



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

Case reference : **LON/00AW/BSG/2024/0001**

Property : **Ovington Court,197-205 Brompton Road, London SW3 1LB**

Applicant : **Brompton Estates Nominees No.1 Limited & Brompton Estates Nominees No.2 Limited**

Respondent : **Wall Properties Limited**

Type of application : **For a determination of the principal accountable person under section 75 of the Building Safety Act 2022**

Tribunal : **Judge Sheftel**

Date of Directions : **13 March 2024**

DETERMINATION OF THE PRINCIPAL ACCOUNTABLE PERSON

Summary of determination

Wall Properties Limited is the principal accountable person for Ovington Court, 197-205 Brompton Road, London SW3 1LB.

Background

1. By an application dated 6 February 2024, the Applicants seek a determination under section 75 of the Building Safety Act 2022 (the “2022 Act”) as to the principal accountable person (“PAP”) of Ovington Court, 197-205 Brompton Road, London SW3 1LB (the “Building”).
2. The Applicants contend that the PAP should be the Respondent, Wall Properties Limited.
3. The application was made by consent, with a copy of the Applicants’ letter setting out the basis of the application counter-signed by Rohan Worrall, a director of the Respondent. The letter also stated that the

parties considered that the application could be dealt with without a hearing.

4. Accordingly, the tribunal wrote to the parties on 9 February 2024, stating that the tribunal proposed to determine the application on the papers in the two weeks commencing 4 March 2024, based on the materials provided. However, should any party wish to make further representations or consider that further directions (or indeed a hearing) are required, they should notify the tribunal (copied to the other party) by 26 February 2024. No further representations have been received by the tribunal and therefore I have proceeded to determine the application in accordance with, and on the basis of, the parties' submissions.

Ovington Court

5. As set out in the application:
 - (1) The Applicants are the registered freehold owners of the Building.
 - (2) The Building comprises commercial premises across the basement the ground floor and parts of the first and second floors and residential flats across part of the basement, ground and 1st to 8th floors.
 - (3) The Building is an occupied higher-risk building within the meaning of section 71 of the 2022 Act.
 - (4) The Respondent is the registered leasehold proprietor of parts of the basement and ground floor and of the first to eighth floors. The Respondent's leasehold interest is held pursuant to several leases as set out in the application, including a lease dated 26 August 1976 made between Underwoods Chemicals Limited (1) and Metropolitan Property Holdings Limited (2) comprising parts of the basement and ground floor, first to eighth floors and roof (the "1976 Lease").
 - (5) Pursuant to clause 2(3) of the 1976 Lease, the Respondent is under an obligation during the term well and substantially to repair the demised premises and keep them in good and substantial repair and condition. The terms of the 1976 Lease are incorporated into the other leases under which the Respondent's leasehold interest is held.
 - (6) It is common ground that the Respondent's leasehold interest includes the structure and exterior surfaces of the Building in relation to the first to eighth floors.
 - (7) The Applicants retain an interest in possession of the structure and exterior of the basement and ground floor of the Building – the commercial leases granted by the Applicants do not include any part of the structure and exterior.
 - (8) The leases of individual flats do not include any part of the structure and exterior.

The legal framework

6. Section 72(1) of the 2022 Act provides as follows:
 - “(1) In this Part an “accountable person” for a higher-risk building is—
 - (a) a person who holds a legal estate in possession in any part of the common parts (subject to subsection (2)), or
 - (b) a person who does not hold a legal estate in any part of the building but who is under a relevant repairing obligation in relation to any part of the common parts.”
7. The definition of “common parts” in relation to a building is contained in subsection (6) as:
 - (a) the structure and exterior of the building, except so far as included in a demise of a single dwelling or of premises to be occupied for the purposes of a business, or
 - (b) any part of the building provided for the use, benefit and enjoyment of the residents of more than one residential unit (whether alone or with other persons)
8. Subsection (6) also provides that “a person is under a relevant repairing obligation in relation to anything if the person is required, under a lease or by virtue of an enactment, to repair or maintain that thing” and that reference to “possession” does not include the receipt of rents and profits or the right to receive the same.
9. According to the application, there is no person who does not hold a legal estate in any part of the Building but who is under a relevant repairing obligation in relation to any part of its common parts.
10. In the circumstances:
 - (1) The Applicants are accountable persons in that they hold a legal estate in possession in relation to the basement and ground floor structure and exterior of the Building; and
 - (2) The Respondent an accountable person in that it holds a legal estate in possession in relation to the structure and exterior surfaces of the first to eighth floors of the Building.
11. Where there is more than one accountable person for a higher risk building, section 73 of the 2022 makes provision for the determination of the principal accountable person. In such cases, pursuant to section 73(1)(b), the principal accountable person will be the accountable person who holds:
 - (a) a legal estate in possession in the relevant parts of the structure and exterior of the building, or
 - (b) is within section 72(1)(b) because of a relevant repairing obligation (within the meaning of that section) in relation to the relevant parts of the structure and exterior of the building.

12. The difficulty in the present case is that both the Applicants and the Respondent appear to fall within the above definition, albeit for different parts of the Building.
13. Section 73(1)(b) is subject to section 75(2), which provides that where more than one accountable person is within section 73(1)(b) an interested person may apply to the Tribunal for a determination as to the principal accountable person for a higher-risk building. Where it appears to the Tribunal that there is more than one accountable person within section 73(1)(b), the principal accountable person “*is such one of those accountable persons as the Tribunal considers appropriate*”.
14. An “interested person” includes a person with a legal estate in any of the common parts (which is defined by reference to section 72: section 75(4) of the 2022 Act).
15. It is worth pausing at this point to note that in the application, it is said that no provision is made for the parties to agree between themselves who is the principal accountable person for a higher risk building without reference to the tribunal. I express no finding on this, save to note that where a party (in this case the Respondent) has already been registered as the principal accountable person and there is no dispute that they should be principal accountable person, it is not obviously apparent that a determination by the tribunal is also required. Nevertheless, the tribunal will of course proceed to determine the present application, as an interested person is entitled to seek the tribunal’s determination under section 75(1)(b) of the 2022 Act as set out above and there may be advantages to the parties in having certainty and/or being bound by their agreement, both of which a determination will provide.

Determination of the principal accountable person in the present case

16. As noted above, the Applicants and Respondent are each accountable persons within the meaning of section 73(1)(b) of the 2022 Act as each holds a legal estate in possession of relevant parts of the structure and exterior of the Building. Accordingly, the provisions of section 75(2) are engaged: the tribunal must consider which accountable person is appropriate to be the principal accountable person for the Building.
17. There is no further guidance within the 2022 Act as to how the tribunal determines which accountable person it considers is appropriate to be the principal accountable person. However, on the facts of the present case, the parties agree that the Respondent would be the most appropriate on the grounds that it is under a repairing obligation in relation to:
 - (1) the structure and exterior surfaces of the majority of the Building, including those floors solely occupied for residential purposes (the Respondent is responsible for the structure and exterior of the 1st-8th floors whereas the Applicants for the ground floor and basement); and

- (2) the common parts generally within those floors.
18. In my view, the above analysis is consistent with the provisions and purpose of Part IV of the 2022 Act in relation to higher risk buildings and I have no reason to depart from it.
19. In the circumstances the accountable person that that I consider appropriate to be the principal accountable person in accordance with section 75(2) of the 2022 Act, is the Respondent. It is therefore determined that the Respondent, Wall Properties Limited, is the principal accountable person for the Building.

Name: Judge Sheftel

Date: 13 March 2024

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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).

