

12473



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

Case Reference : **CAM/26UJ/LSC/2017/0029**

Property : **Flats 1 -212, Ovaltine Court, Kings Langley, Herts WD4 8GZ|**

Applicant : **Kings Langley RTM Company Limited**

Representative : **Mr B Doyle Counsel instructed by Freshlaw Solicitors
Mr J Hunt and Mr R Wiggins both of the Applicant Company
Ms N Ponnuthurai and Ms S Harriri both of Freshlaw Solicitors**

Respondent : **The long leaseholders of the 212 flats in Ovaltine Court**

Representative : **None**

Type of Application : **For the determination of the reasonableness of and the liability to pay a service charge**

Tribunal Members : **Tribunal Judge Dutton
Mrs S F Redmond BSc Econ MRICS
Mr O N Miller BSc**

Date and venue of Hearing : **Watford Tribunal Centre, Watford on 20th October 2017**

Date of Decision : **23rd October 2017**

DECISION

Decisions of the tribunal

- (1) The Tribunal determines that the obligation to repair maintain redecorate and renew the windows in the property at Ovaltine Court, Kings Langley rests with the Applicant and its successors in title for the reasons set out below**

The application

1. The Applicant seeks a determination pursuant to s.27A(3) of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether the Applicant is responsible under the leases for the repair, maintenance, redecoration and renewal of the windows and window frames within the building known as Ovaltine Court ("the Building").
2. The Building contains 212 flats all held, we were told under the terms of leases made between Fairview New Homes (Kingsley) Limited (1), The Kings Langley Management Company Limited (KLMC) (2) and the tenant. Into that mix has been added the Applicant, Kings Langley RTM Company Limited, a company which acquired the right to manage the Building in 2012. The freehold of the development which includes the Building, 45 freehold houses and another block of some 110 flats held by a Housing Association, is now owned by Freehold Managers (Nominees) Limited.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Mr Doyle of Counsel, accompanied by those persons named on the front of this decision. No Respondents attended or had communicated with the Tribunal. We were told that of those who had expressed a view, both at a recent AGM, where some 30 leaseholders attended and in correspondence, were in favour of the application, although some wondered at the need, having assumed that the Applicant had been responsible at all times.

The background

5. The property which is the subject of this application was, in part, originally the Ovaltine drink factory. The facade to the factory has been retained and is in an impressive and attractive art deco style. This frontage, of three storeys, has large coated metal windows and doors leading to private sitting areas. There is a large entry door to the common entrance to the front. To the side and rear are modern extensions of 4/5 storeys in a form of E shape with under cover car

parking at ground floor level. The rear of the development backs onto the Grand Union Canal and has two piazza styled areas reached by steps. The windows away from the front facade are wooden. The windows at the Building had recently undergone redecoration.

6. The Building and the surrounds appear to be well maintained.
7. The Respondents hold long leases of the flats in the Building which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. It is the right for the Landlord to undertake maintenance and repair works to the windows and for the tenants to be responsible for paying such works that has caused this application to be made to us. The specific provisions of the lease will be referred to below, where appropriate.

The issues

8. It is perhaps simplest to set out the issues by reference to the skeleton argument produced by Mr Doyle. The Building contains some 100 windows in the common parts and around 450 that serve individual flats. The windows are of a mix, being metal coated and wood. It is the Applicant's case that to maintain the consistency, style and upkeep of the Building, particularly the front facade, the Applicant is responsible not only for the decoration of the exterior of the windows, as it is by reference to clause 6 of Part IV of the Schedule to the lease, but also their repair and maintenance, and renewal.
9. Prior to the hearing we received a bundle of papers containing the Application to the Tribunal, a statement of case, the directions, witness statement of Mr Hunt and Mr Wiggins, with exhibits, the sample lease and freehold plans. We also had copies of the freehold title.

The Hearing

10. Mr Doyle had provided a helpful skeleton argument setting out the reasons for the application, the relevant terms of the lease and the case law which he said supported the Applicant's request.
11. The relevant provisions of the lease, which we were told is the same for all flats in the Building are to be found at clauses 3(1) and (2), (5)(a) and under the Schedule at paragraphs 14 of Part III and paragraph 1(a) and 2(b) of Part IV as well as paragraph 6 of that part.
12. The demise of the flat at Part V of the lease includes *"the windows window frames glass and fastenings of the said flat"*.

13. The terms of the leases will be known to all interested parties and we will therefore just paraphrase the clauses, save where they would benefit from being set out in full. It is noted that the leaseholders are required under the lease to become members of KLMC.
14. It is common ground that each leaseholder pays an equal share in respect of service charges (1/212th), the details of such services being set out in the Schedule at Part IV. The lessee is required under clause 3(1) to "*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 floors and ceiling and appurtenances belonging in good substantial and tenantable repair and condition...*"
15. Clause 3(2) contains internal decorating obligations and (5)(a) an obligation to contribute to the expenses of the Applicant incurred under the provisions of Part IV of the Schedule. There is an obligation to keep the windows clean.
16. The Applicant, taking on the responsibilities of KLMC in so far as the Building is concerned, by reason of the acquisition under the RTM Company, has an obligation to perform the matters set out in Part IV of the Schedule. In particular for the purposes of this application the Applicant is obliged, subject to the observance by the lessee of their obligations and whenever deemed reasonably necessary, to "*maintain repair redecorate and renew:-*

(a) The external walls and structure and in particular the main load bearing walls and foundations and roof storage tanks gutters rainwater pipes lifts (if any) of the Block..." (paragraph 1(a)). There is also an obligation on the part of the Applicant to maintain repair and renew all party walls and other walls and structures common to the Property (paragraph 2(b)(i))
17. At paragraph 6 of Part IV is an obligation on the Applicant to decorate the exterior including the windows and window frames not less than every three years.
18. We had noted the contents of the witness statements of Mr Hunt and Mr Wiggins and the Statement of Case. As put to us by Mr Doyle, the question to be determined, accepting that the windows do fall within the demise of the flat, is whether, nonetheless, within the provisions of Clause 1 of the Schedule Part IV does the Applicant's obligation to maintain repair decorate and renew the 'structure' extend to the windows and exclude the lessees obligations under clause 3(1)?
19. In support of this contention we were referred to three cases, *Re The Estate of Valbourg Cecile Godman Irvine v Moran (1992) 24. H.L.R.1:*

541 Marlborough Park Services Ltd v Rowe [2006]EWCACiv 436 and Sheffield City Council v Oliver LRX/146/2007. Although each case was fact specific the underlying thrust of the judgments, in so far as it affects this case, is that the word "structure" includes windows. Mr Recorder Thayne Forbes QC said this. *"Windows pose a slightly different problem. I have some hesitation about this, but bearing in mind that one is talking about a dwellinghouse, and rejecting as I do the suggestion that one should use "load-bearing" as the only touchstone to determining what is the structure of the dwellinghouse in its essential elements, I have come to the conclusion that windows do form part of the structure of the dwellinghouse".* This finding found favour with the President of The Lands Tribunal as it was then, although the provisions of the Housing Act 1985 also impacted.

20. In the case of Marlborough and Rowe Neuberger LJ supported the words of Thayne Forbes QC in *Irvine v Moran*.

Findings

21. Having heard evidence and submissions from the Applicants and considered all of the documents provided, we make the following finding.
22. The Building benefits from the facade and the former Ovaltine factory architecture. This should be maintained if the value of flats and houses on the development is to be protected, as much as is possible. The windows to the facade in particular, are substantial and works of repair could be very expensive for an individual leaseholder. Further, and generally, if the individual leaseholder were to be responsible for the maintenance, repair and renewal of the windows there is the real danger that each will have different views on those requirements and it is possible that works would be of differing standards and design which would impact on the ambiance of the Building and the development in general. These are in our view sound practical reasons for adopting the Applicant's arguments. However, there must be a legal basis for such a decision.
23. We find considerable help in determining this matter in the judgments referred to above. Although the demise includes the windows there is no obligation on the lessee to maintain the exterior of same. Indeed it is for the Applicant to decorate. The lease clearly obliges the Applicant to maintain, repair, redecorate and renew the external walls and structure. We find that "structure", by reference to the authorities we have referred to, includes the windows, both of the flats but also of the common parts. The obligation on the lessee at Clause 3(1) excludes the matters set out in Part IV of the Schedule, which has the effect of overriding the lessee's obligations.

24. Our finding is that the Applicant, by reference to paragraph 3(1) in Part IV of the Schedule, is the responsible party in so far as the works of maintenance, repair, decoration and renewal of the windows in the Building is concerned.
25. There appears to be no immediate need to carry out works of maintenance, repair or renewal of windows in the Building, they having just been decorated. However, the evidence before us in the form of a surveyor's report exhibited to Mr Wiggins statement indicates substantial sums due in the future. By including the windows in the structure, and within the repairing obligations of the Applicant, it means that sinking fund money can continue to be collected towards this cost and other expenses that may arise in the passage of time. We note that the Applicant reviews the requirement for sinking fund contributions on an annual basis with regular surveys in support.
26. It should also be pointed out that our decision does not impact on any lessee's right to challenge service charge costings in the future

Andrew Dutton

Name: Tribunal Judge Dutton **Date:** 23rd October 2017

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. 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 for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 provisions 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.