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Sweeping Clauses, Not Sweeping Bills: Tower Hamlets v Brewster & Malting House Leaseholders [2025] EWCA Civ 1591

Mayor and Burgesses of the London Borough of Tower Hamlets v Various Leaseholders of Brewster House and Malting House [2025] EWCA Civ 1591

Date: 9 December 2025

Judges: Lord Justice Males, Lord Justice Snowden and Lord Justice Dove

Key Words:

Structural defects, Right to buy, Service charge, Large Panel System (LPS), Lease interpretation, Safety clause, Total Expenditure, Landlord and Tenant Act 1985

Summary

The appeal concerned whether right-to-buy leaseholders were liable via service charge to contribute to major works addressing a pre-existing structural defect in Brewster House and Malting House [1, 2, 5]. The works, required to make the buildings safe due to a fundamental flaw in their Large Panel System (LPS) construction, were estimated at over £9.2 million [6, 11, 12].

The Council appealed decisions of the FTT and Upper Tribunal holding leaseholders not liable [1, 2]. The Court of Appeal agreed, finding that the lease provisions—particularly the general 'sweeper' safety clauses—did not oblige leaseholders to pay for remedying a pre-existing structural defect [3-5, 47-48]. The appeal was dismissed [3-5, 64-66].

Key Themes:

1. **Interpretation of Service Charge Clauses:** The dispute centred on general service charge provisions, including the 'sweeper' clause (clause 5(5)(o)) referring to works necessary for "safety," and the definition of "Total Expenditure" [1-2, 16(o), 17, 26, 61].
2. **Structural Defects vs. Maintenance/Repair:** The judgment reaffirmed the distinction between obligations to maintain and keep in repair (clause 5(5)(a)) and the separate obligation to remedy pre-existing structural defects [16, 21, 52].
3. **The Right to Buy Statutory Context:** The leases, granted under the Housing Acts 1980 and 1985 (as amended), had to be interpreted against their statutory background, which informed the parties' intentions [3-5, 39-40, 47-48].

4. **Tenant Protection and Financial Burden:** The legislation was designed to protect leaseholders—often of modest means—from potentially ruinous liability for structural defects [32, 53].
5. **Landlord Knowledge of Defects:** A key finding was that the council knew of the underlying LPS defect from the outset, even though the full extent of remedial works emerged later [27-28, 55-57].

Background

Brewster House and Malting House, part of the Barleymow Estate, were built around 1967 using LPS construction [3-6]. The inherent flaw—that structural integrity depended heavily on the walls—became apparent after the Ronan Point disaster in 1968 [6]. Safety works were undertaken in the late 1960s and again between 1990 and 1994 to address abnormal loading risks [7-9].

Following renewed concerns about LPS buildings in 2017, the council commissioned a structural reassessment [10]. By July 2018 it concluded existing reinforcement was inadequate even for normal loading [10]. In March 2020, major works (including external and internal steel frames) were approved, at a cost exceeding £9.2 million [11-12]. The council sought to recover £70,000–£95,000 per leaseholder under right-to-buy leases granted between 1989 and 2005 [3-5, 13-14].

Legal Issues and Analysis

The appeal focused on two grounds put forward by the council: whether the costs were recoverable via service charge because (1) the works fell under the scope of clause 5(5)(o), as they were necessary or advisable for the safety of the building; or (2) the costs fell under the definition of ‘Total Expenditure’ in Schedule 5 as costs "reasonably and properly incurred in connection with the Building" [34].

The Court of Appeal focused on interpreting these provisions in their contractual and statutory context [38-40].

Analysis of Clause 5(5)(o) (Safety Clause): Lord Justice Males noted that while the works were carried out for safety reasons, the critical question was whether the clause encompassed the making good of a pre-existing structural defect [47-48]. Clause 5(5)(o) lists "safety" alongside "management, maintenance, amenity or administration," suggesting it is concerned with relatively routine, day-to-day matters, not fundamental structural defects exposing the building to collapse [49]. Furthermore, the language of "absolute discretion" in clause 5(5)(o) is unsuitable for covering a fundamental structural defect that the council is statutorily obliged to make good without discretion [50]. It was considered that bringing the cost of remedying a pre-existing structural defect within this general sweeper clause would be bringing in something that clearly does not belong there [62].

Analysis of the Right to Buy Legislation: The legislation (Housing Acts) expressly addressed structural defects, implying a covenant for the landlord to make them good [43(a)]. Critically, the legislation restricted the landlord’s ability to recover these costs unless the defect was notified before the lease grant or became known significantly later [44(16-17), 45-46]. Given this detailed statutory framework, any requirement for leaseholders to contribute should have been stated in clear words dealing expressly with structural defects, rather than being left to a very general term like 'safety' in a sweeper clause [51].

Analysis of 'Total Expenditure' (Concluding Words): The court found that the general words in Schedule 5 ("any other costs and expenses reasonably and properly incurred in connection with the Building") could not have been intended to enable the council to recover the cost of making good a pre-existing structural defect, especially since the council had a positive statutory duty to make it

good [61].

Analysis of the Two Earliest Leases: Two of the earliest leases contained additional wording in Schedule 5 which expressly referenced structural defects, aligning with the relevant Housing Act provisions [18, 54]. This wording effectively precluded recovery for structural defects that were not notified to the leaseholder and were known to the council at the time the lease was granted [27-28, 54]. The FTT made a finding of fact that the fundamental defect (the LPS design flaw) was known to the council from the outset, even though new remedies were devised later, which was fatal to the council's claim regarding these two leases [55-57].

Conclusion

The Court of Appeal concluded that the council is not entitled to recover any part of the costs incurred in remedying the pre-existing structural defect through the service charge [62]. This decision applied to all leases, including those containing additional specific wording concerning structural defects and those that did not [62]. The court agreed that interpreting the general service charge clauses to include the potentially ruinous cost of fixing a fundamental, pre-existing structural flaw was contrary to the context of the lease and the objective of the right to buy legislation [26, 32, 59-60, 62]. The appeal was dismissed [64-66].

Key Takeaway:

The key takeaway is that general, sweeping service charge clauses in right-to-buy leases, even those referencing safety, will not be interpreted to compel leaseholders to pay for the cost of remedying fundamental, pre-existing structural defects, particularly when the relevant statutory context (the Housing Acts) addresses such defects in detail and provides consumer protection against such large, unforeseen liabilities [3-5, 39-40, 51, 62].

Parting Thoughts

This was, in the end, a case about limits. Not engineering limits (those were exceeded decades ago), but linguistic, legal, and statutory ones. The Court of Appeal was unimpressed by the suggestion that a broadly worded service charge clause—armed with the word "safety" and a sense of optimism—could be stretched far enough to hoist a £9.2 million structural rescue operation onto the shoulders of right-to-buy leaseholders.

The judgment is brisk, orthodox, and quietly devastating to the Council's case. Sweeper clauses sweep; they do not excavate. "Safety" in a list alongside caretakers, lightbulbs and fire extinguishers does not suddenly transmogrify into a licence to re-engineer a 1960s tower block whose fundamental defect pre-dated the leases by a generation. To read it otherwise would be to smuggle an elephant through the letterbox and then charge the leaseholders for the damage.

Crucially, the Court refused to read the leases in a vacuum. These were right-to-buy leases, born of legislation expressly designed to promote home ownership while shielding purchasers of modest means from financially catastrophic liabilities. Parliament had already grappled—explicitly and in detail—with structural defects. Against that background, the idea that the same liability might reappear, silently and indirectly, under the heading of "any other costs … in connection with the Building" was not contractual interpretation but wishful thinking.

The Council's position was further undermined by an awkward but fatal fact: it knew about the LPS defect all along. Discovering better ways to understand it, or more expensive ways to fix it, did not convert an old defect into a new one. Knowledge does not reset the clock simply because engineering advances.

The result is a decision that will be welcomed by leaseholders and carefully read by landlords. It reaffirms that courts will not casually convert general words into ruinous obligations, particularly where statute points firmly in the opposite direction. If a landlord wishes to pass on the cost of remedying a fundamental, pre-existing structural defect, it must do so clearly, expressly, and in harmony with the legislative scheme—not by hoping that a "sweeper" clause might quietly do the heavy lifting.

In short: if the building was born broken, and the law says the landlord must fix it, no amount of semantic polishing will turn that bill into a service charge.

Authorities

Case Law:

Interpretation of Leases and Service Charge Clauses in Context

1. ***Arnold v Britton*** **[2015] UKSC 36, [2015] AC 1619:** *Sets out the general approach to contract interpretation, emphasising that the court's task is to ascertain the objective meaning of the language chosen by the parties in context, and confirms that there are no special rules of interpretation applicable to service charge clauses. It also affirmed that the court should not "bring within the general words of the service charge clause anything which does not clearly belong there".*

2. ***City of London v Various Leaseholders of Great Arthur House*** **[2019] UKUT 341 (LC), [2020] L&TR 6:** *Supports the view that the legislative background of the right to buy scheme is an aid to the interpretation of the covenants in the leases. It also provided crucial context regarding consumer protection, explaining that Parliament intended to partially insulate tenants from potentially ruinous liability towards rectifying structural defects.*

3. ***89 Holland Park (Management) Ltd v Dell*** **[2023] EWCA Civ 1460, [2024] HLR 9**: *Used to support the conclusion that a general clause (like clause 5(5)(o)) does not extend to works vastly different in kind and scale from the obligations already specified in the preceding paragraphs of the lease, limiting the scope of the sweeper clause.*

4. ***McHale v Earl Cadogan*** **[2010] HLR 412:** *Cited for the principle that, when applying ordinary interpretation principles, the court should not "bring within the general words of the service charge clause anything which does not clearly belong there".*

5. ***Wood v Capita Insurance Services Ltd*** **[2017] UKSC 24, [2017] AC 1173:** *Establishes the general approach to interpretation of a contract, requiring the court to ascertain the objective meaning of the language chosen by the parties, based on the terms of the contract as a whole and the relevant background matters.*

Scope of Repair, Maintenance, and Structural Defects

1. ***Assethold Ltd v Watts*** **[2014] UKUT 537 (LC), [2015] L&TR 15:** *Relied upon to conclude*

that remedying a major structural defect, where there is no physical damage or deterioration, is not within the scope of a maintenance obligation.

2. ***City of London v Various Leaseholders of Great Arthur House*** **[2019] UKUT 341 (LC), [2020] L&TR 6:** *Provides the definition of a structural defect, noting that it is something that arises from the design or construction of the structure and is contrasted with damage or deterioration that has occurred over time.*

3. ***Quick v Taff-Ely Borough Council*** **[1986] QB 809:** *Cited by the FTT to confirm the understanding that proposed works, if they do not involve remedying a deterioration in the buildings from some previous physical condition, do not amount to 'repair'.*

4. ***Post Office v Aquarius Properties Ltd*** **[1987] 1 All ER 1055:** *Cited alongside Quick to confirm the understanding that the proposed works did not amount to 'repair' because they were not aimed at remedying a deterioration in the buildings.*

Insurance and Subrogation

1. ***Mark Rowlands Ltd v Berni Inns Ltd*** **[1986] QB 211:** *Applied by analogy to the insurance provisions in the earliest leases, establishing that if a tenant pays an insurance premium to cover a risk (e.g., the cost of making good structural defects), the landlord (or their subrogated insurer) cannot subsequently recover damages from the tenant for the loss covered by that insurance, as this would amount to a double indemnity.*

Legislation:

Right to Buy and Protection Against Structural Defect Costs

Housing Act 1985

- *This Act contains the statutory right-to-buy legislation, which is part of the essential background context for interpreting the leases, alongside the 1980 Act, as the leases were granted pursuant to this scheme.*
- *Schedule 6, paragraph 14(2)(a) imposed an implied covenant on the landlord (the council) to make good any structural defect.*
- *The Act's provisions concerning the recovery of costs for making good structural defects were amended by the Housing and Planning Act 1986.*
- *The general words defining 'Total Expenditure' in the leases cannot be intended to enable the council to recover the cost of making good a structural defect, as the council had a positive duty to make it good by virtue of paragraph 14 of Schedule 6 of the legislation.*
- *The provisions of this Act, and the subsequent 1986 Act, deal expressly and in detail with the landlord's obligation regarding structural defects and the limited circumstances in which the leaseholder must contribute.*

Housing Act 1980

- *This Act first enacted the statutory right to buy.*
- *This legislation forms part of the background context relevant to interpreting the leases.*
- *Schedule 2, paragraph 13(1) imposed an obligation on the landlord to keep the structure and exterior in repair and* **"*to make good any defect affecting that structure*"**.
- *Schedule 2, paragraphs 15 to 17 restricted the landlord's ability to recover costs from the tenant for structural defects.*
- *Under these provisions, the landlord could only recover a contribution if the defect was notified before the lease grant or if the landlord did not become aware of it until 10 years after the lease was granted.*
- *The leases were expected to conform with this legislation, meaning the requirement for leaseholders to contribute to structural defects should have been stated in clear, express words, given the detailed nature of this statutory framework.*

Housing and Planning Act 1986

- *This Act amended the 1985 Act and came into force on 7 January 1987.*
- *It introduced new provisions concerning the recovery of costs for making good structural defects through the service charge.*
- *A new section 125(4A) required the landlord to notify a prospective tenant of any known structural defects.*
- *A new paragraph 16B of Schedule 6 restricted the tenant's contribution if structural defects were notified, limiting payment to the estimated contribution (plus inflation), and generally protected tenants from liability for defects unknown to the landlord for the first five years of the lease.*
- *The wording in the two earliest leases concerning a five-year period reflects elements of the regime established by this Act.*

Service Charge Determination and Recovery

Landlord and Tenant Act 1985

- *Section 27A provides the mechanism under which the leaseholders made an application to the FTT for a determination as to whether the service charges were payable under the terms of the lease.*
- *Section 20C provides for an order that the landlord (the council) cannot recover its legal costs of the proceedings through the service charge, an order the council submitted to both in the Court of Appeal and below.*

Legal Texts & Commentary:

None referred to.

#StructuralDefects, #RightToBuy, #ServiceCharge, #LeaseholdLaw, #LPSConstruction, #TowerHamlets, #CourtOfAppeal, #PropertyLaw, #HousingAct1985, #LandlordTenant #PropertyLaw #DisputeResolution #LegalUpdate #CaseLaw #DDAlegal

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RICS Adjudication Panel Member since 2006
RICS Dispute Board Registered since 2013
TECSA Adjudication Panel Member since 2012

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