



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

Case Reference : CHI/00HY/LVT/2020/0004

Property : Chantry Court, New Park Street, Devizes
SN10 1BH

Applicant : Stonewater Homes

Representative : Capsticks Solicitors LLP

Respondent : The Lessees

Representative :

Type of Application : Variation of leases by a majority: section 37
Landlord and Tenant Act 1987

Tribunal Member(s) : Judge J. Dobson

Date and venue of hearing : On the papers

Date of Decision : 4th January 2021

DECISION

Decision

1. **The application to vary the leases at Chantry Court, New Park Street, Devizes SN10 1BH (“the Property”) is granted.**
2. **The Leases are varied as identified in the extract attached to this Decision by the removal of the words highlighted in red and by the addition of the word highlighted in green.**

The application and the history of the case

3. The Applicant applied for variation of the leases (“the Leases” or where referred to singularly “Lease”) of the 55 flats (“the Flats”) in the Property the subject of such Leases by application dated 26th August 2020 and made pursuant to section 37 of the Landlord and Tenant Act 1987 (“the Act”).
4. The Tribunal gave Directions on 12th October 2020. The Directions Order listed the steps to be taken by the parties in preparation for the determination of the dispute, if any.
5. The Directions stated that the Tribunal would proceed by way of paper determination without a hearing pursuant to of the Tribunal Procedure Rules 2013, unless any party objected. There has been no objection to determination of the application on the papers and indeed agreement from each Respondent who replied.
6. This is my decision made following that paper determination.

The Law

7. Section 37 of the Act reads as follows:

37 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 appropriate tribunal) 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% 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.

8. Section 38 of the Act the says the following, insofar as relevant to this application:

38 Orders varying leases

- (1)
- (2)
- (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 [tribunal] with respect to the leases specified in the application, the [tribunal] may (subject to subsection (6) and (7)) make an order varying each of those leases in such manner as is specified in the order.
- (4)
- (5) If the grounds referred to in subsection (2) or (3) (as the case may be) are established to the satisfaction of the [tribunal] 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) [A tribunal] shall not make an order under this section effecting any variation of a lease if it appears to [the tribunal]-
 - (a) That the variation would be likely to substantially prejudice-
 - (i) Any respondent to the application, or
 - (ii) Any person who is not a party to the application,
 - And that and award under subsection (1) would not afford him adequate compensation, or

- (b) That for any reason it would not be reasonable in the circumstances for the variation to be effected.
- (7)
- (8) [A tribunal] 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 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 maybe) a reference to any variation effected in pursuance of such an order.
- (9) [A tribunal] may be 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 [a tribunal] makes an order under this section varying a lease [the tribunal] 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 tribunal] considers he is likely to suffer as a result if the variation.

The parties' cases

9. The Applicant explained that the Property is a block of 56 retirement flats all leased to the Lessees on long leases. The plan of the Property demonstrates that the block contains an office and a flat provided for a resident warden.
10. In Annexe A, as termed, of the application, the Applicant goes on to explain that the reason for seeking the variation of the Leases is that the Applicant has been unable to obtain the services of a new resident warden after the former one moved out. The Applicant says that the post was advertised but no applications were received, following which an agency scheme manager was employed but at a cost of an additional some £10,000 per year. The Applicant states that a decision was taken to ballot the Lessees to determine whether they would prefer a permanent but non- resident scheme manager.
11. The Applicant further explained that the ballot was conducted in late 2018/early 2019, with forty-four of the Lessees agreeing to the variation, one lessee objecting and one lessee expressing no preference. The other ten Lessees did not cast any vote. It is said that there has been no change in the identity of any of the Lessees and no indication that any Lessee has changed his or her mind in the intervening period. Rather the Applicant asserts that the Lessees who voted in favour of the change are anxious for variation of the Leases to be approved. The Applicant correctly identifies that the landlord also has one vote

pursuant to section 37(6)(b) above, so that overall forty-five of fifty-six possible votes are in favour of a variation of the Leases.

12. A schedule is attached to the application, termed “Schedule A” containing a list of lessees, the Flats of which they are lessees, the date of the given Lease and whether or not a vote was cast in the ballot. Further columns identify whether any vote cast was so cast in favour of a variation to a non-resident warden, in favour of a resident warden or expressing no preference.
13. The Applicant has provided sample correspondence to a Lessee dated 19th October 2020 providing a copy of the Directions by the Tribunal, which included the manner in which a Lessee could respond to the application if so desired.
14. The Applicant has also provided a sample Lease and contends that the relevant terms of all of the Leases are materially to the same effect. The Applicant has also identified the wording the removal of which is sought and the wording which the Applicant wishes to be added. I do not set out the original wording in the body of this Decision, the relevant wording appearing in the Extract attached and as explained below.
15. The Applicant submits that the variations give appropriate effect to the wishes of the majority of the Respondents (as well as reducing service charges).
16. No information has been provided explaining the delay from the date of the ballot to the date of the application to the Tribunal, several months later.
17. The opposition to the variation is in effect the single vote cast for retaining a resident manager. However, as will be apparent, that pre-dated the application and was in response to the ballot held. None of the Respondents have replied to the application now made objecting to it.

Consideration

18. It necessarily follows from the figures of votes in favour of the variation or otherwise, that over 75% of the Lessees agreed to the variation and less than 10% objected to it. Those requirements laid down by section 37(5) the Act are therefore met.
19. The ground for an application is that the object to be achieved by the variation cannot be satisfactorily achieved unless all the Leases of the Flats are varied to the same effect. The Applicant’s case is essentially that the Leases need to be varied to allow for a non- resident manager in order that there may be one. I accept that, finding that the object to

be achieved cannot be satisfactorily achieved in the absence of the variation of the Leases.

20. Provided that the requirements have been made, the Tribunal can-although is not compelled to- vary the Leases in the terms requested. The Tribunal is given a power to vary and a discretion as to whether or not to do so. Section 38 (6) provides that the discretion should not be exercised in favour of a variation in the event that “substantial prejudice”, as detailed, would be caused or in the event that it would not be reasonable in the circumstances for the variation to be made.
21. Given the lack of any case advanced in response to this application that I ought not to exercise that discretion and setting out a compelling argument why, no substantial prejudice or unreasonableness of the variation has been asserted. I am unable to otherwise identify any, instead finding that there would be an improvement in the current situation, that the wishes of the majority of the Lessees would be reflected and that it is both reasonable and sensible in the circumstances for the variation to be made. I find that there will be no substantial prejudice and that there are no circumstances to render the variation unreasonable.
22. I find that no award of compensation is appropriate, no basis for such having been identified and given the finding made that there will in fact be an improvement from the current situation facilitated.
23. In light of those findings, I consider it appropriate to exercise the discretion in favour of the variation of the Leases of the Flats in the Property in the manner requested and in the terms of the variations set out in the Extract below. The wording in red shall be removed from the Leases and the wording in green shall be added to the wording in black.
24. I order that a memorandum of this variation shall be endorsed on the Leases (including any counterparts) and that an application shall be made to the Land Registry for a record of the variation to be placed on the registers of the titles to the Flats. The Applicant shall attend to those matters by 31st January 2021.

**EXTRACT ATTACHED TO THE DECISION DATED 4TH
JANUARY 2021**

Note: Reference to the pages of the Lease in brackets do not form part of the variation and are included solely for ease of reference.

1. The following definitions shall apply:-

“Warden’s Residence” - that part (the position and extent whereof is shown hatched black on the Plan) of the Buildings on and over the land shown edged green on the Plan

(from page 2 of the Lease)

“Common Parts”

All parts of the Development (other than those comprised in the Leases and excluding the Warden’s Residence) but including the Residents Lounge

(from page 2 of the Lease)

FIRST SCHEDULE

(Right Granted)

The right for the Purchaser and all persons authorised by the Purchaser (in common with all other persons having a similar right) :-

(e) to use and enjoy the Residents Lounge and Services afforded by the resident warden provided by the Association;

(from page 4 of the Lease)

FIFTH SCHEDULE

(Covenants by the Association as to the provision of Services)

1. To maintain at all times the services of a resident warden for the performance within the Development of the following duties:-

(a) Responding to the warden call system link between the Property and the Warden’s Residence Office

(from page 8 of the Lease)

PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED as follows:-

(ii) **the warden is not employed on 24 hours duty but** a central alarm system will be available during off duty hours to answer calls

(from page 9 of the Lease)

2. To keep in a good state of repair and condition and when necessary replace rebuild and reinstate the **Warden's Residence and Residents Lounge**

(from page 9 of the Lease)

3. To keep the roof foundations party walls floors and external parts (including external walls and loadbearing walls and external doors and windows save the glass in any such doors and windows and the interior surfaces of walls) of the Property in good and substantial repair and to paint or otherwise treat (as may be appropriate) as often as may be necessary in a proper and workmanlike manner and with suitable materials of good quality such external parts of the Property and all other Buildings comprised in the Development and all internal and external parts of the **Warden's Residence and Residents Lounge** as are usually painted or otherwise treated

(from page 9 of the Lease)

4. To keep and maintain at all times in the Property an emergency warden call system linked to the Warden's **Residence Office** and by a direct link into a suitable **district** central alarm system

(from page 9 of the Lease)

12. (a) To keep the Development **(including the Warden's Residence)** and the Property insured at all times.....

(from page 10 of the Lease)

13. To pay all rates taxes assessments and outgoings charged or imposed or assessed in respect of the Common Parts **and the Warden's Residence**

(from page 10 of the Lease)

14. **Not to use the Warden's Residence for any other purpose other than as or incidental to a private dwelling for the use of a resident warden to supervise and maintain services for the benefit of the owners and occupiers of the dwellings comprised in the Development**

(from page 10 of the Lease)

SIXTH SCHEDULE

PART II

(Expenditure to be recovered by means of the Maintenance Charge)

5. All rates (including water rates) taxes assessments and any other outgoings payable in respect of the Common Parts **the Warden's Residence** and the Residents Lounge

(from page 12 of the Lease)

6. All sums paid by the Association in and about the repair maintenance decoration cleaning lighting and running of the Common Parts **the Warden's Residence** and the Residents Lounge whether or not the Association was liable to incur the same under the covenants herein contained

(from page 12 of the Lease)

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.
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.