FIRST TIER PROPERTY CHAMBER DECISION

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

**Case Reference : CHI/45UD/LSC/2023/0170**

**Property : Elmleigh Court, Petersfield**

**Road, Midhurst, West** **Sussex, GU29 9HB**

**Applicant : Elmleigh Court Residents**

**Association Ltd** **Representative : Gray Property Management**

**Ltd**
**Respondent : The Leaseholders of Flats 1 –**

**12 Elmleigh Court**

**Type of Application : Determination of liability to**

**pay and reasonableness of** **service charges**

**Section 27A Landlord and** **Tenant Act 1985**

**Tribunal : Judge T. Hingston**

**Date of Decision : 5**

**th November 2024**

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**DECISION** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**Decision of the Tribunal: -**

**The £2,160 cost of removing cavity wall insulation is a valid expense in** **complying with the landlord’s covenants under the Lease, and can be** **recovered from all leaseholders as a reasonably-incurred service charge.**

**BACKGROUND**

**1.** Elmleigh Court is a development of 12 separate dwellings, comprising three pairs
of detached two-storey blocks, each of which contains a ground floor and a first floor flat.

**2.** The freehold is held by Elmleigh Court Resident’s Association, and the
leaseholders have 999 year leases which commenced in 1967.

**3.** Six of the 12 flats (numbers 5 – 10 inclusive) have had cavity wall insulation installed. The parties are agreed that problems with damp and condensation in some of the flats are at least partly due to ‘failed’ cavity wall insulation.

**4.** There is no record or evidence as to when the cavity wall insulation was put in, nor as to whether it was funded by the landlord/ freeholder or by individual leaseholders.

**5.** It is now agreed by the members of the Resident’s Association (following a
meeting in September 2023) that the insulation in Flats 7 and 8 should be removed. The cost of such works would be £2,160.

**6.** The parties are not agreed, however, that these costs are a valid service charge expenditure.

**7.** Accordingly the Applicant made an application dated 20

th of November 2024.

**THE LEASE**

**9.** A copy of the Lease for Flat 6 was provided to the Tribunal as a ‘sample’. It is understood that all the Leases follow the same format. Relevant provisions are as follows: -

Clause 1 defines the demised premises and details the nature of the demise, length of the lease etc.

Clause 2 sets out the tenant’s covenants, which include the following:-

i) a covenant to pay the yearly rent, and

ii) to pay all rates, outgoings and taxes on the property

iii) to ‘...*cleanse, maintain and repair…’* and keep in good condition the interior of the flat, including walls, floors, ceilings, windows and doors, and also gas, water and electricity conduits pipes and cables

iv) not without previous written consent of the landlord to ‘.*..make or permit to be* *made any alteration in the construction or arrangements of the demised premises* *nor cut, alter or injure any of the walls ceilings floors doors or windows thereof…’* v) to give the landlord a right of entry to the flat in certain circumstances

vi) to insure the flat

……

xiii) to pay a ‘*proportionate part’* of the landlord’s expenses incurred in complying with the covenants in Clause 3: the proportion being calculated on the basis of the rateable value of the property as against the value of the whole estate.

……..

Clause 3 sets out the Landlord’s covenants, which include the following: -

3(i)(a) ‘*To maintain in good and substantial repair and condition the main* *structure and roof … of the demised premises...and the link-way...and the* *foundations thereof…’.*

**10.** The ‘main structure’ as above is defined (in Clause 3(e)(iii)) as:-

‘*...all the foundations exterior walls joists floors and all interior walls floors and* *ceilings of the demised premises...which are not the responsibility of the tenant…’*

**11.** The ‘roof’ is defined as the: - ‘...*timbers tiles slates and all roofing material.*’
**12.** The landlord also covenants to redecorate the exterior wood and iron-work, and to maintain and keep tidy the gardens, paths entrance road etc. of the estate.

**RELEVANT LAW**
**13. See Appendix.** **APPLICANT’S CASE**

**14.** The Applicant is the Elmleigh Court Resident’s Association, and they seek a determination as to whether the removal of the failed cavity wall insulation is the responsibility of the landlord, and if so, whether the liability for the expense falls within the scope of the service charges.

**15.** The Applicant’s case is set out in the Application form and in the Position Statement dated 11

**17.** It was not known whether the cavity wall insulation had been installed by previous tenants on an individual basis (with or without permission), or when it was installed, but it was agreed that during the past 10 years any requests in relation to
the same had been met with the response that it would be at the tenant’s own

expense and any issues arising from it thereafter would be the tenant’s responsibility.

**RESPONDENT’S CASE**

**18.** The Tribunal received one written statement, from Ms Anne Phillips, leaseholder of Flat 7.

**19.** Ms. Phillips purchased her flat in September 2022, and by December 2022 she reported water running down the internal walls.

**20.** As far as Ms. Phillips was concerned, she was not aware of any meetings being held in 2023 to discuss the issue, despite repeated requests from her.

**21.** Ms. Phillips stated that, although she had been given permission by Company Director Colin Field to carry out works herself to remove the failed insulation, she was concerned that the cavity between the exterior and interior walls was a ‘shared

area’ as between herself and the tenant of Flat 8 in the same block, and that there could be difficulties as a result.

**TRIBUNAL FINDINGS AND DETERMINATION**

**22.** The Tribunal finds that the ‘structure’ of the flats as defined in the Lease does include both the interior and exterior walls and the area or ‘cavity’ between them. Therefore, under the terms of Clause 3 (as above) the landlord has responsibility for maintaining and repairing the walls and keeping them in good condition, and the removal of failed or faulty cavity wall insulation between those walls would come within the remit of the Tenants Association.

**23.** The fact that there has been a ‘policy’ in respect of cavity wall insulation for the last 10 years does not necessarily mean that there was any such policy in place when the insulation was installed originally.

**24.** In the absence of any evidence either as to the basis on which the insulation was installed or as to who funded it, the Tribunal finds that the cost of the works to remove the insulation is a valid expense to the landlord which can be reclaimed by way of service charges.

**25.** The £2,160 expended by the landlord Association in complying with their obligations in this respect can therefore properly be recovered from all 12
leaseholders on the estate, in the proportions as per Clause 2(xiii).

**Right to Appeal**

1. A person wishing to appeal this decision to the Upper Chamber must

seek permission to do so by making written application 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. Where possible you should send your further application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal to deal with it more efficiently.

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.

**ELMLEIGH COURT – CHI/45UD/LSC/2023/0170 - APPENDIX – LAW.**

**The Landlord and Tenant Act 1985**

**Section 18**

(1) In the following provisions of this Act “service charge” means an amount payable by a tenant of
a dwelling as part of or in addition to the rent –

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose –

(a) “costs” includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be
incurred, in the period for which the service charge is payable or in an earlier or later period.

**Section 19**

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise ……………………..

**Section 27A**

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to –

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which –

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.