



**First-tier Tribunal  
Property Chamber  
(Residential Property)**

**Case reference** : **CHI/00HN/LIS/2021/0021**

**Property** : **Cavendish Court,  
1 Cavendish Road,  
Bournemouth,  
BH1 1QX**

**Applicant** : **Cavendish Court Management  
(Bournemouth) Ltd.**

**Represented by** : **Burns Hamilton (lay)**

**Respondents** : **Mr. F. Mooney (Flat 1)  
Mr. T. Price (Flat 2)  
Mr. E. Hagger (Flat 3)  
Mrs. P. Bhatia (Flat 4)  
Mr. C. Venturi (Flat 5)  
Mr. S. Meads (Flat 6)  
Mr. G. Caserta (Flat 7)  
Miss. K. Ellis (Flat 8)  
Mr. J. Payne (Flat 9)  
Annie's Garden Ltd. (Flat 10)  
Mr. A. Giles (Flat 11)  
Mr. M. Waugh (Flat 12)  
Mr. N. Dawe & Mrs. L. Georgiadades-  
Dawe (Flat 14)  
The Trustees of the A. E. Cooper-Dean  
Charitable Foundation**

**Date of Application** : **11<sup>th</sup> May 2021**

**Type of Application** : **to determine payability of service  
charges**

**The Tribunal** : **Judge Bruce Edgington**

**Decision Date** : **15<sup>th</sup> September 2021**

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**DECISION**

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1. Subject to the service charge and demise wording in the leases being held by the tenant Respondents all being in the same terms as that for Flat 12 which has been produced to the Tribunal, in respect of the works set out in the specification to include the roof repairs and new dormer windows in

the roof, the Tribunal's determination is that these are payable by the tenants as part of the service charge in the proportions set out in the respective leases.

2. The Tribunal is unable to determine whether work to other external windows in the property can form part of the service charge. If such work consists of repairs and decoration then it is probable that the reasonable cost should form part of the service charge with the same reservation as above i.e. that the relevant clauses in the leases are in the same terms as that for Flat 12.

## Reasons

### **Introduction**

3. This is an application by the management company which manages the building in which the 13 flats at the property are situated for a determination as to who should pay for work to be undertaken to the roof and dormer windows therein in particular. The application form also asks for a determination as to who is responsible for repairs/renewal of the other windows in the building.
4. The Respondent tenants would also appear to be the shareholders of the Applicant. However, the application form states that "*Lessees have raised queries as to the responsibility for the costs of window repairs and replacements, both as part of the roof works (roof windows) and also the external repairs and redecoration works which are also due*". It was made clear that the works other than to the roof and roof windows relate to the other windows in the building. The Tribunal assumes that these are windows in the external structural walls.
5. A directions order was made on the 24<sup>th</sup> June 2021 by Judge Whitney timetabling the case to a hearing. As none of the Respondents lodged any evidence or representations, everyone was asked whether they would be content for this matter to be determined on the papers and those who have been participating agreed to this.
6. This Tribunal has agreed to do as asking in the application. However, although it has not been told this, the Tribunal is somewhat concerned that it is simply being asked to give legal advice rather than perform its statutory task of resolving disputes between parties. Despite the inference in the Application form that some or all tenants do not want the cost to form part of the service charge, no-one – not even the Applicant – has put forward a statement of case, which means that the Tribunal does not really know what people think or why.
7. The end result is that if some people do not agree with this decision, they will have to appeal. This will prove difficult if they have not put any case forward for this Tribunal to consider.

## **The Lease**

8. The legal titles to the flats are complex although this would not appear to be relevant in respect of this particular application. Suffice it to say that the Trustees of the A. E. Cooper-Dean Charitable Foundation would appear to be the freehold owners and the tenants have underleases or sub-underleases with provisions as to the payment of service charges.
9. There is some confusion about who the intermediate landlords are but both the Applicants and Stavegrade Ltd. seem to have interests as intermediate landlords. A separate underlease appears to have been created in respect of flats 8, 9, 10, 11, 12 and 14. The Tribunal has been informed that all the underleases to the tenant Respondents are in the same terms so far as service charges are concerned. It is also has to be assumed that the definition of each demise has similar wording in that the windows are not mentioned.
10. The sublease of flat 12 has been produced with a term of 189 years from the 25<sup>th</sup> March 1983. This appears to be an extended lease created under section 56 of the **Leasehold Reform, Housing and Urban Development Act 1993**. The Applicant is a party and has the responsibility for managing the property as a whole. With this flat, the tenant pays one sixth of the service charge for flats 8, 9, 10, 11, 12 and 14 and one thirteenth of the balance for all the flats.
11. As the application is simply limited to a determination as to which party is to pay for work to the property, the Tribunal will simply consider that issue. If a determination is needed as to the amount and reasonableness of service charges and the identity of the individuals who have to pay, the Tribunal will need to see all the title documents.
12. As to maintenance, the payment provisions are on page 27 of the bundle provided for the Tribunal. The definition of the Applicant's responsibility to maintain is set out in Schedule 4, Parts I, II and III. Windows are not specifically mentioned either in the definition of what is included in the demise or in the maintenance provisions. The Applicant is able to collect from the tenants:-
  - (a) The main structure and in particular the roof chimney stacks gutters rainwater pipes and foundations of the Building*
  - (b) The gas water pipes drains and electric cables and wires in under or upon the Building and serving more than one flat or garage therein*
  - (c) The main entrances passages landings and staircases of the Building leading to the flats and garages in the building and*
  - (d) The boundary walls and fences of the Building*
13. The definition of the demise is "*ALL THAT the Flat...and numbered 12 being on the second floor of the Building (including the floor and ceilings of the flat but not the floor of the flat above it and the internal and external walls between such levels) the situation whereof is shown on the Plan Number 1 annexed hereto and thereon edged red*".

14. This description could be said to be ambiguous as it is not absolutely clear whether the word 'and' before 'internal and external walls between such levels' is intended to be read in conjunction with the earlier word 'but' i.e. are the walls included in the demise or not? The Tribunal's interpretation is that, as the external walls must be part of the structure of the building, it is the latter i.e. the walls are not included. As the windows are not even mentioned, the Tribunal concludes that they are included in the walls and thus are not part of the demise. In that case the cost of repair and decoration will form part of the service charge.
15. For the avoidance of doubt, the red edging on the plan is, as is often the case, not very helpful as it does not make it clear whether the windows and frames are included.

### **The Law**

16. Section 18 of **The Landlord and Tenant Act 1985** ("the 1985 Act") defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.
17. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.
18. Section 27A of the 1985 Act gives this Tribunal to power to determine whether a service charge is payable and, if so, by whom.

### **The Inspection**

19. Judge Whitney's directions order notified the parties that the Tribunal member(s) would not inspect the property unless it considered that it was necessary to do so. A party could request an inspection of the exterior by 27<sup>th</sup> August 2021. The Tribunal does not consider that an inspection is necessary and none of the parties has requested an inspection.

### **Discussion**

20. As far as the dormer windows in the roof are concerned, the photographs show that the frames are in poor condition. As such windows form part of the roof and are therefore needed to protect the rest of the building below, it seems clear to this Tribunal that a repair to the roof will include any work needed to repair and/or maintain and/or decorate those windows and frames.
21. As far as the other windows are concerned, the case of **Tedworth North Management Ltd. and another v Mr. L. Miller and others** [2006] UKUT 522 (LC) is binding on this Tribunal and has some similarities to this case. Tedworth Square in London SW3 is a purpose build block of 49 flats where the service charge provisions make no specific mention of the windows and window frames. Although not mentioned specifically, it must be inferred that the definition of each demise did not mention them

either. In other words, the legal position appeared to be much the same as this case.

22. The building was comprehensively inspected in 2010 and there were no serious problems with the windows found save for the need to redecorate and make minor repairs to the Crittall windows. The anticipated cost for all the work to the windows was £50,064 plus VAT. When the work was undertaken in 2014 and 2015, the tenants were given the choice of having their windows replaced at their own cost and 28 of them did that.
23. However, when the work was done all the Crittall subframes were replaced and the tenants who had not elected to have new windows faced a bill for about £5,000 each to cover the cost of such subframes. The First-tier Tribunal had to decide whether that work came within the definition of decoration or repair to bring it within the definition of service charge. It heard evidence from experts and analysed that to see whether just replacing all the subframes was actually required.
24. It decided that it was not and did not allow that whole cost but allowed £1,266 for repair to individual subframes as part of the service charge figure. The Upper Tribunal did not allow the appeal by the management company and the landlord.
25. It reminded us that some time ago it had been determined that replacing a flat roof with a tiled roof could be seen to be a repair. Even though it would be more expensive than repairing the flat roof, the long term cost would be less because, in those days, flats roofs needed replacing more than they do nowadays.
26. In **Tedworth**, the Deputy Chamber President of the Upper Tribunal, Martin Rodger QC, said that “*a common-sense approach is required when considering what remedial work is appropriate to remedy a state of disrepair*”. He went on to say:

*“The general principle is that the work which the landlord is obliged or entitled to carry out is limited to that which is reasonably required to remedy the defect. This may include ancillary work rendered necessary by the carrying out of repairs. The FTT’s decision was based on an expert evaluation of the condition of the windows, and the range of available responses to that condition having regard to the expense which would be incurred or avoided in future depending on the choice made”.*

### **Conclusions**

27. The Tribunal, having taken all the evidence and submissions into account, concludes that the responsibility for the reasonable cost of repairing/maintaining and decorating the roof, including the dormer windows therein is payable by the tenants as part of the service charge.
28. In view of the **Tedworth** case, and without knowing exactly what work is proposed for all other windows in the building, the Tribunal cannot make

the same determination in respect proposed work to those windows. If it is only repairs, essential maintenance or decoration it is likely to form part the service charge.



.....  
**Judge Edgington**  
**15<sup>th</sup> September 2021**

**ANNEX - RIGHTS OF APPEAL**

- i. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. 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.
- iii. 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.
- iv. 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.