



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

Case Reference : CHI/00HP/LVT/2021/0001

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

Applicant : Stonewater Limited

Representative : Shakespeare Martineau LLP

Respondent : The Lessees

Representative : -

Type of Application : Application to vary leases: section 37
Landlord and Tenant Act 1987

Tribunal Member(s) : D Banfield FRICS
Regional Surveyor

Date of Decision : 3 August 2021

DECISION

Background

1. The Applicant lessor seeks to vary all the leases at Reynard Court so that the residential scheme manager will be replaced with a non-residential scheme manager. The application is made under section 37 of the Landlord and Tenant Act 1987, on the basis that the required majority of 75% have already agreed to, and less than 10% oppose, the proposed variation.
2. The Applicant made a similar application in 2020, which was rejected by the Tribunal, primarily because the Tribunal did not find there was sufficient reliable evidence that the necessary majority had agreed.
3. The property comprises 32 flats, one of which is designated for use by a warden and not therefore subject to a lease.
4. On 14 January 2021 the Applicant wrote to each of the Lessees explaining the situation and setting out the variations proposed. Lessees were asked to return a statement whether they agreed to the variation.
5. The proposed variations are set out in the Order at paragraph 14 of this decision.
6. The Tribunal has been sent copies of 27 replies, 25 in favour, 1 against and 1 marked “not bothered”. The Applicant also confirms their consent.
7. The tribunal made Directions on 17 May 2021 indicating that the application was likely to be suitable for determination on the papers alone without an oral hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing to the Tribunal within 28 days of the date of receipt of the directions. No objections have been received and the application is therefore determined on the papers.
8. The directions also invited the Respondents to send any objection to the proposals to the Applicant although it appears that none were received.
9. On receipt of the hearing bundle the Tribunal considered whether it had sufficient information to make its decision without an oral hearing and decided that it did. There were no disputes as to the facts of the case that could be illuminated by the receipt of oral evidence.

The Law

10. Section 37 of the Act states:

(1) Subject to the following provisions of this section, an application may be made to [a leasehold valuation 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 leases are varied to the same effect.

(4) An application under this section in respect of any leases may be made by the landlord of any of the tenants under the leases.

(5) Any such application may 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.

Section 38 provides that:

(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 the leases in such manner as its specified in the order.

Section 38 provides;

(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 any variation would be likely to 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

Evidence

11. The bundle submitted contains the signed responses to the application from the lessees as referred to above.

Decision

12. The Tribunal is satisfied that the requisite percentage of parties, (including the landlord), consenting to the agreed lease variation has been met. Further, the Tribunal is also satisfied that not more than 10 per cent of the total parties concerned disagree with the proposals and that the statutory criteria have therefore been met.

13. The Tribunal is satisfied that the Applicant's object in seeking the lease variation cannot be met unless all subject leases are varied to the same effect and that none of the reasons for not granting an order as set out in section 38 applies.

14. The Tribunal therefore makes the following Order as requested.

IT IS ORDERED THAT:

1. Pursuant to section 38(3) of the Landlord and Tenant Act 1987 ("the Act") all the residential long leases at the Property are varied from the date of this Order, as follows. Any clause not shown remains as per the original lease:

1.1 Lease Recital

"(3) It is intended to demise all the units of accommodation in the property upon terms similar to those herein contained to elderly retired persons and the Lessor will retain the parts of the property used in common by the lessees of the said units and such other if any part of the said property which shall not be demised as aforesaid"

1.2 Clause 4 (1)(b)(ii)

"4. The Lessee HEREBY COVENANTS AS FOLLOWS

(1) (a)

(b) Such service charge shall be paid monthly in advance on the first day of each month as follows:

(i) ...

(ii) from the 1 December [year of each leaseholders lease] and from each succeeding 30 November a due proportion being 3.47% (for two bedroom flats) or 2.75% (for one bedroom flats) of the Lessors estimate of the costs and expenses of providing the said services during the year to which the service charge relates. ...”

1.3 Clause 5 (1)(d)

“5. The Lessor HEREBY COVENANTS with the Lessee as follows:

(1) During the said term subject to payment by the Lessee of the service charge to

(a) ...

(b) ...

(c) ...

(d) employ a Warden for general supervision of the Property but this shall not include nursing or any other domiciliary services”

1.4 Paragraphs 1 and 3 of Part 1 of The First Schedule

“THE FIRST SCHEDULE hereinbefore referred to

PART I

Costs expenses outgoings and matters in respect of which the Lessee is to contribute by way of service charge

- 1. The costs and expenses incurred by the Lessor in carrying out its obligations (except renewal or replacement) in respect of maintenance repair and decoration of the exterior; common parts of the property; maintenance of services cleaning and servicing and lighting and heating (where applicable) of common parts of the property; cleaning of outside windows; maintaining driveways car parking spaces forecourts gardens and grounds regular maintenance (but not renewal) of the lift and maintenance and*

repair (but not renewal) of the heating installation within the flats maintenance and repair of the warden alarm system and portaphone system. The provision of a payphone in the common area and employing a warden

2. ...

3. *The cost of the warden's salary and expenses and the cost of providing a relief for the warden in off-duty hours and during holidays”*

1.5 The word “WARDEN” on the Lease Plan is to be deleted

2. Pursuant to section 38(9) of the Act it is ordered that the Chief Land Registrar shall make such entries on the registers relating to the titles hereby affected for the purpose of recording and giving effect to the terms of this Order.

3. A copy of the Order is to be sent to each of the 31 Lessees.

D Banfield FRICS
3 August 2021

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 RPSouthern@justice.gov.uk. 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.
2. 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.
3. 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 appeal is seeking.

