



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

**Case References** : **MAN/36UD/LVT/2019/0002**

**Property** : **1-12 Stansfield Court, Church Street,  
Knaresborough HG5 8NR**

**Applicant** : **Goldsborough Estates**

**Respondents** : **Long Leaseholders at Stansfield Court (1-12)**

**Type of Application** : **Landlord & Tenant Act 1987 – Section 37**

**Tribunal Members** : **Laurence Bennett (Tribunal Judge)  
Niall Walsh (Regional Surveyor)**

**Date of determination** : **16 March 2020**

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DECISION

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## **Application**

1. Goldsborough Estates applies for an order under Section 35 of the Landlord & Tenant Act 1987 (the Act) for an order for varying the Leases of the apartments and houses at the Property. The Respondents are the owners of the Leasehold interest in the apartments and houses.
2. The application was received by the Tribunal on 9 May 2019. By directions dated 2 July 2019 a Tribunal Judge directed that in the absence of a request by either party the application would be determined on the papers. The Tribunal has not received a request for a hearing and the application has been determined on the papers.

## **The Property**

3. The Property is a former gatehouse and stable block converted into residential apartments and houses in 1983. The dwellings are let on Residential Leases. The Applicant is the owner of the Leasehold interest.

## **Evidence and Submissions**

4. The Leases of the dwellings are in common form. A sample Lease has been provided.
5. The Applicant's request arises from a unanimous decision of the Leaseholders to cease an alarm system, emergency response service and warden currently required to be provided by the Landlord under Clause 4(5) of the Leases.
6. The Applicant has provided signed consents from all Leaseholders.
7. The Applicant applies for a variation of the Lease under Section 37 of the Act by deletion of Clause 4(5) of the Leases.

## **The Law**

8. **Section 37 Landlord and Tenant Act 1987. Application by majority of parties for variation of Leases**
  - (1) Subject to the following provisions of this section, an application may be made to the court in respect of two or more Leases for an order varying each of those Leases in such manner as is specified in the application.
  - (2) Those Leases must be long Leases of flats under which the landlord is the same person, but they need not be Leases of flats which are in the same building, nor Leases which are drafted in identical terms.
  - (3) The grounds on which an application may be made under this section are that the object to be achieved by the variation cannot be satisfactorily achieved unless all the Leases are varied to the same effect.
  - (4) An application under this section in respect of any Leases may be made by the landlord or any of the tenants under the Leases.
  - (5) Any such application shall only be made if—
    - (a) in a case where the application is in respect of less than nine Leases, all, or all but one, of the parties concerned consent to it; or
    - (b) in a case where the application is in respect of more than eight Leases, it is not opposed for any reason by more than 10 per cent. of the total number of the parties concerned and at least 75 per cent. of that number consent to it.

(6) For the purposes of subsection (5)—

(a) in the case of each Lease in respect of which the application is made, the tenant under the Lease shall constitute one of the parties concerned (so that in determining the total number of the parties concerned a person who is the tenant under a number of such Leases shall be regarded as constituting a corresponding number of the parties concerned); and

(b) the landlord shall also constitute one of the parties concerned.

9. **Section 38 Landlord and Tenant Act 1987. Orders by the court varying Leases**

(1) If, on an application under section 35, the grounds on which the application was made are established to the satisfaction of the court, the court may (subject to subsections (6) and (7)) make an order varying the Lease specified in the application in such manner as is specified in the order.

(2) If—(a)

an application under section 36 was made in connection with that application,

and (b) the grounds set out in subsection (3) of that section are established to the satisfaction of the court with respect to the Leases specified in the application under section 36,

the court may (subject to subsections (6) and (7)) also make an order varying each of those Leases in such manner as is specified in the order.

(3) If, on an application under section 37, the grounds set out in subsection (3) of that section are established to the satisfaction of the court with respect to the Leases specified in the application, the court may (subject to subsections (6) and (7)) make an order varying each of those Leases in such manner as is specified in the order.

(4) The variation specified in an order under subsection (1) or (2) may be either the variation specified in the relevant application under section 35 or 36 or such other variation as the court thinks fit.

(5) If the grounds referred to in subsection (2) or (3) (as the case may be) are established to the satisfaction of the court with respect to some but not all of the Leases specified in the application, the power to make an order under that subsection shall extend to those Leases only.

(6) The court shall not make an order under this section effecting any variation of a Lease if it appears to the court—

(a) that the variation would be likely substantially to prejudice—

(i) any respondent to the application, or

(ii) any person who is not a party to the application,

and that an award under subsection (10) would not afford him adequate compensation, or

(b) that for any other reason it would not be reasonable in the circumstances for the variation to be effected.

(7) The court shall not, on an application relating to the provision to be made by a Lease with respect to insurance, make an order under this section effecting any variation of the Lease—

(a) which terminates any existing right of the landlord under its terms to nominate an insurer for insurance purposes; or

(b) which requires the landlord to nominate a number of insurers from which the tenant would be entitled to select an insurer for those purposes; or

(c) which, in a case where the Lease requires the tenant to effect insurance with a specified insurer, requires the tenant to effect insurance otherwise than with another specified insurer.

(8) The court may, instead of making an order varying a Lease in such manner as is specified in the order, make an order directing the parties to the Lease to vary it in

such manner as is so specified; and accordingly any reference in this Part (however expressed) to an order which effects any variation of a Lease or to any variation effected by an order shall include a reference to an order which directs the parties to a Lease to effect a variation of it or (as the case may be) a reference to any variation effected in pursuance of such an order.

(9)The court may by order direct that a memorandum of any variation of a Lease effected by an order under this section shall be endorsed on such documents as are specified in the order.

(10)Where the court makes an order under this section varying a Lease the court may, if it thinks fit, make an order providing for any party to the Lease to pay, to any other party to the Lease or to any other person, compensation in respect of any loss or disadvantage that the court considers he is likely to suffer as a result of the variation.

10. **Section 39 Landlord and Tenant Act 1987. Effect of orders varying Leases: applications by third parties**

(1)Any variation effected by an order under section 38 shall be binding not only on the parties to the Lease for the time being but also on other persons (including any predecessors in title of those parties), whether or not they were parties to the proceedings in which the order was made or were served with a notice by virtue of section 35(5).

(2)Without prejudice to the generality of subsection (1), any variation effected by any such order shall be binding on any surety who has guaranteed the performance of any obligation varied by the order; and the surety shall accordingly be taken to have guaranteed the performance of that obligation as so varied.

(3)Where any such order has been made and a person was, by virtue of section 35(5), required to be served with a notice relating to the proceedings in which it was made, but he was not so served, he may—

(a)bring an action for damages for breach of statutory duty against the person by whom any such notice was so required to be served in respect of that person's failure to serve it;

(b)apply to the court for the cancellation or modification of the variation in question.

(4)The court may, on an application under subsection (3)(b) with respect to any variation of a Lease—

(a)by order cancel that variation or modify it in such manner as is specified in the order, or

(b)make such an order as is mentioned in section 38(10) in favour of the person making the application, as it thinks fit.

(5)Where a variation is cancelled or modified under paragraph (a) of subsection (4)—

(a)the cancellation or modification shall take effect as from the date of the making of the order under that paragraph or as from such later date as may be specified in the order, and

(b)the court may by order direct that a memorandum of the cancellation or modification shall be endorsed on such documents as are specified in the order; and, in a case where a variation is so modified, subsections (1) and (2) above shall, as from the date when the modification takes effect, apply to the variation as modified.

11. Reference to the Court shall include the First Tier Tribunal.

### **Further Submissions**

12. The Applicant states that with the agreement of all residents, the employment of the Warden was dispensed with at least six years ago and since then the Applicant has relied on the emergency alarm system which is linked to a remote 24 hour monitoring centre to fulfil the Landlord's obligations ..... The Stansfield Court Residents Association, acting on behalf of the residents of the twelve units at Stansfield Court, has requested that the existing Emergency Alarm System be decommissioned and the associated 24 emergency alarm monitoring service be removed.
13. The Applicant has provided a draft of the variation sought which comprises a deletion.

### **Tribunal's Conclusions**

14. An application can be made under Section 37 of the Act. The Tribunal has to consider 2 issues.  
  
Is it necessary to vary all of the Leases?
15. Noting the objective we determine that it would not be possible to achieve the objective unless all Leases are varied.  
  
Requisite consent
16. All relevant parties including the Landlord are in agreement and consent. This is above the percentage required.
17. Following our findings we conclude that the order proposed by the Applicant should be made to give effect to the variation proposed.
18. We further determine under Section 38(9) that a memorandum of the variation of the Leases affected by our order under shall be endorsed thereon.

### **Order**

19. The Tribunal orders that the Leases of the dwellings at the Property are varied by deletion of paragraph 4(5).
20. A memorandum of the variation shall be endorsed on the Leases.

**L J Bennett**  
**Tribunal Judge**  
**16 March 2020**