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

**Case Reference** : **LON/OOAC/LVL/2013/0016**

**Property** : **240 STATION ROAD EDGWARE  
HA8 7AU**

**Applicant** : **RICHARD ARCHER PROPERTY  
TRADING LTD**

**Representative** : **Mr J Upton of Counsel**

**Respondent** : **SADHANA PANDYA (1)  
JAMES ERNEST JOHN LOGAN (2)**

**Representative** : **The first named Respondent  
accompanied by Ms K Pandya and  
Mr E Lishak**

**Type of Application** : **Variation of lease under Part IV of  
the Landlord and Tenant Act 1987**

**Tribunal Members** : **JUDGE T RABIN  
MRS SARAH REDMOND MRICS  
BSc (Econ)**

**Date and venue of  
Hearing** : **8<sup>th</sup> November 2013 at 10 Alfred  
Place, London WC1E 7LR**

**Date of Decision** : **2<sup>nd</sup> December 2013**

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**DECISION**

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## **Introduction**

1. The Tribunal was dealing with an application made by Richard Archer Property Trading Ltd (“the Applicant”) for an order under Part IV of the Landlord and Tenant Act 1987 (“the Act”) for a variation of the leases of Flats 240A and 240B Station Road HA8 7AU (“the Flats”). The Flats are located on the first and second floors respectively of 240 Station Road aforesaid (“the Building”). The Applicant is the landlord under the two leases of the Flats and the Respondents are the long leaseholders of the Flats.
2. Mr Upton explained that the Building as described in the leases is a detached property with 242 Station Road. Following a transfer to a third party of 242 Station Road, the Building now consisted of a semi-detached property with a single commercial premises on the ground floor and one flat on each of the first and second floors. After the sale there were parts of the Building and 242 Station Road aforesaid that were shared with corresponding access and support rights for each of the two properties. The common terrace on the first floor was divided down the centre but the shared yard on the ground floor and the staircase leading to the first floor terrace are now part of the 242 Station Road aforesaid but with rights of access in favour of the Applicant and people authorised by them. Mr Upton produced a copy of the transfer dated 24<sup>th</sup> January 2003 where 242 Station Road aforesaid was sold as well as plans showing the extent of the Building and 242 Station Road and the areas demised to the Respondents.

## **The hearing**

3. The Applicant was represented by Mr Jonathan Upton of Counsel who was directly instructed by the Applicant and the Respondents were represented by the first named Respondent, Ms S Pandya (“Ms Pandya”) who was accompanied by her sister, Ms K Pandya and a friend Mr E Lishak. The hearing took place on 8<sup>th</sup> November 2013 and the Tribunal met again on 22<sup>nd</sup> November 2013 in order to consider the terms of the draft order and the evidence given.
4. The Tribunal received a bundle of documents, delivered not in accordance with directions of the Tribunal and Ms Pandya handed in some documents. Following the conclusion of the hearing Mr Upton produced a draft order varying the leases and correctly coloured plans.
5. Ms Pandya made an application for the matter to be struck out as the Applicant had failed to comply with the Tribunal’s directions. She also did not wish the application to proceed since she did not want the leases to be altered. She produced a letter from the second named Respondent confirming that Ms Pandya was authorised to represent him.
6. In the Tribunal’s view there was no prejudice to the Respondents by late service of documents as time had been allowed to consider these

and there was no new material. In addition, the Tribunal would consider any objections to the proposed variation made by Ms Pandya

7. Ms Pandya relied upon Section 35(6) of the Act as one of the grounds of her objection. This section is set out in the Appendix. Her objection was based on the fact that the Building was described in the leases as 240 and 242 Station Road aforesaid. However, there is no requirement for the description of the Building and Flats in the leases to follow the wording of the Act. Ms Pandya had a misguided view of the legal position as Section 35(6) of the Act referred to the provisions not applying if the demised premises consisted of “three or more flats in a building”. Her argument was that the Flats were two of four in the building as currently described in the leases and her flat was one of four in the building. The description of “the Building” in the leases refers 240 and 242 Station Road. The Flats are described as “the Mansion” together with Flats 242 A and B, located in the adjoining Building. The restriction on variation relates to a situation where three flats may have been included in the same lease. In this case, each of the Flats is separately demised under the individual leases that Applicant wishes to vary, not to the building in which the flats are located. Mr Upton had clearly explained the position in the Applicant’s statement in reply. Mr Upton had made this explanation in the Applicant’s statement in reply. The Tribunal could see no merit in the application to strike out and it was therefore refused
8. Ms Pandya said she was unhappy about the proposed changes. In her view the leases in their present form were an accurate reflection of the rights and obligations. She could see no need for the proposed variations and she feared that these would lead to an increase in her liability for service charges. In her view the Applicant wished to vary/sever the lease so that they can then charge all the service charges to the Respondents, instead of sharing the service charges with the other two flats and the two commercial premises that also share usage. The financial burden would be too high for the Respondents to bear and this would be unfair unjust and inequitable and they would be at risk of losing their homes.
9. Mr Upton explained that the Applicant was seeking the variation as the management of the Building impossible. The leases as they stand fail to make satisfactory or proper provision for repair, insurance and maintenance of installations. In particular he made three following points:
  10. Section 35 (2) (a) (ii) of the Act requires that a lease makes satisfactory provision for repair of the Flats and the Building. By paragraph 5 of Part 2 to Schedule 5 of the leases of the Flats, the landlord is required to repair both 240 and 242 Station Road aforesaid. The Respondent no longer owns 242 Station Road and has no control over it. Similarly, under Schedule 7 of the leases of Flats, the tenants are required to contribute towards the costs incurred by the landlord in carrying out its obligations under Schedule 5. In simple terms the Respondents are

currently technically required to contribute towards the costs of repairing 242 Station Road.

11. Section 32(2) (b) of the Act requires that a lease make satisfactory provision for insurance of the Building. By paragraph 4 of Part 2 to Schedule 5 of the leases of the Flats, the landlord is required to insure both 240 and 242 Station Road aforesaid and the tenant is required to contribute to this insurance. In effect, the landlord does not have an insurable interest in 242 Station Road aforesaid and there is no reason for the tenants of the Flats to covenant to pay towards this insurance.
12. Section 35 (2)(c) of the Act requires that a lease make satisfactory provision for the repair or maintenance of any installations. These include gas, electricity and water supplied, television aerials and the like, provided that the service is necessary for the reasonable enjoyment of the occupiers of the Flats. By Part 7 of Part 2 of Schedule 5 of the leases of the Flats, the landlord is required to keep the conducting media in good repair. This obligation encompasses both 240 and 242 Station Road and therefore includes an obligation in relation to matters no longer under the Applicant's control.
13. Section 35(2) (d) of the Act required a lease makes satisfactory provision for the maintenance of any services. By Schedule 6 the landlord under the leases has discretion to provide services as set out in Schedule 6. There is an obligation on the part of the tenants to contribute towards the costs and this means that the Respondents have an obligation to contribute to services beyond those relating to 240 Station Road aforesaid alone.
14. Ms Pandya is concerned that the variation will result in an increase in her liability for contribution to the services. In fact just the opposite is the case. The Respondents will each only be liable for half of the cost of services directly relating to the two flats and one third of the cost of services relating to the Building as redefined and one quarter of the cost of maintaining the staircase that is used by the Flats and the owners of the flats in 242 Station Road. There will be no obligation on the part of the Respondents to pay towards the costs of maintaining the yard at the rear of both 240 and 242, currently in the ownership of 242 Station Road aforesaid that the Tribunal understands is currently used for parking for the commercial premises.
15. These variations will have the effect of clearly defining the extent of the Building and the contributions of the Respondents. In essence, these will remain unchanged.

## **THE LAW**

16. The statutory provisions dealing with variations of leases are contained in Part IV of the Act as amended by the Commonhold and Leasehold Reform Act 2002 ("the "2002 Act"). The relevant extract is in the Appendix.

## **DECISION**

17. The Tribunal considers that the leases of the Flats no longer reflect the position with regard to the Building. This has been the situation since 2003 when 242 Station Road aforesaid was sold and the Tribunal cannot understand why it has taken nine years for steps to be taken for the issues to be resolved.
18. It is clear to the Tribunal that variations in the leases in accordance with Sections 35(2), 2(b), 2(c) and 2(d) are required in order to make satisfactory provisions to reflect the current ownership of the freehold interests in 240 and 242 Station Road aforesaid. The Tribunal is satisfied that the amendments proposed by the Applicant and agreed with Ms Pandya at the hearing are appropriate.
19. Although there were no submissions with the regard to compensation under Section 38(10) of the Act, the Tribunal considers that the Respondents will not suffer a loss or disadvantage by the variation and in fact will benefit from clarification of the service charge liabilities. The Tribunal will make no order for compensation under Section 38(10) of the Act.
20. The Tribunal is empowered to make an order varying the Lease if the grounds upon which the application was made are established to the satisfaction of the Tribunal and the Tribunal is satisfied that the variation would be appropriate. A copy of the Order under Section 38 of the Act is attached as slightly amended by the Tribunal

## **SECTION 20 OF THE LANDLORD AND TENANT ACT 1985 (“the 1985 Act”)**

21. Ms Pandya made an application that the Tribunal make an order under Section 20C of the Landlord and Tenant Act 1985 to the effect that the costs of these proceeding should not be regarded as relevant costs for the purpose of calculating the service charges. Since the variation is at the request of the Applicant and the issues with the lease terms should have been resolved in 2003, the Tribunal considers it is appropriate for an order under section 20C of the Act to be made.

Judge T I Rabin

Date: 2<sup>nd</sup> December 2013

## APPENDIX of relevant legislation

### Landlord and tenant Act 1987

#### 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 court 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) Rules of court 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.

**DRAFT ORDER**

**IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)**

**CASE REF:**

**LON/00AC/LVL/2013/0016**

**IN THE MATTER OF PART IV OF THE LANDLORD AND TENANT  
ACT 1987**

**PREMISES: 240 STATION ROAD, EDGWARE, MIDDLESEX HA8  
7AU**

**BETWEEN**

**RICHARD ARCHER PROPERTY TRADING LIMITED**

**Applicant**

**-and-**

**(1) SADHANA PANDYA**

**(2) JAMES ERNEST JOHN LOGAN**

**Respondents**

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**ORDER**

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IT IS ORDERED that:

1. The leases referred to in Schedule 1 to this order shall be varied under s.38 of the Landlord and Tenant Act 1987 in accordance with Schedule 2 to this order.
2. A memorandum of the variations effected by this order shall be endorsed on each of the said leases and any counterpart leases.

**Schedule 1**

1. Flat 240A Station Road, Edgware HA8 7AU dated 27 November 1984 for a term of 99 years from 25 March 1984 and registered under Title Number NGL517200



2. Flat 240B Station Road, Edgware HA8 7AU dated 26 March 1985 for a term of 99 years from 25 March 1984 registered under Title Number NGL523121

## **Schedule 2**

Clause 2.1 – vary as follows: “the Building” means the property at and known as 240 Station Road Edgware Middlesex registered under Title Number AGL161323 and the building erected on part thereof all of which property is shown on the plans 2, 3 and 4 annexed hereto edged red yellow”

Clause 2.2 – vary as follows: “The Mansion” means the part of the Building comprising the two flats known as 240A and 240B Station Road Edgware Middlesex together with the common parts

Clause 2.5 – substitute for the entire paragraph: “the common parts means the internal staircase, landings, paths, railings and entranceways in Title Number AGL161323 the use of which is or may be common to the Tenant or occupier of the Flat and to the tenant or occupier of any of the other flats or parts of the Building and the occupiers of 242, 242A or 242B Station Road and the individual staircases leading from the first floor to the second floor of the Building and the landings at second floor level.”

Schedule 1, Part 3 – substitute: “Plan 1” for “the Plan”

Schedule 2, para 1 – add at the end: “and the external staircase leading to the entrance of the Mansion and the area hatched blue on Plan 2”

Schedule 5, Part 2 – *add* “10. To keep the external staircase leading to the entrance of the Mansion in good repair and condition”

Schedule 7, para 1.3 – vary as follows: “The Service Charge” means the fair proportion of the Total Service Cost attributable to the Flat which fair proportion shall be:

- 1.3.1 one half of the Total Service Cost insofar as it relates to the Mansion but not to other parts of the Building;
- 1.3.2 one third of the Total Service Cost insofar as it relates to the Building; and
- 1.3.3 one quarter of the Total Service Cost insofar as it relates to the external staircase leading to the Mansion

PROVIDED THAT if in the reasonable opinion of the Landlord it should at any time or time for any reason become necessary or equitable to do so the Landlord may recalculate the bases on which such fair proportions (or any of them) are calculated and whether in respect of the whole of the expenditure concerned or only part thereof and in such event the Landlord shall notify the Tenant accordingly and in such case as from the date of the such event the new fair proportion or proportions shall be substituted for that or those previously in effect.

The Plan: Renamed Plan 1 and Plans 2, 3 and 4 (attached to this order) added

### **Schedule 3**

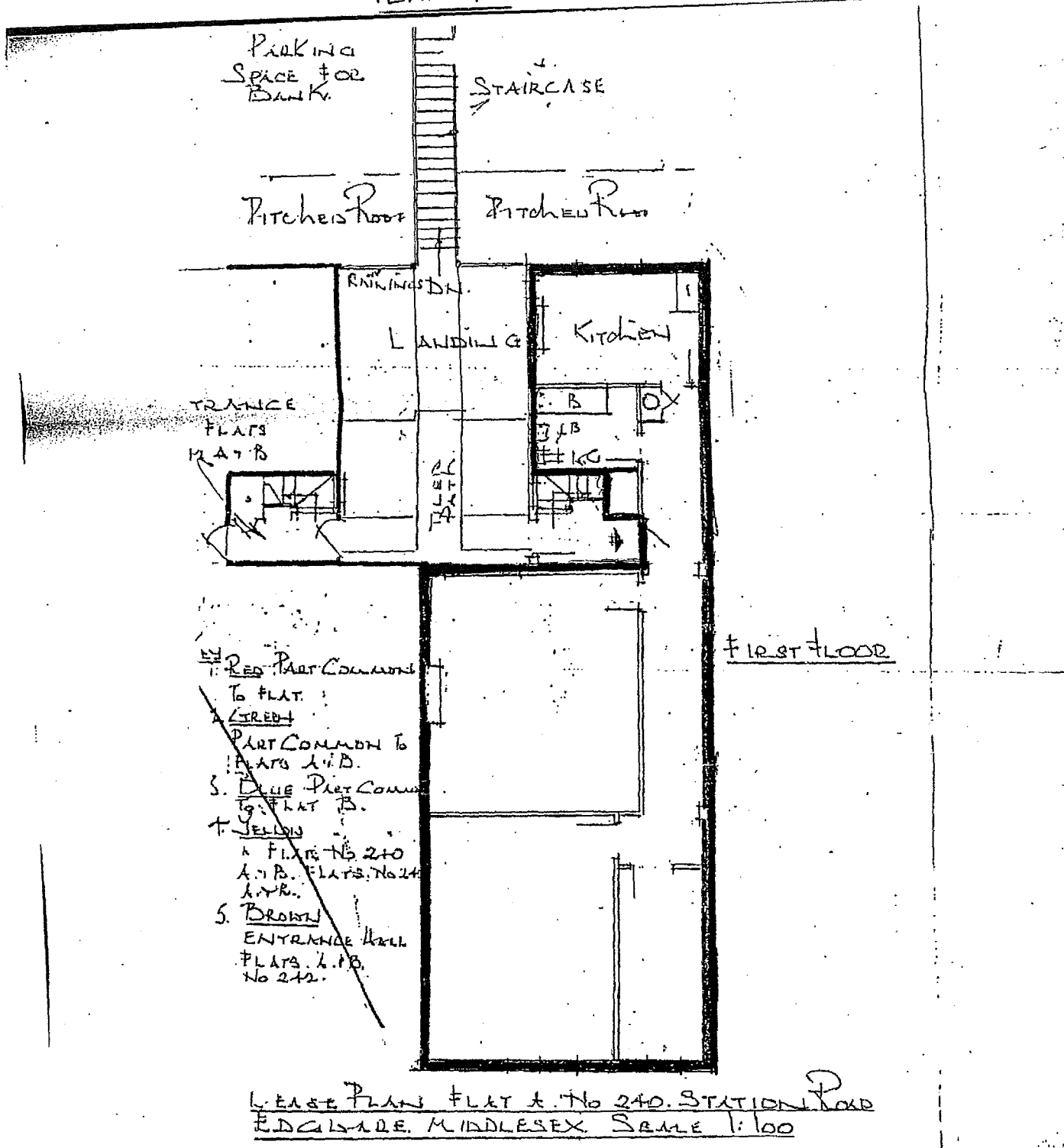
The variation to the Leases made by Schedule 2 shall be protected by the entry of agreed notices in the registers at HM Land Registry appertaining to the respective Leases. For which purpose Richard Archer Property Trading Ltd shall apply as soon as practicable under rule 81 of the Land Registration Rules 2003 for the entry of agreed notices in the registers appertaining to the respective Leases that give proper notice of the variations to the Leases that are made by virtue of paragraph 2 of this Order. The said applications to HM Land Registry shall be

- (a) made in Land Registry Form AN1; and
- (b) accompanied by a certified copy of this Order

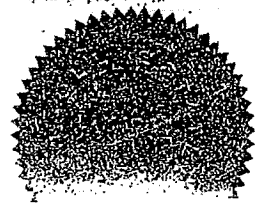
Upon such application by the Chief Land Registrar and/or his delegates are requested by the Tribunal to accept the certified copy of this Order as the order of the Tribunal

For the avoidance of doubt the Chief Land Registrar and/or his delegates are requested by the Tribunal, upon the application to be made the Applicant to HM Land Registry, to enter the proposed agreed notices.

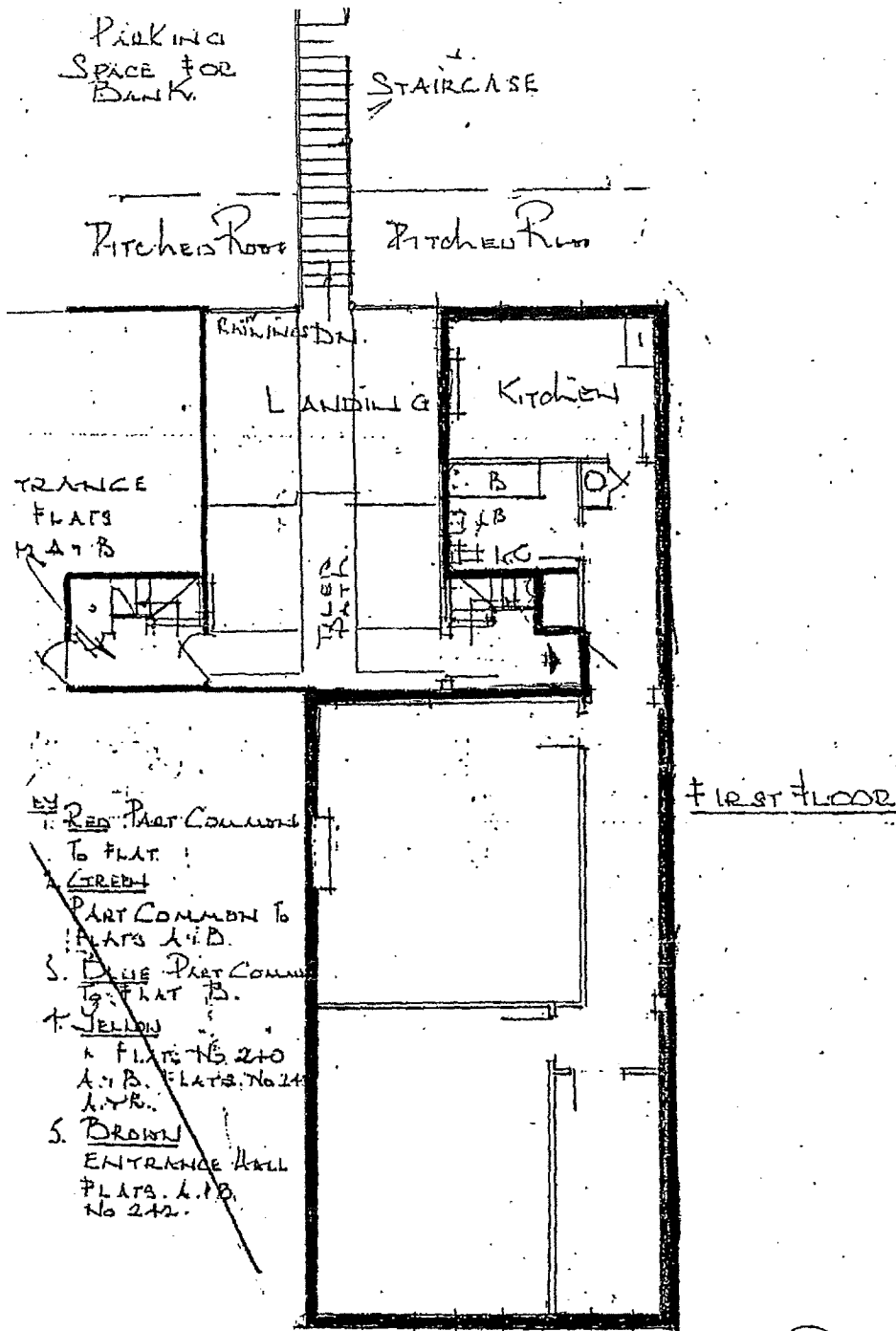
PLAN 1



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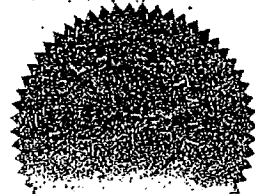


PLAN 1



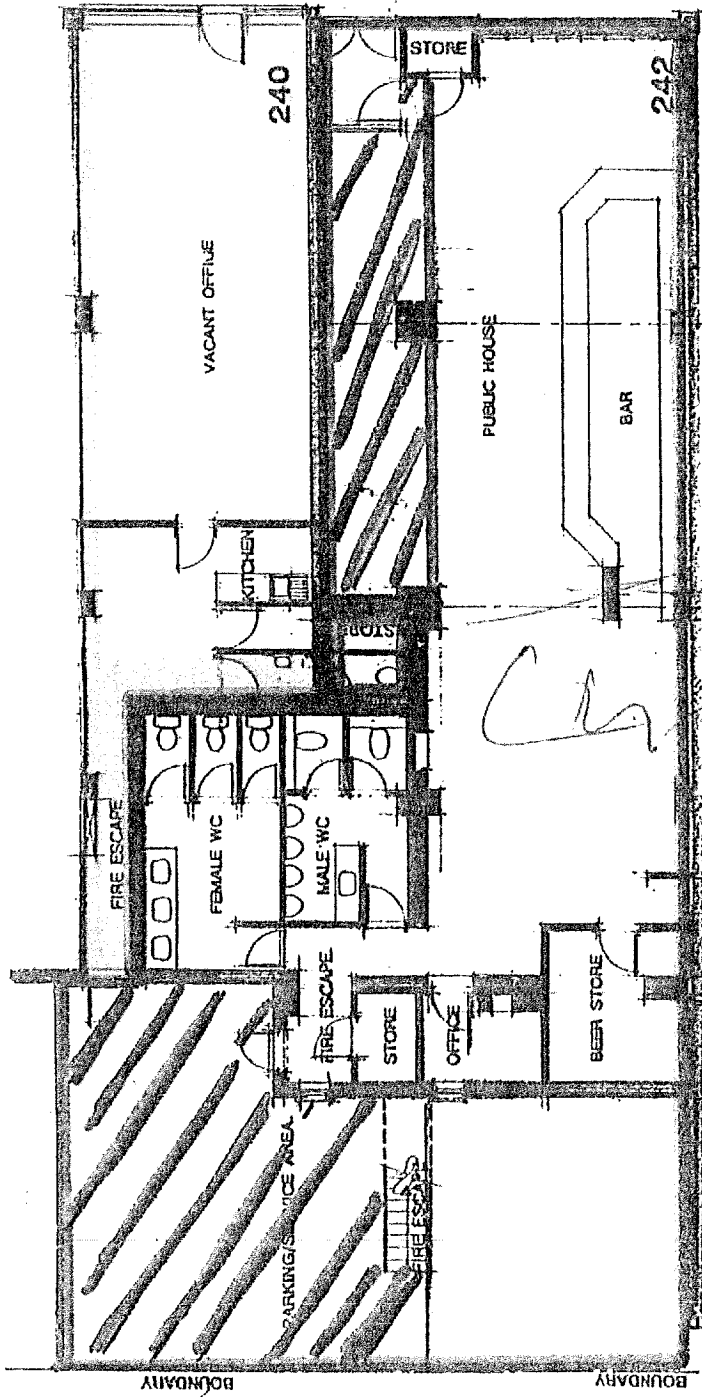
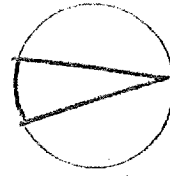
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 EDGWARE, MIDDLESEX SCALE 1:100

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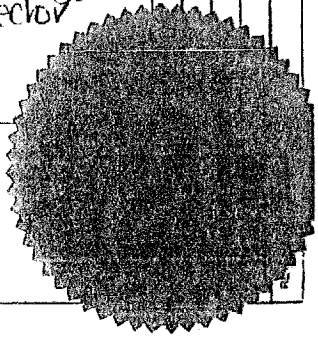
PLAN 2

STATION ROAD



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*J. M. O'Connell*  
Director  
*Glenn Higgins*  
E.J. Higgins  
Director



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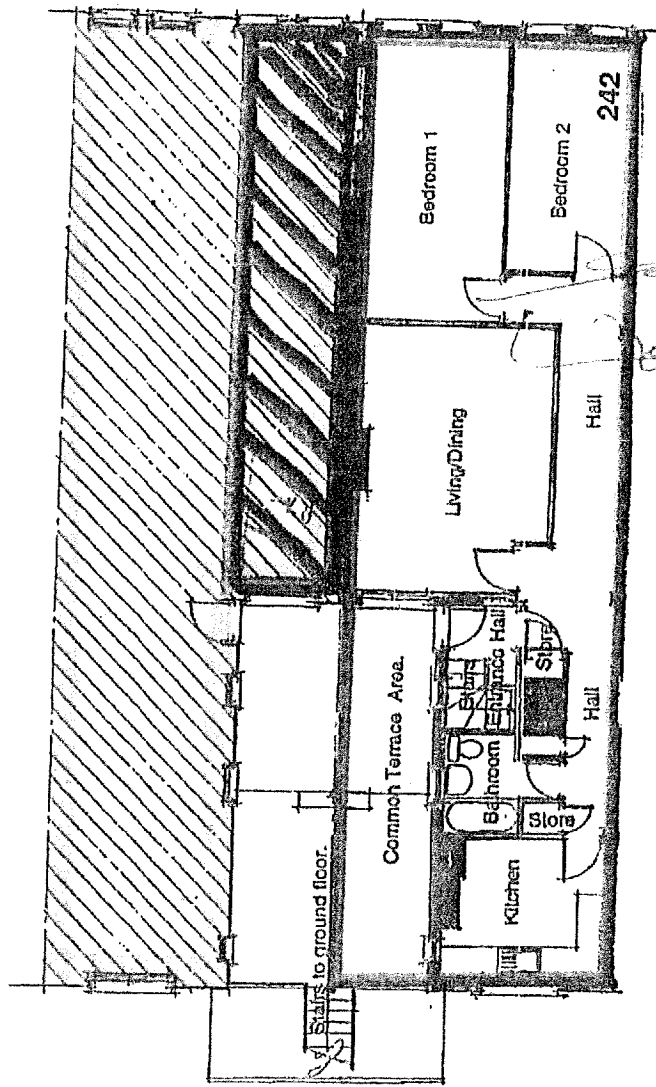
PLAN 3

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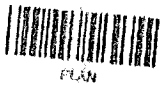
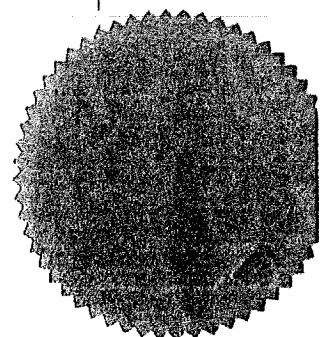
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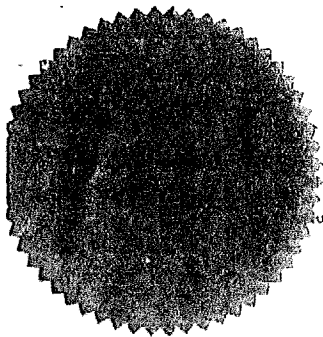
STATION ROAD



FIRST FLOOR

*[Signature]*  
R.M. O'Connell  
Director  
*[Signature]*  
E.J. Higgins  
Director





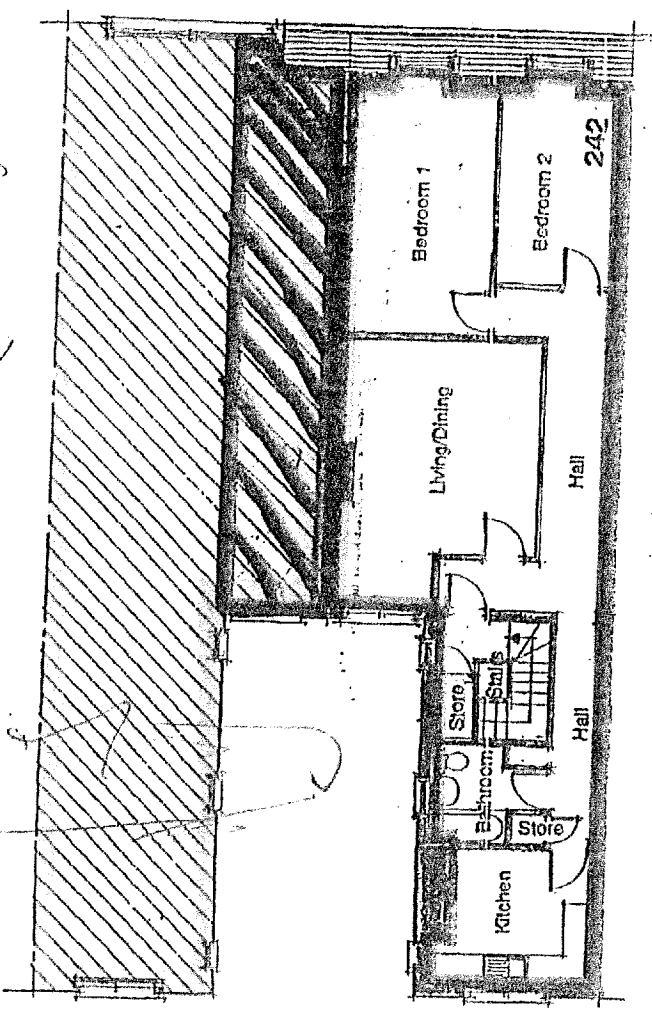


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 E.J. Higgins  
 Director  
  
 F.W. O'Connell  
 Director



SECOND FLOOR

CEDAR LANE



PLAN 4