



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

**Case reference : LON/OOBD/LSC/2024/0043**

**Property : 91-95 ST MARGARETS ROAD TWICKENHAM, W1 2LJ**

**Applicants : 91-95 ST MARGARETS ROAD TWICKENHAM LTD**

**Respondent : LEASEHOLDERS OF 91-95 ST MARGARETS ROAD  
TWICKENHAM LTD**

**Type of application : Payability of service charges**

**Tribunal: Judge Shepherd**

**DECISION**

1. This case concerns the interpretation of a lease in order to determine whether particular costs are recoverable by the landlord. The landlord (“The Applicant”) here is 91-95 St Margaret’s Road Ltd who is the freeholder of premises at 91-95 St Margarets Road, Twickenham, W12LJ (“The premises”). The necessary Respondents are the leaseholders of this premises.
2. The central question to be determined by the Tribunal is whether the windows of the flats at the premises form part of the demise or whether they fall within the retained part of which the Applicant is responsible to repair with the ability to recover costs under the service charge.

3. I have decided that the windows do not form part of the demise and the Applicant can therefore recover the costs of repair from the service charge. This may be a contentious decision because some of the leaseholders have replaced their windows themselves. I would hasten to add however that my decision is solely about the interpretation of the lease. I have not decided either that it is reasonable or necessary to replace the windows or that the projected costs are reasonable. These are matters that can still be litigated upon pursuant to Landlord and Tenant Act 1985, s.27A.

### **Reasons for the decision**

4. The premises comprise 10 flats all let on long leases for a period of 150 years from 25 March 2007 save for one lease which is for 999 years from 25 January 2018. All of the leases are materially in the same form.
5. I am told that the window frames of the Building are in need of repair or replacement ( as I have already said I make no judgement as to this), but the leases are unclear as to whether the cost of repairs or replacement will be recoverable as a service charge under the terms of the leases. This application is therefore made for a determination prior to those costs being incurred.
6. The relevant clauses in the leases are as follows:

- a. *Clause 1*

*IN consideration of[...] the Lessor hereby demises unto the Lessee ALL THAT flat (to be known as.. ) the same being shown on the plan A annexed hereto and thereon edged red being on the [...floor] of the Building (hereinafter called "the Building") known as 91 - 95 St Margaret's Road, Twickenham TW1 2LJ including the floorboards and ceilings thereof but not including the joists below the floors nor above the ceilings and including the internal plaster work and facings of the structural walls thereof and the whole of any non-structural internal walls thereof and including the water tanks water pipes cisterns gas*

*pipes electric wires installations and fixtures serving the same exclusively (all which premises are herein after called "the Flat'J. TOGETHER WITH [etc].*

*b. Clause 2*

*THE Lessee hereby covenants with the Lessor in manner following that is to say: (6) From time to time and at all times during the said term well and substantially to keep in good repair uphold support cleanse maintain drain amend and keep the Flat and in particular any parts of the said Flat which may provide support or shelter for the parts of the Building not hereby demised and all new buildings which may at any time during the said term be erected on and all additions made to the said Flat and the fixtures therein and all sewers pipes wires drains pathways passageways easements and appurtenances thereof with all necessary reparations cleansings and amendments whatsoever.*

*(31) Duly to pay to the Lessor at the times and in the manner set out in the Third Schedule hereto all sums as shall under the provisions of that Schedule be determined to be the maintenance charge payable in respect of the demised premises.*

*c. Clause 4*

*THE LESSOR HEREBY FURTHER COVENANTS with the Lessee:*

*(1) To keep the foundations main walls girders and timbers roof and exterior of the Building (including drains gutters and external pipes) in good and substantial repair and clean and proper order and condition and also to keep the floors and structure of the same and all water tanks and cisterns electric wires cables and meters and gas and water pipes and drains not forming part of the Flat or any other flat in the Building in good and substantial order and condition*

*(2) To paint the exterior wood and iron and cement work of the Building and all additions thereto with two coats of good paint of suitable quality in a proper and workmen like manner at least once in every five years of the term by granted.*

7. There is no express mention of the windows here, accordingly it is necessary to determine if they fall within the wider terms . The demise appears largely to deal with the internal areas. The landlord’s repairing responsibilities extend to repair of of the “timbers” and the “structure”. In *Irvine’s Estate v Moran* [1991] 1 EGLR 261 Mr Recorder Thayne Forbes QC found that the structure of the dwelling house consists of those elements of the overall dwelling house which give it its essential appearance, stability and shape. This extended to windows and external doors. This was approved in *Grand v Gill* [2011] 27 EG 78.

8. Of course these authorities cannot dictate findings in relation to individual leases however they are helpful in terms of guidance. I consider that the windows are not within the demise for the following reasons:

- i) The demise itself refers largely to internal items;
- ii) Windows are part of the exterior of the building;
- iii) Windows could be part of the timbers of the building;
- iv) Windows can be part of the structure of the building;
- v) The freeholder is responsible for painting the exterior which could include the windows.

9. For these reasons I determine that the windows are not part of the demise and do form part of the retained land that the Applicant is required to maintain and recover service charges on.

Judge Shepherd

5<sup>th</sup> August 2024

## RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.



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