



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

**Case Reference** : CHI/00HP/LBC/2017/0009

**Property** : 4a, Warwick Road, Poole, Dorset,  
BH14 8SY

**Applicants** : Mr R S Thomas and Ms E B Thomas

**Representative** : Rawlins Davy Solicitors

**Respondents** : Mr C J Tattersall and Ms P J  
Tattersall

**Representative** : In Person

**Type of Application** : Determination of an alleged breach  
of covenant

**Tribunal** : Mrs H C Bowers MRICS

**Date of Inspection and  
Determination** : 7 June 2017

**Date of Reasons** : 19 June 2017

**DECISION**

**The Tribunal finds that the Respondents are in breach of the terms of the lease:**

- By reason of the findings below the Respondents are in breach of Second Schedule, paragraph 1(c);
- By reason of the findings below the Respondents are in breach of Second Schedule, paragraph 1(d).

## **Background:**

(1) The Applicant landlords seeks a determination, under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”), that the Respondent tenants are in breach of the lease dated 12 July 1967 under which the First Floor Flat at York House, 4 Warwick Road, Poole, Dorset, BH14 8SY (“the subject property”) is held.

(2) An application dated 26 January 2017 was made requiring a determination of various breaches of covenant. Directions were issued on 2 March 2017, giving details about how the parties should prepare for this case. The Directions stated that the matter would be decided without a hearing, unless either party requested a hearing. There was no such request; therefore this matter was dealt with on the basis of an inspection and the written submissions from both parties.

(3) It is alleged that there are breaches of the subject lease in respect of the failure to maintain the exterior walls roof and chimney and the failure to maintain the electrical cables exclusively serving the First Floor Flat. The specifics are detailed in the application as:

- Timberwork to the first and second floors including fascia, soffits, trims and decorative timberwork are in poor condition with areas of rot evident
- Rainwater goods are blocked and the metal downpipes are in poor decorative order and condition
- Pointing to the brickwork is in poor condition and requires pointing with rebuilding of failed lintels. Failed brickwork requires replacement.
- Chimney stack is leaning and pointing is defective
- Lead-work gully to garage roof requirements replacement
- Water ingress to the front left hand reception room.

(4) The application initially identified the Personal Representatives of Kathleen Hartley Tattersall deceased as the Respondents in this matter. However, included in the Tribunal’s bundle were Official Copy entries of the relevant freehold and leasehold interests in the building and the subject property. The Official Copy of the Land Registry entry for the leasehold interest is held under title number DT37070 and the copy at pages 44-50 of the bundle indicate that this was obtained on 7 April 2017. This shows that the leasehold title as being held by Christopher John Tattersall and Penelope Jane

Tattersall. The date of ownership is stated to be 15 February 2017. It appears that since the application was made, that probate has been granted.

(5) Under rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal may make a Direction to add, substitute or remove a person as either an Applicant or a Respondent. In the circumstances set out in paragraph 4 above, the Tribunal directs that Mr C J Tattersall and Ms P J Tattersall are substituted as the Respondents in this case in their own capacity in place of the Personal Representatives of Kathleen Hartley Tattersall deceased.

### **The Law:**

(6) Section 168 of the 2002 Act provides as follows:

*“(1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.*

*(2) This subsection is satisfied if—*

*(a) it has been finally determined on an application under subsection (4) that the breach has occurred,*

*(b) the tenant has admitted the breach, or*

*(c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.*

*(3) .....*

*(4) A landlord under a long lease of a dwelling may make an application to [the appropriate tribunal] for a determination that a breach of a covenant or condition in the lease has occurred.”*

### **Terms of the Lease:**

(7) The “subject lease” is dated 12 July 1967 and was originally between Michael Richard Torrville Bryer-Ash and Agnes Mabel Wareham as Lessor; and Vincent Ladbrooke as the Lessee. As mentioned above the Official Copy of the Land Registry for the leasehold interest, under title number DT37070 the proprietors of the leasehold interest are listed as Christopher John Tattersall and Penelope Jane Tattersall. The Official Copy of the Land Registry for the freehold interest, under title number DT229888 the proprietors of the freehold interest are listed as Richard Stanley Thomas and Emma Borein Thomas.

(8) The clauses that the Applicants claims that the Respondents have breached are set out below:

Second Schedule, paragraph 1(c) states that the Lessee covenants “to keep the First Floor Flat and garage (when erected) in good and substantial repair and without prejudice to the generality of the foregoing to keep the said premises in the state of repair that is necessary to afford such support and protection to the other part of the said building as they now enjoy PROVIDED ALWAYS that the Lessee shall not repair any joist or beam on which the floors of the First Floor Flat are laid without giving notice to the occupier of the Lower Flat of his intention so to do giving details of the work intended to be done so that the occupier of the Lower Flat may take such precautions as he may be advised for the protection of the ceilings thereof and provided such notice is duly and properly given the Lessee shall not be liable for any damage resulting to the ceilings of the Lower Flat”.

Second Schedule, paragraph 1(d) states that the Lessee covenants “to keep and repair the pipes wires and mains exclusively serving the First Floor Flat”.

(9) The lease does not provide a clear definition of the First Floor Flat. However it does describe it as “all that maisonette comprising such part of the dwellinghouse known as York House Warwick Road Parkstone aforesaid as is situate over the ground floor thereof and which said dwellinghouse is for the purposes of identification only shown Pink on the plan annexed to a certain Conveyance dated the 1<sup>st</sup> day of November 1962 and made between Arthur Ernest Wareham and John Derek Wareham of the one part and the said Gordon Anderson Weir and Gladys Muriel Weir of the other part TOGETHER with the staircase leading thereto TOGETHER ALSO with the piece of land coloured Green on the said plan being a site for the future erection of a garage in the garden of the said property known as York House ....”.

(10) At pages 56-59 of the bundle there is a Deed dated 26 November 1981 between Agnes Mabel Wareham as Lessor and Richard John Tattersall and Kathleen Hartley Tattersall as the Lessees. This Deed indicates that there is a further grant of land, this is indicated as being edged red on an attached plan and the consideration of this is the surrender of land edged blue on the plan to the Deed. The plan attached is not entirely clear, but the red edged land is shown as the garage, a rear wall and a side wall and an area where the access steps are located on the ground floor and at first floor level show the lower and upper terrace and the porch of the First Floor Flat.

(11) Further at Second Schedule, paragraph 3 it states “For the avoidance of doubt it is hereby declared that this Lease herein contained shall always be constructed so that:-

*(i) the joists on which the floors of the First Floor Flat rest are the property of the Lessor and shall be maintained by her or her successors in title*

*(ii) the footings and foundations main walls and timbers of the house up to the level of the top of the brickwork supporting the said joists are the property of the Lessor and shall be maintained by her or her successors in title*

*(iii) all other parts of the said house being the First Floor Flat including the roof are the property of the Lessee and shall be maintained and repaired by him or his successors in title”.*

**Inspection:**

(12) The Tribunal made an inspection on 7 June 2017 in the company of Mr Thomas and Ms Tattersall.

(13) The building in which the subject property is located is a substantial Edwardian, detached house that has been converted into two flats. At the front of the house is a door giving direct access to the Ground Floor Flat. The Applicants are the registered proprietors of this flat. To the side of the house is a garage and an external access stairs to the first floor terraces and the front porch to the First Floor Flat.

(14) The First Floor Flat has accommodation at the first and second floor levels. At the first floor level it was noticed that the ceiling to the landing area was a lathe and plaster ceiling and the plaster had been removed. Ms Tattersall explained that as part of the renovation works, the Respondents had removed the plaster.

(15) At the second floor level there was a small door in the eaves giving access to the lower part of the roof structure. It was observed that there was insulation positioned between the rafters. Other areas of the eaves were accessed but these areas were boarded out and no inspection could be made as to the insulation arrangements. At this level two dormer windows were observed. It was not possible to see the external structure of these areas. However the internal inspection did not reveal any areas of damp ingress. In another area, within a small built in cupboard, there was evidence of damp ingress and this appears to be associated with the remaining chimney on the building.

(16) From the external inspection it was noted that the external decorations to the fascias, soffits and to the rendered gable ends at first and second floor level were in poor condition. The gutters and down pipes were also noted to be in poor condition with some pipe work leaking and obvious misalignment in some areas. The gutters to the rear of the house were blocked with plant

growth. The brickwork was generally sound at the first/second floor levels but there was some area of disrepair around the top of the chimneybreast and in some areas there was a need for some repointing. There is one chimneystack with two chimney pots and this appears to have a slight lean. A number of the brick lintels to the first floor windows show some movement although this may be historic.

(17) The external stairs to the lower and upper terraces have two wooden balustrades and whilst a little loose, generally seem to be in sound order. The terrace areas are underlined with a felt, flat roof over the garage area and then covered with paving slabs. Whilst in need of a general tidy up and clean, there is no evidence of a failure of the flat roof system by means of water ingress to the garage and a side passage way.

(18) In the under stairs cupboard of the Ground Floor Flat is the fuse box to the electrical supply to the First Floor Flat. From a visual inspection it is not possible to fully identify the fuse box that serves the First Floor Flat, but there is some dated equipment that appears to be the relevant fuse box/switchgear.

### **Hearing:**

(19) There was no request for a hearing and therefore this matter was considered on the basis on the inspection and the written submissions from both parties.

### **Applicants' Case**

(20) In the witness statement from Mr Thomas he explained that prior to the death of Mrs K Tattersall he had raised with her the issues of disrepair at the subject property. A survey was commissioned from Miles & Company in spring of 2016, an electrical survey was obtained from All Building Services Limited and a further building survey was obtained from AK Property Consultants. There had been discussions with Ms P Tattersall and a draft section 146 notice was sent on 2 August 2016 identifying various breaches and seeking those breaches to be remedied. There had been some discussions between the parties but none of the work was progressed. In the opinion of Mr Thomas the Respondents changed their position as to their liability under the lease and so the application was brought.

(21) The items of disrepair raised in Mr Thomas' witness statement related to those identified in the three reports; the condition of the rainwater goods, the fascias on which they sit and staining to the brickwork and the condition of the chimney. The particulars of breach identified in the draft section 146 notice include:

- i. The build up of condensation in the roof structure and the potential for rot and risk of beetle infestation;
- ii. The condition of the chimney;
- iii. The roof covering to the garage and flat roof of the dormers;
- iv. The repair of the fascias, soffits, barge boards and timber detailing;
- v. The overhaul of the rainwater goods;
- vi. The replacement of the balustrading to the external stairs to the access of the subject property;
- vii. The pointing and repair work of the external brickwork;
- viii. The replacement of the fuse-board and switchgear serving the subject property and
- ix. The replacement of the wiring to the First Floor Flat.

(22) In the Applicants' extended reasons the relevant parts of the lease were quoted and it was submitted that the wording of the lease resulted in the Respondents being responsible for the repair and maintenance of all parts of the building above the joists to the First Floor Flat and that there is no provision for the Applicants to carry out those repairs and maintenance. There is also an obligation on part of the Respondents to keep and repair the pipes, wires and mains exclusively serving the subject property.

(23) Responding to the Respondents' statement of case it is stated that the Respondents now accept their repairing obligations under the lease; that there is an admission in respect of the disrepair and the Respondents' failure to remedy the outstanding repairs and that the Respondents do not dispute the evidence of Mr Thomas.

(24) The survey from Miles and Co, a firm of Chartered Building Surveyors, was dated 20 April 2016. The report from AK Property Consultants, again a firm of Chartered Surveyors was dated 16 November 2016. From these reports the following issues were identified:

- i. In the loft space there were high moisture meter readings and evidence of blue stain fungus. It was suggested that the ventilation within the roof space had been restricted due to the presence of insulation material. It was recommended that the insulation should be removed. There is damp ingress to a living room and this would appear to be caused by defective tiles and torn felt to the roof covering. It is recommended that this is investigated further and the torn felt is

repaired. The water tank and some water supply pipes are noted to not be insulated and there is a risk of freezing and it is recommended that insulation work is carried out.

- ii. There is evidence of an historic common furniture beetle infestation. It is suggested that a treatment is applied to prevent future insect infestation.
- iii. There is an excessive lean to the chimney on the east elevation and it is close to being unstable it is recommended that the chimney there should be remedial action as soon as possible. It is also identified that there is defective pointing and that the rear clay chimney pot is cracked.
- iv. The roof coverings to the garage and flat roof dormers are of mineral felt and have a limited life expectancy and a replacement programme should be put in place.
- v. The fascias, soffits, bargeboards and other timber detailing are in poor decorative order with evidence of some decay to the timber. It is recommended that these should be repaired. The roof rafter ends below the eaves are exposed. There are concerns that this could result in timber decay.
- vi. The rainwater goods are undersized and are not properly discharging water. The gutters are noted to being blocked and that the metal downpipes are in poor decorative order. It is suggested that the rainwater goods are replaced.
- vii. The balustrading and guarding to the access stairs are described as being poor and non-compliant. It is recommended that these items should be replaced with suitably strength tested and resilient material.
- viii. The brick pointing is missing and degraded in areas and this should be repaired. Additionally there are concerns that there are inadequate lintels to a number of the windows at first floor level and that these should be replaced or rebuilt.
- ix. There is an area of staining to the left hand side of the garage The staining appears to have occurred from water escaping the garage roof and into a rainwater hopper. It is noted that this appears to be due to defective flashing and the lack of a bend for the rainwater pipe. It is recommended that repairs are carried out and the area is cleaned.

(25) A visual condition report by All Building Services Ltd and dated 13 June 2016 examined the electrical services to the First floor Flat. This report



indicated that the switchgear is mounted on wooden back-boards which are flammable and in conjunction with cables likely to date from the 1960's there is a significant fire risk. It identified that the switchgear located in the cupboard of the Ground Floor Flat could not easily be accessed and isolated if required. It is also noted that there does not appear to be an earth bonded cable of suitable size protecting the First Floor Flat and it is assumed that there is no RCD protection.

(26) The survey reports note a number of defects to the ground floor area of the building, which is beyond the repairing obligations of the subject property and are not detailed in this decision.

### **Respondents' Case**

(27) There is a witness statement from Ms Tattersall dated 28 March 2017. This indicates that there had been some prior discussions between the parties to try and resolve the issues and that the current application was a surprise in the light of those discussions. Ms Tattersall acknowledged the Respondents' duties under the lease and refers to a letter dated 10 August 2016 to the solicitors acting for the Applicants as to their position in respect of the alleged breaches. The work had been delayed over the winter months due to the inclement weather. It is intended that the works will be undertaken and at the date of the witness statement the work should be concluded within three months. Ms Tattersall expressed the hope that matters can be resolved with continued negotiations.

(28) In correspondence between the parties, Ms Tattersall responded to the issues raised in the draft section 146 notice and in particular stated in respect of each numbered points

- i. The build up of condensation in the roof structure and the potential for rot and risk of beetle infestation – Accepted, repair/remediation as required.
- ii. The condition of the chimney – Disagree, but repair/remediation as required.
- iii. The roof covering to the garage and flat roof of the dormers – Further detail and justification is sought.
- iv. The repair of the fascias, soffits, barge-boards and timber detailing - Accepted, repair/remediation as required.
- v. The overhaul of the rainwater goods – Not necessarily accepted, repair/remediation as required.

- vi. The replacement of the balustrading to the external stairs to the access of the subject property – Disagree, it is stated that Mrs K Tattersall had replaced the balustrading in 2013.
- vii. The pointing and repair work of the external brickwork – It is suggested that steps are taken to deal with the brickwork on a joint basis.
- viii. The replacement of the fuse-board and switchgear serving the subject property - Accepted, repair/remediation as required. An inspector from Scottish and Southern Energy noted that the supply was dated but not an immediate threat and that the need for a separate supply run was unnecessary, expensive and contrary to health and safety protocols. It is re-iterated that the Respondents would replace the fuse-board and carry out such re-wiring as is necessary, but they will not commission a new supply.
- ix. The replacement of the wiring to the First Floor Flat – Disagree and a request for further justification that work is required.

(29) In a letter of 28 September 2016 Ms Tattersall highlighted that the recommendations and conclusions of Mr T Miles of Miles and Co is that the works are carried out to ensure that the property does not fall below an acceptable standard of repair. It is submitted that the expert's view is that the property has not fallen below an acceptable standard of repair.

**Tribunal's Findings of Fact:**

(30) One of the features identified by the Respondents and noted by the Tribunal is that some of the works detailed in the various reports is work relating to ideal steps that should be taken. There may be items of work that would be seen as desirable, but this alone is not necessarily an indication that those items are currently in disrepair.

(31) In respect of the items of disrepair claimed in the draft section 146 notice the Tribunal finds:

- i. The build up of condensation in the roof structure and the potential for rot and risk of beetle infestation – The high levels of moisture are indicated in the two surveys and a physical inspection of the Tribunal noted the arrangement of the insulation that blocked the ventilation arrangements. The Tribunal finds that there is disrepair in respect of the roof timbers.

- ii. The condition of the chimney – The evidence is that there is a significant lean to the chimney and there is repair work needed to the pointing.
- iii. The roof covering to the garage and flat roof of the dormers – There is no evidence that these items are in disrepair. Whilst the work may be desirable, this in itself is no indication that there is disrepair.
- iv. The repair of the fascias, soffits, barge-boards and timber detailing - These areas show signs of disrepair as there has been deterioration of the timbers and the decorative condition of these aspects are poor. These elements of the building are in disrepair.
- v. The overhaul of the rainwater goods – The details of the two surveys and the inspection of the Tribunal identified that the rainwater goods at the property are not adequate and show signs of water leakage and the accumulation of debris. The rainwater goods at the first floor level and above are in disrepair.
- vi. The replacement of the balustrading to the external stairs to the access of the subject property – Although reference is made in one of the surveys is made to non-compliance, there is no reference as to which standards are being referenced. The physical inspection of the Tribunal found that the balustrading appears sound and as such the Tribunal finds that this item is not in disrepair.
- vii. The pointing and repair work of the external brickwork – The surveys detail that repairs are needed to the brickwork and pointing and this was observed by the Tribunal. The Tribunal finds that the brickwork and pointing is in disrepair.
- viii. The replacement of the fuse-board and switchgear serving the subject property – The survey carried out on behalf of the Applicants indicates that there is a significant fire risk from the fuse-board and switchgear equipment. On the other hand the evidence from Ms Tattersall is that Scottish and Southern Energy noted that the current arrangement of the equipment are dated but not an immediate threat. However, there is no independent report or correspondence on this point as such the Tribunal puts lower weight to this evidence. Given health and safety aspects within a building there must be a connection between works needed to tackle disrepair and those where the duty to repair needs to be undertaken at a stage before a component is in actual disrepair and before a risk/harm actually occurs. In the case of the replacement of the fuse-board and switchgear, whilst there may not be a technical disrepair, there is a duty to ensure the work is completed

before harm occurs. As such the tribunal finds that the repair work to the switchgear and fuse-board is outstanding.

- ix. The replacement of the wiring to the First Floor Flat – Whilst a re-wiring of the First Floor Flat may be desirable, there is no evidence available to the Tribunal to show that the existing wiring is in disrepair.

(32) The other main aspect of alleged disrepair identified in the Applicants' case and not included in the draft section 146 notice is the staining of the brickwork around the top of the garage door. The Tribunal accepts the evidence from the survey report and from its own inspection and concludes that this area is in disrepair.

### **Tribunal's Findings of Breach**

(33) The next stage is for the Tribunal to consider those findings of facts in the context of the lease clauses in order to determine whether there have been any breaches of covenant.

(34) The Tribunal determines that following the findings of fact in paragraphs 31 (i – ii, iv, v and vii) and paragraph 32 (insofar as the area is within the part of the property covered by the Respondents' repairing obligation) that there are several items of disrepair and as a consequence of these findings, the Tribunal also finds that there are breaches of Second Schedule, paragraph 1(c).

(35) The Tribunal determines that following the findings of fact in paragraphs 31 (viii) that there is a lack of repair in respect of the fuse-board and switchgear and as a consequence of these findings, the Tribunal also finds that there is a breach of Second Schedule, paragraph 1(d).

(36) In summary the Tribunal makes the following findings in respect of the terms of the lease:

- by reason of the findings in paragraph 34 above the Respondents have been in breach of Second Schedule, paragraph 1(c).
- by reason of the findings in paragraph 35 above the Respondents have been in breach of Second Schedule, paragraph 1(d)

**Name:** H C Bowers

**Date:** 19 June 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 that 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.