
OPINION

1. My instructing solicitors act for Lewisham House No. 1 Limited (**LH**), the owner of the long leasehold interest in the above-mentioned premises (**Lewisham House**) together with other leasehold interests and rights in other land adjacent to it, the freehold reversion of which is owned by LS Lewisham Limited (**Landsec**). LandSec is the owner of the adjoining Lewisham Centre.
2. LH wishes to carry out certain works to Lewisham House. I have seen a letter dated 12 July 2024 from Matthew Sherwood of Quod on behalf of Landsec addressed to Ian Kemp at Lewisham Borough Council in which Mr. Sherwood contends that Landsec has received legal advice to the effect that LH is unable to carry out those proposed works to Lewisham House without Landsec's consent which it is not required to provide. In support of that contention he relies on a letter dated 17 February 2022 from Eversheds Sutherland LLP (**ES**) on behalf of LandSec addressed to Jon Watson at Landsec (**the Letter**) in which ES contends that it is "*highly unlikely that any redevelopment [of Lewisham House] could take place without [Landsec's] consent.*".
3. I have been asked whether I agree with the views expressed in that letter. I do not agree with those views which are based on a misapprehension by ES both as to LH's legal rights and, it would appear, as to the scope of the works which LH intends to carry out.

4. ES is correct in stating in the letter that LH has rights from three different sources: the Lewisham House Lease, the Service Deck Lease and the Multi-Storey Lease. It deals separately with LH's rights during the course of its intended works and LH's rights once those works have been carried out. I agree that it is convenient to deal with those matters separately and I take the same approach below.

Rights during the course of the works

5. The Lewisham House Lease grants LH two different rights of access over Landsec's adjoining land. By Schedule 2 paragraph 3 of the lease LH has a right (subject to Landsec's consent not to be unreasonably withheld) to oversail the Restricted Area (which is part of Landsec's adjoining land) with cranes and other apparatus for the purposes of rebuilding alteration or development. By Schedule 2 paragraph 5 it has the right on 14 days notice to enter on to any part of Landsec's adjoining land for the purpose of repairing inspecting or maintaining Lewisham House.
6. The cladding is in disrepair and requires to be replaced. The right under Schedule 2 paragraph 5 can be exercised in carrying out those repair works. Other works proposed to be carried out are not works of repair but of improvement. The right under Schedule 2 paragraph 3 can be exercised in carrying out those improvement works.
7. ES's contentions are set out in 5 numbered points on pages 2 and 3 of the Letter. I consider these points below in turn.
8. At point 1 on page 2, ES states that "*no rights have been granted over the adjoining land ... to carry out works of development, alteration or rebuilding to Lewisham House.*" In my opinion that is plainly wrong since it ignores the rights set out in Schedule 2 paragraph 3 of the Lewisham House Lease.
9. At point 2 on page 2 of the Letter, ES states that the rights of access "*do not permit the tenant to place ... any plant or equipment (including scaffolding) on your*

adjoining land.” That is also wrong. In replacing the cladding LH can rely on the right under Schedule 2 paragraph 5 which would include a right not just for persons to enter the adjoining land but to do so with equipment to be used in connection with such works. I see no reason why such equipment cannot include scaffolding.

10. In carrying out works of improvement LH’s rights are those under Schedule 2 paragraph 3 rather than paragraph 5. They are limited to a right to oversail which does not permit equipment to be placed at ground level but it does permit, for example, scaffolding to be placed on upper floors in a manner which oversails the Restricted Area. I understand that this is precisely what LH intends to do in order to facilitate the carrying out of the works of improvement.
11. At point 3 on page 2 of the Letter, ES correctly identifies that the Service Deck Lease grants to LH a right to use the service deck with vehicles for the delivery and collection of goods to and from Lewisham House and the collection of refuse from Lewisham House. ES rightly points out that this does not enable LH to use the service deck to store plant or machinery. But ES is simply wrong to assert that the right does not enable LH to use the service deck for the delivery and collection of materials or the collection of refuse in connection with the proposed works. There is no such limitation expressed in the right and no basis upon which one could be implied.
12. At point 4 on page 3 of the Letter ES correctly points out that the Service Deck Lease contains a covenant by LH that in exercising its rights under that lease it must not use the service deck with a greater frequency or a greater number of vehicles or persons or otherwise to increase its use beyond the degree which would be appropriate to it being used as an office building in the occupation of a single occupier as the headquarters of that occupier’s business. However it is wrong in stating that this prevents it being used for construction traffic.

13. It seems likely that ES has reached this erroneous conclusion because it has failed to understand the significance of the fact that LH's interest is not a short occupational lease of say 10 to 20 years but rather is a 999 year lease and that accordingly with a lease of that term the parties would have anticipated that major works would be carried out from time to time during the term of the lease both to repair the building and also to carry out works of improvement and alteration. In fact clause 3.12 of the Lewisham House Lease expressly contemplates that the building may even be demolished or reconstructed during the term of the lease. The simple point is that a person occupying the building as its headquarters for 999 years would from time to time carry out major works to the property which would involve significant construction traffic and this is something which the parties to the lease contemplated.
14. ES makes a similar error in point 5 on page 3 of the Letter in which it asserts that the rights granted by the Multi-Storey Lease do not confer a right for construction traffic to use the car park. The right granted in the Multi-Storey Lease is a right to park private motor cars limited to those of persons employed at or visiting Lewisham House. Contractors carrying out the works are employed at or are visiting Lewisham House and if they drive private motor cars rather than commercial vans they fall within the scope of the right granted by the Multi-Storey Lease. There is nothing surprising about that conclusion given the length of LH's leasehold interests and the fact that the parties to the lease accordingly envisaged that significant works would from time to time be carried out.

Rights after completion of the works

15. ES's contentions as to the position after completion of the works is set out in four unnumbered bullet points on page 3 of the Letter. Again I consider these in turn below.
16. In the first bullet point ES repeats (correctly) that the Multi-Storey Lease limits parking rights to those employed at or visiting Lewisham House. It then contends that this

excludes use of the car park by residential tenants. I do not think it is an entirely straightforward question as to whether or not it does in fact exclude residential tenants. But the point has no significant consequence. ES fails to mention that if the right is so restricted LH would be entitled to apply to the Upper Tribunal (Lands Chamber) to modify the restriction so as to permit use by residential tenants pursuant to section 84 of the Law of Property Act 1925. It is very likely that the Upper Tribunal would grant such a modification provided that there would be no significantly increased disruption to LandSec or other users of the car park from the fact that it was being used by residential rather than commercial tenants. It is difficult to see how that could be contended to be more disruptive and accordingly I consider that the Upper Tribunal would modify the restriction.

17. In the second bullet point ES contends that the 20 car parking spaces can be used only on Sunday and Monday. That is an unfortunate misreading of the Multi-Storey Lease. The lease demises the top floor of the car park which may be used from Sunday to Friday and grants a separate further right to the exclusive use of 20 spaces on Saturdays. ES is correct however that use is limited to 7am to 9pm.
18. In the third bullet point ES seeks to rely on the covenant in the Service Deck lease mentioned in paragraph 12 above as a basis for the contention that residential tenants would not be entitled to use the service deck since *“this would almost certainly result in an intensification of use and a breach of covenant”*. I would be very surprised if residential tenants of the building were to use the service deck with any significantly greater intensity than might be expected of a commercial tenant of the building. Accordingly in my opinion it is very unlikely that there would be a breach of this covenant and residential tenants would therefore be entitled to use the service deck.
19. Finally in the fourth bullet point ES asserts that the Service Deck Lease does not permit residential tenants to bring removal trucks onto the service deck to move in and out of apartments in the building. That is plainly wrong. The rights granted include the right to use the service deck for the delivery and collection of goods to and from

Lewisham House. That would include a truck delivering or removing furniture and household contents.

Conclusion

20. For those reasons I consider that LH is entitled to carry out its proposed works to Lewisham House and to occupy and use the building following the completion of the works in the manner proposed and that LandSec has no right to prevent it doing so.

John McGhee KC
Wilberforce Chambers
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