What were the reasons for withholding consent and (3) were they reasonable?

- (2) Trespass on retained land
- Works would involve trespass on landlord's neighbouring property
- Was it permissible for landlord to take into account matters relating to property outside the demise?
- Parties had in fact agreed terms in respect of the adjoining land subject to outstanding service charges being paid
- Landlord could not refuse consent to the alterations on the trespass ground simply because service charges had not been paid



(2) What were the reasons for withholding consent and (3) were they reasonable?

- (3) Undertaking for costs
- Landlord alleged tenant had failed to provide undertaking for costs
- Undertaking for £3,500 requested by landlord's solicitor on 4 November 2022 in respect of amendments to consent document
- Tenant's failure to provide this undertaking was reasonable reason, notwithstanding the costs applied to amendments



Summary

- Some of the landlord's reasons were reasonable and others not
- The good reasons outweigh the bad reasons so landlord found to have reasonably refused consent

Guidelines for reasonableness in context of licence for alterations (1)

- An objective enquiry as to whether the reason in the landlord's mind (subjective) was reasonable or unreasonable
- Purpose of covenant is to protect landlord from tenant effecting alterations and additions that damage the property interest of the landlord
- Landlord not entitled to refuse consent on grounds which have nothing to do with its property interests
- It is for tenant to show landlord has unreasonably withheld consent
- Landlord does not need to prove its reasons were justified if they are conclusions that may be reached by a reasonable landlord in the circumstances



Guidelines for reasonableness in context of licence for alterations (2)

- Landlord normally need only consider its own interests but there may be cases where effect on tenant of refusal would be disproportionate to the benefit of the landlord
- Consent cannot be on money grounds alone as landlord can demand compensation as condition for consent
- Every case depends on its own circumstances as to whether the landlord, having regard to the actual reasons for refusing consent acted reasonably or not

Jacobs v Chalcot Crescent Management Company Limited

[2024] EWHC 259 (Ch)

Facts (1)

- Request for consent to alterations of a flat made on 23 August 2019
- Subsequent correspondence around compliance with building regulations, in particular fire safety
- 16 July 2020, letter of refusal: “*layout you propose is regarded as unsatisfactory in the context of fire safety and prejudices the fire safety of the block as a whole*”
- Tenant carried out works anyway and issued proceedings for declaration that consent was unreasonably withheld

Jacobs v Chalcot Crescent Management Company Limited

[2024] EWHC 259 (CH)

Facts (2)

Court found that consent had been unreasonably withheld because:

- the landlord had not pleaded its case properly before the court. It did not specifically refer to concerns over the safety of the building as a whole which might have been a reasonable reason for refusing consent, if pleaded
- Landlord did consider integrity of building as a whole as a ground of refusal. However, landlord was not a fire safety expert, and landlord had not obtained fire safety expert opinion

Final Pointers

- Tenant must pay landlord's reasonable costs if requested as failure to do so can give reasonable ground for refusal
- Tenant should supply as much information as possible on the alterations including structural drawings. Insufficient information may be a sufficient ground for refusal
- Landlord should always consider giving consent subject to conditions designed to deal with concerns, rather than simply refusing consent
- Decision on consent must be on grounds relating to the application and not on extraneous grounds (eg non-payment of service charges)
- Landlord's consent may well be unreasonable if it is for reasons that require expert evidence and no such evidence has been obtained by the landlord