

**LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL**

BIR/00CU/LBC/2006/0002

***DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER
SECTION 168(4) OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002***

Applicant:	Maltings Property Management Limited (freeholder)
Respondent:	Mr. G. Restall (leaseholder)
Subject property:	1 The Maltings Little Aston Road Aldridge Walsall West Midlands WS9 0NL
Application to LVT:	31 July 2006
Hearing:	10 October 2006
Appearance:	For the Applicant : Mr. M.R.G. Ryan The Respondent appeared in person
Member of the Tribunal:	Mr. A.P.Bell MA LLB Mr. I.D.Humphries FRICS Mr. M. Ryder
Date of determination	13 OCT 2006 2006

INTRODUCTION

1. This is a determination on an application under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") made to the Leasehold Valuation Tribunal on 31 July 2006 by Maltings Property Management Limited ("the Applicant"), the freeholder of the house and premises at 1 The Maltings Little Aston Road Aldridge Walsall West Midlands WS9 0NL ("the subject property"), for a determination that Mr. G. Restall ("the Respondent"), the leaseholder of the subject property, has breached two covenants in his lease.

2. Section 168(1) of the 2002 Act provides:

"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 ... in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied"

Subsection (2) may be satisfied by any of three alternative conditions. The relevant condition in the present case is that "it has been finally determined on an application [to the Leasehold Valuation Tribunal] under subsection (4) that the breach has occurred".

The Applicant seeks such a determination from the Tribunal.

THE BACKGROUND TO THE APPLICATION

3. The subject property is one of seven dwellinghouses in a conservation area converted in 1981 from buildings adjacent to Moot House The Green Aldridge ("the development") of which the Applicant is the freeholder. The Respondent holds the subject property under a lease dated 15 January 1982 for a term of 99 years from 29 September 1981 at an escalating ground rent. The lease was subsequently assigned to the Respondent.

4. In its application the Applicant stated that the original design of the development provided that the boundaries of each dwelling should consist of a wall to a height of two foot six inches with a standard wooden gate to a height of three feet providing access to each dwellinghouse. The Applicant claims that firstly in 1992 the Respondent erected a wrought iron fence on top of the brick wall dividing the subject property from the common parts of the development and replaced the original three foot wooden gate with a six foot wrought iron gate. Secondly the Applicant claims that in 2005 the Respondent erected further wrought iron fencing on the boundary wall of the subject property that separates it from number 2 The Maltings. The

Applicant claims that in neither case did the Respondent obtain its consent for the works as was required by the lease.

5. On the basis of the facts outlined in paragraph 4 above, the Applicant claims that the Respondent has breached the following tenant's covenants contained in the Eighth Schedule to the lease:

Paragraph 24

"Not to cut maim or injure or make any breach in any part of the structure of the demised premises nor without the previous consent in writing of the Lessor or its agents to make any alteration whatsoever to the plan design colour or elevation of the demised premises....."

Paragraph 25

"On making application for any such consent or approval to submit to the Lessor or its agents such plans block plans elevations and specifications as the Lessor or its agents shall require and to pay the legal and surveyors' fees of the Lessor in connection with any such application and to carry out any work authorised only in accordance with such plans elevations and specifications as the Lessor or its agents shall approve in writing....."

6. In the circumstances, the Applicant claims that the Respondent has breached two covenants in the lease and he has commenced the preliminary stages of the forfeiture procedure

INSPECTION AND THE HEARING

7. The Tribunal inspected the subject property on 10 October 2006 in the presence of the Respondent and Mr. Ryan representing the Applicant. The subject property has a small front garden bounded by a 120 mm brick wall 810mm high with a frontage of 6.75m to a common footpath and a return frontage of 2.27m to the garden of number 2 The Maltings. Some considerable number of years ago the Respondent erected a wrought iron fence 980mm high on the wall to the common path together with a 900mm gate to the side. More recently in 2005 the Respondent has erected (with its two supports on the wall of the subject property adjoining number 2 The Maltings) a similar wrought iron fence, the railings of which overhang the garden of the subject property.
8. Mr. Ryan, on behalf of the Applicant, explained that the Applicant had made the application as they were concerned that the erection of the Respondent's fences and gate set a precedent which, if allowed to remain, could well result in other residents erecting fences all of different

designs and materials which would detract from the development as a whole, situate as it was in a conservation area. Mr. Ryan also informed the Tribunal that the Applicant had agreed to install automated gates at the entrance to the development and the consultation process to achieve this outcome was currently in progress. When questioned by the Tribunal Mr. Ryan accepted that the fencing erected by the Respondent was all situate within the area comprised in the Respondent's lease.

9. The Respondent informed the Tribunal that he had repositioned the fence erected in 2005 on the boundary wall between the subject property and number 2 the Maltings by moving the fence so that it now overhung his own garden. As regards the fence erected in 1992 the Applicant explained that the fence had been erected for added security following an attempted break into his house without any objection from the Applicant. Further, in accordance with the letter of his solicitors, Ian Henery & Co, to Mr. M. Ryan of the Applicant dated 16 September 2005, his solicitor's view was that had not broken any covenants in his lease by erecting the fencing. In response to a question from the Tribunal the Respondent conceded that the installation of an automated gate at the entrance to the development as a security measure would partly help the position, but he nevertheless reiterated that he did not consider that he had broken any covenant in his lease.

DETERMINATION OF THE TRIBUNAL

10. The Tribunal finds as a matter of fact that the fencing and gates erected by the Respondent on the two occasions were and remain situate within the area comprised in the Respondent's lease. The Tribunal determines that this work amounted to an alteration to the plan, design and elevation of the demised premises which was carried out without the consent of the Respondent, as was required by paragraph 24 of the Eighth Schedule to the lease. On the basis of the written and verbal representations of the parties and the Tribunal's own inspection of the subject property the Tribunal accordingly determines that the Respondent has breached those covenants in the lease referred to in paragraph 5 above.
11. The Tribunal's jurisdiction is limited to determining whether breaches of covenant in the Respondent's lease have occurred and accordingly it does not have jurisdiction to determine whether the Respondent has waived the breaches by acting in a way which was only consistent with the continued existence of the Respondent's lease following becoming aware of the breaches of covenant. This aspect of the matter would therefore require to be determined by the courts if forfeiture proceedings are commenced by the Applicant.

SIGNED



A.P. Bell

Chairman

DATED

13 OCT 2006