



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

Case reference : CHI/23UB/LSC/2023/0122

Property : 1 – 18 Cobham Court, Tewkesbury Road,
Cheltenham, Gloucester, GL50 9BA

Applicant : Idris Davies Limited

Respondents : The Leaseholders of the Property

Type of application : For the determination of the payability and
reasonableness of service charges under
section 27A of the Landlord and Tenant Act
1985

Tribunal member : Judge H. Lumby

Venue : Paper determination

Date of decision : 30 July 2024

DECISION

Decision of the tribunal

The tribunal determines that the sum of £600 for survey works and the £1,362 for further investigatory works is reasonable and payable by the leaseholders of Flats 9 to 18 (other than Flat 11) with 10% of the cost payable by each of those leaseholders.

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the payability and reasonableness of service charges in respect of the 2023 service charge year.
2. The total amount the subject of the application is £1,962.
3. The Applicant has not sought costs orders pursuant to section 20C of the 1985 Act or pursuant to paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002. The parties were invited to submit representations on any applications made pursuant to those statutory provisions. No representations or applications have been received and the tribunal makes no determination in relation to this subject.

The background

4. The Property comprises purpose built two storey blocks of eighteen studio flats in total, built in 1982/3, with eight flats being on one side of a road and ten on the other. The two sides are each referred to as a single block, although in practice each single block actually contains two individual buildings.
5. Fourteen of the flats were sold with a term of 99 years from 24 June 1983 on identical terms but referring to Flats 1 to 8 as one block and Flats 9 to 18 as a separate block. Flats 1, 3, 11 and 17 were retained by the Applicant until 1999, when they were also sold, this time each with a term of 99 years from 25 December 1999.
6. The Applicant is the freeholder of the Property and the Respondents are the leaseholders.
7. The application relates to structural cracks which have appeared in Flats 13 to 16. £600 has been incurred on a surveyor’s report and drainage survey which could not identify anything which caused the cracks to those flats. The Applicant has received a quotation of £1,362 for further investigations involving trial pits and holes. The Applicant

seeks a determination as to whether these two costs are recoverable under the service charges for all the block comprising Flats 9 to 18 or from all leaseholders in the Property, even though the structural issues only affect Flats 13 to 16.

8. The Applicant has also identified that the service charge provisions in the leases for Flats 1, 3, 11 and 17 contain errors in the service charge provisions in that none of them refer to the block in the lease or its plan. In addition, the apportionments in three of the leases are incorrect, with Flats 1 and 3 referring to 1/10th rather than 1/8th and Flat 11 referring to 1/8th when it should be 1/10th. Flat 17 contains the correct apportionment of 1/10th.
9. The Applicant asks whether a deed of variation can be enforced to regularise the position. That question is beyond the scope of this application; if the Applicant wishes to seek an order to vary the affected leases, they will need to make a separate application in the correct form. The Applicant in submissions has accepted this position.
10. The application was submitted on 27 September 2023 and Directions were issued by the tribunal on 22 April 2024. A case management and dispute resolution hearing occurred on 22 May 2024, with further Directions issued on that day.
11. This has been a determination on the papers, as agreed by the parties at the hearing on 22 May 2024. The documents that the tribunal was referred to are in two bundles of 85 and 116 pages, the contents of which the tribunal have noted. The first bundle contained the application, specimen leases of Flats 4 and 12, title information, photographs, position and other statements, both of the tribunal's directions in the case and contact details for the Respondents. The second bundle contains the leases of Flats 1, 3, 11 and 17.

The leases

12. The bundles contain copies of the leases of Flats 4 and 12, as well as copies of the leases of Flats 1, 3, 11 and 17.

Flat 12

13. The tribunal considered the lease of Flat 12 as its starting point. It contains a number of relevant definitions as follows:

“the block” means the buildings together with all gardens around footpaths open spaces parking spaces and vehicular accessways as are necessary for the proper enjoyment by individual lessees in the building of their flats as shown on the Plan annexed hereto and thereon edged blue

“the buildings” means the buildings in which the flats are situate but excludes all footpaths open spaces parking spaces and vehicular accessways adjacent thereto

“flats” means the flats forming part of the buildings and “flat” has a corresponding meaning

“the demised premises” means the property hereby demised as described in the Seventh Schedule hereto

“the reserved property” means that part of the block (including the buildings) described in the Seventh Schedule hereto but not included [sic] either in the flats or the parking spaces.

“maintenance expense” means the expenditure incurred by the Lessor in carrying out its obligations under the Sixth Schedule hereto together with a sum equal to 15% of such expenditure by way of a management fee

The plan attached to the lease shows the entirety of the buildings comprising Flats 9 to 18 and their external parts edged blue; this comprises the block.

14. Clause 1 of the lease of Flat 12 requires the tenant to pay one tenth of the maintenance charge each year by way of additional rent. On account payments are fixed by the lease, with £50 per year payable in advance for the first five years of the term and increasing by £25 every five years from June 1988. There are provisions for top up payments if the actual maintenance charge is higher than the amount paid on account.
15. The Seventh Schedule of the lease of Flat 12 contains the definition of the demised premises. This is an internal demise which excludes all load bearing walls and joists or beams to which the ceiling is attached. That schedule also describes the reserved property which comprise the common parts and defines it to include:

“the structural parts of the buildings including (without prejudice to the generality of the foregoing) the concrete beams canopies roofs external parts (including walls) internal load bearing walls and foundations thereof (but not the windows or window frames of the flats nor interior faces of such of the external walls as bound the flats) and all cisterns tanks sewers drains pipes wires ducts and conduits not used solely for the purpose of one flat”

16. The Sixth Schedule of the lease of Flat 12 contains the landlord’s covenants, with expenditure incurred by the landlord comprising the maintenance charge. These covenants include the following obligation at paragraph (5):

“To keep the reserved property in a good and tenantable state of repair and in a proper and tidy condition and properly lit and when required to clean and repoint the external stone and brickwork of the building and to paint in a good and workmanlike manner in every fifth year of the term all external wood or ironwork stone or

brickwork previously painted and when required to resurface the vehicular accessway Provided that nothing herein contained shall prejudice the Lessor's right to recover from the Lessee the amount of any loss or damage suffered by the reserved property by the negligence or other wrongful acts or default of the Lessee

Flat 4

17. The lease of Flat 4 is in the same form as the lease of Flat 12, save that the block shown in this case is of the entirety of the buildings comprising Flats 1 to 8 and their external parts. The tenant pays one eighth of the maintenance charge rather than one tenth (reflecting the fact that this block only comprises eight not ten flats) and the initial on account maintenance charge was £35 rather than £50.

Flat 11

18. When granting the leases of Flats 1, 3, 11 and 17, the solicitors acting for the landlord adopted a different form of lease to that used in the earlier leases. In particular, there is no reference to Blocks and the demise plans only show the building or part of the building in which the relevant flat is located.

19. The lease of Flat 11 contains the following definition of "Building":

"the Building" shall mean the building known [sic] in which the flats are situate

There is no definition of flats.

20. The demised premises are described in schedule 1 to the lease and begins:

"ALL THAT flat known as Flat 11 Cobham Court of the building known as Cobham Court all of which is for the purposes of identification only shown edged red on the plan annexed ..."

The demise is an internal non-structural demise. The plan referred to shows the ground floor of the building in which Flats 9, 10, 11 and 12 are located.

21. Clause 2(c) of the lease of Flat 11 requires the tenant to pay one eighth of the costs specified in schedule 3 to the lease by way of additional rent. Schedule 3 of the lease actually contains rights and reservations from the demise. The service charge provisions are at schedule 4 to the lease. That schedule provides for the tenant to pay 12.5% (i.e. one eighth) of the landlord's expenditure on the services and other items referred to in that schedule. There are provisions for an on account payments together with top up payments if the actual maintenance charge is higher than the amount paid on account.

22. The expenditure recoverable by the landlord pursuant to schedule 4 include:

(i) the cost of keeping the exterior of the demised premises including the roof structural walls foundations and main timbers thereof including the gutters and downpipes from the roof (but excluding those parts of the demised premises for which the Tenant is made responsible in Clause 3(4) hereto) in good and tenantable repair

(ii) the cost of keeping the external parts of the demised premises well and sufficiently decorated

(iii) the cost of keeping the foul and surface water drainage system the main water supply pipe and all pipes wires and other service media in the Building serving the demised premises and other parts of the Building (but excluding those services for which the Tenant is made responsible in Clause 3(4) hereto) in good and tenantable repair

...

(c) Expenditure incurred or provided for in the interests of good estate management or for the benefit of the occupiers of the Building (including the establishing and maintenance of a reserve fund as provision against contingent or anticipated expenditure by the Landlord in respect of the matters referred to in (a) above

Flat 17

23. The lease of Flat 17 is in broadly the same from as that for Flat 11, although the service charge percentage is set at 10% and refers to the correct schedule. The plan attached to the lease shows the ground floor of the building comprising Flats 13 to 18.

Flats 1 and 3

24. The leases of Flats 1 and 3 are in broadly the same from as that for Flat 11, although the service charge percentage in each case is set at 10% and both refer to a different incorrect schedule. The plan attached to both lease shows the ground floor of the building comprising Flats 1 to 4.

Submissions by the parties

25. The Applicant's case is set out in a position statement dated 2 May 2024 and in a further statement made by Mrs L Richardson on behalf of the Applicant dated 3 June 2024. They state that they were initially made aware of internal cracking affecting Flat 14 in February 2023. On inspection, internal cracking was also identified in the surrounding flats in that building (being Flats 13, 15 and 16).

26. Mrs Richardson argues that the leases to the Respondents provide that costs relating to Flats 1 to 8 are split one eighth each amongst the leaseholders of those flats whilst any costs for Flats 9 to 18 are split one

tenth each amongst the leaseholders of those flats. Flats 1 to 8 do not contribute towards any costs relating to the block comprising Flats 9 to 18 and vice versa. She explains that confusion has arisen because historically all costs across the Property have been split 1/18th per leaseholder without any allocation between blocks.

27. The Respondents' case is set out in a position statement date 13 May 2024 provided by Carolyn Mills, the leaseholder of Flat 11. She argues that the issue relates to one detached building and so it is unreasonable to ask leaseholders in unaffected buildings to contribute towards the costs.

Tribunal consideration

28. The issue to be determined is which, if any, of the Respondents are obliged to contribute towards the costs of investigating and repairing structural damage which has occurred to Flats 13 to 16 and, if so, in what proportions.
29. As a preliminary point, the tribunal only considered the leases in their current form, ignoring for these purposes any variations the Applicant may agree in due course with any of the leaseholders.
30. Having considered all of the documents provided, the tribunal has made determinations on the issue in question as follows.
31. The starting point for the tribunal were the original leases granted in the 1980s, being all the leases except those for Flats 1, 3, 11 and 17. These are all in the same form (save for the service charge proportions for Flats 1 to 8, which are one eighth of the total expenditure whilst the proportions for Flats 9 to 18 are one tenth of such expenditure).
32. These leases provide that the landlord can recover the costs of repair and maintenance of the reserved property. This includes all of the structural parts of the applicable buildings, including external walls, foundations and the roof. It would include the cost of surveys and other investigatory activity to identify the cause of the cracking. The plaster within the flats are part of the tenant's demise so they would retain responsibility for that plaster.
33. On the basis that the costs referred to in the application and related future structural works are recoverable from the leaseholders, the next question is which of them are obliged to contribute.
34. The reserved property is defined by reference to the block (including the buildings on it). The definition of block expressly refers to buildings and is identified by a blue line on the plan attached to each lease. These show that the block is either Flats 1 to 8 and their environs or Flats 9 to

18 and their environs. The references to buildings makes it clear that the definition of block includes all the buildings on it.

35.

Flats 2, 4, 5, 6, 7 and 8

36. There is no provision requiring one block (as defined) to contribute towards the costs of the other block. The tribunal therefore determines that the leaseholders of Flats 2, 4, 5, 6, 7 and 8 (being the leaseholders with the relevant form of lease in the block comprising Flats 1 to 8) are not obliged to contribute towards the cost of structural repairs to any building on the block comprising Flats 9 to 18.

Flats 9, 10, 12, 13, 14, 15, 16 and 18

37. In this case, the block in question is the area occupied by Flats 9 to 18. All the leaseholders subject to this form of lease within these flats (meaning all except Flats 11 and 17) are obliged to contribute towards the costs, irrespective of whether their flat is located in the relevant building.

38. Accordingly, the tribunal determines that the leaseholders of Flats 9, 10, 12, 13, 14, 15, 16 and 18 are all obliged to contribute towards the costs of structural repairs to Flat 13 to 16. Each of their leases sets the proportion payable as 10% of the total cost and the tribunal determines that this is the percentage payable by each of them.

Flats 1, 3, 11 and 17

39. The tribunal next considered the newer forms of lease, being those of Flats 1, 3, 11 and 17. These are in a different form to those granted earlier, following the seemingly inexplicable decision taken to change the service charge basis.

40. The new service charge provisions allow the recovery of expenditure relating to the structure of the demised premises itself or the Building as defined. As with the older leases, this would include the recovery of the cost of structural works and the cost of surveys and other investigatory activity to identify the cause of the cracking. Again, as before, the plaster within the flats is part of the tenant's demise so they would retain responsibility for that plaster.

41. The next question is which of the four leases in question, if any, are obliged to contribute towards the cost of structural works to Flats 13 to 16.

42. None of these leases refer to blocks, relying instead on a definition of Building, which just refers to the singular building in which the undefined flats are located. In addition, the plans attached do not show the wider context of the flat, instead just showing the ground floor of the physical building in which the relevant flat is located. The only reference to a wider context in the lease is in the definition of the demise, referring to Flat [] Cobham Court of the building known as Cobham Court. This description again refers to a singular building.
43. The tribunal considers that the affect of the definition of Building only referring to a singular building and the fact that the demise plans only show a specific building mean that the building referred to in each case is the physical building in which the relevant flat is located. This means that the obligation on these leaseholders to contribute towards structural repairs only relates to works to the physical building in which their flat is located.
44. Applying this to the leases in question in the case of Flats 1 and 3, the building in question is the one in which Flats 1 to 4 are located. The tribunal therefore determines that the leaseholders of Flats 1 and 3 are not obliged to contribute towards the costs of structural repairs of Flats 13 to 16.
45. Turning to Flat 11, the building in this case is the building in which Flats 9 to 12 are located. The tribunal therefore determines that the leaseholder of Flat 11 is not obliged to contribute towards the costs of structural repairs of Flats 13 to 16.
46. Finally, turning to Flat 17, the building in question in this case (and as shown on the demise plan) is the building in which Flats 13 to 18 are located. The tribunal therefore determines that the leaseholder of Flat 17 is obliged to contribute towards the costs of structural repairs of Flats 13 to 16. The lease of Flat 17 sets the proportion payable as 10% of the total cost and the tribunal determines that this is the percentage payable by the leaseholder of this flat.

Reasonableness of costs

47. The only costs known so far are the initial survey and further investigatory works and no objections have been received to the cost of these. The tribunal therefore determines that these sums are reasonable and payable. It cannot make a determination as to the reasonableness of unknown future expenditure and the parties will be able to bring a claim under section 27A of the 1985 Act in relation to that expenditure in due course.

Tribunal Determination

48. The tribunal therefore determines that the sum of £600 for survey works and the £1,362 for further investigatory works is reasonable and payable by the leaseholders of Flats 9 to 18 (other than Flat 11) with 10% of the cost payable by each of those leaseholders.

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
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.