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LC-2025-265

IN THE UPPER TRIBUNAL (LANDS CHAMBER)

AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

Ref: LON/00AT/LSC/2024/0712

Royal Courts of Justice, Strand,
London WC2A 2LL

29 January 2026

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – SERVICE CHARGES – interpretation of leases – timber balconies in blocks of flats – whether part of demised premises – balconies in different states of repair – whether landlord entitled to replace some or all balconies – appeal dismissed

BETWEEN:

CLAUDIA JULIA HOLY

Appellant

-and-

BRENTFORD LOCK ISLAND
RESIDENTS' ASSOCIATION LIMITED

Respondent

14 Barnes Quarter, Tallow Road,
Brentford TW8

Martin Rodger KC,
Deputy Chamber President

27 January 2026

Mr Julian Holy for the appellant

Dr Christy Burzio, instructed by KDL Law, Solicitors, for the respondent

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The following cases are referred to in this decision:

Crédit Suisse v. Beegas Nominees Ltd [1994] 1 EGLR 78

Fluor Daniel Properties Ltd v Shortlands Investments Ltd [2001] 2 EGLR 103

Proudfoot v Hart (1890) 25 QBD 42

Welsh v Greenwich LBC [2000] 3 EGLR 41

Introduction

1. Did a management company's repairing covenant in leases of flats at Brentford Lock entitle it to replace the timber flooring of the flats' balconies with new flooring made of non-combustible material although only 15% of the balconies were in immediate need of repair?
2. In a decision handed down on 8 June 2025, the First-tier Tribunal, Property Chamber (the FTT) decided that the management company would be entitled to replace the timber flooring with a modern aluminium alternative. One of the leaseholders, who had recently replaced the balcony of her flat at her own expense, now appeals against that decision with the permission of this Tribunal.
3. The appellant, Claudia Holy, owns the lease of Flat 14 in Barnes Quarter, one of six buildings in the Brentford Lock Island development (the Development). She was represented at the hearing of the appeal by her father, Mr Julian Holy, who is a retired solicitor.
4. The respondent is the Brentford Lock Island Residents' Association Ltd (the Management Company), a company established at the time the Development was completed and which is responsible for management of the Development and the provision of services, including keeping the buildings in repair. The Management Company is party to the lease of each flat in the Development and its members are the leaseholders. It was represented at the hearing of the appeal by Dr Christy Burzio.

The facts

5. The Development was completed in stages from about 2000 and comprises six new residential blocks, each of five storeys, and 20 separate houses. The residential blocks contain 173 flats, all of which are let on the same terms. 124 of the flats have balconies of various sizes (flats on the ground floors have patios rather than balconies, and flats on the top floors have terraces).
6. The balconies comprise a steel framework and balustrading, supported by concrete beams projecting from the face of the building, but the floor of each balcony is formed of lap-jointed timber planks, each about 10 cm wide and 5 cm deep. The planks are treated softwood with a grooved upper surface to provide some grip, and they are screwed into concealed timber bearers fixed to the steel framework.
7. The Development was constructed in accordance with the prevailing building regulations at the time, but since July 2022 amendments to Building Regulations, Approved Document B have required that balconies in residential buildings of 11 metres or above (which I was told include the Development) must achieve a fire safety rating which, in effect, excludes the use of timber components. The amendments do not apply to existing buildings, but they reflect increased concern about the risk of fire since the Grenfell Tower tragedy. The same concerns are apparent in advice published by the Ministry of Housing, Communities and Local Government in 2019, and in new standards for fire risk assessment, PAS 9980, in January 2022. In practice, flats which

contain combustible elements in walls or balconies have come to be regarded with suspicion by some insurers, purchasers and mortgage lenders.

8. Against that background the Management Company sought advice in 2022 on the replacement of the timber flooring in the balconies with a non-combustible alternative. Some balconies were observed to be in poor condition, and a test programme to replace three balconies in one building also revealed that some of the concealed timber bearers to which the balcony floors are fixed are liable to rot. In October 2024 a survey of all of the balcony floors found that 15% (19 of 124) were in poor condition while of the remainder, 102 were in fair condition and 3 had been replaced as part of the test programme. The balconies described as being in fair condition were not uniform, but none of them were at any immediate risk of failure. In some cases they exhibited signs of decay or rot, but in other cases the deficiencies recorded were simply cosmetic.
9. The Management Company wished to proceed with the replacement of all of the balcony floors and consulted with its members on a comprehensive programme of works aimed at eliminating the risk and uncertainty they gave rise to once and for all. Amongst those who opposed the suggested programme was Ms Holy, who had already replaced her own balcony flooring (although it would appear from the October 2024 survey that the replacement material is also timber). Following correspondence, the management company applied to the FTT under section 27A(3), Landlord and Tenant Act 1985, for a determination whether, if costs were incurred in undertaking the proposed work, those costs would be recoverable as a service charge. The FTT answered that question affirmatively.
10. After permission was granted for this appeal against the FTT's decision the Management Company decided that it could not leave the 19 damaged balconies in their dilapidated condition while the appeal was pursued. It therefore undertook a limited programme of patch repairs, replacing the timber flooring on the most seriously damaged balconies with new timber flooring. The current position is therefore that none of the flooring is in such a dilapidated condition as to require immediate repair. That does not mean that the flooring may not have deteriorated from its original condition; the deterioration of timber exposed to the elements for more than 20 years is inevitable and progressive. It is possible that some of the balconies previously rated as being in fair condition are now in or approaching poor condition, but there is no evidence that that is the case.

The Lease

11. I was shown a sample lease of one of the flats in the Development and I assume that the remaining flats are held on the same terms. The sample lease was granted on 24 March 2005 for a term of 999 years from 25 March 1999. There are three parties, the Lessor (Charles Church Developments Ltd), the original Lessee, and the Management Company.
12. The whole of the Development is divided into two parts, referred to in the Lease as the Island Site and Brentford Lock. The subject of the Lease itself is referred to as "the Demised Premises". By clause 1.1, unless the context otherwise requires, that expression means the property described in the Second Schedule. The relevant parts of that description are the following:

“ALL THAT apartment (together with the floor surface only of any balcony or patio co-extensive therewith (if any) and the air space above such balcony or patio to a height of one storey above the surface thereof) being Plot 130 ... (EXCEPTING AND RESERVING from the demise the main structural parts of the Building including the roof space (unless such roof space forms part of this demise) foundations and the external parts)”

The Lease also includes definitions of the “Building”, meaning the building of which the Demised Premises forms part, and the “Buildings”, meaning the Building and other buildings within the Island Site.

13. By clause 3 of the Lease the Lessee covenanted to perform obligations in the Seventh Schedule, and by clause 5 the Management Company covenanted to perform obligations in the Fifth Schedule.

14. The Fifth Schedule divides the obligations of the Management Company into four parts. Those in Part 1 are obligations in respect of the Development as a whole. Part 2 concerns services to be provided by the Management Company in respect of the Dwellings (meaning the houses and apartments on the Island Site), while Part 3 covers services to be provided in respect of the Buildings.

15. The Management Company’s principal repairing obligation is found at paragraph 1 of Part 3 to the Fifth Schedule, by which it is to perform the following service:

“Inspecting maintaining renewing repairing rebuilding repointing improving or otherwise treating and keeping the Buildings and every part thereof in good and substantial repair order and condition”

16. Other Management Company obligation of note in Part 3 to the Fifth Schedule include complying with notices served by a local authority or requirements of a competent authority relating to or in connection with the Buildings (Paragraphs 11 and 14) and the following, at paragraph 17:

“Paying all expenses (if any) incurred by the Management Company in the maintenance and management of the Buildings including any expenses incurred in rectifying or making good any inherent structural defect in any Buildings ...”

17. The Lessee’s obligations in the Seventh Schedule include, at paragraph 4 of Part 2, the following concerning the repair of the Demised Premises:

“To repair and keep the Demised Premises and all Service Installation exclusively serving the same and every part thereof and all Landlord’s fixtures and fittings therein and all additions thereto in good and substantial repair order and condition at all times during the Term including the renewal and replacement forthwith of all worn or damaged parts ...”

18. Finally, in Part 2 of the Fifth Schedule, at the end of the list of services to be provided by the Management Company in respect of the Dwellings, the following acknowledgement appears, at paragraph 5:

“For the avoidance of doubt it is acknowledged that the Management Company and not the Lessee shall be responsible for the maintenance repair and upkeep (but not cleaning) of any patio or balcony forming part of the Demised Premises”.

The simple question: who is responsible for keeping the balcony floors in repair and, where necessary, renewing them?

19. The main point of contention between the parties in correspondence was whether the Management Company was entitled to replace the balcony floor. Mr Holy maintained that it was not, and he maintained that position on the appeal. His argument proceeded in this way. First, he asserted that the balcony is part of the Demised Premises. Secondly, the obligation to keep the Demised Premises in repair, and specifically to renew and replace worn or damaged parts, falls on the Lessee under paragraph 4 of Part 2 to the Seventh Schedule. Thirdly, the Management Company’s obligation in relation to the balcony is stated in paragraph 5 of Part 2 of the Fifth Schedule to be the “maintenance repair and upkeep” of the balcony. Finally, the parties must therefore be understood to have intended a clear distinction between the Management Company’s obligation to maintain and repair the balconies, and the Lessee’s obligation to renew and replace them. It followed that the Management Company was not entitled to renew or replace the balcony flooring.
20. This argument fails at the first step, the definition of the Demised Premises in the Second Schedule. The only part of the balcony which is included in the Demised Premises is “the floor surface only” and the airspace above it. For good measure, the definition also excludes the external parts of the Building from the Demised Premises. The reference to “floor surface” does not mean the whole of the timber floor, it means only the surface, the uppermost two dimensional face having length and breadth but no depth. That limited meaning is apparent from the use of the three words, floor surface only, which signify not the whole of the floor, but only its surface. Had the parties intended that the whole of the floor was to be demised, including the whole of the timber planks, they need have said no more than “the floor”.
21. The exclusion from the Demised Premises of so much of the balcony flooring as lies below its surface is consistent with the acknowledgement in paragraph 5 of Part 2 of the Fifth Schedule that, for the avoidance of doubt, the Management Company and not Lessee is responsible for the maintenance repair and upkeep (but not cleaning) of the balcony forming part of the Demised Premises. The only part of the physical structure of the balcony included in the Demised Premises is the part which requires cleaning, the surface.
22. Once the premise of Mr Holy’s argument is removed, the remaining steps lead nowhere. The Lessee’s obligation in paragraph 4 of Part 2 of the Seventh Schedule applies only to the Demised Premises and so does not extend below the surface of the balcony. The Management Company’s obligation includes keeping the Building and every part of it, thus including the whole of the balcony flooring, in good and substantial repair order and

condition. There is no tension between the parties' respective obligations and no reason not to give the list of actions which the Management Company is to perform in order to keep the Buildings in good and substantial repair order and condition their ordinary meanings. Maintaining, renewing, repairing, rebuilding, and improving are amply wide enough to cover replacing timber flooring in its entirety when and if that is considered the most appropriate way to keep that part of the Building in the required condition.

23. The answer to the question: who is responsible for repairing and, where necessary replacing, the balcony flooring is therefore that the Management Company is.

The more complex question: is the Management Company entitled to replace all of the balcony floors?

24. Whether any particular work is within the scope of a repairing obligation is not simply a question of interpretation of that obligation; it is a more complex question which depends on the circumstances as they are at the time the question is asked. It is what is sometimes called a question of fact and degree. The FTT considered that the replacement of all of the balcony floors at the Development with new aluminium flooring would be within the scope Management Company's covenant and would therefore be work which the Management Company could insist on doing and could require the Lessees to pay for through the service charge or from service charge reserve funds.
25. The facts have changed since the FTT's decision. Some of the considerations which led the Management Company to decide that wholesale replacement of the balcony floors was the most appropriate method of complying with its repairing obligation no longer apply. Most obviously, it has taken action to replace the 15% of balcony floors which had deteriorated to such an extent that they needed to be addressed straight away. The dilapidated state of some balconies is no longer a reason for urgency. It might be said that the FTT's decision on the work which the Management Company was entitled to carry out become academic, as the FTT was considering a proposal, and the facts underlying that proposal have changed.
26. But the perceived fire risk arising from the fact that the balcony floors are made of combustible timber has not been addressed by the recent works. Nor have issues concerning the mortgageability of the flats or the attitude of insurers (although the evidence about these issues is quite vague). Each of these concerns is largely independent of the state of repair of the balcony floors.
27. I was told that the Management Company would still like to proceed with the replacement of all of the balcony floors in the Development with their chosen non-combustible alternative. I assume it would also like to do so in a single programme of work, rather than in a rolling programme over a number of years. So the question answered by the FTT remains relevant but it will have to be answered again, in changed circumstances. The evidence before the FTT was about the circumstances as they were at the date of its decision, not as they are now, but it may assist the parties if I consider whether the FTT's conclusion was correct and explain how they and others facing the same question might go about answering it.

28. The authors of the invaluable *Dilapidations: The Modern Law and Practice* (7th ed., 2022) suggest in Chapter 6 of their work a five stage approach to issues of liability under a standard repairing covenant. They provide a systematic analysis which reduces complex questions to their constituent parts, making them easier to answer, and it can usefully be adopted in this appeal. Not all repairing covenants are expressed in standard terms, and it will also be necessary to look at the specific language of the leases in this case to see what difference, if any, it might make. But I will consider first the Management Company's obligation in paragraph 1 of Part 3 to the Fifth Schedule to keep "the Buildings and every part thereof in good and substantial repair".
29. The first question asks: What is the physical subject-matter of the covenant? The physical subject-matter of the Management Company's obligation is the whole of the Buildings and every part of them including, in particular, the balconies.
30. The second question asks: Is the subject-matter of the covenant in a damaged or deteriorated condition? The answer in this case is that some of the balcony floors are damaged, showing evidence of rot, others are discoloured or denatured in less serious ways, while some (at least 22) were sufficiently damaged to require replacement but are now new or nearly new and show no signs of damage or deterioration. It follows that if the focus of the question is on the Buildings, or on the floors of the balconies as a whole, the answer to the question is affirmative. If the focus is on individual balcony floors the answer is (and was before the FTT) yes in the case of some, and no in the case of others.
31. The third question asks: Is the nature of the damage or deterioration such as to bring the condition of the subject-matter below the standard contemplated by the covenant? As the authors explain, at para. 6-06:
- "Not every occasion of physical damage or deterioration will give rise to a liability under the covenant. It is necessary to ask whether such damage or deterioration results in the premises not being in the state and condition that the parties contemplated they should be in. This involves identifying the standard imposed by the covenant and comparing it with the actual state of the premises."
32. This statement of principle reflects the explanation provided by Lord Esher MR in the leading case of *Proudfoot v Hart* (1890) 25 QBD 42. A tenant had covenanted to keep a house in Kentish Town in "good tenantable repair", which Lord Esher explained (in rather dated terms):
- "... is such repair as, having regard to the age, character and locality of the house, would make it reasonably fit for the occupation of a reasonably minded tenant of the class who would be likely to take it."
33. The standard of repair envisaged by the covenant in this case is likely to be quite high. The covenant itself refers to "good and substantial repair" and these are expensive modern flats in an attractive development in London. But the parties are unlikely to have intended that the condition of the Buildings as a whole, or of individual balconies, would at all times be pristine. They are likely to have anticipated the natural effects of the weather on the exterior of the Buildings, including their wooden components, and they are unlikely to have in mind that these should be replaced at the first sign of

deterioration. There was reference in the hearing documents to a suggested life expectancy for the balcony floors of 25 years, attributed to the RICS. The Timber Decking and Cladding Association Code of Practice: Balconies on new homes (TDA/RD1701 E3) suggests a minimum service life of between 30 and 60 years is achievable. But the life expectancy of timber flooring is likely to depend on the quality and treatment of the materials used and the extent to which they have been maintained, and while estimated life expectancies are relevant to decision making, they are less important when assessing whether a particular example has fallen below the standard anticipated by the covenant.

34. Before the recent work to remedy the most seriously damaged balconies the answer to the third question was that some, including the 19 but possibly also including others, were below the standard contemplated by the covenant, but that others had not yet reached that condition. Of those others, some might fall below the expected standard in the relatively near future, while others might have many years of perfectly serviceable life left in them. It is likely that all or most of the balcony floors which have not been replaced since their installation are now in or approaching their design life expectancy. But it is not possible for me to form any view about the relative number of balcony floors which now fall below the contemplated standard, and the number which remain in “good and substantial repair”, or for how long that may continue.
35. The fourth question asks: What work is necessary in order to put the subject-matter of the covenant into the contemplated condition? Where there is more than one way of remedying the state of disrepair the party under the obligation to carry out the work is entitled to choose which method to adopt. In this case that is the Management Company. Individual lessees are not entitled to insist that the Management Company adopt the least expensive approach. But where the work is to be paid for by someone else, in this case the Lessees, that principle is qualified and the choice made by the landlord, or in this case by the Management Company, must be a reasonable one bearing in mind, in particular, the length of the parties respective interests. Both the general principle, and that important qualification, are supported by the decision of Blackburne J in *Fluor Daniel Properties Ltd v Shortlands Investments Ltd* [2001] 2 EGLR 103. First, the general principle, at page 110M:

“The obligations have been cast upon the landlord. It is for the landlord to decide how to discharge them. Provided it acts reasonably, it is for the landlord to decide how to go about the matter. The tenants cannot complain simply because the landlord could have adopted another and cheaper method of doing so.”

Then the qualification, at page 111A:

“In short the works - ie the standard to be adopted - must be such as the tenants, given the length of their leases, could fairly be expected to pay for. The landlord cannot, because he has an interest in the matter, overlook the limited interest of the tenants who are having to pay by carrying out works which are calculated to serve an interest extending beyond that of the tenants.”

36. The Management Company wishes to replace the timber balcony floors with new aluminium floors (although the replacements are designed to have the appearance of

timber planks). Mr Holy agreed that if work was required there was good sense in using modern, non-combustible materials. The issue is not whether different materials can be used, as they clearly can, but is whether wholesale replacement is justified in circumstances where not all balcony floors are in the same condition and some are not in a state of disrepair at all. That is a question of judgment for the covenanting party, in this case the Management Company, but factors likely to be relevant to that judgment include the relative cost of the different approaches, the condition and life-expectancy of the timber floors, the number which are likely to need some work in the relatively near future compared to those which are unlikely to require replacement for many years, the practicality and relative convenience or inconvenience of a comprehensive programme on the one hand and a reactive or intermittent approach on the other, the duration of the leases, and the views of the Lessees themselves.

37. It would also be permissible for the Management Company to have regard to any beneficial effect of complete replacement on the marketability, mortgageability and value of the flats. Those seem to me to be legitimate considerations, even though they arise as a result of the material used in the balconies, rather than from any state of disrepair. But, as I have said, the evidence about those matters is vague and it is not clear whether what is described in correspondence and in the witness statement of the managing agent refers to problems which have been experienced or fears of difficulties which may be encountered in future. If real difficulties are currently being encountered by Lessees wishing to sell or remortgage, or if the presence of the timber balcony floors is in fact having an effect on the cost of insurance, those would be powerful factors in favour of adopting a comprehensive approach, even if relatively few balconies can currently be said to be in disrepair.
38. The fact that the Lessees have a limited interest in their flats is a matter of less significance. In this case (unlike in *Fluor Daniel*) the leases were granted for 999 years and will long outlive the Development itself. The Lessees (or their successors) will enjoy the full benefit of the proposed works.
39. Ms Burzio suggested that the achievement of a uniform appearance for the Development would also be a relevant consideration. That might be the case, but the floors of balconies may not be very obvious from the ground or even from other flats in the Development. The replacement of separate building components which function independently of each other and only some of which are in disrepair, seems to me to raise different considerations from repairing a single component only part of which is in disrepair (such as repainting a wall part of which has been graffitied, or replacing ceiling or wall tiles, only some of which are damaged, as in *Shortlands Investments Ltd v Cargill* [1995 1 EGLR 29]).
40. The fifth question asks: Is that work nevertheless of such a nature that the parties did not contemplate that it would be the liability of the covenanting party? Where the element in disrepair is only a small part of the subject of the covenant this question is unlikely to arise, and it not a consideration in this case.
41. Drawing these considerations together, it seems to me that the decision taken by the Management Company to replace all of the balcony floors, whatever their state of repair, was a perfectly reasonable one. At that time fairly urgent work was required to 15% of the balconies and most of the remainder were approaching 25 years old and would

require regular monitoring and progressive remediation. Comprehensive replacement would solve the fire risk problem once and for all and would allow other work to be done from the same scaffolding. It would be expensive, but the Lessees would benefit equally and fully from that expenditure.

- 42. For these reasons I agree with the conclusion of the FTT. Had the facts not changed, that would be the end of the matter.
- 43. But the facts have changed and there is no longer a need to carry out urgent work to 15% of the balconies. Taking those into account together with the three which were replaced in the test programme and a number replaced in recent years by individual Lessees (including Ms Holy), it is likely that 20% or more will require little or no work for many years. The relative balance between damaged and undamaged floors is likely now to be quite different from how it was 18 months ago. It may be that the number of balcony floors which are currently below a reasonable standard of repair is small, or perhaps negligible. The Management Company should therefore give proper consideration to the facts as they now are, including before deciding whether to proceed with full replacement.

The final question: If none of the balcony floors are currently in disrepair is the Management Company entitled to replace them all?

- 44. The condition of the remaining balcony floors (those which have not already been replaced either in timber or aluminium) may not be such as to require any remedial work to bring them into an acceptable state of repair. They may simply require cleaning to maintain their current condition, which is the responsibility of the Lessee. But even in those circumstances the combustibility of the timber floors, and any effect they may have on the marketability and mortgageability of the flats, and on their value, would persist. The final question which arises is therefore whether, if they are undamaged and in good repair, the Management Company would nevertheless be entitled to replace all of the timber floors because of the fire risk and its wider consequences.
- 45. Ms Burzio submitted that the Management Company was entitled to replace the balcony floors even if none of them are in disrepair. But something which is not in disrepair cannot be repaired. If the subject-matter of the obligations, in this case the floors of the balconies, have not deteriorated to an extent which causes them to be below the standard contemplated by the covenant, they are not in disrepair. In that event it would be necessary to look elsewhere for an entitlement to replace building components which are not in disrepair.
- 46. In the absence of any intervention from a local or statutory authority two possibilities need to be considered.
- 47. Paragraph 1 of Part 3 of the Fifth Schedule to the Lease is not limited to repair. It requires the Management Company to keep the Buildings and every part of them in good and substantial “repair order and condition”. Do the references to “good ... order and condition” impose obligations (and confer entitlements) which go further than simply remedying deterioration from a previous condition?

48. Paragraph 17 of Part 3 of the Fifth Schedule to the Lease requires the Lessee to pay all expenses incurred by the Management Company in “rectifying or making good any inherent structural defect in any Buildings”. Might that be a route by which the Management Company could recover the cost of replacement of balconies which, though in repair, were manufactured from combustible materials?
49. On the face of it, a covenant to keep a structure in good and substantial “repair order and condition” is broader than a covenant simply to keep the structure in repair. That was the view of Lindley J in *Crédit Suisse v. Beegas Nominees Ltd* [1994] 1 EGLR 78, and of the Court of Appeal in *Welsh v Greenwich LBC* [2000] 3 EGLR 41, which concerned a covenant “to maintain the dwelling in good condition and repair...”; Robert Walker LJ said:

“[T]he reference to ‘good condition’ in [the clause] is intended to mark a separate concept and to make a significant addition to what is conveyed by the word ‘repair’.”

50. But the precise difference between keeping in good repair and keeping in good condition remains uncertain. The extent of the obligation has been considered in cases where the argument has been whether particular work was too extensive properly to be described as repair. In *Crédit Suisse*, for example, the replacement of the external cladding of an office building was found to be too extensive to be described as repair (although parts of the cladding had deteriorated) but the same replacement work was found to be required by virtue of the landlord’s obligation to keep the building in good condition. I am doubtful whether a building component which has not deteriorated and is in as good a condition as when it was first provided, and so is not in need of repair, could nevertheless be said not to be in “good condition”. In *Fluor Daniel* the covenant in the lease of a modern office building was “to uphold maintain repair amend renew cleanse and redecorate and otherwise keep in good repair and substantial condition and as the case may be in good working order and repair”. It was argued that deterioration was a precondition of liability, even under a covenant to keep in good condition. Blackburne J accepted that submission:

“The obligations contained in the clause presuppose that the item in question suffers from some defect (i.e. some physical damage or deterioration or, in the case of plant, some malfunctioning), such that repair, amendment or renewal is reasonably necessary.”

51. I received no substantial argument on the meaning of the obligation to keep the balconies in good condition and I am reluctant to decide it. It may be important in other cases where the facts are clearer, and it is best left until then.
52. I also received no argument about whether the Lessee’s obligation to pay for “rectifying or making good any inherent structural defect in any Buildings” might be engaged by the state of the balcony floors. In ordinary language the word “defect” need not involve deterioration from a previous state. Something which has been newly manufactured might be described as defective if, as designed, it exhibits a flaw. Whether something which was in good condition when it was installed could be said to constitute a defect, not because of any change in its condition, but because relevant standards have changed, is more difficult. Nor is it obvious whether the balcony floors could be regarded as a

“*structural*” defect. Once again, I prefer not to determine these questions, but I draw attention to them because they may be important in this or in other cases.

Disposal

53. For these reasons I am satisfied that the FTT’s conclusion was correct, and that in principle the Management Company is obliged to repair the timber floors of the balconies. At the time of the FTT’s decision it would have been entitled to perform that obligation by replacing the timber floors with aluminium and to do so for all balconies at the same time. The appeal is therefore dismissed. The facts have changed and I am not in a position to determine on the information available to me whether comprehensive replacement of all of the balcony floors would still be within the Management Company’s covenant.

Martin Rodger KC,
Deputy Chamber President

29 January 2026

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal’s decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.