



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

**Case Reference** : **CHI/21UG/HTC/2024/0003**

**Property** : **Norton Garth Court, Station Road,  
Sidmouth EX10 8NY**

**Applicant** : **Norton Garth (Sidmouth) Limited**

**Representative** : **In person**

**Respondents** : **Graham and Gill Gill (Flat 1)  
Joanne Cooke (Flat 8)**

**Representative** : **In person**

**Type of Application** : **Application pursuant to section 27A of the  
Landlord and Tenant Act 1985 to determine  
the service charges payable in respect of  
Flats 1 and 8 for the year 2023/2024**

**Tribunal Members** : **Judge Paul Letman M.B.E.  
Michael J F Donaldson FRICS**

**Date and venue of** : **17 September 2024 (notional hearing date)  
On paper**

**Date of Decision** : **15 October 2024**

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**DECISION**

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## **Introduction**

1. By an application dated 13 October 2023 ('the Application') the Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) of the service charges payable by Flat 1 and Flat 8 at the Property for the service charge year 2023/2024.
2. Initial directions were made on 15 May 2024 providing, amongst other things, for a Case Management Hearing to be heard remotely on 05 June 2024 and a dispute resolution hearing on 25 July 2024. In due course further directions were made herein on 26 July 2024, directing each party to send a written statement of case and for the matter to be determined on paper by the tribunal.

## **The Law**

3. As regards interpreting the Lease, the applicable principles are those established by the Supreme Court in the leading trilogy of cases, *Rainy Sky SA v Kookmin Bank* [2011] 1 WLR 2900, *Arnold v Britton* [2015] AC 1619 and *Wood v Capita Insurance Services Ltd* [2017] UKSC 24. Thus, when interpreting the Lease terms, as with any commercial contract, the concern is to ascertain the objective meaning of the language used, identifying what the terms would mean to a reasonable person having all the background knowledge which would reasonably be available to the audience to whom the instrument is addressed.
4. More particularly, as Lord Neuberger stated in *Arnold* (paragraph 15) in relation to the construction of clause 3(2) of the 25 leases in issue in that case, the meaning in that context has to be assessed in the light of (i) the natural and ordinary meaning of the clause (ii) any other relevant provisions of the lease (iii) the overall purpose of the clause in the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense. In any case, whether a lease or other commercial document, where there are two possible constructions, a court being entitled to prefer the construction which is more consistent with business common sense.

## **The Lease**

5. The lease ('the Lease') of each of the flats at Norton Garth are agreed to be in substantially the same form. The tribunal has been provided with the lease of Flat 8 dated 1 October 1970 which in so far as is presently material provides as follows:
  - 7.1 By the first recital the following terms were defined for the purposes of the Lease:

*'The Property' means the property described in the First Schedule hereto.*

*'The Reserved Property' means that part of the Property not included in the Flats being the property more particularly described in the Second Schedule hereto*

*'The Premises' means the property hereby demised as described in the Third Schedule hereto including for the purposes of obligation as well as grant the ceilings floors joists beams cisterns .. specified in the said Schedule*

7.2 Under the Second Schedule, The Reserved Property, is defined as follows:

*FIRST ALL THOSE the entrance drive forecourts forming part of the Property ... which are used in common with the owners or occupiers of any two or more of the Flats AND SECONDLY ALL THOSE the main structural parts of Norton Garth and Belgrave Cottage forming part of the Property including the roofs foundations and external parts thereof (but not the glass of the windows of the Flats nor the interior faces of such of the external walls that bound the Flat) ..'*

7.3 Under the Third Schedule, The Premises, are defined as follows:

*ALL THAT Flat forming part of the Property and known as Flat Number 8 Norton Garth Court aforesaid All Which said Flat is for the purpose of identification only delineated on the Plan Numbered 1 annexed hereto and thereon coloured Pink .. EXCEPT AND RESERVING from the demise the main structural parts of the building of which the Flat forms part including the roof foundations and external parts thereof but not the glass of the windows of the said Flat nor the interior faces of such of the external walls as bound the Flat ..'*

7.4 Pursuant to clause 3 and paragraph (4) of the Seventh Schedule the Lessor covenants to keep the Reserved Property and all fixtures and fittings therein and additions thereto in a good and tenable state of repair decoration and condition including the renewal and replacement of worn or damaged parts ..'

### **The Applicant's Case**

6. The Applicant's written position statement contends that the porch and lightwells of Flat 1 and the veranda and canopy which form a decorative feature on the Station Road side of Flat 8, exclusively accommodate the related flat and should accordingly be treated as part of the demise of the flat, so as not to fall within the landlord's repairing obligation.
7. The Applicant refers to and relies upon the fact that none of these features are mentioned in the Lease for each flat, but they are within the pink shaded area on the relevant plans that highlight the extent of the demise of each. Further, it is submitted that none of these features are structural so as naturally to fall within the Reserved Property rather than form part of the demise.
8. The Applicant acknowledges that costs for previous maintenance of each of these features has been funded from the Service Charge. The Applicant has therefore agreed not to revisit historic charges, but is concerned rather to obtain a definitive ruling for the future as to whether responsibility for the repair of these features should or should not be a service charge cost.

### **The Respondents' Case**

9. The Respondents contend to the contrary, that these 3 features form part of the Reserved Property. They accept that since the conversion of the Property in the 1970's what was the front door to Norton Garth, with its decorative porch, is now solely the front door and porch to Flat 1. They note though that the porch is specifically referred to in the Grade 2 listed building description for the premises and that like the light wells this is a prominent feature of the building.
10. As for the window wells and the covers over these, it is accepted by the Respondents that the wells provide light only to the basement rooms of Flat 1, but point out that the covers also shield the fabric and structure of the building from the build up of leaves and detritus and inclement weather. The covers serve also, it is said, to protect the foundations of the building.
11. Ultimately, on a proper interpretation of the Lease, they contend that the porch and window wells are part of the Reserved Property rather than the Premises, and accordingly within the scope of the Lessor's repairing obligations and a shared cost.

### **Determination**

12. Given that the Reserved Property is defined as including '*the main structural parts of the building of which the Flat forms part including the roofs foundations and external parts thereof* .', and similarly the Demised Premises as excluding these parts (albeit the exclusion refers just to roof in the singular) the key issue is whether each of the features in question come within the scope of these words. In our view there can be little doubt that they do.
13. Each of the features is in our judgement properly regarded as forming an 'external [part]' of the building. Further, the canopy to the veranda and that of the porch can also each in our view be regarded as a roof; the term in the Lease is not qualified by any reference to main roof or the like. Given also the reference to 'roofs' in the definition of Reserved Property, nor we do not think that this is restricted to a single roof.
14. The fact that each feature exclusively serves Flat 1 or 8 as the case may be, does not alter this conclusion. In many respects elements of the structure or other decorative features such as the shutters can be said only to benefit a particular (proximate) flat but plainly that does not mean that contrary to the clear express terms of the Lease they are to be excluded from the Reserved Property and made part of the demise of that flat.
15. Further, the fact that all of these features come within the Pink shading on the Lease plans also does not alter the conclusion above (that each forms part of the Reserved Property). Much if not all of the main structure and (main) roof are equally within the area of the shading. Notably also the Lease expressly states that the shading, together with the delineation, is for 'identification' purposes only rather than for the purposes of definition.
16. We are also confirmed in our view as to the correct interpretation of the Lease (as above), by the fact that it would also appear to make good practical sense for such

external features, important as they are to the overall architectural integrity and appeal of the Property, to be maintained under the single authority of the Lessor.

### **Conclusion**

17. For all the reasons stated above, the Tribunal unhesitatingly concludes that on a proper interpretation of the Lease, each of the 3 features in question (the porch and front door, the light wells and their covers and the decorative veranda feature) are all within the Reserved Property and the subject of the Lessor's repairing covenant. Costs incurred in repairing and maintaining these features are accordingly payable under the service charge provisions of the Lease.

### **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.

**Communications to the Tribunal MUST be made by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk). All communications must clearly state the Case Number and address of the premises.**