maples teesdale

Legal alert

June 2016

Balancing the interests of landlord and tenant?

Timothy Taylor Ltd v Mayfair House Corporation [2016] EWHC 1075 (Ch)

In this case, Timothy Taylor Ltd, the upmarket art gallery, was (and still is) the tenant of the ground floor and basement of a five-storey building in Carlos Place in the heart of London's Mayfair. The remainder of the building was used as apartments.

In 2013, the landlord, Mayfair House, started work on a major redevelopment of the floors above the gallery, to increase the number of apartments.

The tenant complained to the High Court that the gallery's business was being severely disrupted by the noise of the landlord's work and by the way in which the landlord had wrapped scaffolding around the building.

The judge awarded substantial damages to the tenant in the form of a 20% reduction in rent payable during the course of the works.

The wording of the lease had made it clear that the landlord had the right to do anything it wanted on, or to, any adjoining premises that it owned. So what went wrong for the landlord in this case?

The judge reiterated the general principle that, no matter how widely drafted the landlord's rights are, there remains an irreducible minimum degree of enjoyment of its premises to which the tenant is entitled. In other words, the tenant has the right to use its premises free from excessive interference from the landlord. In legal-speak this is known as "quiet enjoyment" or "non-derogation from grant". In ordinary language, a landlord cannot give with one hand and take away with the other.

In practical terms, this means that a tenant has to live with a certain amount of disruption should the landlord wish to carry out work to neighbouring premises. But, in carrying out the work, the landlord must take all reasonable steps to minimise the disturbance caused to the tenant.

In this particular case, the judge pointed to several steps that the landlord should have taken, but failed to do so.

The landlord had failed to give the tenant sufficient warning of the work. This meant that the landlord had deprived the tenant of the opportunity to move into alternative accommodation during the disturbance.

The landlord had failed to warn the tenant of the likely level of noise, its duration and to explore ways in which the impact of noise on the gallery could be mitigated (for instance, to agree periods during which particularly noisy work could be carried out).

The landlord had failed to erect the scaffolding in a way that preserved an open view of the gallery. Instead, the landlord had enwrapped the entire building with scaffolding, giving the impression that the gallery had been subsumed into a building site. To make matters worse, hoists had been placed on the scaffolding at the front of the gallery. This led to delivery lorries blocking the main entrance to the gallery on most days. This situation could have been avoided had the hoists been placed elsewhere.

Moreover, the landlord could have (but didn't) offer the tenant a rental discount as part of its package to minimize the impact of the work. (It seems that such an offer would have been an important factor in assessing the overall reasonableness of the landlord's work.)

The landlord had failed to have proper regard to the nature of the particular premises. The premises had been let for a high rent for use as a peaceful, quiet, high class art gallery in Mayfair. In such a situation, the landlord must pay particular attention to keeping disturbance to the gallery's customers and staff to a minimum.