



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

Case Reference : CHI/00HP/LVL/2020/0002

Property : Reynard Court, Parkstone Road, Poole,
BH15 2QA

Applicant : Stonewater Limited

Representative : Shakespeare Martineau Solicitors

Respondent : The leaseholders

Representative :

Type of Application : Landlord & Tenant Act 1987 -to vary two or
more leases by a majority

Tribunal Member(s) : Judge Tildesley OBE

**Date and Venue of
Hearing** : Decision on Papers

Date of Decision : 27 August 2020

DECISION

The Application

1. The Applicant applied to vary 32 leases under Section 37 of the Landlord & Tenant Act 1987 (“the 1987 Act”).
2. Reynard Court is a purpose built block of 32 flats built in 1989. Reynard Court is designed for retirement housing.
3. On 9 June 2020 the Tribunal directed the Application to be heard on the papers unless a party objected within 28 days of the date of the directions. No objections were received by the Tribunal.
4. The Applicant was directed to serve a copy of the Application together with the directions on the leaseholders. The leaseholders were given an opportunity to make representations on the Application.
5. The Applicant confirmed that it served all leaseholders with a copy of the application together with the Directions. The Applicant and the Tribunal have not received any representations from the Leaseholders.
6. The Applicant supplied a hearing bundle. Page references in the bundle are in [].

The Facts

7. The Applicant has consulted with the Leaseholders at Reynard Court about the replacement of the residential scheme manager with a non-residential scheme manager. The reason given for the change was to save the costs of a residential manager, which are recovered from the leaseholders by way of their service charge.
8. In December 2018 the Applicant carried out a ballot of the leaseholders in respect of the replacement of a residential manager with a non residential manager. The Applicant received 24 responses from the 32 leaseholders. Of the responses received, 24 leaseholders voted in favour of a non-residential scheme manager. The Applicant as landlord, also had a vote and would have voted for a non-residential scheme manager. The Applicant exhibited the individual ballot papers in the hearing bundle at [44] – [67].

Decision

9. In order for the Tribunal to entertain an application under section 37 of the 1987 the Applicant must satisfy the Tribunal that at the time it made the Application the criterion of the “relevant majority” was met.
10. Under section 37(5)(b) of the 1987 Act the relevant majority for applications involving eight or more leases is that the Application is not opposed for any reason by more than 10 per cent of the total number of

parties concerned and at least 75 per cent of that number consent to it. Each tenant constitutes one of the parties concerned as well as the landlord. Further a person deemed to be opposed is to be determined objectively.

11. The Applicant stated that there were 24 leaseholders who consented to the proposed change which together with the landlord amounted to 78.13% per cent of the parties concerned giving consent. The Applicant maintained that this was over and beyond the required 75% of the parties concerned whose consent was needed to make an Application under Section 37 Landlord and Tenant Act 1987. Further the Applicant stated that no leaseholder had indicated a preference for a residential scheme manager.
12. The Tribunal noted that the ballot was conducted in December 2018 and concluded in January 2019. The date of the Application was the 18 March 2020. The timeline for assessing whether the Applicant had the requisite majority is the date of the Application.
13. The Tribunal examined the ballots against the list of leaseholders attached to the Application. The ballot for 12 Reynard Court was signed by a Mr Prior [63]. The leaseholders for 12 Reynard Close named on the list of leaseholders were Mr M Gray and Mrs V Golder. The ballot for 2 Reynard Court was signed by a Mrs Suttley [65]. The list, however, named a Michelle O' Toule. These disparities between the ballot and list of leaseholders cast doubt on whether the Applicant *at the time of the Application* had the requisite majority. The Tribunal is entitled to assume that the list of leaseholders is correct at the time of the Application and if that is the case the Applicant would have 23 of the 33 parties concerned with the Application which constituted 69.7 per cent below the required 75 per cent needed to make an Application under section 37 of the 1987 Act.
14. The Tribunal is also concerned that the ballot related to the choice between a residential manager and a non residential manager. The leaseholders were not asked their views on the proposed changes to the wording to their leases.
15. The Tribunal is not satisfied that at the time of the Application the Applicant had met the requirements for a "relevant majority".
16. The Tribunal is also not satisfied that the Applicant had met the requirements of section 37(3) of the 1987 Act. The Applicant did not address this issue in its statement of case. In *Shellpoint Trustees v Barnett* [2012] UKUT 95 LC the Upper Tribunal made it clear that once the Applicant had proved that they have the requisite majority it is for the Applicant to adduce evidence to prove that the variations satisfy the statutory requirements of section 37(3). Merely saying that the leaseholders agree to the variations is insufficient.

17. Essentially in order for the Application to succeed the Applicant must satisfy the Tribunal of the object for the proposed variations, how the proposed variations achieve the Object and do all the leases need to be varied to meet the object. The Applicant's statement of case is silent on these issues.
18. **In view of the reasons given above the Tribunal refuses the Application.**

RIGHTS OF APPEAL

1. A person wishing to appeal this 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. The application must be sent by email to rpsouthern@justice.gov.uk.
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