FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AF/LSC/2024/0130**
Property	:	**Flats 15 & 16 The Courtyard, Holwood, Westerham Road, Bromley BR2 6HZ**
Applicants	:	**Thomas Henry Klonarides Geraldine Lilian Klonarides Ms S Highmore (as executor of the estate of Mr Francis Alan Henry)**
Representative	:	**n/a**
Respondent	:	**Trinity (Estates) Property Management Ltd**
Representative	:	**n/a**
Type of application	:	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	:	**Judge O'Brien, Mr S Mason FRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**5th September 2024**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sums of demanded in respect of the repairs to the clock tower are payable by the applicants as a service charge pursuant to the terms of their respective leases.

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 or under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

The application

1. The applicants have applied for a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the applicants in respect of the service charge year 2023 to 2024. The application has been considered on the papers without a hearing pursuant to the direction of Judge Walker dated 23 April 2024.

2. The first and second applicants are the leasehold owners of the premises known as Flat 15 The Courtyard, Holwood, Bromley BR2 6PH. The original third applicant was the leasehold owner of Flat 16 but sadly died in the course of these proceedings. Ms Highmore, the third applicant's daughter and the executor of his estate, was substituted as third applicant on 14 May 2024.

3. The respondent manages the Holwood Estate on behalf of the freeholder, Taylor Wimpey. The respondent is a party to the leases in its capacity as estate manager.

The background

4. The estate which is the subject of this application is a residential development consisting of a number of freehold houses and a block containing 16 leasehold flats all built around a central courtyard. The respondent manages the common parts of the development, but not the block in which the flats are situated, the leaseholders having acquired the right to manage the same in 2008.

5. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

6. The applicants hold a long lease of their respective flats which requires the estate manager to provide services and the tenant to contribute

towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issue to be determined.

7. The only issue in this case is whether the cost of repairs to a clock tower situated on the roof of one of the freehold houses, namely No.3 the Courtyard, is recoverable from the applicants via the service charge provisions in their respective leases. It is common ground that following a consultation process carried out under s.20 of the LTA 1985 the respondent carried out works of repair to the clock tower in 2023. It subsequently sought payment from each of the leaseholders in the sum of £357 in November 2023. It is the case for the applicants that the sums sought are not recoverable from them as a service charge under the terms of their leases. They do not seek to challenge the reasonableness of the cost, the need for the repairs or the standard of the work undertaken.

The Lease

8. The tribunal has been provided with a copy of the lease for Flat 15 and it is common ground that the lease for flat 16 is in identical terms. The relevant terms are set out below with the contentious definitions highlighted in bold:

(i). Paragraph 2 of Part One of Schedule 8 of the lease obliges the lessee "*To pay to BM (building manager) and EM (estate manager) … the relevant parts of the* ***Lessee's Proportion*** *at the times and in the manner herein provided*".

(ii) Clause 1 of the lease defines "***the Lessee's Proportion***" as "*the proportion of* ***Maintenance Expenses*** *payable by the Lessee in accordance with the provisions of the Seventh Schedule"*. Clause 1 further defines *"****the Maintenance Expenses****" as "the moneys actually expended or reserved for periodical expenditure by or on behalf of the Manager or the Lessor at all times during the Term in carrying out the obligations specified in the Sixth Schedule*".

(iii) The **maintenance expenses** are defined in the Sixth Schedule to the lease. That schedule is split into 3 parts; the Estate costs (Part A), the Block Costs (Part B) and the **Courtyard Costs** (Part C). Paragraph 4 of Part C of the Sixth Schedule to the lease includes the following costs as '***Courtyard Costs'***; "I*nspecting rebuilding repointing repairing cleaning renewing redecorating or otherwise treating as necessary and keeping the* ***Maintained Property within the Courtyard*** *and every part thereof in good and substantial repair order and*

condition and renewing and replacing all worn or damaged parts thereof".

(iv). Clause 1 of the lease defines "***the Courtyard***" as "*the area shown edged blue on Plan 2 (excluding the Block and the Dwellings)"*. It further defines "***the Maintained Property***" as "*those parts of the Estate (excluding the Redwood Centre ("Redwood Centre") shown hatched red on Plan 3) and/ or the Block and/ or Courtyard (as applicable) which are more particularly described in the Second Schedule and the maintenance of which is the responsibility of BM or EM*"

(vi). Paragraph 1.3 of the Second Schedule provides that the '***Maintained Property'*** includes " *The structural parts of the Building(s) (including the roofs gutters rainwater pipes foundations floors and walls bounding individual Dwellings therein and all external parts of the Building(s) including all decorative parts) and all* ***structural and external parts of the Courtyard (including the items referred to above The Clock Tower forming part of No 3 The Courtyard)".***

The parties' submissions

9. The applicants argue that the clock tower forms part of No.3 the Courtyard and consequently is owned by the freehold owner of that property. Consequently they argue that it cannot form part of 'the courtyard' as it is defined by Clause 1 of the lease because that definition expressly excludes 'dwellings'. They then argue that because the clock tower does not form part of the courtyard the cost of repairing it does not come within the definition of maintenance expenses in paragraph 4 of part C of the 6th Schedule, as these are limited to the costs of maintaining "*the maintained property within the courtyard*".

10. The Respondent does not accept that no 3 The Courtyard falls under the definition of 'dwellings' in the lease. It submits that 'dwellings' in Clause one is defined as the premises demised under the lease and the other flats in the block in which the demised premises are situated. It does not include the freehold houses. It submits that the definition of maintained property in the transfer of No.3 expressly includes the clock tower. They submit that it is clear from the proposal originally submitted to the freeholder by the respondent in 2004 that the clock tower would form part of the maintained property.

The tribunal's determination

11. The applicant considers that the terms of the lease have to be interpreted 'contra preferentem' in other words in the case of ambiguity, the lease should be interpreted against the interests of the party who drafted it and seeks to rely on it. As the Supreme Court held in *Arnold v Britton [2015] UKSC 36* [*2015] A.C. 1619,* there is no such rule of interpretation when considering the meaning of leasehold covenants, and the words used in a lease should be given the natural meaning, having regard to their context.

12. There appears to be an unfortunate lack of clarity in the lease as to whether the term 'dwelling' in Clause 1 includes the freehold houses on the estate but we do not have to determine this point for the purposes of this decision. Nor do we have to determine whether the clock tower forms part of the freehold of no.3; the issue as to who owns the clocktower is not determinative of the question as to who is obliged to maintain it under the terms of this lease. There is no doubt that the clock tower forms part of the maintained property by virtue of paragraph 1.3 of the Second Schedule to the lease. The only doubt is whether it forms part of the maintained property '*within the courtyard'* or the maintained property within some other part of the estate. In our view the natural meaning of clause 1.3 of the Second Schedule is to include the clocktower as part of the "*external and structural parts of the Courtyard*" for the purposes of defining the '*maintained property*'. The structure of paragraph 1.3 of Schedule 2, which first defines the structural part of the buildings and then defines the structural and external parts of the courtyard, further supports the conclusion that this was the parties' intention. This would have been clearer had the word 'and' been included between the words 'the items referred to above' and 'the Clock Tower', however we consider that the meaning of the sentence is sufficiently clear notwithstanding the omission of that conjunction. The express inclusion of the clock tower as a component of the structural and external parts of the courtyard must either override any lack of clarity regarding the definition of 'courtyard' contained in clause 1 of the lease or operate as an extension of it for the purposes of identifying the maintained property and quantifying the maintenance expenses.

13. We therefore determine that the cost of repairs to the clock tower fall under 'Courtyard Costs' in Part C of the Sixth Schedule to the lease.

Application under s.20C and refund of fees

14. The applicants made an application for a refund of the fees that they have paid in respect of the application. Taking into account the determinations above, the tribunal does not order the Respondent to refund any fees paid by the Applicant. The applicants also applied for an order under section 20C of the 1985 Act and under Paragraph 5A of Schedule 11 to the 2002 Act. Taking into account the determinations above, the tribunal determines that it is not just and equitable in the circumstances for an order to be made under section 20C or Paragraph 5A preventing the respondent from passing on any of its costs incurred

in connection with the proceedings before the tribunal through the service charge or as an administration charge.

Name: Judge O'Brien **Date:** 5 September 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 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).