



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

Case reference : **LON/00AE/LBC/2025/0650**

Property : **40A St Mary's Road
Willesden
London NW10 4AY**

Applicant : **Luke Donnelly**

Representative : **In person**

Respondent : **Gary Edge**

Representative : **In person**

Type of application : **Declaration as to breach of covenant –
s.168 (4) Commonhold and Leasehold
Reform Act 2002**

Tribunal members : **Mr I B Holdsworth FRICS
Valuer Chairman
Duncan Jagger FRICS
Angela Kelly MRICS**

**Date and venue of
Hearing** : **2 March 2026
10 Alfred Place
London WC1E 7LR**

Date of Decision : **17 March 2026
14 April 2026**

Minor typographical errors corrected in accordance with Rule 50 of Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“**the 2013 Rules**”).

DECISION

Decisions of the Tribunal

- a. The Tribunal determines that, for the purposes of s.168 (4) of the Commonhold and Leasehold Reform Act 2002 a breach of the lease has occurred, in that the Respondent has failed to comply with lease covenants

iii, vi, vii, and xi of the lease dated 24 March 1976, made between Ansoll Estates Limited and James Patrick Drohan (the “**1976 lease**”).

1. The application

- 1.1 Under an application issued on 27 July 2025, the Applicant sought a determination under s.168 (4) of the Commonhold and Leasehold Reform Act 2002 ('**the 2002 Act**'), that the Respondent tenant was in breach of their lease in respect of 40A St Mary's Road, Willesden, London NW10 4AY ('**the Property**'), in that they had allowed use of the Property in breach of lease clauses iii, vi, vii, ix and xi of the lease which, amongst other obligations, require the Respondent to:

'Keep the premises in good repair (iii)' and

'Not to permit to be done or cause any nuisance or annoyance damage or inconvenience to the lessor (xi)'

2. Preliminary matters

- 2.1 The Tribunal issued Directions on 22 October 2025. In accordance with these Directions the Applicant prepared a bundle that contained:

- The Applicant's statement of breaches of the lease at pp.223-224 of the bundle.
- copies of e-mail exchanges between leaseholder, sub-tenant and other relevant parties, contained at pp.20-223 of the bundle.
- The Respondent's submissions are at pp.247-253 of the bundle.

The Respondent prior to the start of the hearing submitted a copy letter from Mace Housing Co-Operative (“**Mace Housing**”) dated 17 February 2026, confirming an Outright Possession Order by a District Judge.

- 2.2 A hearing was held on 2 March 2026 at 10 Alfred Place, London WC1E 7LR. ~~Mr~~ **Dr** Luke Donnelly attended as the Applicant, freeholder and leaseholder of 40 St Mary's Road NW10 ('**the Building**'). His husband **Dr** Joseph Donnelly also attended and gave evidence. They both represented themselves at the hearing. The Respondent Gary Edge, leaseholder of the Property 40A a St. Mary's Road, also attended as a litigant in person.

- 2.3 The parties had not asked for an inspection of the Property, and it was considered proportionate for an inspection not to be undertaken.

The Building & Property

- 2.4 The Building forms a mid-terrace two-storey structure built during the late-19th Century as purpose-built ground and first-floor flats.

- 2.5 The ground floor flat comprises two bedrooms, kitchen, lounge and bathroom/Wc. The first and second floor flat offers three bedrooms, kitchen, lounge bathroom/Wc and shower room.
- 2.6 The freehold of the Building is held by the Applicant ~~Mr~~ **Dr** Luke Donnelly and his husband ~~Mr~~ **Dr** Joseph Donnelly under a conveyance dated 24 February 2023. They occupy the ground floor flat 40 St Mary's Road under a leasehold dated 25 June 2021 between Rebecca Hiluk and Luke and Joseph Donnelly.
- 2.7 The Respondent is the leaseholder of the first and second-floor flat referred to as "the Property", 40A St Mary's Road. The Tribunal were told this property is let by the leaseholder to Mace Housing Cooperative, a social housing provider who sublet the dwelling to a 7 persons family. No details of these agreements were submitted to the Tribunal.
- 2.8 The Respondent leaseholder holds the Property through the assignment of a lease dated 23 March 2018 between Rebecca Marie Hiluk and Michael Price (*the "2018 lease"*) . This 2018 lease refers to the **Existing Lease** at 1.3. This is defined as "*the lease dated 24 March 1976 between Ansoll Estates Limited and James Patrick Drohan*". The 2018 lease goes on to require the leaseholder to comply with "*the same terms, and subject to the same covenants, provisos and conditions on their part as the Existing Lease*". The Existing lease is accordingly the relevant agreement for the purposes of this Application.

3. The law

- 3.1 s.168 of the Act provides as follows:

'1. The Landlord under a long lease of a dwelling may not serve a notice under s.146 subsection 1 of the Law of Property Act 1925 (c 20) restriction on forfeiture in respect of a breach by a tenant of covenant or condition in the lease unless subsection (2) is satisfied.

'This subsection is satisfied if: -

'(a) it has been finally determined of application under subsection (4) that the breach has occurred;

'(b) the Tenant has admitted the breach; or

'(c) a Court in any proceedings or an Arbitral Tribunal in Proceedings pursuant to a post dispute arbitration agreement has finally determined the breach has occurred.

'3. A Notice may not be served by virtue of subsection (2) (a) or (c) until the end of the period of 14-days beginning with the day after that on which the final determination is made.

'4. A Landlord under a long lease of a dwelling may make an application to the appropriate tribunal

(First Tier Property Tribunal) for a determination that a breach of covenant or condition in the lease has occurred.'

3.2 This Tribunal is asked to determine whether the Respondent has breached a term or terms of their lease.

3.3 The lease dated 23 March 2018 (pp.227 of the bundle), under 1.3 '*Definitions and interpretation*' defines the existing lease as:

*'A lease dated 24 March 1976 made between
Ansell Estates Limited (1) and
James Patrick Drohan (2)
by which the premises were demised to the Tenant.'*

3.4 At clause 5.1 the Tenant covenants to:

'Observe and perform all the covenants and conditions on the part of the lease contained in the existing lease.'

3.5 The Existing or 1976 lease is at p.237 of the bundle.

3.6 The Applicant drew the attention of the Tribunal to lease clauses iii, vi, vii, ix and xi, of the 1976 lease these being:

'iii At all times to keep the said premises and all fixtures and additions thereto in good and substantial repair

'vi To permit the lessor and the tenants ... or workmen at any time or times during the said term to enter into and upon the said premises ... for the purpose of constructing laying down altering repairing cleaning ... water pipes stopcocks ...

'vii To permit the lessor or his agent with or without workmen to enter into and upon the said premises

'xi Not to use the said premises or any part thereof for any illegal or immoral purposes whatsoever and not to do or permit to be done upon the said premises or any part thereof anything which may be or grow to be a nuisance or annoyance damage or inconvenience to the lessor or the owners or occupiers of any adjacent premises and whereby any insurance for the time being effected on the said premises may be rendered void or voidable

4. The parties' submissions

4.1 The Respondent confirmed to the Tribunal that he agreed the chronology of events prepared by the Applicant and found at p.223 of the bundle. He also agreed that on the weekend preceding the hearing, the weekend of 28 February to 1 March 2026 water penetrated the part of the Building occupied by the Applicant from the Property above.

- 4.2 The Respondent said that the vibration to the water pipework, reported by the Applicant in both their written and oral statements was not rectified, despite the reporting of the defect in 2023.
- 4.3 It was agreed between the parties at the hearing that substantial water ingress had occurred from the Property to the flat below on more than 12 occasions since the Respondent's tenants had taken occupation of the Property in or around ~~late 2022~~ **August 2021**.
- 4.4 The Applicant provided the Tribunal with a specific example of a breach of the lease covenants. He referred to the event on 20 December 2023, when water entered the Flat 40 from the Property. The Applicant advised and complained to the Respondent by e mail, highlighting to him that this was the fifth time an escape of water into the ground floor flat in the Building had occurred. The water ingress caused extensive damage to paintwork, decorations and other household fittings.
- 4.5 The Applicant then referred Tribunal to specific clauses iii '*to keep ... in good and substantial repair*' and xi '*not to cause inconvenience to the freeholder and adjacent properties*'. He said this incident and the numerous other similar events were a violation of lease clauses (iii) and (xi). The Applicant gave the 20 December 2023 incident as an example of the type of event that had occurred on multiple occasions since 2023 until the weekend prior to the hearing. The resultant damage caused by the December 2023 leak was exacerbated by water ingress that occurred throughout February and March 2024.
- 4.6 The noisy vibration of the pipework formed part of a subsequent complaint in which the police became involved. Mace instructed a plumbing contractor to carry out an inspection of the Property. The findings of that inspection, are in a report prepared by Action Plumbing & Co, dated 18 February 2024 (pp.125-126 of the bundle). It was the opinion of Action Plumbing & Co that the significant defects present in the pipework of the Property could only be remedied by works to replace undersize and poorly fitted waste and supply pipework with correct sized pipework.
- 4.7 The Applicant gave this evidence as previous and continuing breaches of the covenants contained in the lease.
- 4.8 The Respondent states that in 2021, the flat was completely refurbished at a cost of approximately £90,000, although there was nothing in the bundle to validate this figure. He did not dispute that the breaches had occurred. He said Mace Housing through whom he had let the Property and himself had made every effort to remedy the various defects identified in the pipework. He adduced no evidence to support this statement
- 4.9 He also alleged that the behaviour of the tenants was the sole cause of the water ingress from their flat into 40 St Marys Road. He said it was his understanding that members of the tenant family doused themselves with water outside the waterproofed areas of the bathroom/Wc. He said

this led to the damp floors, ceilings and water ingress into the flat below. He gave no alternative reason or explanation for the different locations of the water ingress into the flat below besides the area immediately below the first-floor bathroom/Wc.

- 4.10 He said every effort had been made by Mace Housing to change the tenant's behaviour. These efforts had failed and they had culminated in eviction. He did confirm the tenants remained in occupation of the Property at the date of the hearing.

5. Determination of the Tribunal

5.1 Water penetration

- 5.1.1 It was common ground between the parties that the Respondent had failed to address the problem of frequent incidents of water penetration from the Property into the ground floor of the Building. His explanation that the tenant behaviour was the sole cause of this defect is not accepted by the Tribunal as credible or evidenced.
- 5.1.2 The agreed chronology of events lists at least 12 events dating from 2022 to the present time of water penetration into the ground floor of the Building. These varied in severity but all caused damage to the flat below and constituted breaches of the lease covenants.
- 5.1.3 Photographic evidence in the bundle illustrates and evidences the water damage to plasterwork, decorations and floor coverings.
- 5.1.4 The Tribunal is provided with sufficient evidence to confirm that water ingress from the Property into the ground floor of the Building since 2022 has occurred. These events cause damage and to cause damage or nuisance is a breach of the lease terms. In the recent breach of covenant decision **Peter Calnan v Stack House Residents (Oxted) Limited, 2025 UKUT 342 (LC)** the Upper Tribunal Deputy Chamber President reminds parties that "*the meaning to be given to the covenant is the meaning which the parties would have understood in {date of lease}, when the obligation was entered into*". The obligations of the leaseholder in this 1976 lease are unambiguous. The water leaks and pipe banging at the Property is not disputed. The Tribunal accordingly determines the leaseholder has specifically infringed **clause iii** to '*At all times to keep the said premises ... in good and substantial repair*', **and clause xi** by causing "*nuisance, inconvenience and annoyance*" to the residents below. Further, by his failure to require his tenants to permit access into the Property by appropriate works personnel he has violated **clauses vi and vii**.

Vibration in pipework

- 5.1.5 The Tribunal accepts the evidence given by the Applicant in their report of the long standing and continuing defect of pipe vibration. The noise from this defect is a nuisance to occupiers of flat 40. This is validated by

the police report DP-2520-24-0101-IR and the subsequent specialist report of Action Plumbing & Co dated 18 February 2024.

- 5.1.6 The Respondent accepts “*pipe banging*” is an ongoing problem with the pipework within the Property. He said in oral submission at the hearing “*around 90% of the problem was resolved*”. The defect was reported in late 2023. It remains unresolved.
- 5.1.7 The Tribunal are persuaded the vibration within the pipework constitutes a continuing breach on the part of the Respondent to satisfy lease **clause iii** to '*At all times to keep the said premises ... in good and substantial repair*'. Further, that the length of time taken to carry out and complete all necessary repairs conflicts with the requirements of lease **clause xi** which specifies the Respondent leaseholder must '*not to do or permit to be done upon the said premises or any part thereof anything which may be a nuisance or annoyance damage or inconvenience to the lessor or the owners or occupiers of any adjacent premises*'.

5.2 **Conclusion**

- 5.2.1 The Tribunal is satisfied that the leaseholder of the Property, 40a St Marys Road has breached the lease clauses iii, vi, vii, and xi and some of these violations continued as at the date of the hearing. It is for this reason that it should make a determination in this matter.
- 5.2.2 The likely consequences of the Tribunal's findings is that the Applicant freeholder will decide whether they should seek a determination from the County Court about the Respondent leaseholder's forfeiture of the lease.
- 5.2.3 In the alternative the Tribunal would urge the parties to seek a resolution of this long-standing dispute. This determination identifies and confirms the failure of the Respondent to comply with his lease obligations, but this does not preclude an urgent commitment by the Respondent, Mace Housing and the tenant family of the Property to remedy the continuing breaches of the lease covenants. The Tribunal would urge these parties to expedite the necessary repair works and changes to use at the Property. Such action could obviate the need for further legal proceedings by the freeholder and form a basis for a mutually beneficial way forward for all parties.

Name: Ian B Holdsworth
Valuer Chairman

Date: 17 March 2026
14 April 2026

RIGHTS OF APPEAL

- 1 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.
- 2 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.
- 3 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.
- 4 The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie, 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.