Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0034/10/14

In the Matter of number 1 Heol y Blodau, Llangewydd Court, Bridgend, CF31 4UF

In the matter of an Application under section 168(4) of the Commonhold and Leasehold Reform Act 2002

TRIBUNAL: Mr. Timothy Walsh (Chairman)
Mr. Peter Tompkinson (Surveyor)

APPLICANT Wales and West Housing Limited

RESPONDENT Susan Amanda Butterworth

REASONS FOR THE DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

The Decision in Summary

1. For the reasons given below the Tribunal has reached the conclusion that the Respondent has breached a covenant or condition in her lease of the premises at number 1 Heol y Blodau, Llangewydd Court, Bridgend. More particularly:

   (I) Contrary to Clause 3(3) of the lease the Respondent has failed to keep the premises clean and well and substantially maintained. Split refuse sacks and food waste were allowed to accumulate in the paved garden area of the premises rendering the premises unclean. That area is also so overgrown that the Respondent is in breach of the covenant to keep the premises "*substantially...maintained*".

   (II) Contrary to Clause 3(10) of the lease the Respondent failed to permit the Applicant or its agent to enter the premises following written notice requesting access to view the condition of those premises.

Representation

2. At the hearing the Applicant was represented by its property lawyer, Mrs. Dorrett Evans.
3. The Respondent did not attend.

4. In accordance with Regulation 14(2) of the Leasehold Valuation Tribunals (Procedure) (Wales) Regulations 2004 ("the Regulations") notice of the hearing was given to the Respondent by letter from the Tribunal dated 10 December 2014. The Applicant indicated its wish to proceed in the Respondent's absence and, in the absence of any explanation for her non-attendance from the Respondent, we determined that it was appropriate to proceed with the hearing in accordance with regulation 14(8) of the Regulations.

The Statutory Provisions

5. This is an application made under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act"). The application (hereafter "the Application") was dated 21 October 2014 and was received by the Tribunal on 23 October 2014.

6. Section 168(4) provides as follows:

"A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred".

7. A determination under section 168(4) is sought because section 168(1) of the Act provides that 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 a lease unless subsection 168(2) is satisfied. Subsection 168(2) is only satisfied if: (a) it has been finally determined on an application under subsection 168(4) that a breach has occurred, or (b) the tenant has admitted the breach, or (c) a court in any proceedings, or an arbital tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that a breach has occurred. As neither 168(2)(b) or (c) are satisfied here, the landlord applicant accordingly seeks to satisfy section 168(2)(a) by obtaining a determination under section 168(4).
8. A notice under section 146 of the Law of Property Act 1925 is itself a precondition to the enforceability of a right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in that lease. That section stipulates the requirements of such a notice. The jurisdiction of this Tribunal is confined to the narrow issue of whether or not a breach of a covenant or condition in the lease has occurred. The question of whether any future section 146 notice is valid, the question of whether the

landlord is entitled to forfeit the lease and the question of whether the tenant would be entitled to relief from forfeiture are not before us. This Tribunal has no jurisdiction to decide on forfeiture.

The Application and the Lease

9. By a shared ownership Lease ("the Lease") dated 6 May 1994 between Gwerin (Cymru) Housing Association Limited (as landlord) and Graeme Andrew Butterworth and Susan Amanda Butterworth (as lessees) the property known as number 1 Heol y Blodau, Llangewydd Court in Bridgend ("the Premises") was demised for a term of 99 years from the date of the Lease. The Lessees paid a premium of £17,200 representing 40 percent of the initial market value of the premises of £43,000. The gross rent on commencement was £2,326.03 of which the Lessees were to pay 60 percent, being a "specified rent" of £1,395.62 per annum.
10. In view of the foregoing the Lease qualifies as a long lease for the purpose of section 168 of the Act (this is the combined effect of section 76 and section 169 of the Act). The Premises, being a private residence, are also a dwelling as defined in the Act.
11. The Applicant (Wales & West Housing Association Limited) is the registered owner of the freehold reversion of the Premises under HM Land Registry title number WA97769; it has been so registered since 13 March 1996.
12. In 2005 the Applicant received notice that, by a Transfer Deed dated 14 February 2005, the Premises were transferred from the joint names of Graeme Butterworth and the Respondent into the sole name of the Respondent. We have had sight of the HM Land Registry Official Copy of the leasehold title for the Premises which confirms that the Respondent is the sole registered owner.
13. The Application alleges that there have been breaches of the tenant's covenants contained in clause 3(3) and clause 3(10) of the Lease. At the hearing Mrs. Evans confirmed that reliance was only placed upon those clauses; they provide as follows:

"3. The Leaseholder HEREBY COVENANTS with the Landlord:

(3) To keep from time to time and at all times during the term the Premises clean and well substantially repaired maintained and decorated (damage by fire and other risks insured under Clause 4(2) excepted unless such insurance shall be vitiated by any act or default of the Leaseholder)...

(10) To permit the Landlord and its surveyor or agent at all reasonable times on notice to enter the Premises to view the condition thereof And [sic] to make good all defects and wants of repair of which notice in writing is given by the Landlord to the Leaseholder and for which the Leaseholder is liable under this Lease within three months after the giving of such notice"

14. The "Premises" are defined in the Particulars to the Lease as: *"1 Heol y Blodau Llanbgewydd Court Bridgend Mid Glamorgan and includes the fixtures and fittings therein".* By Clause 1(2)(a) the Lease expressly incorporates that definition of the Premises in the Particulars into the Lease generally.
15. In respect of Clause 3(3) the Application alleges a breach of that clause in the following way:

"The Respondent allows the garden to the front and rear of the property to become overgrown and filled with black sacks of rubbish which is unsightly and a potential health risk from vermin. The Respondent ignores requests by the Applicant to remedy this state of affairs leading to the Applicant having to carry out works in default in February 2014 at a cost of more than £1,500. Recent visits to the property have confirmed that the garden is once again overgrown and contains black sacks of rubbish. Requests to the Respondent to clear the garden have again gone un-heeded."

16. In respect of Clause 3(10) the Application alleges breach in these terms:

"The Applicant is concerned that the interior of the property is in a poor state of repair and that the structural condition of the property may be deteriorating due to a lack of heating and general neglect. The Respondent has repeatedly failed to comply with requests by the Applicant to arrange to view the inside of the property."

17. By Order dated 30 October 2014 the Vice President of the Tribunal, as procedural chairman, issued directions. In particular, the Respondent was directed to provide a Statement of Case setting out her response to the Application and to provide copies of any evidence upon which she relied. The deadline for doing so was 19 November 2014 but the Respondent has filed nothing. The Applicant was directed to file any evidence in reply by 3 December 2014 and a statement dated 2 December 2014 from Mrs. Evans was provided. That is referred to further below.

The issues

18. The issues raised by the Application may thus be summarised as follows:

    (1) Has the Respondent failed to keep the Premises "*clean*" or "*well substantially repaired maintained and decorated*"? More particularly:
        (a) Has the Respondent allowed the paved garden to the Premises to become overgrown and filled with rubbish?
        (b) If so, is that a breach of the covenant to keep "*the Premises*" "*clean*" or "*well substantially...maintained*"?

    (2) Has the Respondent failed to permit the Applicant, its surveyor or agent "*at all reasonable times on notice*" to enter the Premises to view the condition of them? This subdivides into two questions:
        (a) Has the Applicant given the necessary notice?
        (b) If so, has the Respondent failed to permit access?

Site Inspection - The Premises

19. We were due to inspect the Premises at 10.30 a.m. on 3 February 2015. In the aforementioned letter from the Tribunal dated 10 December 2014 the Clerk to Tribunal had informed the Respondent of the proposed inspection and had requesting that she make arrangements to allow access to the Premises. The Tribunal members attended at the pre-appointed time but the Respondent was not obviously present at the Premises and access for an inspection was not therefore possible.
20. Further, as the Respondent was not present the Tribunal did not consider it appropriate to undertake a full inspection of the private yard or garden at the Premises without the Respondent being present or otherwise consenting to that inspection. However, access to the Premises is achieved through either a south facing front door or a west facing side door and so limited observations were possible (indeed unavoidable) when seeking to ascertain whether the Respondent was at home.
21. The property is a semi detached house built in around 1990. It is of cavity wall construction which is partly rendered to the front elevation and the remainder has facing brickwork. The house has a pitched tiled roof, plastic rainwater goods, timber fascias and soffit boards.

Doors and windows are a combination of timber and plastic units. To the front of the house is a small walled garden. To the rear/side (i.e. the west and north) there is a garage/store shed and paved garden. We believe the Premises have three bedrooms, a bathroom, reception room and kitchen.

22. We could not properly inspect the store shed in the Respondent's absence although it appeared to be in a poor condition. In the Application, however, the Applicant has not relied upon disrepair of the store shed and so we make no determination in what follows in relation to that part of the Premises.
23. At the time of the Tribunal's attendance at the Premises there were several sealed black refuse bags in the paved garden area indirectly opposite the side access door. In all there were around half a dozen. The paved area itself was largely overgrown with weeds and bramble suggesting that it had not been attended to for some considerable time. Also visible through the glass of the side door was what appears to be the kitchen. There were several black refuse bags stacked inside that room.

The Evidence

24. The only statement served prior to the hearing was that from Ms. Evans. The statement itself contains nothing of assistance but effectively exhibits a chronology, a letter dated 2 September 2014 and five undated photographs.
25. The chronology extends to three and a half sides of A4. Mrs. Evans' statement indicates that the chronology was *"based upon the actions taken by Maria Edwards, the Applicant's Housing Officer who also took the photographs"*. In fact neither of those statements is accurate since Mrs. Edwards informed us that she had only been the Housing Officer since September 2014 and so the chronology also contained entries or records made by other staff before that date. Moreover, Mrs. Edwards confirmed that not all of the photographs were taken by her. She did confirm, however, that she is the current Housing Officer with responsibility for this property. It is one of around 400 for which she is responsible.
26. No witness statement from Mrs. Edwards was provided. Nonetheless, under Regulation 14(7) of the Regulations the Tribunal has wide powers to determine the procedure at the hearing and Regulation 14(7)(c) permits a party to call witnesses. Here, the statement of Mrs. Evans had pre-emptively indicated that Mrs. Edwards, would be called and we accordingly exercised our discretion to allow her to give evidence. Indeed, we considered that that was necessary in order to properly scrutinise the detail of the chronology.

27. In the chronology the relevant background stated there was as follows:

27.1 An entry dated **18 December 2013** reads: *"Visited and left a card asking for urgent contact. Property appears to be in poor condition. The garden is very overgrown. There is a large pile of black bags in the rear garden. Some black bags of garden waste are in front of the property. Photos can be seen on file".*

27.2 An entry dated **22 January 2014** contains the terms of a letter apparently sent to the Respondent. It includes the following passage: *"You were...advised in a letter dated 19th June 2013 that due to the condition of the garden, you were in breach of clause 3(3) of your Shared Ownership Lease that you were required to keep the premises ? [sic] clean and well substantially repaired, maintained and decorated? [sic]. I visited on the 18th December 2013 and noted that the garden was extremely overgrown and there are a number of rubbish bags at the front and rear"*. No copy of the earlier letter of 19 June 2013 has been provided and it was unclear from the chronology who the author of the letter on 22 January 2014 was. The letter adds that a company called "Green Futures" was booked to attend on behalf of the Applicant in order to clear the garden to the Premises on the 3rd and 4th of February 2014.

27.3 As arranged, it seems that Green Futures attended on **4 February 2014**. An entry in the chronology on that date includes: *"I went into the rear garden with Bob, it was in a very poor condition, in addition to the overgrown brambles, [plants] and trees, it was clear that Mrs. B is simply bagging household waste and throwing it into the garden. There are a number of very recently discarded black bags which clearly contained household waste. (see photos)".* We were told by Mrs. Edwards that the Housing Officer at that time was a Ms. Ann Lewis who also worked with a Mr. Andrew Lester and that this record was probably made by Ms. Lewis.

27.4 There are a number of additional entries not directly relevant to the instant application and then one dated **19 June 2014** which reads: *"Asked Andrew L to have a quick look at the garden. He advised that it does look overgrown and rubbish bags are accumulating..."*. A further entry for that day then adds: *"Spoke to Mrs. B. Advised her of the observed garden condition, and the danger that if it got like it did previously we*

would recommence forfeiture action. She advised that she had put bags out this morning and had a number for a gardener...". Mrs. Edwards told us that the provenance of that entry in the chronology was, again, probably a record prepared by Ms. Lewis.

27.5 On **16 July 2014** the chronology adds: *"Visited property. Garden is overgrown (photos on file) and there were 4 black bags in the garden. The interior of the property (where visible through the windows) was in poor condition, photos of the kitchen and rear ground floor room are on file."*. Mrs. Edwards stated that that was probably her note (albeit that she was not the dedicated housing officer at that time). We were also told that the remaining entries in the chronology were Mrs. Edwards' notes.

27.6 Not included in the chronology but included separately by the Applicant in the hearing bundle was a letter to the Respondent, addressed to the Premises, dated **2 September 2014**. That letter was written by Mrs. Evans and refers to the February 2014 clearance of the Respondent's garden. Materially the copy in the bundle then adds:

> *"In addition you have again allowed the garden to become overgrown and sacks of rubbish to accumulate. This is likely to lead to an infestation of rats or other vermin and is a potential health risk, as well as being unsightly. Please accept this letter as a formal notice by the association requiring you to comply with clause 3(3) of your lease by clearing the weeds and debris from your garden...*
>
> *"As the landlord under the lease, the association is also concerned about the condition of the interior of the property and I would ask you please to contact me or the [AMO ?] [sic] by phone on [...] within 14 days of the date of this letter to arrange for him/her enter the property to assess the state and condition of it in accordance with clause 3(10) of the lease. Following the inspection a further notice may be served on you requiring you to do any maintenance which may be necessary to prevent the property from falling into disrepair".*

27.7 On **7 October 2014** the chronology adds: *"Telephone call leaving message to make contact followed by visit to site by Maria. No one at home. No further contact from Mrs. B. Pictures taken showing garden over grown [sic] and black bags as before"*.

27.8 In the remaining entries it is apparent the Applicant has been trying unsuccessfully to make contact with the Respondent. Indeed, there is no reference to any direct contact at all after 2 September 2014.

27.9 After the Applicant issued its application in October, a further entry appears dated **25 November 2014** adding: *"Home visit (morning call) no one at home – garden overgrown and photographs taken of the kitchen through the side external door (photographs provided)..."* and *"...neighbour has expressed some concern that [the Respondent] has not had heating in her home for a few years and the damp/cold is affecting her property. The damp is growing on the neighbours [sic] internal living room skirting and wall."*

28. In relation to the photographs in the bundle, these were numbered 1 through to 5 at the hearing:

(I) Photograph 1: This shows three sealed filled plastic refuse sacks located in broadly the same position as the refuse sacks visible on 3 February 2015 (i.e. in the western area of paved garden indirectly opposite the side door to the house). The sacks are not split and their contents are not obvious. The area behind the sacks in the photograph is overgrown with bramble. Mrs Edwards told us that the photograph was probably taken by a housing officer called Mr. Mike Richards on 3 February 2014.

(II) Photograph 2: This shows the paved garden area and is apparently the area located to the west and north of the dwelling house. In the photograph the area is significantly overgrown with bramble or similar weeds and the condition is again consistent with that visible on 3 February 2015. We were told that that photograph was taken by employees of Green Futures on 15 July 2014.

(III) Photograph 3 shows the area depicted in photograph 1 but from a different angle and, evidently, taken at a different time of year. There are two sealed refuse sacks present which are not discernibly split and the area remains overgrown Mrs. Edwards told us that the photograph was probably taken on 25 November 2014 by contractors with Green Futures.

(IV) Photograph 4 is materially the same as photograph 2 in what it depicts although it again appears to have been taken at a different time of year. Mrs. Edwards believed that she had taken the photograph on 25 November 2014

(V) Photograph 5: Mrs. Edwards stated that this was a photograph that she had also taken on 25 November 2014. It is taken through the glass of the west facing access door and so shows the room that we were told serves as the kitchen. In the photograph there is a bin bag on the floor and what appear to be around 10 empty/used cardboard cat food boxes spread across that floor.

29. The evidence as to who took the photographs in the bundle and when was not altogether satisfactory. As already stated above, Mrs. Edwards' recollection was not consistent with Mrs. Evans' statement nor was she consistently clear at the hearing. Indeed the dates and the attendances of Green Futures recorded in the chronology are not consistent with dates that Mrs. Edwards initially provided. What is clear from the photographs, however, is that they were taken at the Premises and they were almost certainly taken as different times of the year. They are consistent with what was visible at the abortive site inspection by this Tribunal and they appear to corroborate the indication in the chronology that problems with the paved garden becoming overgrown and with refuse bags or sacks being left in that area are of long-standing.
30. The oral evidence from Mrs. Evans and Mrs. Edwards was material in a number of ways.
31. First, in relation to the letter dated 2 September 2014 Mrs. Evans informed us that that the version of the letter in the bundle (and materially recited above) was not the version sent to the tenant. We were given what we were told was the final draft of the letter which instead reads as follows:

"As the landlord under the lease, the association is also concerned about the condition of the interior of the property and I would ask you please to contact me or Maria Edwards, Housing Officer by phone on 07929 201316 or Jenny Williams, Housing Manager on 0800 052 2526 within fourteen days of the date of this letter to arrange for them enter the property to assess the state and condition of it in accordance with clause 3(10) of the lease. Following the inspection a further notice may be served on you requiring you to do any maintenance which may be necessary to prevent the property from falling into disrepair".

32. Mrs. Evans stated that it was this version of the letter that would have been emailed to her colleague, Michael Richards, to be sent to the Respondent. Although there was no proof of posting available at the hearing Mrs. Evans' evidence was that the letter must have been sent because she subsequently had discussions with Mr. Richards about the further steps that would follow and be necessary now that the letter had been sent.

33. On this issue Mrs. Edwards also gave evidence that she had written to the Respondent on two occasions seeking access. Those letters did not refer expressly to clause 3(10) of the Lease. They were to the effect that Mrs. Edwards would be visiting the Premises on a given date at a specified time at least two weeks away to carry out an inspection of the condition of the Premises and the Respondent was asked to contact Mrs. Edwards if the appointment time for the inspection was inconvenient. Initially Mrs. Edwards indicated that those letters were sent by first class post although she subsequently expressed the view that one of the letters was probably hand delivered by her.
34. Mrs. Edwards' evidence was that the Respondent had not responded to any of these written requests for access.
35. The letters sent by Mrs. Edwards were not in the bundle and cannot be confidently married to any particular entry in the chronology with the result that Mrs. Edwards could not confirm when those letters had been sent. Their omission from the chronology on such a fundamentally significant point is all the more surprising given that there are two entries in that chronology that recount the terms of letters verbatim. Mrs. Evans also indicated at one point during the hearing that she had not seen the letters to which Mrs. Edwards was referring.
36. In relation to the alleged breaches of Clause 3(3), Mrs. Edwards indicated that there were numerous additional photographs which, again, had been omitted from the bundle. These were said to show that the Respondent had placed as many as fourteen full plastic refuse sacks in the paved garden area at one time. She said that those sacks had split and that the presence of that refuse and the split bags had been the apparent cause of a rat infestation necessitating that Rentokil attend. No written record from Rentokil detailing their attendance was provided at the hearing.
37. Finally, Mrs. Edwards stated that she had spoken with the Respondent's neighbour recently and had been informed that the neighbour was able to see the accumulation of refuse bags in the Respondent's living room. That neighbour was not called to give evidence at the hearing (indeed neither Mrs. Evans nor Mrs. Edwards could provide the neighbour's full name) and, as "multiple hearsay" which did not directly address the specific allegation against the Respondent, we did not consider that evidence helpful or of any material probative value.

Adjournment Application

38. For the sake of completeness we would record that the Applicant did apply to adjourn during the course of the hearing. That application was made on the basis that the Applicant wished to adduce further evidence on the foregoing issues. First, it wanted to file and serve further photographs of the condition of the Premises. Secondly, it wanted to file and serve further documents in the form of Mrs. Edwards' letters to the Respondent requesting access for the purpose of inspection under clause 3(10) of the Lease.
39. Regulation 15(2) of the Regulations provides that:

"15(2) Where a postponement or adjournment has been requested the tribunal shall not postpone or adjourn the hearing except where it considers it is reasonable to do so having regard to -
(a) the grounds for the request;
(b) the time at which the request is made; and
(c) the convenience of the other parties."

40. Having regard to those criteria we declined to adjourn the hearing. There was no adequate explanation for the failure to include all relevant photographs in the hearing bundle and the Applicant had had ample opportunity to file any documentary evidence it wished to rely upon on the factually straight-forward issue of whether the Respondent had breached clause 3(10). The request to adjourn could not have been made later and, whilst there was no inconvenience to the Respondent (because she has not engaged with the process) it would not, in our judgment, have been reasonable to adjourn in all the circumstances.

Decision

The Alleged Breach of Clause 3(10)

41. The Respondent is required to permit the Applicant or its agent to enter the Premises to view their condition "*at all reasonable times on notice*".
42. In relation to the letter dated 2 September 2014, the version provided at the hearing requests that the tenant contact the Housing Officer or the Housing Manager to arrange for them to enter the Premises to assess their condition. That is a clear request that the Applicant be permitted access at a reasonable time convenient to the Respondent.

Accordingly a failure to engage with the Applicant in order to give its agents access is, in our view, a breach of Clause 3(10).

43. Although we were not provided with proof of posting nor any evidence from Mr. Richards to confirm that he had sent it, we are satisfied on the available evidence that the letter in the form provided at the hearing was probably sent to the Respondent. Mrs. Evans had discussions with Mr. Richards which she says were only consistent with the letter having been sent and it had, of course, clearly been prepared for sending. It is also material that the Application expressly states that the Respondent has repeatedly failed to comply with requests by the Applicant to arrange to view the inside of the property and the Respondent has not challenged that assertion by way of a Statement of Case or evidence at the hearing.
44. We also accept Mrs. Edwards' evidence that she too had made written requests of the Respondent for access to inspect the Premises. It was wholly unsatisfactory that those letters were not provided in the hearing bundle for the Tribunal nor, it seems, to Mrs. Evans when the application was prepared. We are also mindful of their omission from the chronology. Nonetheless, Mrs. Edwards gave a clear and convincing account of what she wrote to the Respondent. Namely a request for access to inspect on a given date with significant advance warning. The omission of any express reference to Clause 3(10) would not, given the terms of Clause 3(10), undermine the efficacy of those letters as the required notice.
45. We are also satisfied that upon receipt of the aforementioned requests the Respondent did not reply to the Applicant. In reaching that conclusion we are mindful of the fact that the letter of 2 September 2014 invited the Respondent to contact Mrs. Evans, Mrs. Edwards or Jenny Williams. Jenny Williams was not called to give evidence and so she did not personally confirm that the Respondent had not been in contact. However, Mrs. Edwards' evidence was that there had been no contact from the Respondent in response to these letters and that is wholly consistent with a pattern of behaviour reflected in the chronology in which the Respondent has frequently (albeit not always) failed to reply to requests for contact. Again, as already noted the Respondent has not challenged this allegation in the Application.
46. Considering the gravity of the situation it may be thought surprising that the Respondent has failed to fully engage with the Applicant to accommodate access, or more generally, but we are satisfied on the evidence that she has not done so.
47. It is, finally, not without relevance that the Respondent also failed to accommodate this Tribunal's request for access. That failure does not place the Respondent in breach of the

Lease but it is at least consistent with the general pattern of behaviour said to underpin this application.

48. In the circumstances, and despite the limitations of the evidence made available to the Tribunal, we conclude that the Respondent has probably failed to respond to written notice requiring that she permit the Applicant to enter the Premises to view their condition. We accordingly determine that there has been a breach of Clause 3(10) of the Lease.

The Alleged Breach of Clause 3(3)

49. As to Clause 3(3), we do take the view that the obligation to keep the Premises clean and well and substantially maintained must, on a proper construction of the Lease, extend to the whole demised parcel including the paved garden.
50. A covenant to keep demised premises "clean" is not common. In our view it must be construed sensibly and adopting a common sense approach to interpretation. It is trite that *"the law does not require judges [or tribunals] to attribute to the parties an intention which they plainly could not have had"* and the parties to the Lease cannot have regarded the obligation to keep the Premises "clean" as an absolute obligation triggered regardless of triviality. Further, the obligation to keep "*clean*", whilst readily applicable to the interior of a dwelling-house, is less obviously apposite when considering a garden.
51. Generally, a covenant to keep in repair does not require premises to be kept in perfect repair and will generally be satisfied by keeping them in substantial repair. Although the word "clean" was not expressly so qualified in Clause 3(3) that term must, in our view, be treated as similarly qualified. The covenant does not require the Premises to be kept perfectly clean but, by analogy with the disrepair cases (of which the leading case is *Proudfoot v. Hart* (1890) 25 QBD 42), merely clean to a standard that would render the premises reasonably fit for the occupation of a reasonably minded tenant of the class who would be likely to take or occupy the Premises.
52. The obligation to "maintain" the Premises is expressly qualified in that the Premises must be kept "*well substantially...maintained...".* We were not referred to any authority on the standard of maintenance that this part of the covenant imposes although in *Riverside Property Investments v. Blackhawke Automotive* [2005] 1 EGLR 114 Judge Coulson QC reiterated that: *"A covenant 'well and substantially' to repair does not require the tenant to put the property into perfect repair...or into pristine condition".* The same must be true of a covenant to maintain.

53. Similarly, in *Simmons v. Dresden* [2004] EWHC 993 (TCC) HH Judge Richard Seymour made the following material observations:

> *"[48] ...in cl 2(5) the standard to be achieved by repair, renewal or cleansing was expressly qualified. What was required was that the tenants "well and substantially" repair, and so forth, and keep in "good and substantial" repair. The force of "substantially" and "substantial", in my judgment, was to require that in its essentials, but not necessarily in each and every minute detail, the premises were to be repaired, renewed, cleansed and kept. I do not think that that is a standard which in practical terms is different from the standard of "such repair as, having regard to the age, character, and locality of the house, would make it reasonably fit for the occupation of a reasonably minded tenant of the class who would be likely to take it" which Mr Denehan submitted was the appropriate standard. What that standard requires in any given case must be a question of fact and degree..."*

54. Mrs. Evans, in her closing submission, asserted that "clean" meant that the Premises including the paved garden should be "tidy", free of weeds and refuse sacks and not be in such a condition as to attract rodents or other vermin nor thereby constitute a nuisance to adjoining neighbours.
55. Turning to the evidence of breach here, we do not consider that the mere presence of full refuse sacks in the paved garden as shown in the photographs 1 and 3 or as apparent on 3 February 2015 constitutes a breach of the Clause 3(3) covenant. In the photographs those sacks are relatively few in number (no more than are usually present at a domestic property) and are not split. We also consider that it would be an impermissibly wide construction of the clause to say that general untidiness was caught by its terms.
56. However, the evidence of Mrs. Edwards to the effect that there were, at one point in 2014, around 14 refuse sacks containing food and domestic waste and that a number had split so that their contents had spilled out into the paved area is much more significant. We accept that evidence and, in our view, the exterior of the Premises was not "clean" when there were a large number of plastic refuse sacks and the presence of spilt food waste from those sacks which apparently caused a rat infestation.
57. The terms of the Application do not specifically refer to the interior of the Property, no doubt owing in part to the fact that access to the Premises has not been accorded to the Applicant. From photograph 5 it is also apparent, however, that the condition of the kitchen is unclean to a degree that, even adopting an appropriately restrictive interpretation of Clause 3(3), places the Respondent in breach of Clause 3(3).

58. Finally, the fact that the paved garden is overgrown does not mean that the Premises are not "clean". However, as Clause 3(3) also requires that the Premises be kept "*well substantially...maintained...*" that begs the question of whether the condition of the paved garden is so overgrown and poorly maintained that it would be unacceptable to a reasonably minded incoming tenant. On balance, we conclude from the evidence in the photographs and the condition we observed on 3 February 2015 that the paved garden is sufficiently overgrown and poorly maintained to place the Respondent in breach of the covenant to keep the Premises "*well substantially...maintained*" having regard to that required standard of maintenance.

59. In view of the foregoing we accordingly make the following order.

ORDER

Pursuant to section 168 of the Commonhold and Leasehold Reform Act 2002 the Leasehold Valuation Tribunal determines that the Respondent has breached a covenant or condition in the Respondent's lease of the premises at number 1 Heol y Blodau, Llangewydd Court, Bridgend. More particularly:

(III) contrary to Clause 3(3) of the lease the Respondent tenant failed to keep the premises clean and well and substantially maintained;

(IV) contrary to Clause 3(10) of the lease the Respondent tenant failed to permit the Applicant landlord or its agent to enter the premises following written notice requesting access to view the condition of those premises.

DATED this 10th day of February 2015

CHAIRMAN