

Residential Property Tribunal for Wales

Y Tribiwnlys Eiddo Preswyl

Leasehold Valuation Tribunal

Reference LVT/0042/10/24

In the matter of Flats 1-36 (inclusive) and Penthouses 1 & 2 Glyn Garth Court Glyn Garth Menai Bridge Anglesey LL59 5PB

And in the matter of an application under Part IV of the Landlord and Tenant Act 1987

Applicant: Glyn Garth Court Flats Limited

Respondents: Leaseholders at Glyn Garth Court Flats Menai Bridge whose names are listed in the schedule hereto

Tribunal panel: Gwyn Eirug Davies -Tribunal Judge
Neil Martindale – Surveyor member
Hywel Eifion Jones – Lay member

Representation: Ian Alderson - solicitor for the Applicant

Mrs Karen Eastham – witness

None of the Respondents appeared and they were not represented

This matter was heard by video link on Microsoft Teams on the 22nd April 2025

No site meeting was arranged as it was not considered necessary.

Decision:

The application is granted

Clause 1 of the Lease is amended to read as set out in paragraph 8 hereof

New clauses numbered 1A, 1B and 1C (as set out in paragraph 9 hereof and as amended in paragraph 31 hereof) shall be inserted into the Lease after clause 1

Background

1. The Applicant company is the freehold owner of Glyn Garth Court Menai Bridge Anglesey (the Premises). The Premises is a 10-storey building containing 38 flats (36 flats and 2 penthouses) together with garages and gardens. The Applicant is owned by the Respondents.
2. The Respondents are the owners of the flats held under long residential leases for a term of 999 years commencing on the 23rd May 1966. All 38 leases are identical in form. A sample lease is contained in the bundle (pages 13- 26). All the leases together are referred to as 'the Lease' in this decision.
3. This application is made under section 35 Landlord and Tenant Act 1987 for permission to vary the Lease so as to allow the Applicant to collect by way of service charge an amount in anticipation of future expenditure and to build a sinking or reserve fund for that purpose.
4. The Landlord and Tenant Act 1987 is hereinafter referred to as 'the Act'
5. Section 35 of the Act reads as follows:

35. *Application by party to lease for variation of lease.*

(1) Any party to a long lease of a flat may make an application to the appropriate tribunal for an order varying the lease in such manner as is specified in the application.

(2) The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely—

(a) the repair or maintenance of—

(i) the flat in question, or

(ii) the building containing the flat, or

(iii) any land or building which is let to the tenant under the lease or in respect of which rights are conferred on him under it;

(b) the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);

(c) the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation;

(d) the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such

installations or not, and whether they are services provided for the benefit of those occupiers or services provided for the benefit of the occupiers of a number of flats including that flat);

(e) the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party;

(f) the computation of a service charge payable under the lease.

(g) such other matters as may be prescribed by regulations made by the Secretary of State.

(3) For the purposes of subsection (2)(c) and (d) the factors for determining, in relation to the occupiers of a flat, what is a reasonable standard of accommodation may include—

(a) factors relating to the safety and security of the flat and its occupiers and of any common parts of the building containing the flat; and

(b) other factors relating to the condition of any such common parts.

(3A) For the purposes of subsection (2)(e) the factors for determining, in relation to a service charge payable under a lease, whether the lease makes satisfactory provision include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.

(4) For the purposes of subsection (2)(f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if—

(a) it provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and

(b) other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and

(c) the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would either exceed or be less than the whole of any such expenditure.

(5) Procedure regulations under Schedule 12 to the Commonhold and Leasehold Reform Act 2002 and Tribunal Procedure Rules shall make provision—

a) for requiring notice of any application under this Part to be served by the person making the application, and by any respondent to the application, on any person who the applicant, or (as the case may be) the respondent, knows or has reason to believe is likely to be affected by any variation specified in the application, and

(b) for enabling persons served with any such notice to be joined as parties to the proceedings.

(6) For the purposes of this Part a long lease shall not be regarded as a long lease of a flat if—

(a) the demised premises consist of or include three or more flats contained in the same building; or

(b) the lease constitutes a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.

(8) In this section “service charge” has the meaning given by section 18(1) of the 1985 Act.

(9) For the purposes of this section and sections 36 to 39, “appropriate tribunal” means—

(a) if one or more of the long leases concerned relates to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) if one or more of the long leases concerned relates to property in Wales, a leasehold valuation tribunal.

6. If the grounds of the application under section 35 are established, then s38 of the Act enables the tribunal to make an order varying the Lease.

38. Orders ... varying leases.

(1) If, on an application under section 35, the grounds on which the application was made are established to the satisfaction of the tribunal, the tribunal may (subject to subsections (6) and (7)) make an order varying the lease specified in the application in such manner as is specified in the order.

(2) If—

(a) an application under section 36 was made in connection with that application, and

(b) the grounds set out in subsection (3) of that section are established to the satisfaction of the tribunal with respect to the leases specified in the application under section 36,

the tribunal may (subject to subsections (6) and (7)) also make an order varying each of those leases in such manner as is specified in the order.

(3) If, on an application under section 37, the grounds set out in subsection (3) of that section are established to the satisfaction of the tribunal with respect to the leases specified in the application, the tribunal may (subject to subsections (6) and (7)) make an order varying each of those leases in such manner as is specified in the order.

(4) The variation specified in an order under subsection (1) or (2) may be either the variation specified in the relevant application under section 35 or 36 or such other variation as the tribunal thinks fit.

(5) If the grounds referred to in subsection (2) or (3) (as the case may be) are established to the satisfaction of the tribunal with respect to some but not all of the leases specified in the application, the power to make an order under that subsection shall extend to those leases only.

(6) A tribunal shall not make an order under this section effecting any variation of a lease if it appears to the tribunal —

(a) that the variation would be likely substantially to prejudice—

(i) any respondent to the application, or

(ii) any person who is not a party to the application,

and that an award under subsection (10) would not afford him adequate compensation, or

(b) that for any other reason it would not be reasonable in the circumstances for the variation to be effected.

(7) A tribunal shall not, on an application relating to the provision to be made by a lease with respect to insurance, make an order under this section effecting any variation of the lease—

(a) which terminates any existing right of the landlord under its terms to nominate an insurer for insurance purposes; or

(b) which requires the landlord to nominate a number of insurers from which the tenant would be entitled to select an insurer for those purposes; or

(c) which, in a case where the lease requires the tenant to effect insurance with a specified insurer, requires the tenant to effect insurance otherwise than with another specified insurer.

(8) A tribunal may, instead of making an order varying a lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified; and accordingly any reference in this

Part (however expressed) to an order which effects any variation of a lease or to any variation effected by an order shall include a reference to an order which directs the parties to a lease to effect a variation of it or (as the case may be) a reference to any variation effected in pursuance of such an order.

(9) A tribunal may by order direct that a memorandum of any variation of a lease effected by an order under this section shall be endorsed on such documents as are specified in the order.

(10) Where a tribunal makes an order under this section varying a lease the tribunal may, if it thinks fit, make an order providing for any party to the lease to pay to any other party to the lease or to any other person, compensation in respect of any loss or disadvantage that the tribunal considers he is likely to suffer as a result of the variation.

7. The amended directions order dated 14th February 2025 identified the following issues to be addressed: i) what is the object to be achieved by the proposed variation), ii) is the proposed variation within the contemplation of section 35 of the Act and iii) if it does make an order varying the Lease should the tribunal order any person to pay compensation to any other person (s38(10) of the Act.
8. The object of the proposed variation is to include provision in the Lease to permit the Applicant to collect a service charge on account each year in respect of expenditure to be incurred in future years and through this to build a sinking or reserve fund. This variation is to be achieved by amending clause 1(c) of the Lease and inserting additional clauses clarifying the management of the reserve fund by the Applicant. The proposed amendment and the additional clauses are set out below. The relevant definitions are as follows:
 - 'Lessors' means the Applicant (Glyn Garth Court Flats Limited)
 - 'Lessee' means the leaseholder (together being the Respondent)
 - 'Annual day for payment of rent' means 1st June in each year
 - 'Lessor's covenants' mean the Applicant's covenants set out in clause 4 of the Lease

1(c) Also paying to the Lessors by way of further or additional rent from time to time such sum (hereinafter called 'the maintenance payment') as shall be determined to be the maintenance payment under the provisions hereinafter contained such last mentioned sum to be paid (subject to the provisions hereinafter contained) without any deduction on the annual day for payment of rent next ensuing after the expenditure by reference to which the same is

calculated the first of such payments to be made on the first day for payment of rent under the provisions hereinbefore contained AND

1(d) Also paying to the Lessors by way of further or additional rent such sum as shall be equal to one thirty-eighth part of the amount expended by the Lessors on the maintenance of the lawns or grass plots in front of Glyn Garth Court Flats such last mentioned sum to commence and be payable from the annual day for payment of rent which shall happen next after any moneys or expenses shall be so expended or repaid and to continue during the residue of the term.

*PROVIDED ALWAYS **and subject to clause 1A of this lease** it is hereby agreed that the maintenance payment for any year shall be one thirty-eighth of the amount of the cost of the Lessors during such year of complying with the Lessor's covenants hereinafter contained so that in calculating the cost to the Lessors for the purpose of this provision*

(a) The amount of all insurance premiums paid in accordance with the covenants hereinafter contained shall be disregarded and

(b) The cost of employing agents and managers shall be included AND PROVIDED ALSO that the Lessee shall pay to the Lessors on account of such maintenance payment as aforesaid the initial sum of £50.00 on the execution hereof and half yearly sums (on account as aforesaid) of such amount as may be determined by the Lessors from time to time on the first day of December and the first day of June in every year and Provided that during the first year of the term hereby granted the maintenance payment shall not exceed the sum of £100

9. It is further proposed that new clauses numbered 1A, 1B and 1C as set out below, are inserted after the existing service charge provisions:

1A This maintenance payment will include such sum as the Lessors determine as being a reasonable sum for anticipated expenditure by way of a contribution to sinking or reserve funds for items of expenditure referred to in clause 1 of this lease to be or expected to be incurred at any time during the remainder of the term of this lease

1B Any sinking or reserve fund will be kept in a separate bank account and any interest earned by the fund will be added to the fund.

1C Any sinking or reserve fund will be held by the lessors on trust for the lessees of the Glyn Garth Court Flats and will only be applied in accordance with the terms of clause 1A of this lease

10. The Applicant's covenants as landlord are contained in clause 4 of the Lease and the relevant sections are set out below:

ii) that the Lessors will at all times during the term hereby granted maintain the external walls and roof and approaches of Glyn Garth Court Flats (including as when required the cleaning and repointing of the external stone cement and stucco and brickwork) and the halls staircases lifts and landings and the external drainage gas and electricity services and water services therein in good and substantial repair and condition except as regards damage caused by any act or default of the lessee or the tenant or occupier of the demised premises making all necessary renewals and replacements as may be required thereto and will also as and when required paint the outside wood and iron of Glyn Garth Court Flats and all additions thereto with two coats of good oil and white lead paint in a proper and workmanlike manner.

iv) That the Lessors will redecorate in a proper and workmanlike manner the main halls staircases and landings of an in Glyn Garth Court Flats enjoyed by the Lessee in common with others at least once every five years Provided Always and it is expressly agreed that the Lessors shall not in any way be held responsible for any damage caused by any neglect or failure to maintain the premises in respect of any damage caused by any want of repair in or to any pipes or services thereof unless and until notice in writing of any such neglect failure want if repair or defect as aforesaid has been given to the Lessors by or on behalf of the Lessee and the Lessors have failed to make good or remedy such neglect failure want of repair or defect as aforesaid within time of receipt of such notice.

11. We are assisted in deciding this matter by the recent Upper Tribunal decision in **56 Westbourne Terrace RTM Company Limited v Poltuark, Davies and others [2025] UKUT 88 (LC)** where the Deputy Chamber President reviewed the case law relating to lease variations under s35 and gave clear guidance on how a tribunal should approach such applications.
12. Firstly, the tribunal should consider if the Applicant is entitled to make the application. In this case the Applicant is a party to a long lease (i.e. a lease with a term in excess of 21 years) and therefore entitled to make the application.
13. Secondly, we should identify if one of the grounds set out in s35(2) of the Act are made out. This application is made on ground s35(2)(a)(ii) and therefore we must be satisfied that the Lease ‘fails to make satisfactory provision with respect to the repair or maintenance of the building containing the flat’. Unless this ground is satisfied then we cannot make an order varying the Lease.
14. Previously, tribunals have approached the question of whether a lease fails to make reasonable provision by considering whether the terms of a lease are clear and workable and if so, those provisions were not deemed unsatisfactory. The Westbourne case clarifies that this is not the correct approach and outlines that ‘the better course of action is to identify the

provision which has been made in the lease, or which is missing from it and to consider whether in the circumstances which now exist that amounts to satisfactory provision in the ordinary understanding of these words.'

15. Clauses 1(c) and (d) of the Lease (as set out in paragraph 8 above) contain the provisions for collection of the maintenance payment.
16. The maintenance payment falls due on the 1st June in each year with each flat owner paying one thirty-eighth of the expenditure incurred in each year. There is a further proviso that the Applicant are entitled to claim payments on account in December and June in each year but only on account of the expenditure for that particular year.
17. The Lease does not allow the Applicant to collect any payments on account of anticipated expenditure and in consequence to build a reserve or sinking fund to cover significant future maintenance costs.
18. The Applicant states that the practical effect of this is twofold. Firstly, it is difficult to plan and fund major expenditure. Any payments on account have to be allocated during the year when the expenditure is incurred. This results in any shortfall being charged to the flat owners at the end of the service charge year or any surplus being credited to the flat owners. Secondly this creates a spike in service charges during years when major works have been undertaken rather than being able to spread the cost over a number of years. This issue was highlighted in 2022 -2023 when costs for major works amounting to £1,172,072.00 were incurred, resulting in each flat owner having to make a capital payment of £21,000 in addition to their annual maintenance charge.
19. These works included:
 - Redecoration of Straits elevation, east and west gable elevations and the roadside elevation
 - Re-weatherproof the main roof of the building over Penthouse 1
 - Re-weatherproof terraces for Penthouses 1 and 2
 - Replace guarding to penthouse 1 and Penthouse 2 terrace to include lead (or similar) capping to the dwarf walls below the guarding
 - Insulate and waterproof the V balconies on the Straits elevation and form larger diameter drainage outlets
 - Penthouse 1 and 2 external walls- replace plywood panels and renew stepped lead flashings where work not already done (i.e. roadside elevation and part P2 elevation).
20. The building is in an exposed location on the banks of the Menai Strait, which means that regular and extensive maintenance is required.

21. The Applicant has consulted with the flat owners, by letter on the 11th September 2023 and on the 18th December 2023, to notify them of the intention to seek a variation to the Lease. Seven responses were received. None of the responses opposed the proposal. There is no record of any of the flat owners objecting to the proposed variation. We were told by Mrs Eastham that some leaseholders have expressed their support for the proposed changes to her.
22. It seems that when the Lease was originally drafted little thought was given to the need to raise and maintain a reserve or sinking fund and it is surprising that such a clause was not included in a lease of this length. The original drafter had little inclination of the high maintenance costs for premises of this type and the financial burdens that are now placed on leaseholders in having to discharge significant liabilities in the year that they are incurred. In the circumstances which now exist the service charge clauses do not amount to satisfactory provision for the maintenance of the building.
23. As we are satisfied that the grounds under s35(2)(a)(ii) are made out, then s38(1) of the Act enables us (subject to the provisions of subsection (6)) to make an order varying the Lease, either in accordance with the application or in such manner as we see fit.
24. Before making any variation, we must consider if the variation that we are being asked to approve is likely substantially to prejudice any person, where such prejudice could not be compensated by payment of a sum of money.
25. No person has objected to the proposed variation or suggested that they will be prejudiced by the variation. We note that the Applicant is owned by the leaseholders. Each leaseholder is a member of the Applicant company for such period as coincides with their ownership of a flat. A leaseholder ceases being a member when they dispose of their interest in the flat and the new flat owner then becomes a member. All the leaseholders will be affected in the same way by the variation. It is therefore difficult to identify any person who is likely substantially to be prejudiced by the proposed variation.
26. Mr Alderson in his skeleton argument makes the following submissions, i) the purpose of the sinking fund is to level out (timewise) expenditure for major works, ii) the creation of a sinking fund pools the risk between past, current and future leaseholders and as such there is no actual or likely loss or disadvantage. It is suggested that such a change could increase the value and/or saleability of the flats, iii) the variation benefits all current and future leaseholders and iv) given that the Applicant is a company owned by the leaseholders with no source of income other than the service charges and the ground rent then any order to pay money by way of compensation is likely to frustrate the variation.

27. We accept the submissions made by Mr Alderson. We find that there is no person likely substantially to be prejudiced by the proposed variation (s38(6)(a)).
28. Further, in considering s38(6)(b), we conclude that there is no other reason why it would not be reasonable in the circumstances for the variation to be effected.
29. Finally, with regard to s38(10), for the reasons set out above, we do not make any order for the payment of compensation to any person.
30. No one has applied for an order under s20C Landlord and Tenant Act 1985 and accordingly we make no such order.
31. The application is therefore granted in the terms of the application, subject to a slight amendment to the proposed new clause 1B so as to allow for the sinking or reserve fund to be retained in one or more account. This will give the Applicant some flexibility in managing and retaining the funds. This amendment can be effected by including the words 'or accounts' after the words 'separate bank account'.

Dated the 22nd day of April 2025

Tribunal Judge Gwyn E Davies

Schedule

List of Respondents (as at 12th February 2025)

| Flat | Title no | Registered Proprietor(s)/ Mortgagee |
|-------|----------|--|
| 1 & 2 | WA7300 | Janet Howell Note: It is understood that Flat 2 is now owned by Jackson Hughes Management Ltd, but this is not reflected on the Land Registry title register. |
| 3 | WA8377 | Christopher John Wallace |
| 4 | WA8106 | Edgar Williams & Elizabeth Catherine Williams |
| 5 | WA11672 | Peter Ronald Hunt & Judith Margaret Hunt |
| 6 | WA12312 | Sally Ann Elizabeth Lyons & John Richard Greenhill |
| 7 | WA8018 | Ann Rodwell |
| 8 | WA8017 | James Peter Mimmagh & Helen Patricia Mimmagh |
| 9 | WA13933 | Wyn Thomas & Janet Thomas |
| 10 | WA9689 | Anthony Joseph Browne & Sian Elizabeth Browne |
| 11 | WA7147 | Mark Edmond Rogers & Catherine Joanne Rogers |
| 12 | WA164646 | Gareth Edward Hughes & Sandra Ann Hughes |
| 13 | WA12260 | Steven Collier & Rosemary Jean Collier Note: It is understood that Mrs Collier has died, but this is not reflected on the Land Registry title register. |
| 14 | WA8369 | Michael Foster & Anne Foster |
| 15 | WA7959 | Shirley Goldsmith & Alan David Goldsmith (Mortgagee Aviva Equity Release UK Limited) Note: Mr Goldsmith has died, but this is not reflected on the Land Registry title register. It is understood that a possession order has been made. |
| 16 | WA10382 | Allan Wynne Jones & Enid Jones |
| 17 | WA12566 | Michael Derek Goddard & Philip James Goddard |
| 18 | WA9464 | Elizabeth Mary Plaistow |
| 19 | WA7146 | Christine Margaret Krolick |
| 20 | WA7506 | Peter Woods |

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| 21 | WA9182 | Gareth Ioan & Sian Elin Anna Ioan |
| 22 | WA46125 | Brenda Marian Johnson |
| 23 | WA9688 | Richard Harrower |
| 24 | WA7704 | Philipmina McFedries |
| 25 | WA9459 | Jean Hudson Jones, Richard Alwyn Jones, Sion Peter Hudson & Dafydd Andrew Jones |
| 26 | WA7798 | Paul Stapley Tovey & Ann Elizabeth Seekins |
| 27 | WA9998 | Rhian Hughes Morris |
| 28 | WA9347 | Christopher Stuart Knight & Frances Jane Knight |
| 29 | WA14308 | Colin Settle |
| 30 | WA14486 | Carl Evans & Tracey Josephine Evans |
| 31 | WA7241 | Margaret Joan Webster |
| 32 | WA46068 | Jane Notley |
| 33 | WA36247 | Christopher John Hand |
| 34 | WA34653 | James Roland Bragg |
| 35 | WA7400 | Colin Shepherd, Michael John Shepherd & Richard James Shepherd |
| 36 | WA10071 | David James William Morewood |
| Penthouse 1 | WA8916 | Paul Martyn Bracegirdle & Jeanne Mary Bracegirdle |
| Penthouse 2 | WA24893 | Richard Stephen Davies |