



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

Case Reference	: CHI/00MR/LSC/2023/0146
Property	: St Helens Court, St Helens Parade, Southsea, Hampshire, PO4 0RR
Applicant	: St Helens Court Limited
Representative	: Peter Dack FRICS
Respondent	: All Leaseholders
Representative	:
Type of Application	: For the determination of the reasonableness of and the liability to pay a service charge
Tribunal Member(s)	: Regional Surveyor Clist MRICS
Date and Venue of Hearing	: On the papers – 18 December 2024
Date of Decision	: 18 December 2024

DECISION

Decision of the Tribunal

1. The Tribunal determines that the Applicant is entitled to recover the costs to be incurred by way of service charges to all 25 flats in relation to the major works proposed to replace the bay structures of the 16 south facing flats at the property. The tribunal determines that the costs of the glass to the windows shall be borne by the individual leaseholders.

Background

2. The Applicant seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 (“the Act”) as to the liability to pay and reasonableness of service charges in respect of the service charge year 2024. The application was received on 20 November 2023.
3. Directions issued on 21 May 2024 provided for a case management and dispute resolution hearing to take place on 21 June 2024.
4. Following a case management application made by the Applicant the hearing on 21 June 2024 was adjourned to 25 July 2024.
5. The hearing was attended by Derek Kelly, Pauline Barber and Penny Foskett (directors of St Helens Court Limited) and by Mr Peter Dack. Mr Dack informed the Tribunal that he was attending in his capacity as the Company Secretary of the Applicant company and not as the Property Manager. The Respondent, Mr Bruce Cozens was also in attendance.
6. Mr Dack explained that major works were proposed to replace the bay structures of the 16 south facing flats at the property. In particular, the Applicant sought a determination as to whether the costs of the proposed works could be recovered as service charges from the lessees of all 25 flats at the property (so to include the 8 north facing flats) or just from lessees of the 16 south facing flats. Further, that where certain lessees had taken it upon themselves to replace the windows to the bay structure serving their own flat whether the cost of replacing those windows as part of the proposed works should be borne solely by the individual lessee or form part of the service charge.
7. It was agreed that lessees of all the flats at the property should be allowed the opportunity to be added as Respondents to the application. That all lessees should be sent a copy of the application, the Applicants statement of case and these Directions. Those lessees who wished to be joined as Respondents would then have the opportunity to make their own representations, if they so wished, prior to a determination.
8. On the 1 August 2024, the Tribunal issued Directions to the parties stating that it considers that the application is likely to be suitable for determination on the papers alone without an oral hearing and will be so determined in accordance with rule 31 of the Tribunal Procedure

Rules 2013 unless a party objects in writing to the Tribunal within 28 days of the date of receipt of the directions.

9. The applicant was further directed to serve the application, directions and bundle on to all lessees as Respondents.
10. No objections have been received as to the determination of the application on the papers and upon review of the bundle, the Tribunal concludes that the matter is suitable for paper determination given the narrow issue for adjudication.
11. 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.
12. The property which is the subject of this application is a purpose-built block of 25 flats with bay window projections to the south and north elevations.
13. The original named Respondent, Mr Bruce Cozens, holds a long lease of the property which requires the Landlord to provide services and the Tenant to contribute towards their costs by way of a variable service charge. It is understood that The specific provisions of the lease will be referred to below, where appropriate.
14. The Tribunal has considered carefully all the documents within the bundle.

The Applicant's Case

15. Mr Dack, for The Applicant has provided a statement explaining that the freehold of St Helen's Court is owned by St Helens Court Limited with each leaseholder owning a share of the company.
16. Mr Dack describes the property as comprising 25 flats arranged over eight floors. The south elevation consists of 16 flats, with a further 8 flats to the north elevation in addition to a penthouse flat. It is said that the south facing flats suffer from water ingress owing to their sea front positioning. This is said to have occurred since the date of construction. Mr Dack states that the timber structure to the bays has severe rot to the south elevation and a recent external wall survey highlighted concerns as to fire spread, although currently the risk is considered to be moderate and non-urgent.
17. Mr Dack states that the bay structure to the north facing flats and penthouse has not deteriorated in the same manner as the south-facing structure owing to having protection from the weather. It is stated that whilst the north facing bay structure may not have the same deterioration, it will still require eventual replacement owing to risk of fire spread.

18. Mr Dack states that each lease was originally granted in 1973 with a new lease granted in 2017 to each leaseholder. The original lease terms remain unchanged with some modern lease terms added in addition to a clause to exclude short term letting.
19. Mr Dack states that that the apportionment of service charge contributions, to which the lease provides is in line with rateable values, is not in dispute but rather whether the north facing flats should have to contribute towards the costs of works to the bay structure to the south-facing elevation. It is stated that some of the leaseholders of the 8 north facing flats do not feel that they should contribute to the cost of proposed works.
20. Mr Dack states that consultation with the leaseholders was undertaken with a notice of intent expiring on the 17 March [no year provided]. No responses were received, however, the leaseholder of the Penthouse responded to a letter sent 6 June [no year provided] outlining the company's proposals in objection, stating that the owners of the penthouse and north facing flats should not have to contribute to the cost of works.
21. It is said by Mr Dack that the lease states that the structure includes external and internal walls and that the demise includes the glass to the windows. Historically, leaseholders have replaced their own windows without referral to the freehold company for consent or contribution to cost. The company is of the opinion that the cost of the works to the south facing bay structure should be borne collectively by all 25 leaseholders, in accordance with the lease, with the windows to be paid for by the individual affected leaseholders. Similarly, all leaseholders should bear the cost of the north-facing bay structure once replaced. The company is of the opinion that individual leaseholders bearing their own costs would be in contrary to the lease.

The Respondent's Case

22. A position statement has been supplied by Mr Bruce Cozens, the leaseholder originally named as Respondent.
23. Mr Cozens states that he is a leaseholder of a south facing flat, one of which has been worst affected by the design defect and has experienced water ingress to his lounge, and considerable rot to the timber bay structure as a result.
24. Mr Cozens has said that despite a number of attempts to remedy the disrepair, none have been successful with significant water ingress continually experienced during prevailing storms. As such, a proposal has been made to replace the bay structure to all south-facing flats only. The flats to the north-east are sheltered and have not therefore experienced any water ingress. Notwithstanding, the bay structures to the north-east facing flats will require eventual replacement, if not for

water ingress than to address fire separation issues recently identified in a fire assessment. Mr Cozens understands the risk of which are modest and currently managed by other measures, however.

25. Mr Cozens is aware of at least one leaseholder of the north-east facing flats that opposes contributing to the cost of replacement bays to the south-facing flats.
26. It is further stated by Mr Cozens that he and the other leaseholders of the south-facing flats are keen to commence the proposed works which will require a significant levy. The application for determination is therefore required to avoid any further delay that a service charge dispute would cause.
27. Mr Dack confirmed that the Directions dated 1 August 2024 were served upon all other leaseholders before the 22 August 2024, to which are all now named as Respondents.
28. No other representations have been received by any other leaseholders as Respondents.

Consideration

29. The bundle contained a sample (originating) lease in addition to a counterpart, granted 20 July 2017 as an extension to the term. The Tribunal understands that all remaining leases are in the same form, incorporating similar terms.
30. The Tribunal identifies the following parts of the lease as the most pertinent to service charges:

Demise: Clause '1) ...and delineated and described on the plan annexed hereto and thereon edged in Pink AND ALSO ALL THAT car park space number 14 edged Blue on the said plan (hereinafter called "the Flat") TOGETHER WITH the Landlord's fixtures and fittings sanitary apparatus and appurtenances installed therein or affixed thereto TOGETHER ALSO with the easements rights and privileges mentioned in the First Schedule hereto but subject as therein mentioned EXCEPTING AND RESERVING from the said demise the main structural parts of the said building of which the flat forms part including the roof foundations and external parts thereof but not the glass of the windows of the flat nor the interior faces of such part of the external or internal walls as bound the flat or the rooms therein and excepting nevertheless and reserving unto the Lessor the rights mentioned in the Second Schedule ...'

To pay service charge: Clause 2.

(2) ' To pay to the Lessor without any deduction by way of further and additional rent a proportionate part of the expenses and outgoings incurred by the Lessor in the repair maintenance

renewal and insurance of the said building and the provision of services therein and the other heads of expenditure as the same are set out in the Fourth Schedule hereto such further and additional rent (hereinafter called "the Service Charge") being subject to the following terms and provisions: -

- (a) the amount of the service charge shall be ascertained and certified by a certificate (hereinafter called "the Certificate") signed by the Lessor's auditors or accountants or managing agents (at the discretion of the Lessor) acting as experts and not as arbitrators annually and so soon after the end of the Lessor's financial year as may be practicable and shall relate to such year in a manner hereinafter mentioned
- (b) the expression "the Lessor's financial year" shall mean the period from the Twenty fifth day of December in each year to the Twenty fifth day of December of the next year or such other annual period as the Lessor may in its discretion from time to time determine as being that in which the accounts of the Lessor either generally or relating to the said Building shall be made up
- (c) a copy of the certificate for each such financial year shall be supplied by the Lessor to the Tenant written request and without charge to the Tenant
- (d) the Certificate shall retain a summary of the Lessor's said expenses and outgoings incurred by the Lessor during the Lessor's financial year to which it relates together with a summary of the relevant details and figures forming the basis of the service charge and the certificate (or a copy thereof duly certified by the person by whom the same is given) shall be conclusive evidence for the purpose hereof of the matters which it purports to certify
- (e) The annual amount of the service charge payable by the Tenant as aforesaid shall be calculated by dividing the aggregate of the said expenses and outgoings incurred by the Lessor in the year to which the certificate relates by the aggregate of the rateable values (in force at the end of such year) of all the flats in the said Building the repair maintenance renewal insurance or servicing where of is charged in such calculation as aforesaid and then multiplying the resultant amount by the rateable value (in force at the same date) of the flat
- (f) the expression "the expenses and outgoings incurred by the Lessor" as hereinbefore used shall be deemed to include not only those expenses outgoings and other expenditure hereinbefore described which have been actually dispersed incurred or made by the Lessor during the year in question but also such reasonable part of all such expenses outgoings and other expenditure hereinbefore described which are of a periodically re-occurring nature (whether recurring by regular or irregular periods) whenever dispersed incurred or made and whether prior to the commencement of the said term or otherwise including a sum or sums of money by way

of reasonable provision for anticipated expenditure in respect thereof as the Lessor or its accountants or managing agents (as the case may be) may in their discretion allocate to the year in question as being fair and reasonable in the circumstances

- (g) the Tenant shall on the execution hereof and thereafter on the Twenty fifth day of December in each year pay the Lessor such sum in advance and on account of the service charge as the Lessor or its accountants or managing agents (as the case may be) shall specify at their discretion to be a fair and reasonable interim payment such sum not being less than One hundred pounds (£100) (the first payment being apportioned if necessary in respect of the period from the date hereof to the Twenty fifth day of December next)
- (h) as soon as practicable after the signature of the certificate the Lessor shall furnish to the Tenant and account of the service charge payable by the Tenant for the year in question due credit being given therein for all the interim payments made by the Tenant in respect of the said year and upon the furnishing of such account showing such adjustment as may be appropriate there shall be paid by the Tenant to the Lessor the amount of the service charge as aforesaid or any balance found payable or there shall be allowed by the Lessor to the Tenant any amount which may have been overpaid by the Tenant by way of interim payment as the case may require
- (i) it is hereby agreed and declared that the Lessor shall not be entitled to re-enter under the provision in that behalf hereinafter contained by reason only of non-payment by the tenant of any such interim payments as aforesaid prior to the signature of the certificate but nothing in this clause or these presents contained shall disable the Lessor for maintaining an action against the Tenant in respect of non-payment of any such interim payment as aforesaid notwithstanding that the certificate had not been signed at the time of the proceedings subject nevertheless to prove in such proceedings by the Lessor that the interim payment demanded and unpaid is of a fair and reasonable amount having regard to the prospective service charge ultimately payable by the Tenant
- (j) PROVIDED ALWAYS and notwithstanding anything herein contained it is agreed and declared as follows: -
 - (i) that in regard to the commencement of the term hereby granted the service charge shall be duly apportioned in respect of the period from the date on which the first payment of rent shall fall due hereunder to the ensuing Twenty fifth day of December and not in respect of the period from the date of commencement of the said term to such ensuing Twenty fifth day of December

- (ii) that the provisions of paragraph(h) shall continue to apply notwithstanding expiration or sooner determination of the said term

Lessor's covenants to repair Clause 6.

THE LESSOR HEREBY COVENANTS WITH THE TENANT as follows: -

- (1) Subject to the payment by the Tenant of the rents and the service charge and provided that the Tenant has complied with all the covenants agreements and obligations on his part to be performed and observed to maintain repair redecorate renew amend clean repoint paint grain in varnish whiten and colour
 - (a) the structure of the said building and in particular but without prejudice to the generality thereof the roof foundations external and internal walls (but not the interior faces of such parts of external or internal walls as found with flat all the rooms therein) and timbers (including the joists and beams of the floors and ceilings thereof) gutters and rainwater and soil pipes thereof;
 - (b) the sewers drains channels watercourses gas and water pipes pumps electric cables and wires and supply lines in under and upon the said building save and except such (if any) heating apparatus and such wires pipes cables and pumps as may be now or hereafter installed in the flat serving exclusively the flat;
 - (c) the passenger lift lift shafts and machinery and the passages landings and staircases and other parts of the said building enjoyed or used by the Tenant in common with others; and
 - (d) the boundary walls and fences of and in the curtilage of the said building PROVIDED that the Lessor shall not be liable to the Tenant for any defect or want of repair hereinbefore mentioned unless the Lessor has had notice thereof

THE FOURTH SCHEDULE –

Lessor's expenses and outgoings and other heads of expenditure in respect of which the Tenant is to pay a proportionate part by way of Service Charge: -

1. The expense of maintaining repairing decorating and renewing amending cleaning repointing painting graining varnishing whitening or colouring the said building and all parts thereof and all the appurtenances apparatus and other things there to belonging and more particularly described in Clause 6(1) hereof
31. The lease is clear on the repairing obligations of the freeholder under Clause 6(1) and the Fourth Schedule, to which is explicit to the structure of the building, to include the external walls and timbers, including floor and ceiling joists. The lease is also explicit on items excluded from the freeholders repair obligation which include the internal facing of external and internal walls. The exclusion of the glass to windows within the description of the demise, implies that the Freeholder does not have a repairing obligation of the same.

32. Clause 2 provides an obligation on the Tenant to pay the Lessor a proportionate part of the expenses and outgoings incurred by the Lessor in the repair, maintenance, renewal associated with such repairing obligations.
33. The Tribunal has examined the photographs of the subject building provided by the Applicant, finding that the bay windows subject to the application form part of the external elevations appearing on visual examination to include part of the balcony structures and would comprise part of floor and ceiling joists, and as such form part of the structure of the building. The freeholder therefore has a repairing obligation to 'repair, maintain and renew' the same, and can recover costs incurred by means of a service charge.
34. The Tribunal finds that the lease makes no mention of individual leaseholder responsibility of the same, thereby allowing for the collective recovery of costs from all 25 leaseholders by way of the service charge mechanism. Notwithstanding, as the extent of the demise includes 'the glass of the windows to the flat', the Tribunal finds that each leaseholder is individually responsible for such. Taking a literal reading of the lease, the tribunal finds that the wording relates only to the panes of the glass and not to the frames or associated parts.

The Tribunal's Decision

35. I determine that the answer to the question posed in paragraph 6 of this determination is that the Applicant is entitled to recover the costs replacement bay structures to the affected flats on the south elevation at the Property and recover its costs by way of a service charge expense collectively from all 25 leaseholders. The cost of the glass panes to the windows are to be borne individually by the affected leaseholders.
36. There has been no question as to the individual apportionment between the 25 leaseholders and as such the Tribunal makes no findings of such.
37. The Applicant is directed to serve a copy of this decision upon all Respondent Leaseholders.

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 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