



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

Case Reference : **MAN/00BU/LVT/2021/0003**

Property : **Aura Court Percy Street Manchester M15
4AB**

Applicant : **Tapestart Limited**

Respondents (1) : **Various, see Annex A**

Respondent (2) : **On Site Truck Repairs Limited**

Respondent (3) : **St Lawrence's Management Company (No.1)
Limited**

Type of Application : **Landlord and Tenant Act 1987 (the Act) –
Section 35**

Tribunal Members : **Tribunal Judge WL Brown
Mr I D Jefferson TD FRICS**

**Date of Issue of this
Determination** : **10 May 2022**

DECISION

The Tribunal orders variation of the leases concerning the residential apartments in accordance with paragraph 25 of this Decision.

No Order as to costs.

REASONS

Procedure

The Tribunal has determined the substantive application following a consideration of the written representations and supporting documentary evidence provided by the parties, but without holding a hearing. Rule 31 of the Tribunal's procedural rules permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed). In this case, one of the Respondents, Mr D Crockett, initially requested an oral hearing but later withdrew the request and no other party called for a hearing or objected to a paper determination. Moreover, having reviewed the parties' documents and submissions, we were satisfied that this matter is indeed suitable to be determined without a hearing; the issues to be decided have been clearly identified in the Applicant's statements of case and the one Respondent engaging in the proceedings did not object to the outcome proposed by the Application. The papers also set out the issues sufficiently clearly to enable conclusions to be reached properly in respect of the issues to be determined, including any incidental issues of fact.

Background and the Application

1. The Application dated 9 April 2021 is for permission to vary the leases of 47 residential apartments at the Property. There are 47 flats and 5 commercial units at the Property. Although the Application extended to matters relating to the commercial premises that matter ceased to be before the Tribunal.
2. The Applicant explained that the First Respondents are the owners, registered at the Land Registry, of long leases in the flats (the Leases). The Second Respondent may be the beneficial owner of Flats 27 and 40, Aura Court, although the Second Respondent is not the registered proprietor of those two flats. The Third Respondent was a party to the Leases and managed Aura Court until it was dissolved on 28 August 2017.

3. On or before 1 November 2018 several leaseholders invoked the provisions of the Leases to require the Applicant (as freeholder) to provide services to the Property, on receipt of payment in advance from the leaseholders, following the failure of the Third Respondent to manage the Property and the Third Respondent's dissolution. The Applicant has managed the Property since 1 November 2018. On or around 13 January 2021, the Third Respondent was restored to the register of companies held at Companies House. The Applicant represented that there is no contractual mechanism in the Leases for management of the Property to be returned to the Third Respondent following its restoration to the register. By naming the Third Respondent in this application, the Applicant did not intend to suggest that the Third Respondent has the right to manage the Property or is in any way responsible for the management of it. The Applicant included the Third Respondent in these proceedings solely because the Third Respondent is a party to the Leases and all parties to the Leases should be bound by any Order that the Tribunal may make pursuant to the Application.
4. The way in which the leases were signed meant that all owners of the Leases (including of the commercial units) were not contributing in a way that the total percentage contributions would add up to 100%. The total of service charge contributions from the leaseholders of the residential units in the Property (comprising Part A services) and of the commercial units (Part B services) recorded in their various leases do not total 100%. The service charge contribution percentages for the residential apartments are different from the commercial units, as is often the case.
5. The current leases of the apartments are dated variously, but show a term described sometimes as to 31 December 2129 (less 10 days) or to 21 December 2129.

Directions

6. The Tribunal made directions following a Video Case Management hearing on 20 August 2021.

The Law

7. Under section 35(1) of the Act: "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."
8. In order to succeed under section 35 of the Act, the First Applicant needs to satisfy subsection (2). In this case it relies upon the criteria set out in subsection 2(f), with reference to the definition of sub-section (4), namely those relating to the way service charges are computed and in particular the way that proportions are calculated.

Subsection (2)(f) allows an application to be made where:

"(2) ...the lease fails to make satisfactory provision with respect to...:

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

Subsection (4) defines that situation as follows:

“(4) For the purposes of subsection (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.

9. Section 38(1) states: “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 make an order varying the lease specified in the application in such manner as is specified in the order.
10. Relevant also is section 38(6) which states: “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 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.

Issue

11. Whether the leases of the 47 residential leases failed to make satisfactory provision for computation of the service charge and whether the variation proposed in the Application should be ordered by the Tribunal.

Representations

12. The First Applicant presented in support of the Application two statements dated 9 April 2021, containing statements of truth, from Benjamin Charles Penty Hammond, in-house Solicitor for the Compton Group of which the Applicant is one of the companies in the Compton Group.
13. No Respondent made representations to oppose the Application.
14. The Applicant presented Annex B. It stated that on its calculations, the aggregate service charge recovery for those items of service charge to which the residential units must contribute is 100.016% (Column J of the Schedule). Further, the aggregate service charge recovery for those items of service charge to which the commercial units must contribute is 97.81% (see Column K of the Schedule).

15. The revised percentages proposed by the Applicant are set out in Columns J for the residential lease and K sets out proposals for varying contributions regarding the commercial leases.
16. The Applicant requested that the Tribunal orders variation of clause 1 of each residential lease so that contribution to Part A charges becomes the figure listed in Column J of Annex B and Part B charges become the figure listed in Column K of Annex B.
17. The Tribunal was informed that Column H shows current Part A charges and Column I shows current Part B charges. The commercial leaseholders contribute to Part B charges.
18. Mr Hammond recorded "*I have served a copy of the Application form and this statement on the First Respondents at the address for service each leaseholder has given on the leasehold title entries at HM Land Registry. I have served a copy of the Application form and this statement on the Second Respondent and the Third Respondent at those parties' registered offices.*"

Tribunal's Conclusions

19. The Tribunal found that the Leases fail to make satisfactory provision for service charges because of the discrepancy between the various leases' terms currently in effect concerning divergent apportionment service charge contributions, without any cogent reasoning to explain the variations.
20. This arises from the way in which the leases were drafted such that all owners were not contributing equally according to service charges and the total percentage contributions did not add up to 100%. The Tribunal identified and considered the service charge apportionment in each residential lease. We found that all residential leaseholders are required to contribute to Part A and Part B charges, relating to different repair and maintenance obligations. The leaseholders of commercial units contribute towards the cost of services comprised in Part B. The Tribunal found that in approximately one-third of the residential leases the recording of Section A and Section B contribution percentages has been presented in reverse. However, the Tribunal's calculation of the totals for each element – i.e. identifying the effect of the error - was not as set out by the Applicant in Annex B, but is:

Part A – 93.746%

Part B – 86.64%

However, it was clear that the service charge contributions do not total 100% and the Tribunal found that the test of Section 35(2)(f) of the Act had been satisfied.

21. In consequence of the Tribunal's findings it is satisfied that variation of the residential leases should be effected to rectify the discrepancy issue.

22. The Tribunal was asked to approve the Applicant's proposed terms for the service charge arrangements, For Part A charges the percentage contribution will be 2.12766% in each residential lease. For Part B charges the percentage contribution will be 1.74829%. Doing so would mean across the 47 flats the total contributions from residential leaseholders would be 100% for Part A charges and 82.16963% for Part B charges. It is assumed that the remainder of 17.83037 to bring the total contributions to Part B charges to 100% will be met from the 5 commercial leases (which could be apportioned equally as to 3.566074%).
23. On the question of any prejudice – see the law at paragraph 15 – the Tribunal received no representations on the point. There was no evidence before the Tribunal of the periodic amounts historically demanded from the leaseholders and the percentages to which they related. It is possible that some leaseholders have been over or under charged in the past. The Tribunal did not identify any persuasive evidence before it that the variation proposed so as to correct the anomalies in the residential leases to provide consistency and accuracy of the total of service charge to be recovered would be likely substantially to prejudice any Respondent or party to the proceedings. The Tribunal noted that there may be costs for the residential leaseholders arising from this decision, but we had no evidence that such a consequence would be in the nature of substantial prejudice. Therefore the Tribunal found no relevant prejudice arising from the proposed lease variation.
24. The Tribunal found that the basis of the Application was made out and determined the variation proposed should be effected so that the service charge expenditure to which the residential leaseholders must contribute are as set out in Columns J and K of Annex B.
25. In consequence, the Tribunal orders:
- In the residential Leases in the definition “Part A Service Charge” in clause 1 of each Lease the figure given as the original service charge allocation for Part A Service Charge as listed the Schedule shall be replaced with the figure 2.12766% for each residential Lease and in the definition “Part B Service Charge” in clause 1 of each Lease the figure given as the original service charge allocation for Part B Service Charge as listed in the Schedule shall be replaced with the figures 1.74829% for each relevant residential Lease
26. Within the Applicant the Applicant requested that the Tribunal also vary the terms of the five leases of the commercial premises. The Applicant subsequently accepted that the Tribunal has no jurisdiction over the commercial leases for such purposes. The Applicant therefore asked “.....*the Tribunal to use its powers under Rule 6(3)(b)(ii) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 [(as amended) to] transfer these proceedings to the High Court at Bristol (Business and Property Courts, ChD) so that the Applicant can make an application to ask the court to use its inherent jurisdiction to vary the commercial leases.*” The Tribunal noted that Rule 6(3)(b)(ii) states that the Tribunal may direct to: “*consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues.....*” Therefore we found that the provision relied upon does not give the Tribunal the power to order as suggested.

27. However, sub-paragraph (n) of Rule 6(3) permits the Tribunal to “*transfer proceedings to another court or tribunal if that other court or tribunal has jurisdiction in relation to the proceedings and (i) because of a change of circumstances since the proceedings were started, the Tribunal no longer has jurisdiction in relation to the proceedings: or (ii) the Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case;*” Potentially, the Tribunal has power under (ii). However, the Applicant’s request was not presented under that provision and the Tribunal was of the view that in the circumstances of this case it should not exercise a power unilaterally when the relevant parties to the request – the commercial leaseholders – could not be party to the primary proceedings in any event, because of the Tribunal having no relevant jurisdiction over those leases. It is open to the Applicant to make a separate application direct to the relevant alternative court with jurisdiction to hear a request to vary the terms of a commercial lease.
28. The Tribunal has been informed since making its decision that on 31 March 2022 the Applicant, Tapestart Limited, disposed of the freehold interest in the Property to Edgerton Estates Limited and the Applicant is to make the latter aware of this decision.
29. There was no application regarding costs of the proceedings and the Tribunal makes no order on that point.

Tribunal Judge Leslie Brown

Aaron Lewis
GLC Estates Ltd A
Ciaran J Aggarwal & Paul A Aggarwal
Claire M Aggarwal & Paul A Aggarwal
Cai Yimin
Scott E Norbury & Brent S Norbury
Sunil Mehta & Chandravadan Raichand & Jason L Alexander
Paul Benson & Catherine M Benson
Grace H Grove
Michael F Maguire
Michael S Willis & Shelagh A Willis
Daniel P Booth
Thomas Slevin
David Robertson
J Clark
Diego Musitelli
Sabita K Chumber
Canyu Lei
John Kennedy
Onsite Truck Repairs Limited
Patrick J McCloskey
Michael W Stevenson & Catherine S Stevenson
David J & Bethany V Crockett & Zoe M Ashby
Richard W Hale
Your Housing Group
Jack W Forsdike & Lu Wang
Adedayo L Adegbite
Caroline L Twist
Christopher S Roman
Adam J Barr
He Huang
Marie C Bung
Jayfex Limited
Peter Singh-Landa & Ranbir J Singh-Landa

| | A | B | C | D | E | F | G | H | I | J | K |
|----|----------------------------------|------------|---------|------------------------------|--|--------------|---------------|-----------|----------|-----------|-----------|
| 32 | Aura Court Percy Street | Manchester | M15 4AB | Mehta | Sunil Gumar Chandravadan & Chandravadan Raichand | Alexander | Jason Lee | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 35 | Aura Court Percy Street | Manchester | M15 4AB | Mehta | Sunil Gumar Chandravadan & Chandravadan Raichand | Alexander | Jason Lee | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 36 | Aura Court Percy Street | Manchester | M15 4AB | Crockett | David John & Bethany Victoria | Ashby | Zoe Melinda | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 37 | Aura Court Percy Street | Manchester | M15 4AB | Hale | Richard William | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 38 | Aura Court Percy Street | Manchester | M15 4AB | Your Housing Group Limited | | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 39 | Aura Court Percy Street | Manchester | M15 4AB | Your Housing Group Limited | | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 40 | Aura Court Percy Street | Manchester | M15 4AB | Forsslie | Jack William | Wang | Lu | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 41 | Aura Court Percy Street | Manchester | M15 4AB | Adegbie | Adeayo Lepo | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 42 | Aura Court Percy Street | Manchester | M15 4AB | Onsite Truck Repairs Limited | | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 43 | | | | | | | | | | | |
| 44 | Aura Court Percy Street | Manchester | M15 4AB | Twist | Caroline Louise | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 44 | Aura Court Percy Street | Manchester | M15 4AB | Your Housing Group Limited | | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 45 | Aura Court Percy Street | Manchester | M15 4AB | Mehta | Sunil Gumar Chandravadan & Chandravadan Raichand | Alexander | Jason Lee | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 46 | Aura Court Percy Street | Manchester | M15 4AB | Roman | Christopher Stewart | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 47 | Aura Court Percy Street | Manchester | M15 4AB | Barr | Adam James | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 48 | Aura Court Percy Street | Manchester | M15 4AB | Huang | He | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 49 | Aura Court Percy Street | Manchester | M15 4AB | Burg | Marie Claire | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 50 | | | | | | | | | | | |
| 51 | Unit 1 Aura Court 23 Lucy Street | Manchester | M15 4BX | Jayfex Limited | | | | 0.00000 | 7.60000 | 0.00000 | 7.77017 |
| 52 | Unit 2 Aura Court 412 Stretford | Manchester | M15 4AE | Jayfex Limited | | | | 0.00000 | 5.74000 | 0.00000 | 5.86852 |
| 53 | Unit 3 Aura Court 74 Erskine | Manchester | M15 4BS | Singh-Landa | Peter | Singh- Landa | Ranbir Jagger | 0.00000 | 1.66000 | 0.00000 | 1.69717 |
| 54 | Unit 4A Aura Court 72A Erskine | Manchester | M15 4BS | Jayfex Limited | | | | 0.00000 | 1.22000 | 0.00000 | 1.24732 |
| 55 | Unit 4B Aura Court 72b Erskine | Manchester | M15 4BS | Jayfex Limited | | | | 0.00000 | 1.22000 | 0.00000 | 1.24732 |
| 56 | | | | | | | | | | | |
| 57 | | | | | | | | 100.01800 | 97.81000 | 100.00000 | 100.00000 |

| | A | B | C | D | E | F | G | H | I | J | K |
|----|-----------------------------|------------|----------|------------------------------|--|-----------------------|---------------------------|------------------|----------------|------------------|----------------|
| | | | | | | | | Residential Only | All Properties | Residential Only | All Properties |
| | | | | | | | | Original | % | Revised | % |
| 1 | | | | | | | | | | | |
| 2 | | | | | | | | | | | |
| 3 | Property Address | Post town | Postcode | First tenant surname or | First tenant forename(s) | Second tenant surname | Second tenant forename(s) | | | | |
| 4 | 1 Aura Court 1 Percy Street | Manchester | M15 4AB | Buckley | Aaron Lewis | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 5 | 2 Aura Court Percy Street | Manchester | M15 4AB | GLC Estates | | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 6 | 3 Aura Court Percy Street | Manchester | M15 4AB | Aggarwal | Ciaran John | Aggarwal | Paul Anthony | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 7 | 4 Aura Court Percy Street | Manchester | M15 4AB | Aggarwal | Clara Mary | Aggarwal | Paul Anthony | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 8 | 5 Aura Court Percy Street | Manchester | M15 4AB | Cai | Yimin | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 9 | 6 Aura Court Percy Street | Manchester | M15 4AB | Norbury | Scott Elton | Norbury | Brent Spencer Berkley | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 10 | 7 Aura Court Percy Street | Manchester | M15 4AB | Mehta | Sunil Gumar Chandravadan & | Alexander | Jason Lee | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 11 | 8 Aura Court Percy Street | Manchester | M15 4AB | Mehta | Sunil Gumar Chandravadan & | Alexander | Jason Lee | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 12 | 9 Aura Court Percy Street | Manchester | M15 4AB | Benson | Paul | Benson | Catherine Mary | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 13 | 10 Aura Court Percy Street | Manchester | M15 4AB | Mehta | Sunil Gumar Chandravadan & Chandravadan Rajchand | Alexander | Jason Lee | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 14 | 11 Aura Court Percy Street | Manchester | M15 4AB | Grove | Grace Hannah | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 15 | 12a Aura Court Percy Street | Manchester | M15 4AB | Mehta | Sunil Gumar Chandravadan & | Alexander | Jason Lee | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 16 | 12b Aura Court Percy Street | Manchester | M15 4AB | Maguire | Michael Francis | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 17 | 14 Aura Court Percy Street | Manchester | M15 4AB | Willis | Michael Sean | Willis | Shelagh Anne | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 18 | 15 Aura Court Percy Street | Manchester | M15 4AB | Booth | Danie Peter | 41 | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 19 | 16 Aura Court Percy Street | Manchester | M15 4AB | Slevin | Thomas | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 20 | 17 Aura Court Percy Street | Manchester | M15 4AB | Slevin | Thomas | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 21 | 18 Aura Court Percy Street | Manchester | M15 4AB | Robertson | David | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 22 | 19 Aura Court Percy Street | Manchester | M15 4AB | Clarke | Jeremy Michael | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 23 | 20 Aura Court Percy Street | Manchester | M15 4AB | Mustilli | Diego | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 24 | 21 Aura Court Percy Street | Manchester | M15 4AB | Chumber | Sabita Kumari | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 25 | 22 Aura Court Percy Street | Manchester | M15 4AB | Clarke | Jeremy Michael | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 26 | 23 Aura Court Percy Street | Manchester | M15 4AB | Norbury | Scott Elton | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 27 | 24 Aura Court Percy Street | Manchester | M15 4AB | Lei | Canyu | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 28 | 26 Aura Court Percy Street | Manchester | M15 4AB | Mehta | Sunil Gumar Chandravadan & Chandravadan Rajchand | Alexander | Jason Lee | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 29 | 25 Aura Court Percy Street | Manchester | M15 4AB | Kennedy | John | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 30 | 27 Aura Court Percy Street | Manchester | M15 4AB | Onsite Truck Repairs Limited | | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 31 | 28 Aura Court Percy Street | Manchester | M15 4AB | McCloskey | Patrick Joseph | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 32 | 29 Aura Court Percy Street | Manchester | M15 4AB | McCloskey | Patrick Joseph | | | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 33 | 30 Aura Court Percy Street | Manchester | M15 4AB | Mehta | Sunil Gumar Chandravadan & Chandravadan Rajchand | Alexander | Jason Lee | 2.12800 | 1.71000 | 2.12766 | 1.74829 |
| 34 | 31 Aura Court Percy Street | Manchester | M15 4AB | Stevenson | Michael William | Stevenson | Catherine Sarah | 2.12800 | 1.71000 | 2.12766 | 1.74829 |