



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **LON/00AW/LBC/2024/0619**

**Property** : **269a Portobello Road, London, W11  
1LR**

**Applicant** : **Leckhampton Property Development  
Limited**

**Representative** : **Ms Dianne Doliveux Counsel**

**Respondent** : **Mr Pushaun Paal Choudhury**

**Representative** : **None**

**Type of application** : **Determination of an alleged breach of  
covenant**

**Tribunal member(s)** : **Judge N O'Brien, Mr I Jagger MRICS**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of hearing** : **7 May 2025**

**Date of  
Determination** : **28 May 2025**

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**DETERMINATION**

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**Decision of the Tribunal**

- (1) The Respondent has breached his lease as set out in paragraphs 22 and 23 below.
- (2) The Tribunal orders the Respondent to reimburse the Applicant in respect of the tribunal fees it has paid in relation to these proceedings in

the sum of £330 pursuant to Rule 13(2) of the Tribunal Procedure Rules 2013.

### **The Application**

1. The Applicant is the freehold owner of 269a Portobello Road London W11 1LR. The building is a 3 storey Victorian terraced property with commercial premises on the ground floor and a maisonette with its own entrance on the first and second floor. The Respondent is the leasehold owner of the maisonette. By an application sent to the tribunal on 12 December 2024 the Applicant sought a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (CLRA 2002) that the Respondent has breached the covenants of his lease. It is the Applicant's case that the Respondent has breached these covenants by failing to keep the premises in good repair and by carrying out alterations to the interior of the premises.

### **The Proceedings**

2. The Tribunal issued directions in respect of the application on 29 January 2025. Pursuant to the directions the Applicant sent its statement of case to the Tribunal and the Respondent, and copies of the witness statements and other evidence relied on, and filed a bundle for use at the hearing. The Respondent has not served or filed any evidence or statement of case in response to the application, or otherwise engaged in any way with these proceedings.
3. The Tribunal had a 137-page bundle of relevant documents, prepared by the Applicant for use at the hearing. The bundle includes the following;
  - A copy of the application and the lease;
  - The Applicant's statement of case;
  - Correspondence passing between the tribunal and the parties and correspondence sent by the Applicant to the Respondent;
  - The witness statements of Mr David Kaye and Mr Johnathan Lloyd on behalf of the Applicant, and a report into the condition of the property, and witness statement, prepared by Mr Anthony Biainchi FRICS.

### **The Hearing**

4. The Applicant was represented by counsel Ms Doliveux. All three of the Applicant's witnesses attended. The Respondent did not attend the hearing. The evidence of the Applicant's witnesses was that they had been informed in November 2024 by the occupant of the next-door building that she had not seen anyone come in or out of the maisonette for over a year. A letter sent to the Respondent at the property address by tracked mail was returned to the Applicant marked 'RTS' (return to sender) and 'addressee unknown'. Mr Lloyd attended the premises on 8 November 2024 and found a number of items of post left at the premises which were

unoccupied. The maisonette had the appearance of being partway through a substantial refurbishment which had been abandoned.

5. We considered that it was quite possible that none of the documents pertaining to the proceedings had come to the attention of the Respondent, as they had all been sent to him at the property address, which remains his address as recorded by the Land Registry entry in respect of his leasehold interest.
6. The Applicant freehold company was purchased by Relentless Investments 6 Ltd in September 2024 and the Applicant's witnesses had no direct involvement with the premises prior to that acquisition. In answer to questions put to him by the tribunal, Mr Lloyd set out the efforts that had been made to find the Respondent in order to bring these proceedings to his attention. A Google search revealed that Mr Choudhry was a respondent in separate proceedings relating to a different address in this tribunal (Case Ref LON/00AW/LBC/2024/0012). The case report indicates that the Respondent did partially engage with those proceedings but by the date of the hearing that property was in the possession of receivers. The Respondent had written to him at that other address prior to the proceedings but did not receive a response. In addition Mr Lloyd found a planning application lodged by the Respondent which contained an email address. He told us that documentation pertaining to the proceedings and a link to the hearing bundle was sent to that email address on 15<sup>th</sup> April 2025 but no response was received. A copy of that email was included in the bundle.
7. We considered Rule 34 of the 2013 Tribunal Procedure Rules which permits the tribunal to proceed with a hearing in the absence of one or more parties. We were satisfied that reasonable steps had been taken to bring the proceedings and the hearing date to the attention of the Respondent and that it would be in the interests of justice to proceed.
8. After the hearing the Applicant forwarded additional documents to the tribunal relating to the condition of the building. The tribunal does not admit those documents into evidence as they were submitted after the hearing had concluded.

### **The Lease**

8. The Lease was granted for a term of 99 years to the Respondent's predecessor in title from 29 September 1986. The copy of the lease in the bundle was only partially legible and so we referred to the extracts from the lease contained in the Applicant's statement of case which were accurate as far as we could ascertain.
9. By Clause 1(a)-(d) the demised premises under the Lease includes "*(a) the floors of the Maisonette and the joists under such floors (but not the foundations on which the Maisonette rests) and the ceilings of the Maisonette (but not the joists or other parts of the Property to which the ceilings are attached)*" "*(b) the internal walls of the Maisonette and the*

*internal surfaces (including plaster boarding and other internal coverings or linings) of the walls bounding the Maisonette excluding any walls forming part of the structure of the Property” “(c) the windows and window frames in the external walls of the Maisonette but not the stonework or brickwork of the window openings” “(d) All pipes wires cables drains and other conducting media within the said Maisonette and exclusively serving the same” .*

11. By Clause 2(3), the Respondent covenants to “*at all times during the term hereby granted (damage by any risk against which the Landlord shall have insured nevertheless excepted save where the insurance moneys shall be properly deemed irrecoverable by reason of any act or default of the Tenant or the Tenant’s family servants or agents) well and substantially to repair cleanse renew maintain amend and keep the demised premises and the Landlord’s fixtures and fittings therein and all additions and improvements thereto and all cisterns boilers and water pipes serving the said Maisonette and any cold water tank within the said Maisonette (and whether serving the said Maisonette or any part of the Building) and keep all ballcocks and pipes gas pipes and electric wires in and serving the said Maisonette in good and substantial repair and condition and replace immediately any broken windows and before repairing the water pipes serving the said Maisonette to give notice (except in an emergency) to the Landlord stating the nature of the defect or damage thereto and in making any of the foregoing repairs to comply in all respects with the requirements of all local and statutory bodies having jurisdiction in the matter and not at any time to obstruct the sinks drains cisterns and wastepipes to the said Maisonette or in the Building*”.
12. By Clause 2(4) the Respondent covenants to “*Once in every seventh year and in the last three (3) months of the said term when and howsoever determined in a suitable and workmanlike manner to paint with two coats of best paint and paper varnish colour grain and whitewash all the inside parts of the said Maisonette respectively heretofore or usually painted papered varnished colour grained and whitewashed*”
13. By Clause 2(12) the Respondent covenants “*not to make any erection in or on or alteration in addition to the said Maisonette or the Building or in the walls or timbers of the same or in the electric wiring system or in the hot and cold water or heating service thereof or alter the plan layout height elevation or appearance of the same or erect any internal partition for dividing rooms or make any alteration in the internal arrangements or in the external appearance of the said Maisonette or the Building whatsoever without the previous consent in writing of the Landlord such consent not to be unreasonably withheld or delayed nor to cut alter or injure any of the walls roofs partitions timbers or floors of the said Maisonette or the Building*” Thus there is a covenant not to alter the internal arrangement of the maisonette without prior consent and an absolute prohibition against alterations to any of the walls, including partition walls, or floors.
14. By Clause 2(15) the Respondent covenants “*Not to stop up darken or obstruct any window or lights belonging to the said Maisonette or the Building or any adjoining building nor permit any new window light*

*doorway opening path or drain or other encroachment or easement to be made into against or upon the said Maisonette or the Buildings or grounds"*

15. By Clause 2(17) the Respondent covenants *"To make good all damage caused through the act or default of the Tenant or the servants agents or visitors of the Tenant (a) to any part of the building remaining under the control of the Landlord or the appointments or fittings and fixtures thereof and (b) to any other occupiers or tenants of the Building and their licensees and to keep the Landlord indemnified from all claims expenses and demands in respect thereof"*
16. By Clause 2 of the Third Schedule to the Lease, the Respondent covenants not to *"do or permit or suffer to be done on or in the said maisonette or in the Building any act matter of things which may be or become a nuisance waste destruction or disturbance or tend to the damage of the Landlord or its tenants..."*
17. Clause 9 of the Third Schedule to the Lease provides that *"the Tenant will not knowingly permit or suffer or allow any water or liquid to soak through the floors and in the event of such happening the Tenant will without prejudice to the Landlord's rights whether under these presents or otherwise immediately rectify and make good all damage and injury to the premises as affected at the cost of the Tenant"*

### **Breach of Covenant- Determination**

18. It is important to note that the Tribunal's role under s.168(4) of CLRA 2002 is to determine simply whether there has been a breach of covenant on the evidence before it. Whether there are extenuating circumstances which would allow relief from forfeiture or whether the landlord has an alternative remedy or has waived any breach is irrelevant at this stage.
19. Mr Bianchi attended the premises in order to compile his report into its condition on 15 November 2024. A copy of his report is contained in pages 238 to 298 of the bundle. It contains numerous photographs. It is clear that the maisonette is in poor condition and appears to be partway through a major refurbishment programme which has been abandoned for some considerable time.
20. Having reviewed the evidence of Mr Bianchi the Tribunal is satisfied of the following;
  - (i) On the first floor the panes of the two windows facing the front of the building have been removed, the windows boarded up and the frames are rotten and wet;
  - (ii) The floorboards in the kitchen and bathroom have been removed as have the kitchen ceiling boards;

- (iii) Internal walls throughout the maisonette have been moved or stripped of lathe and plaster and partially completed new partition walls have been erected on both the first and second floor;
  - (iv) Bricks were removed from a chimney breast.
  - (v) The whole property is suffering from damp. Mr Bianchi believed that the main cause was rainwater penetrating through the boarded-up windows;
  - (vi) A number of internal doors have been removed;
  - (vii) The kitchen fittings have been removed completely save for a boiler which was not tested;
  - (viii) In the ground level entrance hall there was evidence of rising damp and the front door was in poor decorative condition;
21. The evidence of Mr Lloyd and Mr Kaye was that the commercial tenant of the ground floor premises has reported water penetration from the maisonette above.
22. The Tribunal is satisfied that the matters set out in paragraph 11(i) amount to a breach of clause 2(3) and Clause 2(15) of the lease. The matters set out in paragraph 11(ii) to 11(iv) and 11(vi) amount to a breach of Clause 2(3) and Clause 2(12) of the lease. In particular the removal of bricks from the chimney breast and the removal of floorboards and internal partitions amount to a breach of the provisions of Clause 2(12) which contain an absolute prohibition against alterations of a structural nature. The matters set out in paragraph 11(v) amount to a breach of Clause 2(3) and Clause 9 of the Third Schedule to the Lease. The matters set out in in paragraph 11(vii) and (viii) amount to a breach of Clause 2(3) of the lease. Finally by permitting water to leak into the property below the Respondent has breached Clause 2 of the Third Schedule to the lease.
23. The Tribunal does not make any finding as to whether the alterations made to the premises amount to a breach of that part of Clause 2(12) which permits some alterations to the interior of the premises with prior permission. There is no evidence as to whether or not the Respondent ever sought or was granted permission in respect of any of the alterations, which appear to have been undertaken some considerable time prior to the acquisition of the freehold company. However insofar as the matters set out in paragraphs 11(ii)-(iv) amount to alterations to the walls, floors and partitions they amount to a breach irrespective.
24. In its statement of case the Applicant has made an application for costs. We order the Respondent to reimburse the Applicant in respect of the tribunal fees it has paid in relation to these proceedings in the sum of £330 pursuant to Rule 13(2) of the Tribunal Procedure Rules 2013.

**Name:** Judge N O'Brien

**Date:** 28 May 2025

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).