



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

**Case Reference** : CHI/24UJ/LVT/2019/0001

**Property** : 1-38 Bucklers Court, Anchorage Way,  
Lymington SO41 8JN

**Applicant** : Fairhold Homes Limited

**Representative** : Estates & Management Limited

**Respondents** : The 37 Long leaseholders

**Representative** :

**Type of Application** : S 35 Landlord & Tenant Act 1987 - to vary  
leases

**Tribunal Member(s)** : Judge D. Agnew  
Mr D Banfield FRICS

**Date and venue of  
hearing** : 9<sup>th</sup> April 2019 at Havant Justice Centre

**Date of Decision** : 9<sup>th</sup> April 2019

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DECISION

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## ORDER

1. The leases of 1-38 Bucklers Court, Anchorage Way, Lymington, Hampshire SO41 8JN ("the Property") shall be varied in the form set out in the Schedule annexed hereto.
2. The Applicant freeholder shall be responsible for making applications to the Land Registry to have noted against the freehold title and the leasehold titles of the Property the aforesaid variations.
3. If any Respondent wishes, as a consequence of this Order, to make an application for compensation under section 38(10) of the Landlord and Tenant Act 1987 ("the Act") they must make such an application in writing to the Tribunal with a copy being sent to the Applicant's representative by 4 pm on 25<sup>th</sup> April 2019. The application must set out how the compensation sought has been calculated.
4. If any Respondent wishes to make an application under section 20C of the Landlord and Tenant Act 1985 they must do so in writing with a copy to the Applicant's representative by 4pm on **25<sup>th</sup> April 2019**. (If the Tribunal makes an order under section 20C the effect is that the landlord will not be able to include the costs of the application to vary the leases in any future service charge demand.)
5. The reasons for the Tribunal's decision to make the order as requested by the Applicant are as follows.

## REASONS

6. The Applicant is the freehold owner of the land and buildings at Priestlands Place, Lymington, Hampshire which is a development of 53 retirement properties arranged in three blocks: Bucklers Court ("the Court") comprising 37 flats, Bucklers Lodge ("the Lodge") comprising 2 cottages and Bucklers Mews comprising 14 cottages and flats. This application does not concern Bucklers Mews.
7. The lessees of the Court and the Lodge are required by their leases to pay a service charge in respect of the repair and maintenance of both the Court and the Lodge. In the Court leases the proportion of the landlord's costs that each must bear is set out in the Eighth Schedule to the lease and is either 2/106<sup>th</sup> or 3/106ths according to the size of the respective properties. The Lodge owners are each required to contribute 3/106ths and all the contributions add up to 100%.
8. Unfortunately, there appears to have been an error in the drafting of the Lodge leases because there, the contributions as set out in the Eighth Schedule to those leases has the Court owners contributing the

same as in their leases but the Lodge owners' contribution is stated to be  $\frac{4}{318}$ ths of the landlord's expenditure. The total contributions under these leases falls short of 100%, namely 96.85%.

9. It is not possible for the Lodge leases to be subject to an application to the Tribunal for variation as they are houses and not flats. The Lodge owners have agreed, however, to be responsible, equally, for the landlord's costs of maintaining the Lodges and not to enjoy any of the facilities of the Court if the Tribunal agrees to vary the Court leases so that between them they are responsible for 100% of the landlord's costs connected with the Court only. The Lodge owners have entered into a contract accordingly.
10. The Applicant therefore applies to the Tribunal to vary the Court leases so that the Court owners are responsible only for a proportion of the landlord's costs in relation to the Court and for their contributions to be altered to  $\frac{2}{100}$  or  $\frac{3}{100}$ ths of that cost (depending on size of property). Thus whilst their proportions will increase slightly, the costs to which they are contributing are likely to be less than under the existing leases as they will not be contributing towards the costs of the Lodges.
11. The Application was served on all 37 Court lessees together with Directions providing for anyone who opposed the application to set out their objections in writing. Only one Respondent objected to the application, namely Mrs Yeo of 35 Bucklers Court. Her objection was that there is no defect in her lease as all the proportions of lessees' contributions adds up to 100% of the landlord's expenditure. The defect is in the Lodge leases. She sees no reason why her lease should therefore be varied. Any variation should be to the Lodge leases. She regrets that she is not physically able to attend the hearing. Her objection has been fully considered by the Tribunal. It is at first sight an attractive and understandable argument but it is not a valid one for the reasons set out below.

### **The hearing**

12. Mr Milton McIntosh, In-house solicitor with Estates and Management Limited, the Applicant's asset managers, represented the Applicant. There was no appearance by any Respondent.
13. Mr McIntosh explained the circumstances leading to the application and referred the Tribunal to the legislation and authorities upon which the application was based. He answered various queries raised by the Tribunal.

### **The relevant law**

14. The application for variation is made under section 35 of the Act. This provides that:-

“(1) Any party to a long lease of a flat may make an application to the First-tier Tribunal for an order varying the lease in such manner as is specified in the application.

(2) The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely –

.....

(f) the computation of service charge payable under the lease”.

“(4) For the purposes of subsection (2)(f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if-

(a) It provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord and

(b) Other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and

(c) The aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would either exceed or be less than the whole of any such expenditure.”

### **Discussion and decision**

15. It is clear that from subparagraph (4) set out above that when considering whether the proportions add up to 100% one does not just look at one lease in isolation to ascertain whether that lease fails to make satisfactory provision for the apportionment but one must take into consideration all the leases whose lessees contribute to the landlord's costs. This is the answer to Mrs Yeo's objection because whilst her lease shows proportions adding up to 100% when all the lessees who contribute to the landlord's costs are considered the aggregate does not amount to 100%. Thus, in this case, section 35(4) applies and gives the Tribunal jurisdiction to vary the Court leases.
16. The next matter to consider is how the leases should be varied. The Tribunal has no jurisdiction to vary the Lodge leases because the Lodges are not flats and it will be seen that section 35 only refers to applications by parties to the long leases of flats. That being the case, in theory the Court leases could be varied to increase their contributions to make up the shortfall but this would not be fair on the Court lessees when the problem is with the Lodge leases. The solution that has been proposed for the Tribunal to approve is that the Court leases are varied for the Court lessees to pay a contribution of an aggregate of 100% of the costs but only of the costs of their own building and not the Lodges as well.
17. This seems to the Tribunal to be an equitable way to proceed so that although the stated proportion is higher in each of the Court leases, it is likely to be a higher proportion of a lower cost.

18. In summary, therefore:-

1. The Tribunal is satisfied that the applicant is entitled to apply to vary the Court leases under section 35(1) of the Act
  2. That the Applicant has made out a ground for exercising the Tribunal's discretion to vary the court leases
  3. That the Tribunal should exercise its discretion
- The variations ordered should be as proposed by the Applicant in its application and as appears in the schedule appended hereto  
That there are no special reasons as to why the variations should not be made.

Dated the 9<sup>th</sup> day of April 2019

Judge D. Agnew  
(Chairman)

#### **PERMISSION TO APPEAL**

1. A person wishing to appeal the decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at 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.

