FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/OOBE/LVE/2019/0001**
Property	**:**	**1-32 The Hamlet Champion Hill London SE5 8AW**
Applicant	**:**	**The Hamlet Residents Association Limited**
Representatives	**:**	**-**
Respondents	**:**	**The freeholders of 1-32 The Hamlet Champion Hill London SE5 8AW named on the schedule attached to the application**
Objecting tenant	**:**	**-**
Type of Application	**:**	**Application to vary an estate management scheme**
Tribunal Members	**:**	**Judge Professor Robert M Abbey Hugh Geddes, (Professional Member)**
Venue of Hearing	**:**	**10 Alfred Place, LondonWC1E 7LR**
Date of Hearing and Decision	**:**	**26th November 2019**

DECISION

Decisions of the Tribunal

(1) The Tribunal grants the application to vary an estate management scheme provided for by section 19 of the Leasehold Reform Act 1967, as amended.

(2) The reasons for our decisions are set out below.

The background to the application

1. The property, **1-32 The Hamlet Champion Hill London SE5 8AW,** comprises thirty-two freehold properties.

2. The Applicant seeks to vary a scheme of management made pursuant to s75 of the Leasehold Reform Housing and Urban Development Act 1993 and s 19(6) of the Leasehold Reform act 1967 that was authorised by s 19 Of the 1967 Act by Order of the High Court dated 13 June 1984, (the Scheme), and s 159 of the Commonhold and Leasehold Reform Act 2002. Relevant extracts of the legalisation can be found in the appendix to this decision.

3. Clause 11A of the Scheme provides for variations whereby on application to this Tribunal an applicant can terminate or vary all or any of the provisions of the scheme. The applicant is both the successor in title to the original freehold owner of retained land in the estate and the Managers as defined by clause 1(b) and clause 10 of the Scheme and thus the party entitled to make this application.

4. At the time of a hearing for Directions on 11th October 2019 by Tribunal Judge Nicol the Directions required parties who opposed the application to make their objections known on the reply form produced with the Directions. No objection forms were received from the parties nor any written representations.

5. In essence, the changes to be made by the variations are, first, to move the obligation for external painting of the houses from a communal scheme to an arrangement under which each house must be painted individually by the homeowner on a regular basis and to a good standard and in standard colours. Secondly, to incorporate a definition of the estate fences, (as was agreed by the company in an AGM in 2010). Thirdly to update the service charge provisions to a more modern workable format and fourthly to correct various typographical errors and to update the scheme now that all properties have been enfranchised.

The decision

6. By Directions of the Tribunal dated 11th October 2019 it was decided that the application be determined without a hearing. At the time of this determination the Tribunal noted that no written objections had been received.

7. The Tribunal had before it a substantial bundle of documents prepared by the applicant that contained the application, grounds for making the application, copy scheme, copy proposed scheme highlighting the desired variations, copy correspondence including emails, specimen copy title documents and copy Tribunal Directions.

The issues

8. The only issue for the Tribunal to decide is whether or not it is appropriate to vary the terms of the Scheme.

9. Having read the evidence and submissions from the Applicant and having considered all of the copy deeds, documents and grounds for making the application provided by the applicant, the Tribunal determines the variation issues as follows.

10. In its application the applicant stated that it had at all times consulted with the 32 parties affected by the proposed variations and indeed had actually received 26 formal consents to the proposed variations and no party had indicated any opposition to the proposals.

11. The variations sought were set out in full at annex j to the application submitted to the Tribunal and the application thereby sets out the proposed variations to the Scheme shown by way of MS Word "Track Changes". It is this version that the Tribunal considered for this determination.

12. To vary the Scheme there needs to be a change of circumstances making such a variation appropriate. (See section 11 (A) (i) of the Scheme document itself). Since the time of the creation of the Scheme the freehold interests of all the 32 properties on the estate have been acquired by the long leaseholders pursuant to their respective rights of enfranchisement and this was confirmed by the documentation supplied with the application form.

13. Because of this apparent change of circumstance various parts of the original scheme are now expressed awkwardly or may no longer be relevant. In support of the application the applicant referred to two cases that supported the terms of this application and the desired variations. They are *Lewis & Tandy v The Langford Estate* LON/00BE/OEV/2012/0004 and *The Gateways and Elystan Management Co* VG/LON/00AW/OEV/2015/0001). The Tribunal saw no reason to demur from this opinion of the case law.

14. Accordingly, the Tribunal had to consider whether there was a change of circumstance that could support the terms of the application. The Tribunal decided that as all the houses had now enfranchised this was a relevant and important change of circumstance. Therefore, it made complete sense to the Tribunal to vary the Scheme in the terms set out in the "Track Changes" document mentioned above. It should also be remembered that no freeholder has indicated through written representations that they actually oppose the application and many of the parties, (26) had actually written to the applicant to confirm their support for the application.

15. The tribunal is of the view that, in the absence of any written representations from any of the freeholders and because of the clear change of circumstances and because it is proportionate and reasonable to do so, it gives its approval of the desired variations as wholly appropriate. The Tribunal therefore determines that the application to vary the scheme should proceed and the Tribunal approves all the variations as set out in the MS Word "Track Changes" version of the Scheme within the application made to this Tribunal.

16. Rights of appeal made available to parties to this dispute are set out in an Annex to this decision.

Name: Judge Professor Robert M. Abbey **Date:** 26 November 2019

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix

Commonhold and Leasehold Reform Act 2002.
159 Charges under estate management schemes

(1)This section applies where a scheme under—
(a)section 19 of the 1967 Act (estate management schemes in connection with enfranchisement under that Act),
(b)Chapter 4 of Part 1 of the 1993 Act (estate management schemes in connection with enfranchisement under the 1967 Act or Chapter 1 of Part 1 of the 1993 Act), or
(c)section 94(6) of the 1993 Act (corresponding schemes in relation to areas occupied under leases from Crown),
includes provision imposing on persons occupying or interested in property an obligation to make payments ("estate charges").
(2)A variable estate charge is payable only to the extent that the amount of the charge is reasonable; and "variable estate charge" means an estate charge which is neither—
(a)specified in the scheme, nor
(b)calculated in accordance with a formula specified in the scheme.
(3)Any person on whom an obligation to pay an estate charge is imposed by the scheme may apply to the appropriate tribunal for an order varying the scheme in such manner as is specified in the application on the grounds that—
(a)any estate charge specified in the scheme is unreasonable, or
(b)any formula specified in the scheme in accordance with which any estate charge is calculated is unreasonable.
(4)If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the scheme in such manner as is specified in the order.
(5)The variation specified in the order may be—
(a)the variation specified in the application, or
(b)such other variation as the tribunal thinks fit.
(6)An application may be made to the appropriate tribunal for a determination whether an estate charge is payable by a person and, if it is, as to—
(a)the person by whom it is payable,
(b)the person to whom it is payable,
(c)the amount which is payable,
(d)the date at or by which it is payable, and
(e)the manner in which it is payable.
(7)Subsection (6) applies whether or not any payment has been made.

(8)The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of subsection (6) is in addition to any jurisdiction of a court in respect of the matter.
(9)No application under subsection (6) may be made in respect of a matter which—
(a)has been agreed or admitted by the person concerned,
(b)has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which that person is a party,
(c)has been the subject of determination by a court, or

(d)has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
(10)But the person is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
(11)An agreement (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a)in a particular manner, or
(b)on particular evidence,
of any question which may be the subject matter of an application under subsection (6).
(12)In this section—
"post-dispute arbitration agreement", in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen, and
"arbitration agreement" and "arbitral tribunal" have the same meanings as in Part 1 of the Arbitration Act 1996 (c. 23).
(13)For the purposes of this section, "appropriate tribunal" means—
(a)in relation to premises in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and
(b)in relation to premises in Wales, a leasehold valuation tribunal.

Leasehold Reform Act 1967
19 Retention of management powers for general benefit of neighbourhood.

(1)Where, in the case of any area which is occupied directly or indirectly under tenancies held from one landlord (apart from property occupied by him or his licensees or for the time being unoccupied), the Minister on an application made within the two years beginning with the commencement of this Part of this Act grants a certificate that, in order to maintain adequate standards of appearance and amenity and regulate redevelopment in the area in the event of tenants acquiring the landlord's interest in their house and premises under this Part of this Act, it is in the Minister's opinion likely to be in the general interest that the landlord should retain powers of management in respect of the house and premises or have rights against the house and premises in respect of the benefits arising from the exercise elsewhere of his powers of management, then the High Court may, on an application made within one year of the giving of the certificate, approve a scheme giving the landlord such powers and rights as are contemplated by this subsection.
For purposes of this section "the Minister" means as regards areas within Wales and Monmouthshire the Secretary of State, and as regards other areas the Minister of Housing and Local Government.

(2)The Minister shall not give a certificate under this section unless he is satisfied that the applicant has, by advertisement or otherwise as may be required by the Minister, given adequate notice to persons interested, informing them of the application for a certificate and its purpose and inviting them to make representations to the Minister for or against the application within a time which appears to the Minister to be reasonable; and before giving a certificate the Minister shall consider any representations so made within that time, and if from those representations it appears to him that there is among the persons making them substantial opposition to the application,

he shall afford to those opposing the application, and on the same occasion to the applicant and such (if any) as the Minister thinks fit of those in favour of the application, an opportunity to appear and be heard by a person appointed by the Minister for the purpose, and shall consider the report of that person.

(3)The Minister in considering whether to grant a certificate authorising a scheme for any area, and the High Court in considering whether to approve a scheme shall have regard primarily to the benefit likely to result from the scheme to the area as a whole (including houses likely to be acquired from the landlord under this Part of this Act), and the extent to which it is reasonable to impose, for the benefit of the area, obligations on tenants so acquiring their freeholds; but regard may also be had to the past development and present character of the area and to architectural or historical considerations, to neighbouring areas and to the circumstances generally.

(4)If, having regard to the matters mentioned in subsection (3) above, to the provision which it is practicable to make by a scheme, and to any change of circumstances since the giving of the certificate under subsection (1), the High Court think it proper so to do, then the High Court may by order—
(a)exclude from the scheme any part of the area certified under that subsection; or
(b)declare that no scheme can be approved for the area;
and before submitting for approval a scheme for an area so certified a person may, if he sees fit, apply to the High Court for general directions as to the matters proper to be included in the scheme and for a decision whether an order should be made under paragraph (a) or (b) above.

(5)Subject to subsections (3) and (4) above, on the submission of a scheme to the High Court, the High Court shall approve the scheme either as originally submitted or with any modifications proposed or agreed to by the applicant for the scheme, if the scheme (with those modifications, if any) appears to the court to be fair and practicable and not to give the landlord a degree of control out of proportion to that previously exercised by him or to that required for the purposes of the scheme; and the High Court shall not dismiss an application for the approval of a scheme, unless either—
(a)the Court makes an order under subsection (4)(b) above; or
(b)in the opinion of the Court the applicant is unwilling to agree to a suitable scheme or is not proceeding in the matter with due despatch.

(6)A scheme under this section may make different provision for different parts of the area, and shall include provision for terminating or varying all or any of the provisions of the scheme, or excluding part of the area, if a change of circumstances makes it appropriate, or for enabling it to be done by or with the approval of the High Court.

(7)Except as provided by the scheme, the operation of a scheme under this section shall not be affected by any disposition or devolution of the landlord's interest in the property within the area or parts of that property; but the scheme—
(a)shall include provision for identifying the person who is for the purposes of the scheme to be treated as the landlord for the time being; and

(b)may include provision for transferring, or allowing the landlord for the time being to transfer, all or any of the powers and rights conferred by the scheme on the landlord for the time being to a local authority or other body, including a body constituted for the purpose.
In the following provisions of this section references to the landlord for the time being shall have effect, in relation to powers and rights transferred to a local authority or other body as contemplated by paragraph (b) above, as references to that authority or body.

(8)Without prejudice to any other provision of this section, a scheme under it may provide for all or any of the following matters:—
(a)for regulating the redevelopment, use or appearance of property of which tenants have acquired the landlord's interest under this Part of this Act; and
(b)for empowering the landlord for the time being to carry out work for the maintenance or repair of any such property or carry out work to remedy a failure in respect of any such property to comply with the scheme, or for making the operation of any provisions of the scheme conditional on his doing so or on the provision or maintenance by him of services, facilities or amenities of any description; and
(c)for imposing on persons from time to time occupying or interested in any such property obligations in respect of maintenance or repair of the property or of property used or enjoyed by them in common with others, or in respect of cost incurred by the landlord for the time being on any matter referred to in this paragraph or in paragraph (b) above;
(d)for the inspection from time to time of any such property on behalf of the landlord for the time being, and for the recovery by him of sums due to him under the scheme in respect of any such property by means of a charge on the property;
and the landlord for the time being shall have, for the enforcement of any charge imposed under the scheme, the same powers and remedies under the M1Law of Property Act 1925 and otherwise as if he were a mortgagee by deed having powers of sale and leasing and of appointing a receiver.

(9)A scheme under this section may extend to property in which the landlord's interest is disposed of otherwise than under this Part of this Act (whether residential property or not), so as to make that property, or allow it to be made, subject to any such provision as is or might be made by the scheme for property in which tenants acquire the landlord's interest under this Part of this Act.

(10)A certificate given or scheme approved under this section [F1shall (notwithstanding section 2(a) or (b) of the M2Local Land Charges Act 1975) be a local land charge and for the purposes of that Act the landlord for the area to which it relates shall be treated as the originating authority as respects such charge; and where a scheme is registered in the F2... local land charges register]—
(a)the provisions of the scheme relating to property of any description shall, so far as they respectively affect the persons from time to time occupying or interested in that property, be enforceable by the landlord for the time being against them, as if each of them had covenanted with the landlord for the time being to be bound by the scheme; and

(b)in relation to a house and premises in the area section 10 above shall have effect subject to the provisions of the scheme, and the price payable under section 9 shall be adjusted accordingly.
10A)Section 10 of the Local Land Charges Act 1975 shall not apply in relation to schemes which, by virtue of this section, are local land charges.

(11)Subject to subsections (12) and (13) below, a certificate shall not be given nor a scheme approved under this section for any area except on the application of the landlord.

(12)Where, on a joint application made by two or more persons as landlords of neighbouring areas, it appears to the Minister—
(a)that a certificate could in accordance with subsection (1) above be given as regards those areas, treated as a unit, if the interests of those persons were held by a single person; and
(b)that the applicants are willing to be bound by any scheme to co-operate in the management of their property in those areas and in the administration of the scheme;
the Minister may give a certificate under this section for those areas as a whole; and where a certificate is given by virtue of this subsection, this section shall apply accordingly, but so that any scheme made by virtue of the certificate shall be made subject to conditions (enforceable in such manner as may be provided by the scheme) for securing that the landlords and their successors co-operate as aforesaid.

(13)Where it appears to the Minister—
(a)that a certificate could be given under this section for any area or areas on the application of the landlord or landlords; and
(b)that any body of persons is so constituted as to be capable of representing for purposes of this section the persons occupying or interested in property in the area or areas (other than the landlord or landlords), or such of them as are or may become entitled to acquire their landlord's interest under this Part of this Act, and is otherwise suitable;
then on an application made by that body either alone or jointly with the landlord or landlords a certificate may be granted accordingly; and where a certificate is so granted, whether to a representative body alone or to a representative body jointly with the landlord or landlords,—
(i)an application for a scheme in pursuance of the certificate may be made by the representative body alone or by the landlord or landlords alone or by both jointly and, by leave of the High Court, may be proceeded with by the representative body or by the landlord or landlords though not the applicant or applicants; and
(ii)without prejudice to subsection (7)(b) above, the scheme may, with the consent of the landlord or landlords or on such terms as to compensation or otherwise as appear to the High Court to be just, confer on the representative body any such rights or powers under the scheme as might be conferred on the landlord or landlords for the time being, or enable the representative body to participate in the administration of the scheme or in the management by the landlord or landlords of his or their property in the area or areas.

(14)Where a certificate under this section has been given for an area, or an application for one is pending, then subject to subsection (15) below if (before or after the making of the application or the giving of the certificate) a tenant of a house in the area gives notice of his desire to have the freehold under this Part of this Act,—
(a)no further proceedings need be taken in relation to the notice beyond those which appear to the landlord to be reasonable in the circumstances; but
(b)the tenant may at any time withdraw the notice by a further notice in writing given to the landlord, and section 9(4) above shall not apply to require him to make any payment to the landlord in respect of costs incurred by reason of the notice withdrawn.

(15)Subsection (14) above shall cease to have effect by virtue of an application for a certificate if the application is withdrawn or the certificate refused, and shall cease to have effect as regards the whole or part of an area to which a certificate relates—
(a)on the approval of a scheme for the area or that part of it; or
(b)on the expiration of one year from the giving of the certificate without an application having been made to the High Court for the approval of a scheme for the area or that part of it, or on the withdrawal of an application so made without a scheme being approved; or
(c)on an order made under subsection (4) above with respect to the area or that part of it, or an order dismissing an application for the approval of a scheme for the area or that part of it, becoming final.

Leasehold Reform, Housing and Urban Development Act 1993

75 Variation of existing schemes.

(1)Where a scheme under section 19 of the Leasehold Reform Act 1967 (estate management schemes in connection with enfranchisement under that Act) includes, in pursuance of subsection (6) of that section, provision for enabling the termination or variation of the scheme, or the exclusion of part of the area of the scheme, by or with the approval of the High Court, that provision shall have effect—

(a)as if any reference to the High Court were a reference to a leasehold valuation tribunal, and

(b)with such modifications (if any) as are necessary in consequence of paragraph (a).

(2)A scheme under that section may be varied by or with the approval of a leasehold valuation tribunal for the purpose of, or in connection with, extending the scheme to property within the area of the scheme in which the landlord's interest may be acquired as mentioned in section 69(1)(a) above.

(3)Where any such scheme has been varied in accordance with subsection (2) above, section 19 of that Act shall apply as if the variation had been effected under provisions included in the scheme in pursuance of subsection (6) of that

section (and accordingly the scheme may be further varied under provisions so included).

(4)Any application made under or by virtue of this section to a leasehold valuation tribunal shall comply with such requirements (if any) as to the form of, or the particulars to be contained in, any such application as the Secretary of State may by regulations prescribe.

(5)In this section any reference to a leasehold valuation tribunal is a reference to such a rent assessment committee as is mentioned in section 142(2) of the M2Housing Act 1980 (leasehold valuation tribunals).