

A landlord's promise, a tenant's power

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Generally speaking, when it comes to leases, most people believe that landlords hold most of the power. However, in relation to long residential leases, the tables may well have recently turned in one respect at least following a [recent Supreme Court decision](#). Simply put, a landlord is not now free to license works in breach of an absolute prohibition in a lease against carrying out alterations without the agreement of all the other flat tenants in a block where a landlord has covenanted to enforce similar obligations against all the tenants in the block (known as a mutual enforcement covenant).

As a result, it now appears that a tenant has increased control over its landlord's decisions. A landlord is no longer freely able to agree works (that may be perfectly reasonable and well intentioned) falling within an absolute prohibition without first obtaining the agreement of all the tenants who benefit from a mutual enforcement covenant. In other words, tenants in a block may now have the power to control certain alterations a landlord may consent to. At the most extreme limits of such power, tenants could potentially prevent alterations occurring altogether since, in a block with a substantial number of flats, it is highly likely that at least one tenant will object to works being carried out.

This case demonstrates just how careful residential landlords in a block are going to have to be when receiving requests to license something which is otherwise absolutely prohibited under a lease. This applies not just in relation to alterations, but potentially extends to any absolute prohibitions under a lease (e.g. those relating to use). Mutual enforcement covenants are not a requirement under the current edition of the Council of Mortgage Lenders' Handbook, so a landlord may wish to consider whether it enters into mutual enforcement covenants in the future, especially given how easy it could prove to breach those covenants.

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