



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

Case Reference : BIR/47UG/LIS/2023/0039

Property : Flat 6, Mill Lane, Blakedown, Worcs., DY10 3ND

Applicant : The Community Housing Group Limited

Respondents : Trudy Bricknall & Clarence Roberts (Flat 6)
Robert Edwards & Elaine Edwards (Flat 10)

Type of Application : Application to determine liability to pay and reasonableness of service charges under s.27A of the Landlord & Tenant Act 1985

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS
W. Jones FRICS

Date and Venue of Hearing : N/A. Determined on submitted papers.

Date of Decision : **16/10/2024**

DECISION

Introduction

- 1 This is an application by the landlord of a block of flats in Blakedown, a village about 3 miles north east of Kidderminster, Worcestershire, to determine whether costs incurred repairing steps on the outside of a building are the landlord's responsibility and if so, whether the costs could be reclaimed from the tenants as service charge.
- 2 The costs had been incurred in 2022/23 and invoiced in 2023. The amount in issue is £1,395 per flat or £5,580 in total.
- 3 The application was dated 26 October 2023. The First-tier Tribunal (Property Chamber) ('the Tribunal') has issued various orders to date:

Directions Order No.1

28 December 2023.

Barring Warning Notice

28 February 2024. Advising that the Respondents would be barred unless they provided a statement of case within 14 days;

Directions Order under Rule 10 Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

4 March 2024. Adding Robert Edwards and Elaine Edwards of Flat 10, Mill Lane as joined parties.

Directions Order No.2

26 March 2024. Amending previous Directions by stating Robert Edwards and Elaine Edwards of Flat 10, Mill Lane as joined Respondents and a new timetable.

Barring Warning Notice

8 July 2024. Advising that the Respondents would be barred unless they provided a statement of case within 14 days.

Directions Order No.3

16 July 2024. Providing a new timetable.

The property was inspected by the Tribunal today, 7 October 2024, and finds as follows.

Items in Dispute

- 4 The only questions for the Tribunal are whether the costs of repairing steps adjoining the building are part of 'the building' for the purposes of the lease, and if so, whether they could be reclaimed from the tenants as service charge.
- 5 The amount of work and value of costs incurred are not in issue.

Facts Found

- 6 The property comprises two semi-detached houses where the ground and first floors comprise separate self-contained maisonnettes. The right hand side, viewed from the road frontage, has Flat 8 on the ground floor with Flat 6 on the first floor, and the left hand side has Flat 10 on the ground floor and Flat 12 above.

- 7 The building is of two storey brick and tile construction. The ground floor flats each have their own front doors accessed from paths at ground level. The first floor flats are accessed from brick steps to the sides of the building leading to platforms with brick wall surrounds, from where there are doors into the main elevations of the building leading to the accommodation.
- 8 There are gardens to the front and rear of the building.

Relevant Law

- 9 The Tribunal's powers derive from statute.
- 10 Section 27A(1) of the Landlord & Tenant Act 1985 provides that an application may be made to a Leasehold Valuation Tribunal (LVT), now the First-tier Tribunal (Property Chamber), to determine whether a service charge is payable and if so, the person by whom it is payable, to whom, the amount, the date and manner of payment. The subsection applies whether or not payment has been made.
- 11 Section 18 of the Act defines a 'service charge' as an amount payable by a tenant of a dwelling as part of or in addition to rent which is payable directly or indirectly for services, repairs, maintenance, improvements, insurance or the landlord's cost of management, the whole or part of which varies according to the relevant cost.
- 12 Section 19 of the Act provides that relevant costs shall be taken into account in determining the service charge payable for a period (a) only to the extent that they are reasonably incurred and (b) where incurred on the provision of services or carrying out of works, only if the works are of a reasonable standard and in either case the amount payable is limited accordingly.
- 13 These are the statutory criteria for the Tribunal's jurisdiction but it is also bound to take account of Court precedents for interpretation of the standards to be applied.

Lease

- 14 The Applicant provided a copy of the Lease of Flat 6 which is one of the first floor flats accessed via the steps. The Tribunal has not been provided with the Lease of Flat 10 which is one of the ground floor flats but the service charge and repairing provisions are assumed to be similar.
- 15 The Lease of Flat 6 was granted for 125 years from 9 June 2003 at a ground rent.
- 16 Schedule 1 defines the demise as 'all that first floor flat/maisonnette situate at and known as 6 Mill Lane Blakedown in the County of Worcestershire which is for the purpose of identification only delineated on the Plan and thereon coloured pink.'
- 17 Schedule 4.1 requires the tenant to put, keep and maintain in good and tenantable repair, 'such parts of the building as are comprised in the property *save and except the structure roof and external parts ...*' (our italics).
- 18 Schedule 5.2 requires the tenant to reimburse the landlord for costs incurred by the landlord under Schedule 6.

- 19 Schedule 6.2 requires the landlord to 'maintain repair decorate and renew (a) the main structure and exterior of the building including the roof chimney stacks gutters rainwater pipes and window frames ...'

Submissions

20 Applicant

The Applicant landlord submits that the steps are part of the exterior of the building and as the exterior is specifically their responsibility under the terms of the lease, the cost of repairing and maintaining them can be reclaimed from the tenants as service charge.

21 Respondents

The Respondents say that the same question arose some years earlier in 2012 and at the time the landlord agreed the costs relating to repairing the steps were not the tenants' responsibility. In 2012 the landlord did not recover the costs.

- 22 Furthermore, they say that the land leased to them, i.e. the property 'demised' in their leases, is coloured pink on the lease plans and as such is their own responsibility, not the landlords. This is relevant as the costs claimed by the landlord were incurred for the steps leading to Flat 12 on the first floor over Flat 10 which are nothing to do with the tenants of Flats 6 or 10, they have no access to them and the steps are outside their demises. They say the steps leading to Flat 12 are not part of the building.

Tribunal Decision

- 23 The Tribunal has carefully read the lease and seen the site. However, we find the actual land coloured pink in the lease to be irrelevant, it shows the extent of land (or first floor) leased to the tenants but the actual extent and whether or not steps are coloured pink has no effect on the requirement for the tenants to pay the landlord for repairs and maintenance of the structure and exterior of the building. It matters not whether the steps adjoin the respondents' demised flats or whether they are at the other end of the building as in this case, at least as far as Flat 6 is concerned. The key question is whether the steps are part of 'the building' for the purposes of the landlord's repairing covenant in Schedule 6 of the Lease.
- 24 The definition page at the front of the lease defines 'the Building' as 'the Building comprising the flats or maisonnettes (of) which the Property forms part' (Our brackets added to give meaning as the lease omits 'of'). The use of the plural 'flats' and 'maisonnettes' envisages several flats, not just the flats demised by the Respondents' leases.
- 25 We find the steps are part of the structure and exterior of 'the building'. They are built with similar bricks, directly adjoin the gable elevations of the building and without them it would be impossible to access the first floor flats. The question is not whether they are exterior to the demises which they are, but whether they are 'external parts thereof' (i.e. of the Building) for the purposes of Schedule 4.1 which they clearly are.
- 26 We find the steps are part of the 'exterior' of the building and also part of the 'structure' of the building within the lease definition.

- 27 The Respondents do not question whether the costs were 'reasonably incurred' or the amount. Accordingly, we find the costs reasonably incurred for the purposes of sections 18 and 19 of the Landlord & Tenant Act 1985 and payable by the Respondent tenants.
- 28 We appreciate that the parties may have reached a different resolution in 2012 but our duty is to reach a decision based on the documents before us and submissions made by the parties today, adopting established legal principles and interpretation.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Appeal

In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Tenant / respondent may make further application for permission to appeal to the Upper Tribunal (Lands Chamber) on a point of law only. Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 28 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal. Where possible, you should send your further application for permission to appeal by email to Lands@justice.gov.uk, as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently. Alternatively, the Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710).