

**Y TRIBIWNLYS EIDDO PRESWYL  
RESIDENTIAL PROPERTY TRIBUNAL (WALES)  
LEASEHOLD VALUATION TRIBUNAL**

Reference: LVT/0039/01/23

**In the Matter of an Application under Section 35 of the Landlord and Tenant Act 1987  
In the matter of 38, High Street, Llandoverly, Carmarthenshire, SA20 0DD**

APPLICANT	Mr Christopher Smejkal
RESPONDENTS	Mr Christopher James Paul Mrs K A Paul
TRIBUNAL	R Price      Chair A Lewis      FRICS J. Playfair   Lay Member

**DECISION**

The appeal for a variation to the lease, dated 18 April 1988, as described below, is dismissed

**REASONS**

**[ ] denotes appeal bundle handwritten page numbers**

**THE APPLICATION**

1. The applicant applied for a variation to a lease dated 18 April 1988 made between Gerald Sydney Pritchard/Sylvia Maureen Pritchard (Landlords) and Philip Ross Hancock/Louvain Hancock (Tenants). The application was lodged with the Tribunal Service on 11 January 2023 [1-36]
2. The applicant set out in a document dated 9 February 2023, the propose wording of the variation sought as follows:

**Proposed wording of the variations sought:**

**Amendment 1 – Section1, Clause 18**

To pay the Landlord a fair and rateable proportion of the annual cost of insurance premiums payable for the Demised Premises to the extent the same bears to the building.

Amend to:

To pay the landlord a fair and rateable proportion (calculated as 40%) of the annual cost of insurance premiums payable for the Demised Premises to the extent the same bears to the building.

## **Amendment 2**

### **Addition to section3 (addition of new Clause 19)**

To pay the landlord a fair and reasonable proportion (calculated at 40%) of the ongoing repairs and maintenance costs to the building for which the tenant benefits, including and not limited to the roof, windows, main drains, gutters, rain water pipes, exterior walls, wood, iron and other external parts and repairs and maintenance of the wide gateway entrance to the rear of the building adjoining Orchard Street.

3. In accordance with the Tribunal Directions Notice issued on 20<sup>th</sup> January 2023, the Respondents provided their response to the application in an emailed dated 13 February 2023 [52-53].

## **THE APPEAL HEARING**

4. The surveyor member and Judge undertook a site inspection on 5<sup>th</sup> June 2023. The Respondents denied internal access to the Applicants to the leasehold area of their property. The surveyor member and Judge firstly internally inspected the freehold area of the premises held by the Applicants. None of this area concerns the matter in dispute, however, it was helpful in respect of understanding the layout of the premises.
5. The surveyor member and Judge then inspected to the leasehold area that is the subject matter of this appeal, access was provided by the Respondents. In addition, the Respondents also provided access to the side alley where the Respondents have a right of way to the rear of their property.
6. A full inspection was conducted of the outside of the premises.
7. On 15<sup>th</sup> June 2023 at 10:30am, a remote appeal hearing took place on the TEAMS platform. The Applicant attended with Mr Haydn Sinclair for support and Mr & Mrs Paul were in attendance. All three Tribunal members heard the appeal.

## **THE PROPERTY**

8. The property is photographed and described at pages 35 and 36, of the appeal bundle. The photographs clearly outline the freehold in blue, which is the ground floor, used as commercial premises and storage by the Applicant and also the adjacent building on Orchard Street which forms part of the storage area. The freehold area also includes the area outlined in red albeit subject to the lease.
9. The area marked in green, is 38(b) High Street, the freehold being owned by the Respondents, and is not the subject matter of this appeal.

10. The area marked in red which comprises of the first floor, with one bedroom window facing onto the High Street, and the two windows of the other bedroom facing onto Orchard Street. The plan of the first floor also shows that the leasehold area comprises of one bathroom. This layout was confirmed by the site inspection. This is the extent of the demised premises referred to in the lease.
11. The photograph of the side elevation from Orchard Street also shows a gate highlighted in orange, this is a side access to the Respondent's back door. The site inspection showed that there is also a gate that leads to the back gardens of the terrace houses on Orchard Street.
12. The external inspection revealed that there are defects to the external fabric to both the freehold and leasehold areas of the building to include: defective and detached render, poorly maintained and rotten external joinery including window frames, defective rain water goods, movement, and distortion to supporting lintel above the alley way door. Overall, general maintenance of the external fabric is poor.

## **LAW**

13. **Section 35 of the Landlord and Tenant Act 1987** is annexed to this document as Appendix 1. This provision only applies to long leases of flats.
14. **Section 60 of the Landlord and Tenant Act 1987** provides the general interpretation of the legislation, and in particular it defines:

*"flat" means a separate set of premises, whether or not on the same floor, which—forms part of a building, and is divided horizontally from some other part of that building, and is constructed or adapted for use for the purposes of a dwelling;*

*"dwelling" means a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it.*

15. The Supreme Court in Arnold v Britton [2015] UKSC 36; [2015] A.C. 1619 noted that the application of Section 35 of the Landlord and Tenant Act 1987 applied only to long leases of flats, unlike other similar statutory provisions that had a broader application to dwellings.
16. In Cleary & Ors v Lakeside Developments Ltd [2011] UKUT 264 (LC) the Upper Tribunal, overturning a decision of the Leasehold valuation Tribunal (who had varied a lease which made no provision for lessees to pay the costs of employing a manager) said at paragraph 27:

*"There is in my judgement, nothing arguably "unsatisfactory" in the fact that two lessees pay a contribution to the lessor's costs of*

*management and four do not. It simply reflects different contractual provisions that do not appear to cause any difficulty in interpretation or application."*

And at paragraph 29:

*"...there is not in the leases that are the subject of the present application anything to suggest that the management costs to which the proposed variation relates are intended to fall on the tenants, and there is no reason why they should do so".*

17. In London Borough of Camden v Morath [2019] UKUT 193 it was held :

*"the Tribunal will consider whether the wording of the lease as it stands is clear, and whether the term sought to be varied is workable. If it is clear and workable then it is not unsatisfactory. Obviously, the question whether the bargain as it stands works in practice has to be considered on the basis of the evidence in each case. But section 35 does not enable the Tribunal to vary a lease on the basis that it imposes unequal burdens or is expensive or inconvenient. It would be very strange if it did, in view of the law's general resistance to the temptation to interfere in or improve contractual arrangements freely made."*

#### **UNDISPUTED FACTS**

18. The Applicant bought the freehold property (marked in blue and red on the photographs) at auction in December 2021, with completion taking place in February 2022. A copy of the lease dated 18 April 1988 was included in the auction bundle. The Applicant was aware of the lease and its terms. The Applicant did not have a survey undertaken in advance of the purchase.
19. The Respondents were registered as leaseholders of the first-floor accommodation comprising of two bedrooms and a bathroom on 21 October 2019 [16]. ('The demised premises).
20. The property was designated as a Grade II listed building on 18 June 2004.
21. Grant works were undertaken to the property in 2007, and a list of the works undertaken appears at handwritten pages 92 – 94.
22. There are no communal areas within the demised premises.
23. The Tenant covenants to pay the Landlord a fair and rateable proportion of the annual cost of insurance premiums payable for the Demised Premises
24. The Respondent has settled their contribution for the insurance of the freehold property. The insurance policy was obtained by the Applicant.

25. The access, off Orchard Street, to the rear of the Respondent's property is not described in the lease, the right of way is not recorded on any of the title deeds held by the parties.

### **FACTS FOUND, THAT ARE IN DISPUTE BETWEEN THE PARTIES.**

26. The right of way used by the Respondents, to access their rear entrance is not a matter that falls within the jurisdiction of the Tribunal, as it does not fall within the leasehold property that is the subject matter of this appeal. That is, it does not form part of the demised premises. The Tribunal is not required to determine whether the Respondent is liable for any maintenance or repairs regarding this right of way. Furthermore, the Tribunal is not required to consider whether it serves as a right of way to other residents of Orchard Street.

27. The Tribunal accept that the lease appears to contain an omission, as the lease jumps from paragraph 4 to 8. This is the lease that is registered with the Land Registry. However, this is not a matter that the Tribunal can resolve. This is not a reason why Section 35 of the Landlord and Tenant Act 1987 should apply to this appeal.

28. The Tribunal find that Section 35 of the Landlord and Tenant Act 1985, does not apply to the issues raised by the Applicant, and this is because the demised premises do not meet the definition of a flat. The lease does not describe a flat, but specifically describes two residential rooms and bathroom of 38a High Street Llandoverly. Paragraph 1(3) of the lease and the First Schedule of the Lease describe the demised premises.

29. Notwithstanding, the finding of fact set out in paragraph 28 above, the Tribunal find that the lease does make satisfactory provision for the matters identified in Section 35(2) of the Landlord and Tenant Act

### **REASONS**

30. The two residential rooms and bathroom form part of the Respondent's home, which is a two-storey house. The photograph [35] shows the green freehold owned by the Respondents. The demised premises do not meet the definition of a flat, in the context of the Respondents' freehold property as it is not a separate set of premises, nor can it be considered as a separate dwelling. In the context of the Applicant's property, the Tribunal do not accept that the two residential rooms and bathroom can be considered a separate dwelling. The Tribunal do not find that the fact that the official copy entry of register of title [15] of the Applicant's freehold premises, refers to flat undermines its' finding, as this is probably a simple entry by the Registrar. The demised premises are not referred to as a flat, on the official copy entry of the register of title of the Respondents' interest in the land, here it is referred to simply as rooms. Indeed, the lease and the actual layout of the premises should be the determining factor, when considering if the demised premises meets the definition of a flat.

31. If the Tribunal is wrong on its finding, that Section 35 of the Landlord and Tenant Act cannot apply, as the demised premises fall foul of the definition of a flat, the Tribunal find that the lease does make satisfactory provision for the matters listed in Section 35(2).

32. Paragraph 3 of the Lease sets out the Tenants' obligations, which in summary require the Tenant to maintain the internal areas of the demised premises and make reasonable contributions to the insurance premiums. The Landlord's obligations can be found at paragraph 4, in particular paragraph 4(2)(a)(i) and (ii). Paragraph 8 also specifically states the responsibility to maintain the roof of the building rests with the landlord.
33. These provisions the Tribunal find are satisfactory and workable.
34. It is acknowledged that the provisions of the lease places unequal burdens upon the parties', that is the Landlord has the lion's share of the maintenance obligations regarding the exterior of the demised premises. However, applying the decision in London Borough of Camden v Morath, the inequality of repairing obligations between the parties', is not a reason to vary the lease.
35. Furthermore, it is not in dispute that the Applicant, entered into the purchase of this property, knowing there was a lease in existence and having a copy of the lease within the auction bundle, but still proceeded with the property transaction. It was open to the Applicant to have a survey undertaken of the property, which he chose not to do.
36. The application to vary the terms of the lease, pursuant to Section 35 of the Landlord and Tenant Act 1985 is dismissed.

Dated this 30<sup>th</sup> day of June 2023

Tribunal Judge  
R Price