



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

Case reference	:	BIR/00FK/LSC/2026/0017
Property	:	Apt 2, Mickleover House, Orchard Street, Mickleover, Derby DE3 0DF
Applicant	:	Gwyneth Turner-Tymm
Representative	:	David Turner-Tymm
Respondent	:	Mickleover House Management Company Limited
Representative	:	Howard Benjamin Solicitors
Type of applications	:	Application for determination of liability to pay and reasonableness of service charges under sections 27A and 19 of the Landlord and Tenant Act 1985 ("the Act") and for limitation of costs under section 20C of the Act and for an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002
Tribunal member	:	Judge C Goodall Mr G Freckelton FRICS
Date and place of hearing	:	Paper hearing
Date of decision	:	18 August 2026

DECISION

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Background

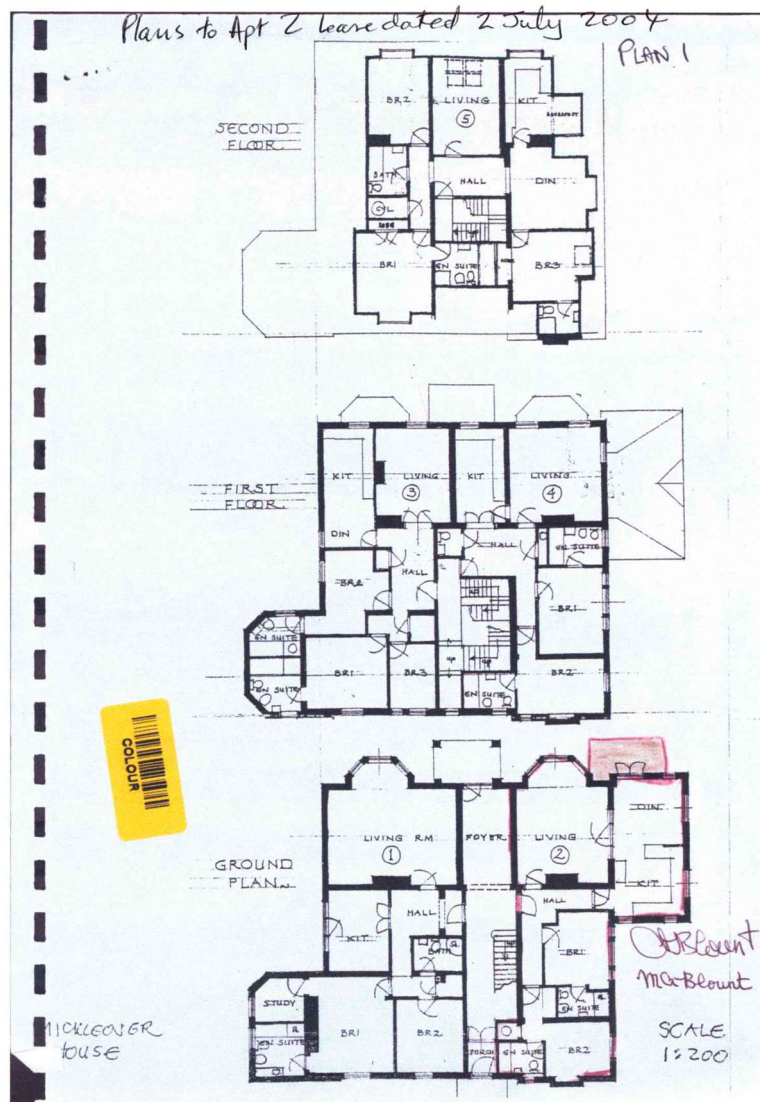
1. Mickleover House is a residential house, converted in the early 2000's into five apartments.
2. This application is brought by the Applicant, one of the five lessees, for a determination of the payability of service charges, arising from a dispute between the lessees over the proper interpretation of her lease. The Applicant's apartment is Apartment 2.
3. The lease is a tri-partite lease between the original developer, the Respondent (who is the management company in the lease) and the lessee. The developer has transferred the freehold into the name of the Respondent, which is a lessee owned company.
4. The dispute between the parties does not concern determination of the payability of any specific sums by way of service charge; it is dispute about whether service charges can be levied on the Applicant for any costs of repair, renewal, and maintenance of a part of Mickleover House known in this decision as the Garden Room.
5. The interior of the Garden Room is included within the demise of Apartment 1. The question concerns whether the costs of repairing, maintaining, cleaning, redecorating, replacing, renewing, and rebuilding the main structures, roof, foundations, external walls and party walls of the Garden Room must be paid by all lessees through a service charge.
6. The parties agreed that the application should be determined on the papers and without a hearing.
7. The papers provided by them, following Directions issued after a case management hearing, comprise:
 - a. An Applicant's bundle of 117 pages containing a Statement of Case and ancillary documents;
 - b. A Respondent's bundle of 95 pages also containing a Statement of Case and ancillary documents;
 - c. An Applicant's response to the Respondent's Statement of Case of 6 pages.
8. This document sets out the Tribunal's decision on the application with our reasons for it.

Facts

9. The lease of Apartment 2 (which is a ground floor Apartment) is dated 2 July 2004. The original lessees were Gordon Turner-Tymm and Gwyneth

Turner-Tymm. The latter is the Applicant. The Apartment is registered at HM Land Registry under title number DY379988. The title plan shows the outline of Mickelover House without the Garden Room shown. The lease plan is as appears below:

Apartment 2



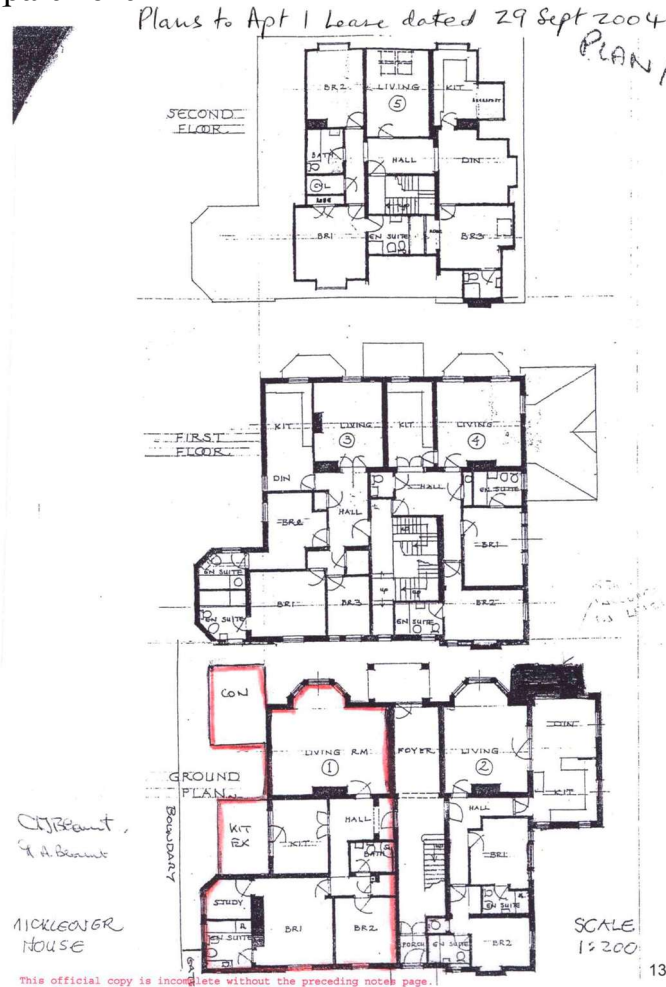
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10. We note that at the top right hand part of the ground floor plan, there is an area coloured red which appears to have been added freehand after the plan was initially drawn. The Respondents Statement of Case identifies this area as a kitchen extension. It is clearly included within the demise of Apartment 2.
11. The lease of Apartment 1 is dated 29 September 2004. The original lessees were John Myton Dent and Audrey Mary Dent. The lease is registered at HM Land Registry under title number DY380349. We have not been supplied with up to date official copies, so do not know the names of the current lessees, but an email in the Respondents bundle from a Mr

Richard Welburn (page 88) suggests that the Dents' have sold the Apartment to Mr Welburn and another.

12. The lease plan for Apartment 1 is as appears below:

Apartment 1



13. It is apparent that the extent of Mickleover House differs between both plans. In the top left hand corner of the lease plan for Apartment 1, there is an area marked "Con". Our understanding is that this is the area on which the Garden Room has been constructed. It is not present on the Apartment 2 plan.
14. Additionally, there is an area marked "Kit Ext" shown on the Apartment 1 plan but not on the Apartment 2 plan. The parties have not focussed on this area, possibly (and this is conjecture, not a finding of fact) because if it was intended to build a kitchen extension, that was in fact never built.
15. For completeness, we note that the Land Registry title plan for Apartment 1 also appears to include in the Apartment 1 title, the area on which the Garden Room has been built.

16. We make an assumption, based on conjecture, that following the grant of the Apartment 2 lease, the Developer of Micklover House reached an agreement with the Dents that he would grant a lease of Apartment 1 to them which would include a newly constructed Garden Room, to be built outside the existing building envelope at the time (and that the lease would also include the Kit Ex land).
17. A planning application for the Garden Room was submitted 19 July 2004. It was granted on 14 September 2004.
18. Estate agent's particulars provided by the Applicant (presumably issued at the time they were house-hunting) give details of the accommodation for all apartments. Apartment 1 does not appear to include the Garden Room.
19. We have not been supplied with much evidence of the facts surrounding the grant of the two leases discussed above. There are no witness statements. The only contemporary documents provided are the estate agents particulars referred to above, and the planning application plans and the consent granted.
20. We have been provided in the Statements of Case with the following information about subsequent maintenance of the Garden Room:
 - a. The Applicant says that the owners of the Garden Room (the Dents) maintained it at their own expense for twenty years. Any repair and maintenance costs were not included in service charge expenditure.
 - b. This is disputed by Mr Welburn who says that he has checked with the holders of powers of attorney for the Dents who say that external window cleaning and redecoration was carried out for the Garden Room through the service charge throughout their ownership. Generally, Mr Welburn disputes the Applicants statements regarding ongoing maintenance in the last 20 years.
 - c. At paragraph 4.4 of the Applicant's Statement of Case, there is a hint that periodic external redecoration might have included the Garden Room, but it asserts that was for convenience and not to be regarded as an acceptance of shared responsibility for those works.
 - d. The Respondent says that the dispute arose because works were required to the roof of the Garden Room. The date of these works being required is not given, but from the context of Statement of Case, it appears that the need for works has only been identified recently and was possibly the trigger for these proceedings being commenced.

- e. The Respondent also confirms that the Garden Room was not constructed as part of the original redevelopment of Mickelover House, but was completed later on the purchase of Apartment 1 by the Dents. It says that there have been no major repairs required to the Garden Room. The most recent service charges sought by the Respondent have included a charge of £280.00 for renewing a coat of bitumen and cleaning of the Garden Room roof.

The Lease

- 21. The key provisions of the leases of Apartments 1 and 2 are set out below. The text appears to be identical. As identified above, the Plans differ.

PARTICULARS

Property ALL THAT ground floor Apartment intended to be known as Apartment [1] [2] Mickelover House, Orchard St, Mickelover, Derby edged red on the Plan 1 (including the parking space shown edged red on Plan 2) and more particularly described in the First Schedule being one of five Apartments in the Block

Service Charge One-fifth of the Service Cost

Development Conversion of Mickelover House apartments, landscaped gardens and car parking spaces intended to be known as Mickelover House, Orchard St, Mickelover, Derby and shall in this Lease mean the land shown edged blue on Plan 2 being all the land comprised in Title Number DY179196 referred to above

Apartments The self contained apartment within the Block at the Development

Block The block of Apartments of which the Property forms part

Recitals

(a) It is the intention that each of the Apartments comprised in the Development shall be demised by a Lease in identical terms (mutatis mutandis) to those of these presents with a view to each of the tenants thereunder being able to enforce against the other tenants the restrictions contained in such Leases

...

1. Definitions

“Building”	means the Block and such other buildings as are erected on the Development
“Common Parts”	Means those parts of the Development (whether or not within the structure of the Building) to be used in common by any tenant other occupy of the Building the Landlord and those properly authorised to do so and includes without limitation the entrance hall corridors staircases landings and accessways passages car park landscaped areas driveway and paths and other such amenities that excludes any such parts as may be within the Property
“Services”	means the services set out in the Sixth Schedule
“Service Charge”	means the proportion of the Service Costs specified in the particulars or such other proportion as may from time to time be substituted for it under the provisions of clause 6.2.1 of this Lease
“Service Costs”	means the amount of money expended in respect of the matters set out in the Sixth Schedule Part 2
“Service Media”	means all drains, channels, sewers, pipes, wires, cables, conduits, aerials, tanks, watercourses, gutters, soakaways and other conducting media whatsoever and any structures incidental to the user thereof (and all other apparatus for the supply of water, gas, electricity, telephone, or television signals) now or hereafter constructed within the Perpetuity Period excluding such service media within and exclusively serving the property

...

3. Tenant Covenants

The Tenant for the mutual protection of the Landlord and the Management Company ... covenants with the Landlord and separately with the Management Company to observe and perform the obligations on the part of the Tenant set out in Part 1 of the Fourth Schedule and in the Seventh Schedule

4. Landlord Covenants

The Landlord ... covenants with the Tenant to observe and perform the obligations on the part of the Landlord set out in the Fifth, Sixth and Seventh Schedules.

...

6 Agreements and Declarations

...

6.2 6.2.1 That the Landlord may in its reasonable discretion withhold or vary any of the Services but only if such withholding shall not materially impair the use and enjoyment of the Development and/or the Property

6.2.2 That the Landlord shall be entitled by giving written notice to the tenant to vary the Service Charge from time to time as a consequence of any alteration or addition to the Building or the Development or any alteration in the arrangements for provision of the services or any other relevant circumstances

6.2.3 That any variation in the Service Charge shall take effect from such date as the Landlord may specify in such written notice having regard to the date of the occurrence of the reason for such variation

...

The First Schedule

The Property is shown edged red on Plan 1 and includes [windows, window frames, door and door frames, internal plaster, non-load bearing walls, flooring down to the joists or other structural parts supporting the floors, plaster on the ceilings]

...

The Fourth Schedule

Part 1

The Tenant's Covenants

...

16. Service Charge

To pay to the Landlord the Service Charge, Interim Service Charge, and where applicable any Supplemental Interim Service Charge in accordance with the provisions of the Seventh Schedule to this lease

The Fifth Schedule

Landlord's Covenants

...

2. Lease Uniformity

That every lease of each of the Apartments granted by the Landlord shall contain covenants by the Tenant substantially in the terms of those on the Tenant's part contained in this Lease

...

The Sixth Schedule

Part 1

Landlord's Covenants for Works and Services

1. Repair

1.1 To repair, maintain, clean, redecorate, replace, renew and rebuild (as applicable) the following:

1.1.1 the Block's main structures, roofs, foundations, external walls, party walls and structures, boundary walls, fences and railings, window frames, doors and door frames

1.1.2 the Common Parts

1.1.3 the Service Media

1.1.4 any other common service facilities serving the Development or used in the Building

But excluding such parts as the Tenant covenants in this Lease to repair

...

3. Party Structures

To repair renew or rebuild or (as appropriate) to contribute to the cost of repair renewal or rebuilding of any party walls and structures used in common by the occupiers for the time being of any part of the Development and the owners and occupiers of any neighbouring property and to keep all parts of the Development not hereby demised and all fixtures and fittings in and additions thereto in good and tenantable state of repair and decoration and condition including the renewal and replacement of all worn or damaged parts PROVIDED THAT nothing shall prejudice the right of the Landlord to recover from the Tenant or any other person the amount or value of any loss or damage suffered by or caused to the Landlord by the negligence or other wrongful or default of the tenant or such other persons

The Sixth Schedule

Part 2

Service Costs

The Service Costs of any Accounting Period are all the expenditure, liabilities and overheads (including Value Added Tax) paid or incurred by or on behalf of the Landlord during or in respect of the Accounting Period of and incidental to:

1. the carrying out of the works and the provision of the services specified in the Sixth Schedule Part 1 at the Development ...

...

The Seventh Schedule

The Service Charge

Covenants on the part of the Landlord and the Tenant in respect of the Service Charge

1. The Tenant shall pay to the Landlord the Service Charge (and an Interim Service Charge and or Supplemental Interim Service Charge on account) in accordance with the following provisions, the purposes of which is to enable the Landlord to recover from the Tenant the Tenant's due proportion of all expenditure overheads and liabilities which the Landlord may incur in and in connection with the carrying out of works at the Development and providing present and future services to its occupiers as set out in the Sixth Schedule (but not including expenditure on those parts of the Property which the Tenant is liable to repair and maintain under the terms of this Lease and the corresponding parts of the other lettable premises in the Building) ...

The party's submissions

22. The Applicant's case is that the scope of her lease does not include the Garden Room within the scope of the structure or common parts for the purposes of service charge recovery. She says that a leaseholder is only liable to pay service charges to the extent that the lease provides for them. In effect, she is saying that there must be a contractual obligation to pay service charges for the upkeep of the Garden Room. The lease cannot have provided that, as the Garden Room did not exist at the date of grant of the lease and there is no provision in the lease allowing the Respondent to add additional contractual payments after the grant of the lease.
23. The Respondent's case is that it was the common intention of the parties that the Garden Room would form part of the lease of Apartment 1 on its

grant, with its repair obligations dealt with in the same manner as the rest of Mickleover House. It relies on the lessor's obligation to grant leases on identical terms.

24. The submission argues that the structure and exterior of the Garden Room cannot be part of the demise to the lessee – see Schedule 1 – so the lessee has no obligation to maintain and repair it. But the argument is that the Respondent therefore must be obliged to maintain and repair it under its covenants in clause 3 of the Sixth Schedule, as that covenant requires the Respondent to keep in repair all parts of the Development not demised. The argument is that this applies whether or not the Garden Room was built at the time of a particular lease, so this clause obliges the Respondent to keep it in repair.
25. Furthermore, the submission argues that clause 6.2.2 allows the Respondent to vary the service charges upon written notice, as a consequence of altering the Development.
26. Finally, the Respondent argues that by analogy with the lease of Apartment 2, the Garden Room should be treated in the same way as the kitchen extension shown on the Plan for the lease of Apartment 2.
27. In response, the Applicant disputes that the existence of a common intention that the Garden Room be repaired and maintained by the Respondent on the basis that there is no evidence in support of this proposition.
28. So far as reliance on clause 6.2.2 is concerned, the Applicant's response is that this provision concerns adjustment of contribution proportions and does not, of itself, create new categories of recoverable liability, alter the contractual allocation of repairing responsibility, or automatically incorporate later structures into the service charge regime.

Discussion

29. When interpreting a lease, a tribunal should bear in mind the Supreme Court decision of *Arnold v Britton* [2015] UKSC 36. The headnote states:

“the interpretation of a contractual provision, including one as to service charges, involved identifying what the parties had meant through the eyes of a reasonable reader, and, save in a very unusual case, that meaning was most obviously to be gleaned from the language of the provision; that, although the less clear the relevant words were, the more the court could properly depart from their natural meaning, it was not to embark on an exercise of searching for drafting infelicities in order to facilitate a departure from the natural meaning; that commercial common sense was relevant only to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date on which the contract had been made; and that,

moreover, since the purpose of contractual interpretation was to identify what the parties had agreed, not what the court thought that they should have agreed, it was not the function of a court to relieve a party from the consequences of imprudence or poor advice.”

30. In our view, the basic service charge mechanism in the leases in this case is clear and straightforward. Lessees are responsible for the repair, maintenance and upkeep of the interior of their own Apartments. Their demises do not include the exterior structures, walls, roofs etc.
31. The exterior structures, walls, roofs etc are the responsibility of the Respondent under its covenants in clauses 1 and 3 of Part 1 to the Sixth Schedule. Clause 1 relates to repairs to the Block. Clause 3 relates to upkeep of the Development. Each lessee has to contribute one fifth of the costs of maintenance and repair of these items.
32. The difficulty is that in our view, both the definitions of “Block” and “Development” differ between the leases for Apartments 1 and 2 because Plan 1 shows a different layout for Mickelover House in each lease. As at the date of grant of the Apartment 2 lease, the Garden Room had not been built; it could therefore not be part of the block of Apartments of which the Property formed part. By the time the lease for Apartment 1 was granted, it DID form part of the block of Apartments.
33. Similarly, as at the date of the lease of Apartment 2, the conversion of the intended Mickelover House did not include the Garden Room (so it did not form part of the Development as defined). By the time of the grant of Apartment 1, it did.
34. Our interpretation is that the “Block” as at the date of the lease of Apartment 2 means the block of Apartments without the Garden Room. The “Block” at the date of the lease of Apartment 1 means the block of Apartments with the Garden Room. Similarly, the “Development” as at the date of the lease of Apartment 2 means the converted Mickelover House as it was at the date of that lease; without the Garden Room. The “Development” as at the date of the lease of Apartment 1 means the converted Mickelover House with the Garden Room.
35. We therefore reject the Respondent’s argument that clause 3 of Part 1 of the Sixth Schedule assists the Respondent. We fully agree that the lease of Apartment 1 obliges the Respondent to repair and maintain the roof, walls and structures of the Garden Room. The Garden Room is clearly part of the Block by the time that lease was granted, and the Respondent’s covenant in the Sixth Schedule is clear.
36. But we do not agree that the Applicant is obliged to contribute towards these costs, because in HER lease, the Block and the Development have different meanings.

37. Changing the meaning of those two definitions between the grant of the two leases should not have happened; it seems to us this was a breach of the Developer covenant to grant identical leases (Recital (a)).
38. We agree with the basic premise of the Applicant's case to the effect that there needs to be a clear contractual right to amend the extent of the Block before a service charge can include additional costs consequent on that change.
39. We also agree with the Applicant's argument concerning clause 6.2. The focus of that clause is on variation. It is an entirely appropriate clause to deal with, say, the addition of an extension to an existing development after all leases have been granted so that a service is added or removed, or the apportionment between service charge payers needs to vary to cater for additional accommodation. It does not seem to us to be intended to allow the Respondent to add service charge costs because of an error by the Developer.
40. We add the following points:
 - a. We do not accept the common intention argument put forward by the Respondent, primarily due to lack of evidence. Reliance on the Respondent's covenant to grant identical leases does not assist the Respondent, as it is apparent that the Developer himself failed to comply with that covenant;
 - b. We had insufficient evidence to be able to investigate the contemporary surrounding circumstances that resulted in the change of the Plans for the two leases, even though arguably they MAY have had some relevance in our quest to identify the intention of the parties on the grant of the leases;
 - c. We note that the lease of Apartment 4 was also granted prior to the grant of the lease of Apartment 1. However, we were not asked to determine the impact of our decision on any other lessee;
 - d. The Respondent's analogy with the "kit ex" addition to the Apartment 2 lease plan is not relevant. That addition is shown on the lease plans for both Apartments 1 and 2, in contrast with the Apartment 2 lease not showing the Garden Room but the Apartment 1 lease showing it;
 - e. We were not asked to, and in any event would not have been able to for lack of evidence, explore whether there may be any arguments based on waiver or estoppel arising from subsequent actions following the grant of the leases.

Decision

41. Our decision is that the Applicant's lease of Apartment 2 does not contain an obligation to pay service charges towards the costs of repairing, maintaining, cleaning, redecorating, replacing, renewing, and rebuilding the main structures, roof, foundations, external walls and party walls of the Garden Room.

Costs

42. It is apparent from this decision that the Applicant has succeeded in her application. In those circumstances, we consider that it is just and equitable that she should not have to bear any of the Respondents costs of this case through the service charge mechanism or through any separate lease covenant. We therefore order:
- a. That any of the costs in this case shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant; and
 - b. That any liability upon the Applicant to pay a particular administration charge in respect of litigation costs in this case is extinguished.
43. The Respondent has applied for an order under Rule 13 or the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Applicant pay its costs of this case. That order can only be made if the Applicant has conducted her case unreasonably. There is no possible basis for that finding. We dismiss the Rule 13 costs application.

Appeal

44. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
First-tier Tribunal (Property Chamber)