



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

**Case Reference** : CHI/00HA/LSC/2023/0038

**Property** : 1 Abbey St, Bath, BA1 1NN

**Applicant** : 1 Abbey St Bath Management Limited

**Representative** : Michael Braddick, Director

**Respondent** : Averbell Investments Limited Flat 1  
Jonathan Dancourt-Cavanagh Flat 2  
Geoffrey Wilson Flat 3  
Mrs. P M McIlwraith Flat4  
Quirijn Jean Stourton Den Rooijen (Flat5)  
Melanie Hudson of Hamptons for Flat 5

**Type of Application** : Determination of Service Charges (Section  
27A of the Landlord and Tenant Act 1985)

**Tribunal Member(s)** : Judge Tildesley OBE  
Mrs A Clist MRICS

**Date and venue of  
Hearing** : Havant Justice Centre  
30 June 2023

**Date of Decision** : 25 July 2023

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**DECISION**

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## **Background**

1. The Applicant seeks a determination that the Respondents are liable to contribute by way of a service charge to the costs of repairing the chimney flue on the gable end of the building. The costs have been estimated at £11,657 which includes VAT and a 15 per cent contingency with an additional £3,000 including VAT for surveyors.
2. The issue to be decided by the Tribunal is whether the Applicant is liable under the respective leases to repair the chimney and if so are the Respondents liable to contribute towards the costs of the repair as service charges? There is no dispute about the reasonableness of the estimated costs.
3. The Property is a five storey Grade 2 listed building in the centre of Bath built around 1760. The building is constructed of Bath Stone with gable ends of rough stones and a tiled mansard roof. The chimney which is at the heart of the dispute is located on the gable wall facing the East and Abbey Square and sits on the roof of 9 York Street which has been empty for nearly four years. The chimney is a substantial structure, 990mm wide and 1780mm in length.
4. The freehold title of the Property is held by John Braddick and Catherine Braddick. John Braddick is the brother of Michael Braddick who is the director of the Applicant. The property has been in the ownership of the Braddick family since the 1950's and was converted in the mid 1980's.
5. The property is a mixed use building with commercial outlets on the ground floor, and five residential units on the first, second and third floors. The residential units are let on long leaseholds. Flats 1 to 4 are of similar size and design and are located on either side of the Property on the first and second floors. Flat 5 is larger and occupies the whole of the third floor which comprises the space immediately below the roof.
6. The leases for the residential units are for terms of 999 years from 25 March 1984 and are in the same form. The long leaseholders are required to pay a service charge. The leaseholders of Flats 1-4 contribute 12.5 per cent each towards the service charge, whilst the contribution of the leaseholder of Flat 5 is 14 per cent. The owners of the commercial units contribute the remaining 36 per cent of the charges. The residential leases are tripartite, the freeholder, the Applicant as the Management Company and the long leaseholder. Under the leases the Applicant is responsible for the performance of the landlord's covenants for which it is entitled to recover service charges from the leaseholders. The Applicant has seven shareholders including the five leaseholders holding one share each and two directors.

7. In or around June 2022 the contractors carrying out repointing works on the Property identified a crack in the chimney extending from the outside into the flue. On 8 June 2022 the Applicant's surveyor confirmed that a structural engineer's report should be obtained urgently to assess the risk of collapse of the chimney which could spill out into Abbey Place, popular with both residents and visitors. On 22 June 2022 the structural engineer attended and three metal bands were fixed to provide temporary strapping to secure the loose stones on the chimney.
8. The structural engineer found that a combination of repairs unsympathetic to soft permeable masonry, lack of maintenance and the bulging of the masonry have resulted in a number of defects in the chimney stack which either required immediate attention or may be addressed as part of a longer-term maintenance strategy. The engineer added that the two loose masonry units to the bottom right of the chimney stack presented the most immediate concern as there was very little to stop these units falling from height. The engineer concluded that structurally the shearing of the chimney at the returns and the central dividing wall had greatly weakened the face of the chimney. Currently despite the extent of movement the chimney would remain stable under its own self weight. The location of the chimney however would result in large suction forces being applied to the face of the chimney which could lead to failure given further deterioration combined with a large storm event.
9. The engineer recommended two courses of action: a medium term or a permanent solution which involved the demolition of the stack over a height of 2000mm. The engineer favoured the permanent solution because the costs were not significantly greater than the medium term solution.
10. The structural engineers quoted £4,500 (VAT inclusive) to produce a detailed schedule of works for the permanent solution and recommended that the work on the chimney to be done within three months. The Applicant authorised the production of a detailed schedule of works. The Applicant received the schedule of works in January 2023.
11. The Applicant was hampered by the uncertainty about who was responsible for the repair of the chimney between the owner of the Property and the owner of 9 York Street. According to the Applicant, it was not clear from the deeds for the Property whether the chimney was part of its structure. Further the Applicant had not been able to obtain a copy of the deeds for 9 York Street, the title of which was not registered with HM Land Registry. The owner of 9 York Street had died in June 2021, and no probate had been issued in respect of his estate. The person who the Applicant believed had inherited the estate was not responding to communications.

12. The Applicant also had been in contact with Bath and North East Somerset Council. At the most recent meeting on 11 May 2023, Building Control expressed the view that the building was secure. The Planning Department was concerned about the dilapidation of 9 York Street which was a listed building, and was considering the issue of a repairs notice. The Applicant concluded that the Council's approach to the problems at 9 York Street was slow and disjointed. The Applicant anticipated that it would take at least several months if not years to resolve the problems at 9 York Street.
13. Despite the uncertainty about who was responsible for the repairs, the Applicant decided to progress the works. On 17 May 2023 the Tribunal granted the Applicant dispensation from consultation in respect of the commissioning of a structural report from June 2022 and the subsequent schedule of works. The dispensation, however, did not extend to the carrying out of the repairs identified in the schedule of works.
14. On 20 March 2023 the Applicant applied for a determination of the service charges on account in respect of the costs for the proposed repairs to the chimney. On 26 May 2023 the Tribunal directed a hearing of the application on 30 June 2023. The Tribunal required the Respondents to complete a pro-forma indicating whether they agreed or disagreed with the Application and if they disagreed to state their reasons why.
15. The Tribunal notes that the Applicant first informed the leaseholders of the proposed works on 17 May 2022. On 21 June 2022 the Applicant circulated a summary of the issues to the leaseholders which was followed up by a copy of the structural engineer's report on 3 August 2022. The Applicant sent the leaseholders on 3 March 2023 a Stage 1 Notice under section 20 of the 1985 Act setting out the scope of the works and the reasons why the works had to be carried out. The notice invited observations from the leaseholders and invited them to propose the name of a person to provide an estimate for the works. The consultation ended on 6 April 2023.
16. Three Respondents completed the pro-forma. The leaseholders for Flats 2 and 4 agreed with the Application. The Leaseholder of Flat 1 disagreed with the Application, and made the following objections:
  - The ownership of the chimney was unclear so there could be no viable legal reason for the Applicant to take it upon itself to spend monies on repairs and expect the leaseholders to contribute to the costs of those repairs.
  - There was no urgency to carry out the repairs in view of the Council's acknowledgement that the chimney was secure.

17. The Tribunal noted that the leaseholder of Flat 3 had responded to the section 20 consultation, stating that he agreed with the urgent repair to the chimney.
18. The Tribunal heard the Application on 30 June 2023 at Havant Justice Centre. Mr Michael Braddick for the Applicant attended by video link. None of the Respondents chose to appear.
19. The Tribunal had before it a bundle of documents which was supplemented by the hearing bundle for the application for the dispensation of consultation requirements. The Tribunal did not inspect the property. The Tribunal, however, had before it a series of detailed photographs taken by the surveyor and the structural engineer showing the position and the condition of the chimney. The Tribunal also viewed the property on Google.

### **Consideration**

20. The issues for the Tribunal are whether the Applicant is liable under the leases to repair the chimney, and if so whether the leaseholders are liable to contribute to the costs of the repair through the service charge.
21. The Tribunal starts with the terms of lease, and refers to Flat 1 as a specimen lease. The lease is made between J L S Braddick Esq and Royton Apartments Limited of the first part, 1 Abbey Street Bath Management Limited of the second part, and J S Foster Esq of the Third part and dated 31 January 1986 for a term of 999 years from 25 March 1984 on payment of rent in the sum of £30 per annum.
22. Under Clause 3 the Lessee covenants with the Lessor and the Management Company that the Lessee will at all times during the term hereby granted:

“(a) Pay to the Management Company such annual sum as may be notified to the Lessee by the Management Company from time to time as representing 12.5 percent of the reasonably estimated amount required to cover the cost and expenses incurred or to be incurred by the Management Company in carrying out services repairs maintenance and management including the obligations or functions contained in or referred to in this Clause and Clauses 4 and 6 hereof and in the covenants set out in the Eighth Schedule hereto (such cost and expenses being hereinafter together called ‘the Management Charges’) such estimated amount to be payable half yearly in advance on the days for payment of rent hereunder the first payment being a proportionate part for the period from the date hereof to the next rent day to be made on the execution of these presents AND it is hereby declared that the Management Charges may (without prejudice to the generality of the foregoing) include such amounts as the Management Company shall from time to time consider necessary to put to reserve to meet the future liability of carrying out major works to the Property the Reserved Property or to the demised premises”.

23. Under Clause 4 the Management Company covenants with the Lessor and the Lessee that the Management Company will perform and observe and carry out or cause to be carried out the covenants and obligations set out in the Eighth Schedule hereto and the obligations on its part herein contained.
24. Under Clause 7 it is hereby agreed and declared that that the Management Company shall at all times during the term hereby granted manage the Property in a proper and reasonable manner the Management Company shall be entitled
- “(II) to employ architects surveyors solicitors accountants contractors builders gardeners and any other person firm or company properly required to be employed in connection with or for the purpose of or in relation to the Property or any part or parts thereof and pay them all proper fees charges salaries wages costs expenses and outgoings”.
25. Under sub-paragraph 2(b) of The Seventh Schedule the Lessee shall have the Chimneys if any of the demised premises swept at least twice a year.
26. The Eighth Schedule entitled the “Lessor’s Covenants to be observed by the Management Company at the Lessee’s Expense”. Paragraph 1 provides that
- “1. To keep in good and substantial repair and condition (and whenever necessary rebuild and reinstate and renew and replace all worn or damaged parts):
- (i) The main structure of the Property including all foundations all structural load-bearing and external walls and all structural and/or load-bearing party walls and structures and all structural and/or load-bearing walls dividing the Flats from the common halls staircases landings steps and passages in the Property and the walls bounding the same and all electrical and other fittings and windows in the Property (but excluding the internal faces plaster finishes and/or dry linings glass in openings and windows and sash cords and window boxes (if any) and electrical and other fittings inside any individual Flat for which the owner thereof is responsible under any provisions in his Lease corresponding to Paragraph 4 of the Sixth Schedule hereto) and all doors therein save such doors as give access to individual Flats and including all roofs and **chimneys** (Tribunal’s emphasis) and every part of the Property above the level of the top-floor ceilings”.
27. The Tribunal is satisfied that under clause 3 of the Lease the Applicant is entitled to recover from the Respondents service charges on account for its costs to be incurred in repairs carried out in performance of the Applicant’s obligations under the Eighth Schedule to the Lease. These obligations require the Applicant to keep in good and substantial repair the main structure of the building which includes the external walls, all

roofs and chimneys. Thus the lease authorises the Applicant to repair chimneys and charge the costs of those repairs to the Respondents.

28. The next questions to be addressed by the Tribunal are ones of fact, namely (1) whether the chimney forms part of the main structure of the property? and (2) whether the repairs to the chimney are necessary. In this regard the Tribunal refers to the plans attached to the leases of Flats 2, 4 and 5 which are on the Eastern flank of the Property, and to the report of Morgan Structural Limited (“the structural engineer”) entitled “1 Abbey Street, Defective Chimney Investigation” and dated July 2022.
29. The Tribunal finds the following facts:
  - The plans for the leases of Flats 2, 4 and 5 indicated the existence of two chimney breasts on the Eastern wall.
  - The requirement for the lessee to sweep the chimney twice a year under sub-paragraph 2b of the Seventh Schedule to the lease suggested that the flats in the property had at some time access to a chimney flue.
  - The bundle of documents included scale section drawings of the chimney prepared by the structural engineer. The drawings identified flues albeit blocked which appeared to serve the Property.
  - The structural engineer described the chimney as being built into the 620mm solid random rubble gable wall facing Abbey Square.
  - The structural engineer identified that the head of the stack was formed from concrete coping stones which were not contemporary with the rest of the chimney breast. The Tribunal, however, noted that the head of the stack detail continued along the length of the gable wall which the engineer believed had been installed for aesthetic purposes.
30. The Tribunal concludes from the above findings that the chimney is part of the main structure of the Property
31. The leaseholder for Flat 1 suggested that the repairs were not necessary because Building Control of Bath and North East Somerset Council had suggested that the banding of the chimney appeared to have addressed any imminent safety concerns to do with the building. The Tribunal observes from the documents in the bundle that the view of Building Control had been based on the report of the structural engineer, and not on its own inspection of the property. Further the comment of the Building Control Inspector was said in the context of the requirements

of sections 77 and 78 of the Building Act dealing with “Dangerous Structures”.

32. The Tribunal considers the findings of the structural engineer compelling. The engineer identified that the chimney was in disrepair and that if not attended to there was a tangible risk the structure would fail. The Tribunal is, therefore, satisfied of the necessity of the works to demolish the stack over the height of 2000mm.
33. The Tribunal has already recorded that there is no challenge to the reasonableness of the costs. The surveyor had carried out a tendering exercise and sent the specification to four contractors. The surveyor had only received one quotation of £8,447 plus VAT which did not include a contingency. The surveyor indicated that another tenderer had given a verbal quotation of £17,000 plus VAT. Although it is not necessary to undertake a full section 20 consultation when determining estimated costs, the Applicant may have to apply for dispensation of the consultation requirements at a later stage if the other tenderer does not put its quotation in writing.
34. The Tribunal finds that the estimated costs of £11,657 including a contingency of 15 per cent and the surveyors fee of £3,000 are no greater amount than is reasonable within the meaning of section 19(2) of the 1985 Act.
35. In view of the Tribunal’s findings it is not necessary to determine whether the owner of 9 York Street is liable to contribute to the costs of the repair works to the chimney. If at some later point the Applicant discovers that the owner of 9 York Street is liable, the Applicant should consider taking action to recover a contribution towards the costs of the repair.

## **Decision**

36. The Tribunal determines that an account service charge in the sum of £14,657 is payable. The leaseholders of Flats 1, 2, 3, and 4 are each liable to pay a contribution of 12.5 per cent which equates to the sum of £1,832. The leaseholder of Flat 5 is liable to pay a contribution of 14 per cent which equates to a sum of £2,052.



## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.