



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

**Case Reference** : CHI/00HN/LIS/2020/0053

**Property** : Viewpoint, 7 & 9 Sandbourne Road,  
Bournemouth BH4 8JP

**Applicant** : Viewpoint Limited

**Representative** : Napier Management Services Limited

**Respondent** : The 65 Leaseholders

**Representative** :

**Type of Application** : Determination of liability to pay service  
charge

**Tribunal Member(s)** : Judge D. R. Whitney

**Date of Decision** : 4<sup>th</sup> March 2021

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**DETERMINATION**

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## **Background**

1. The Applicant acting by its managing agents seeks a determination by the Tribunal as to whether or not certain costs may be recovered under the terms of the lease.
2. The Applicant explains within its application that the development consists of 65 flats. All leaseholders were joined as a Respondent to the application. Repairs are required to remedy certain defects to the main structure. The directions identified the question to be answered as:  
  
“Whether or not the liability for repairs to cracking of internal walls and internal redecoration is that of the freeholder under the service charge, or individually that of the lessees”
3. The Tribunal issued directions on 9<sup>th</sup> October 2020 and various other sets of directions. The Applicant has now produced an electronic bundle and references in [] are to pages within that bundle.

## **Determination**

4. The Tribunal has considered carefully all the documents within the bundle. Representations have been received from the following leaseholders:
  - Mr R Phillips: Flat 35
  - Mr and Mrs Hill: Flat 37
  - Mr F Groom on behalf of Mr K Brown: Flat 48
5. The matter was listed for determination on paper. No party has objected to the same. I have considered the bundle and I remain satisfied that this case is suitable for determination upon the papers given the narrow point for adjudication.
6. The application has been brought as a defect in the original construction of Viewpoint has been identified. It would appear as originally constructed in the 1970's that no expansion joints were put in place. The Applicant relies upon a report of R Elliot Associates Limited from August 2018 [47-63]. It is apparent from this report that major works are required to the exterior of the Property and some flats within the Property will require internal works including to the plasterwork and re-decorating.
7. No representations have been received from any other party. All three Respondents contend that expenditure on repairs to the internal parts of the flats should be recoverable as a service charge expense. The Applicant, by its managing agent, suggests such

expenditure is not recoverable as a service charge expense [86 & 87].

8. The representations on behalf of the Respondents can be summarised as saying that the Company at an AGM in 2017 voted that internal works to flats affected would be undertaken as part of the service charge. They say the result of this vote of the Applicant company should be complied with. Further Mr Groom, the representative of Flat 48 has reviewed the lease terms and suggests that given the works are required as a result of an inherent defect the costs are recoverable as a service charge expense. This assessment of the lease was supposedly prepared following a company meeting and provided to the Applicant.
9. References are made to an earlier Tribunal decision CHI/00HN/LIS/2018/0065. The Tribunal has considered this decision which dealt with external works and did not adjudicate on the question of internal works.
10. The parties are reminded that the jurisdiction of the Tribunal is provided by the Landlord and Tenant Act 1985. My role is to determine whether or not the lease will allow the Applicant to recover the costs of internal works as a service charge expense. In determining this question we will not address whether or not any section 20 consultations have been properly undertaken or whether any actual costs are reasonable as details have not been submitted.
11. The starting point is the lease. A lease for flat 33 is within the bundle [14-30] and a deed of variation for flat 1 [33-38] which essentially extended the term of the lease by reference to the original lease. It appears to be accepted by all parties that the leasehold structure for all the flats at the Property follow a similar format and the lease for flat 33 is in a form common to all.
12. The lease provides that the leaseholder is responsible for maintaining their flat. The Applicant is required to maintain and keep in substantial repair and condition the Building pursuant to The Sixth Schedule paragraph 2.
13. The Second Schedule as set out below defines the flat within the lease:

14. Not to park any vehicle upon or in any other way obstruct the forecourt serving the demised premises other than in places specifically reserved for vehicles

15. These regulations are intended for the common benefit of all occupiers of the Building and the Lessor reserves the right to make further regulations or to vary or amend any of the aforementioned regulations for the common benefit of all occupiers of the Building PROVIDED THAT such further varied or amended regulations shall not be binding on the Tenant until the same shall have been notified to the Tenant in writing

#### THE SECOND SCHEDULE

First ALL THAT the flat on the second floor of the Building known as number 33 as the same is shown edged red on Plan No. 1 annexed hereto and edged blue on Plan No. 2 annexed hereto including:

- (a) The internal plastered coverings and plaster work of the walls bounding the flat and the doors and door frames and window frames in such walls and the glass fitted in the windows and
- (b) the plastered coverings and plaster work of the walls and partitions lying within the flat and the doors and door frames fitted in such walls and partitions and
- (c) the plastered coverings and plaster work of the ceilings and surfaces of the floors including the whole of the floor boards skirting boards and supporting joists (if any) and
- (d) all conduits which are laid in any part of the Building and serve exclusively the flat and
- (e) all fixtures and fittings in or about the flat and not hereafter expressly excluded from this demise

But not including.

- (i) any part or parts of the Building (other than conduits and joists expressly included in this demise) lying above the said surfaces of the ceilings or below the said floor surfaces or
- (ii) any of the main timbers and other joists of the Building or any of the walls or partitions therein (whether internal or external) except such of the plastered surfaces thereof and the doors and door frames fitted therein as are expressly included in this demise or
- (iii) any conduits in the Building which do not serve the flat exclusively

And Secondly ALL THAT the car parking space in the basement of the Building known as space number 33 as the same is shown edged green on Plan No. 3 annexed hereto

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14. It appears to be common ground between the Applicant and those who have replied that each leaseholder is responsible for the plaster

covering the walls in the flat and for internal decorations. For the sake of completeness, I confirm that in my judgement the Respondent leaseholders are responsible for the repair and maintenance of the plaster within their respective flats.

15. The question of what the Company may have agreed with its members at any meeting of the Company are in my opinion irrelevant to the issue I have to determine. It would be an alternative forum to determine whether or not the actions of the company have complied with any duties the company owes its members or pursuant to other legislation.
16. Similarly, whilst it is suggested that the actions of the company in the past have set a precedent in my opinion in this instance case this does not affect the decision I have to make. The higher courts, which are binding on this Tribunal, have been clear that the interpretation of the lease is key in such disputes and no special rules apply to companies in which the leaseholders are the members of the same.
17. I have carefully considered the analysis of Mr Groom [109-111] and his reply on behalf of Mr Brown [113 & 114]. I have read carefully the report of R Elliot Associates Limited referred to earlier. I do not agree with Mr Groom's interpretation.
18. In my determination the lease terms are clear that the internal plasterwork and decorations for each flat are the responsibility of the individual leaseholder. In my judgment the lease in The Second Schedule is clear on this point. The starting point is that each leaseholder is responsible for the repair, maintenance and decoration of the same.
19. Clause 3 (3)(b) of the lease [16] makes clear it is the leaseholder who is responsible for repairing and decorating and "...make good all defects in the repair decoration and condition of the demised premises...". Subject then to payment of the service charge the Applicant is obligated to provide the services set out in The Sixth Schedule. Paragraph (2) of The Sixth Schedule sets out the Applicants repairing obligation which will include the external repairs required and which was determined by the earlier Tribunal.
20. Having considered all of the lease terms in my judgment nothing within the lease requires the Applicant to undertake the repairs to the internal plasterwork or redecorations to the individual flats. The obligation to undertake such works rests with the individual leaseholder under the leasehold structure.
21. I determine that the answer to the question posed in paragraph 2 of this determination is that the Applicant is not entitled to recover the costs of internal works to the flats at the Property as a service charge expense.

## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) being the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking