



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

**Case Reference** : CHI/24UC/LVL/2021/0001

**Property** : Flats 1, 4 & 5 Moss Court, 51 Portsmouth Road, Liphook GU30 7GG

**Applicants** : Tapestart Limited

**Representative** : Benjamin Hammond - Solicitor

**Respondents** : Glenda Passingham (Flat 1)  
William George Barrett &  
Marjorie Ann Barrett (Flat 4)  
Paul Matthew Bailey (Flat 5)

**Representative** : ---

**Type of Application** : Application for lease variation – Section 35 Landlord and Tenant Act 1987

**Tribunal Member(s)** : Judge P J Barber

**Date of Decision** : 23 July 2021

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DECISION

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## **Decision**

- (1) The Tribunal determines that each of the 3 leases as referred to in paragraph 4 below, being the leases respectively of Flats 1, 4 & 5 Moss Court, 51 Portsmouth Road, Liphook GU30 7GG (“the Leases”), shall be varied in such manner as provided for in the Schedule to this decision.

## **Reasons**

### **INTRODUCTION**

1. The application, dated 16 April 2021, was for variation of the Leases; the Applicant explains that Moss Court comprises 10 purpose-built flats, and that only Flats 1-8 use the communal entrance door, hall and stairs. The Leases require the lessee in each case to contribute 1/10<sup>th</sup> of the costs for the above shared facilities; the remaining 5 leases require contributions of 1/8<sup>th</sup> of those costs. The Applicant seeks the variation to the leases of Flats 1, 4 & 5 such that they too will be obliged to contribute 1/8<sup>th</sup> of the costs.
2. Directions were issued on 21 May 2021, providing for the matter to be determined by way of a paper determination, rather than by an oral hearing, unless a party objected; no objection has been received by the Tribunal and accordingly, the matter is being determined on the papers. The directions provided for the parties to exchange documents including any statements, by various specified dates.
3. The Applicant has provided an electronic bundle of documents to the Tribunal, comprising 119 pages and which includes copies of the application, the three leases, a draft order, the directions and Land Registry entries. The Applicant confirmed, when providing the bundle with an email dated 14 July 2021, that the bundle had been sent in draft to all the Respondents, although only Mr Bailey had responded to approve it. It appears that none of the Respondents had made statements so as to raise any challenge in respect of the application.
4. The respective leases are as follows:-
  - Flat 1 – Liphook Service Station Limited (1) Glenda Passingham (2) for a term of 125 years from 1 January 2009.
  - Flat 4 – Liphook Service Station Limited (1) William George Barrett and Marjorie Ann Barrett (2) for a term of 125 years from 1 January 2009
  - Flat 5 – Liphook Service Station Limited (1) Ann Sheila Young (2) for a term of 125 years from 1 January 2009
5. Due to Covid 19 restrictions, no inspection was carried out in respect of the Property.

## THE LAW

5. Sub-sections 35(1), (2) & (4) of the 1987 Act provide as follows:-

*(1) Any party to a long lease of a flat may make an application to the appropriate tribunal for an order varying the lease in such manner as is specified in the application.*

*(2) The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely-*

*(a) the repair or maintenance of-*

*(i) the flat in question, or*

*(ii) the building containing the flat, or*

*(iii) any land or building which is let to the tenant under the lease or in respect of which rights are conferred on him under it;*

*(b) the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);*

*(c) the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation;*

*(d) the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, and whether they are services provided for the benefit of those occupiers of a number of flats including that flat);*

*(e) the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that party or of a number of persons who include that other party;*

*(f) the computation of a service charge payable under the lease;*

*(g) such other matters as may be prescribed by regulations made by the Secretary of State.*

.....

*(4) For the purposes of clause (2)(f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if-*

*(a) it provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and*

*(b) other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and*

*(c) the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a)*

and (b) would either exceed or be less than the whole of any such expenditure.

Sub-section 38(1) of the 1987 Act provides as follows:-

(1) *If, on an application under Section 35, the grounds on which the application was made are established to the satisfaction of the tribunal, the tribunal may (subject to subsection (6) and (7)) make an order varying the lease specified in the application in such manner as is specified in the order.*

### **WRITTEN REPRESENTATIONS**

6. The statement attached to the application broadly refers to the Applicant being the freehold owner of Moss Court comprising 10 flats, and verified that the application was made pursuant to the provisions of Section 35(2)(f) of the 1987 Act; the statement indicated that the application and statement had been served on the Respondents at their addresses for service given in the Land Registry entries. The statement further provided that the service charge contributions attributable to the cleaning, maintaining and repairing of the entrance door, hallways and stairs serving Flats 1-8, are payable by the lessees of Flats 1-8 but do not add up to 100%, on the basis that Flats 1, 4 & 5 currently each contribute 1/10<sup>th</sup> of the costs, whilst Flats 2, 3, 6, 7 & 8 currently each contribute 1/8<sup>th</sup> of the costs. The Applicant explained that Flats 9 & 10 are not required to make contributions to the costs for the above-mentioned facilities, as they do not use them. The Applicant further states that aggregate contributions currently amount to 92.5% of the relevant costs incurred, and requests that the Tribunal order that the Leases of Flats 1, 4 & 5 be varied so as to provide for each to pay 1/8<sup>th</sup> of the relevant costs, entailing an amendment to the beginning of clause 7.1 in each of the three Leases.
7. The Applicant has provided in the bundle, a draft order substantially in the form as appended in the schedule to this decision.

### **DECISION**

8. The Tribunal has taken into account all the case papers in the bundle.
9. The Tribunal notes that none of the Respondents appears to have raised any challenge to the application and further notes that it has been brought in order to rectify a seeming anomaly in the Leases of Flats 1, 4 & 5 which provide for them to contribute only 1/10<sup>th</sup>, rather than 1/8<sup>th</sup> of the costs of cleaning, maintaining and repairing the entrance door, hallways and stairs serving Flats 1-8, resulting in only 92.5% of those costs, rather than 100%, being payable.
10. Section 35(2) of the 1987 Act provides the grounds, on which any application under Section 35(1) may be made, are that the lease fails to make satisfactory provision with respect to various matters including at Sub-section 35(2)(f) *“the computation of a service charge payable*

*under the lease.*” The Tribunal accepts that the arrangements in clause 7.1 in each of the Leases for Flats 1, 4 & 5 is not a satisfactory provision with respect to computation of the service charge payable, given that the contributions do not aggregate to 100%, rather only to 92.5%. The Tribunal notes Sub-section 35(4)(c) of the 1987 Act which in summary provides that for the purposes of Section 35(2)(f), a lease fails to make satisfactory provision with respect to the computation of a service charge if the aggregate of the amounts payable would be less than the whole of such expenditure.

11. The Tribunal accordingly accepts that under Section 38(1) of the 1987 Act, the ground on which this application was made, being that under Sub-section 35(2)(f), is satisfied. No submission has been raised by the Respondents that the variation would be likely substantially to prejudice them. The Tribunal makes the Order that each of the Leases, as referred to in paragraph 4 of this decision, be varied in the form as specified in the schedule to this decision.

## Appeals

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, by email to [rpsouthern@justice.gov.uk](mailto: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.

**SCHEDULE**

**Case Reference: CHI/24UC/LVL/2021/0001**

**The Variation**

**Section 35 Landlord and Tenant Act 1987**

**Re: the Leases respectively of Flats 1, 4 & 5 Moss Court, 51  
Portsmouth Road, Liphook GU30 7GG**

- A. The Leases be varied as follows:

The beginning of clause 7.1 is to be revised so that it reads as follows:

“To pay contributions by way of Service Charge to the Landlord equal to one eighth (1/8<sup>th</sup>) of the costs attributable to the cleaning and maintaining and repairing of the entrance door hallways and stairs serving apartments 1 to 8 (and of any electricity costs directly attributable thereto) and the Tenant’s Proportion of the amount...”

The original wording of clause 7.1 from “the Tenant’s Proportion” is to remain.

- B. The Respondents are bound by the variation to the Leases.
- C. The Applicant and the Respondents shall endorse a memorandum of the variation in paragraph (A) above on any copy of the Leases in his, her or its possession.
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