



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

Case Reference : **MAN/00EQ/LSC/2024/0137**

Property : **Chapel Court, Chapel Street,
Macclesfield, SK11 8BJ**

Applicant : **High Street School Management
(Macclesfield) Limited**

Representative : **Stuart McMonagle - HML Group**

Respondent : **Long Leaseholders -See Annex**

Representative : **In Person**

Type of Application : **Section 27A Landlord and Tenant Act
1985 –**

Tribunal Members : **Tribunal Judge J. E. Oliver
Tribunal Member J. Elliott**

Date of Determination : **12th September 2024**

Date of Decision : **16th September 2024**

DECISION

Decision

1. The windows in the demised apartments belong to the Respondents.
2. The Applicant's responsibility for the windows is limited to their decoration as provided for in paragraph 3, Section B, Part IV of the Schedule to the Lease, the cost of this being part of the service charge.

Reasons

Introduction

3. This is an application by High Street School (Management) Limited ("the Applicant") for a determination of the liability for the maintenance of the windows in the individual apartments, A-J and K-M, in Chapel Court, Chapel Street, Macclesfield ("the Apartments") pursuant to Section 27A and Section 19 of the Landlord and Tenant Act 1895 (the Act).
4. The Respondents to the application are the long leaseholders of the Apartments.
5. On 25th June 2024 directions were issued providing for the filing of statements and bundles and for a determination without a hearing or inspection.

The Lease

6. The Tribunal was provided with a copy of the Lease ('the Lease') for Apartment H and is representative of the leases for the remaining Apartments. The Lease for Apartment H is made between Goric Limited (1) Bernadette Susan Dillon (2) and is dated 25th September 1987. The Lease is for a term of 999 years from 1st March 1987.
7. Clause 3 of the Lease provides as follows:

"In accordance with the said general scheme for the benefit of the Vendor and the Lessees of the remainder of the Block the Purchaser HEREBY COVENANTS with the Vendor and the Company and the Lessee for the time being of the other parts of the Block and with each of them that the Purchaser will from time to time and at all times hereafter during the said term:-

(1) Keep the Demised Premises throughout the term hereby granted (other than the parts thereof referred to in Part IV of the Schedule hereto and all walls party walls sewers drains pipes cables wires timbers floor and ceiling and appurtenances thereto belonging in good substantial and tenantable repair and condition and in particular so as to support shelter and protect the parts pf the Block other than the Demised Premises and in such good substantial and tenantable repair and. Condition yield up the Demised Premises at the expiration or sooner determination of the term hereby created.

8. Part IV of the Schedule of the Lease provides as follows:

SUBJECT to the due performance by the Purchaser of his obligations to contribute to the cost charges and expenses of the Company as herein provided

SECTION A

1. *The Company will whenever reasonably necessary or whenever the Vendor or its agents or surveyors for the time being consider it necessary and in any event within Two months of any notice served under Clause 8 of this Deed maintain repair redecorate and renew the main entrances main common hall common passages landings and staircases and elevator (hereinafter called the “common parts”).*
2. *The Company will so far as is practicable:-*
 - (a) *Keep clean and reasonably lighted the common parts and keep clean the interior and exterior of the windows thereof*
 - (b) *Keep covered with suitable quality floor coverings the common parts*
3. *The Company will pay all gas and electricity consumed in or upon or for the common parts.*

SECTION B

1. *The Company will whenever reasonably necessary or whenever the Vendor its agents or surveyors for the time being consider it reasonably necessary or in any event within Two months of any notice served under Clause 8 of this Deed maintain repair redecorate and renew:-*
 - (a) *The main external walls and structures and in particular the main load bearing walls and foundations roof chimney stacks storage tanks gutters rainwater pipes of the property and the boundary fences*
 - (b) *The gas and waterpipes drains and electricity cables and wires in under and upon the property and enjoyed or used by the Purchaser in common with the Lessees of the other parts of the Property*
 - (c) *Maintain the walls fences and gates (if any) surrounding the property including any situate at the rear thereof and to construct rebuild or renew such walls fences and gates whenever this shall become necessary*
2. *The Company will pay or general rates not assessed or charged upon the individual parts of the property.*
3. *The Company will no less frequently than one every Fifth year decorate the external parts of the property including the windows and frames PROVIDED that the exterior walls and paintwork of the property shall not be painted or decorated otherwise than in the same uniform colour or colours*
4. *.....*

The Law

16.

(1) Section 27A(1) of the 1985 Act provides:

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.*

17. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.
18. The meaning of the expression “service charge” is set out in section 18(1) of the 1985 Act. It 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.*

The Issues

21. The application is to determine whether the responsibility for the windows in the Apartments lies with the Applicant or the Lessees.

Submissions

22. The only submissions received from the Respondents are from Mr & Mrs Lapi-Stansfield of Apartment J who produced photographs of the windows to their apartment showing them to be in a severe state of disrepair, to the extent the glass had fallen out of one window. They had reported the issue to the Applicant who commissioned a report that was dated 2nd August 2023. No details of the report were provided. It was said the Applicant had taken legal advice and had been told the maintenance of the windows was the responsibility of the Applicant. No work has been undertaken to the 6 windows at the date of the application.

23. The Applicant stated as follows:-

“HML as the block managing agent have always sought instructions from the board of directors of Chapel Court. Until very recently when the owner directors stepped down, the Board’s opinion was that the windows are demised and as such the repair or replacement of the frames and glazing was the responsibility of the individual flat owners and not the service charge. In fact, a number of flat owners undertook repair and replacement on their windows and the Chapel Court paid for the external repainting and repaired/repainted window frames. Throughout our period of management, we have been instructed by various directors to

advise owners that unless they repaired their windows the external decoration of the windows could not go ahead. HML have even undertaken, as instructed by the directors, surveys to assess each widow's condition and then written to the flat owners asking them to attend to the identified defects so the external decoration can then be organized..."

Determination

24. The Tribunal considered the terms of the Lease and noted there was no specific reference to the windows, save for within paragraph 3 of Section B, Part IV of the Schedule. This is as stated in paragraph 7 above and as referenced by the Applicant at paragraph 23 above.
25. The Tribunal determines the windows are the responsibility of the Respondents by reason of Clause 3 of the Lease, as set out in paragraph 6 above. The Lease provides for the responsibility of the walls and party walls of which the windows form part. Thereafter, it states*and appurtenances thereto belonging*".
26. The Collins dictionary definition of appurtenances includes "*a secondary or less significant part or thing*", and "*additional features and buildings belonging to a house*".
27. The Tribunal considers the word "*appurtenances*" includes the windows being part of the walls that are the responsibility of the Respondents. It therefore follows the Applicant's responsibility for the windows is limited to their decoration, as provided for in paragraph 3, Section B, Part IV of the Schedule to the Lease and that cost is recoverable through the service charge.

Rights of Appeal

If a party wishes to appeal the decision to the Upper Tribunal (Lands Chamber), a written application for permission must be made to the First-tier Tribunal at the regional office that has been dealing with the case.

An application to appeal must be received at the regional office within 28 days after the Tribunal sends the 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 why the application was not made in time; the Tribunal will then consider whether the application for permission to appeal will be allowed, or not.

Any application must identify the decision to which the appeal relates, state the grounds of appeal and state the result the party is seeking.

If the Tribunal refuses to grant permission to appeal, a further application may be made to the Upper Tribunal (Lands Chamber)