

Living the Quiet Life: Landlord works and whether a Tenant can object

An English case, *Timothy Taylor Ltd v Mayfair House Corporation & Anr* [2016] EWHC 1075 (Ch) gives guidance on landlord works and how these can be reconciled with a landlord's obligation to respect the quiet enjoyment entitlement of its tenant.

While not binding on the Royal Court in Jersey, the decision may be persuasive.

Background

In this case, Timothy Taylor Limited (the Tenant) held a 20 year lease of the ground and basement floors of a multi-story building in Mayfair, from which it ran a high-end art gallery. In 2013 Mayfair House Corporation (the Landlord) started a major redevelopment of the retained upper floors involving the erection of scaffolding around the entire building (including across the front of the Tenant's art gallery) which generated high levels of noise for extended periods of time.

The Tenant argued that the manner in which the Landlord carried out the works breached the covenant in the Lease entitling it to quiet enjoyment of its premises and that the Landlord had failed to inform (and in some cases had misled) the Tenant about the nature and impact of the works.

The High Court Judge noted the conflict between the Landlord's rights under the Lease to alter, raise the height of or rebuild the building and its obligation under the Lease to grant the Tenant quiet enjoyment. It was held that the Landlord's right to undertake the works was impacted by the Tenant's right to quiet enjoyment and that the Landlord ought to have taken "all reasonable steps" to minimise disturbance to the Tenant, which it had not done in this case.

Notwithstanding that the Tenant could not prove any loss arising from the breach, damages in the sum of 20% of rental were awarded in lieu of an injunction, for the duration of the works. An injunction was found to be disproportionate and unworkable.

The Court decision contains useful guidance on matters a Landlord should take into account when undertaking works.

Key considerations for landlords:

Landlords should take into account the fact that the exercise of rights under a Lease should take the tenant's rights into consideration.

In order to minimise the possibility of a conflict arising a landlord seeking to carry out works (even where there is an express right) should:

- liaise with its tenant in advance, providing full details of the nature and extent of the works;

- take into account the nature of the tenant's use of the premises;
- aim to agree a method by which the impact of the works will be minimised
- ensure those supervising the works comply with any agreement reached with the tenant;
- provide the tenant with progress updates on the works; and
- consider offering a reduced rent for the duration of the works where major disturbance will be caused.

It is also worth a Landlord checking whether the lease contains a rent cesser clause allowing for a reduction of rent where premises are unfit for use. Some such clauses also apply to the means of access to premises.

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