FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HG/LIS/2020/0017
Property	**:**	Queen Anne Quay, 9 Parsonage Way, Plymouth, PL4 0LY
Applicants	**:**	Landmark Perennial Growth Limited Partnership
Representative	**:**	Residential Management Group Limited
Respondents	**:**	Various leaseholders
Representative	**:**	Queen Anne's Quay Residents Association
Type of Application	**:**	Section 27a of the Landlord and Tenant Act 1985
Tribunal Members	**:**	Judge S Lal Mr Robert Brown FRICS
Date and venue of Hearing	**:**	1st December 2020, Judge's home
Date of Decision	**:**	1st December 2020

DECISION

Application

1. This is an application made on behalf of the Applicant, Landmark Perennial Growth Limited Partnership as landlord of the Property for a determination as to whether the service charges for the year 2020 relating to balcony repairs and redecoration (in an amount totalling £71,528) are payable by the Respondents.

2. In particular the Tribunal is being asked to determine the following:

   . whether the balcony works are the responsibility of the Applicant to undertake and therefore the person to whom the service charge is payable;
   . whether the works are necessary;
   . whether the costs of the works are reasonable; and
   . the persons by whom the service charge is payable.

3. Queen Anne Quay is a single block of 37 flats but has the appearance of five separate but connected blocks. All of the flats have been sold by way of a long lease. 29 of the flats have balconies with a timber upper layer.

4. Directions were issued by Judge Dobson on 20th June 2020 in order to clarify who the Respondents are and to set out time limits for delivery of the Applicant's and the Respondents' cases. Judge Dobson also made it clear to the parties that the Tribunal was not going to carry out an external inspection of the Property but that the parties could submit photographic or video footage and witness statements to support their case.

5. The application is to be determined on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013.

The Applicant's Case

6. The Applicant has proposed to undertake works to the balconies which have timber upper layers. The Applicant claims that this work should be funded by the service charge but this has been challenged by the Respondents through the Residents' Association. The Applicant has produced a copy of the lease of flat 27 dated 23rd August 2004 between Gervas Property Limited and Michael Timmins (the "Lease"). The other long leases are apparently identical. The Applicant has recited those provisions of the Lease which it considers to be relevant to this case, including the lessor's maintenance obligations which include the balconies and the lessee's obligations to pay the Estimated Service Charge and then any Service Charge Adjustment if applicable.

7. In March 2018, the Residential Management Group obtained a report from Barron Surveying Services on the condition of the balconies following long terms issues with water penetration. In June 2018 the lessees were informed that works were required to replace and repair nine of the timber balconies. Two quotes were obtained, the lower being a revised quote of £43,497.84 from Construction Management Services. A further balcony was included in the project and the unit cost had increased so that at the time of the Application the projected cost of the work was approximately £72,000. A further estimate has been obtained at a price of £93,500 for 10 balconies. The current position according to the Applicant's statement is that 16 balconies are to be included at an estimate of £93,000.

8. The Applicant claims that the balconies are part of the main structure of the building and that the Applicant is responsible for maintaining the balconies under clause 26 of the Lease and for decorating the balconies under clause 28.1 of the Lease. As such, the Applicant claims that these costs are within the Service Charge Expenditure (clause 78.1 of the Lease).

9. The Applicant seeks a determination that it has responsibility for the works to repair and decorate the balconies under the Lease and that these costs should be funded by the service charge. The Applicant appears to recognise that revised competitive estimates should be obtained for the works and the consultation process with the leaseholders should therefore recommence.

The Respondents' Case

10. The Respondents accept that the works to repair and decorate the balconies are "clearly necessary" and that the lessees wish to ensure that the timber decking is replaced where needed as soon as possible. The Respondents also point out that the timbers will need to meet fire regulations and all 29 timber decked balconies should be replaced with non-combustible material.

11. The Respondents state that they are content to accept the costs of this work if arrived at by competitive tender. The Respondents object to the fact that the price and scope of the works has changed three times with the latest price being significantly higher than that stated in the Application.

12. The main point of contention appears to relate to the timber decking. The Respondents state that the steel frame of the balcony which is fixed to the building is the responsibility of the lessor but the perishable, removeable and replaceable timber decking is the responsibility of the lessees to clean, maintain and replace as necessary. The Respondents claim that the timber decking is not a part of "the main structure of the building" as it carries no building load and can be removed without causing any detriment to the main structure of the building.

13. The Respondents claim that the varying condition of the balconies is a result of how much care each lessee has taken in cleaning and maintaining their individual balcony. Regular cleaning and maintenance of the decking is not carried out by the Applicant.

14. The Respondents claim that the Applicant's plan to use the service charge to fund the works is unfair to those residents who do not have a timber balcony and unfair to those who do have a timber balcony but one that is not subject to the works. The Respondents claim that the Applicant has agreed to share out costs based on whether the lessee has a balcony and on the relative size of each balcony.

The Decision

15. The Tribunal has reviewed the three hundred and thirty pages of documentation provided together with the statements from each of the Applicant and the Respondents. The Tribunal has also considered the terms of the Lease and the obligations of the parties thereunder together with the statutory provisions that are relevant to this issue.

16. This is a case which rests on the interpretation of the Lease and the parties obligations thereunder to decide which party is responsible for the repair and maintenance of the balconies. In the Lease the Building is defined as "*the main structure of the Building known or to be known as Queen Anne Quay Coxside Plymouth .....including the foundations, the external walls, the balconies and any rendering, tiling or other fixtures and finishes upon the exterior thereof, any joists and floor slabs, the internal structure of any load-bearing supporting or retaining walls, beams, columns, ceilings, roof, roof voids and any other voids but excluding any Conduits"*

17. Under clause 26 of the Third Schedule to the Lease, the lessor is obliged to: *"Keep in good and substantial repair and condition and whenever necessary rebuild reinstate renew and replace all worn or damaged parts of the surface of the Parking Space and the balcony forming part of the Property....."*

18. The Tribunal is satisfied that this is entirely logical - a good landlord would not want lessees interfering with the exterior of the building or common parts for several reasons:

    a. there are already three examples of lessees doing their own work on the balconies. Two have laid Astroturf and a third has overlaid the existing deck interfering with the designed drainage.

    b. it would involve the potential for individuals working at height without taking proper precautions. For example the residents have suggested that the balconies could be resurfaced without scaffolding. This would mean all waste and new materials being moved via the common parts. Further it would mean that the surface would be opened up at height whilst re-boarding takes place. It is unlikely that the work could be carried removing and replacing one or two boards at a time.

    c. In Clause 26 the car park and balcony are referred to in the same phrase it would be inappropriate for individual lessees to be responsible for resurfacing small areas of the car park.

19. The Property is defined in the Eighth Schedule as:
The Apartment shown edged red on the Plan including by way of demise:
The internal surface of the internal and external load- bearing walls and the internal surfaces of the door frames and window frames in exterior and other load-bearing walls;
All internal non load-bearing walls and door frames fitted in such partition walls;
The surface of the floors and ceilings……..
The structure of any balcony attached to the Property together with the air space between the balcony and any balcony above"

20. The lessee's covenants are set out in the Second Schedule. Clause 9 sets out the lessee's repair and maintenance covenants. Clause 9.1 requires the lessee to:

"repair maintain renew uphold and at all times keep the Property and all parts thereof …….in good and substantial repair and condition".

Clause 9.2 requires the lessee to:
"maintain and at all times keep the Property …….and all parts thereof well decorated to a high standard".

21. It is acknowledged that the Lease is not particularly clear on the substantive point in question here. However, it appears from clause 26 when read alongside the definition of Property in the Eighth Schedule that the lessor is responsible for repair of the "*structure of any balcony".* The Tribunal is satisfied that the extent of the demise is edged red on the plan but this is not necessarily the whole extent of the lessees repairing obligations, otherwise why would the draughtsman have bothered to refer to the balcony in the Lessor repairing obligations? Further the last sentence appears to the Tribunal to say the structure of the balcony is within the demise and the Tribunal is satisfied that no lessor would write a lease making a lessee responsible for the structure of a projecting balcony.

22. The Tribunal has regard to the cited 2019 St Cuby case (CHI/29UN/LSC/ 2019/0091) where the Tribunal found that the balcony for the flat in question was not part of the main structure of the building and that the Tenant of the balcony flat was responsible for the repair of the balcony under the Tenant's repair covenant. Whilst the Property in this case is somewhat different, the Tribunal is not bound by that case as it is a first instance authority and therefore not binding. For these reasons, the Tribunal finds in favour of the Applicants on the substantive point of this case, namely it is to them that the service charge obligation is payable.

23. As to the other points in questions, having reviewed the surveyor's report and photographs, the Tribunal agrees with the parties that the replacement of the timber decking is necessary in principle. As to the reasonableness of the costs associated with these repairs, the Tribunal is not in a position to decide on these costs for a number of reasons. Firstly, it appears that the parties are awaiting a Fire Risk Assessment to determine what materials will needed to replace the timber decking although it has been reported that proposed hardwood is acceptable - (see Page 328 para 4 6a -3rd sub para0) no report has been produced. Secondly the tenders obtained by the Applicant appear to vary in extent and amount and are not up to date. The Applicant accepts that further tenders and consultation with the lessees is required. Thirdly a number of balconies have not been surveyed. Fourthly there appears to be an error in so far as the specification requires hardwood decking but the price inserted appears to be that for the softwood option see pages 163 (spec £21222.50 plus VAT) and 225 (Hayman Quote)..Hardwood £57.44 per m x 650m =£37,336 plus VAT- softwood is £35.09 per m x 650 = £22,808.00 plus VAT.

24. Given that this case rests on the clarification of the Lease, the Tribunal makes no order for costs and each party should bear its own costs in respect of this Application.

25. 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, which has been dealing with the case. 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.

26. 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.

27. 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.

Judge S. Lal
Mr Robert Brown FRICS

1st December 2020