



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

Case reference : **MAN/00BT/LVL/2020/0001**

Property : **1-9, Alvon Court, Mottram Road, Hyde,
SK14 2SY**

Applicants : **The freeholder and leaseholders of the
Property**

Representative : **Nexus Solicitors Limited**

Respondents : **The freeholder and leaseholders of the
Property**

Representative : **Nexus Solicitors Limited**

Type of application : **Application for the variation of a lease
pursuant to section 37 of the Landlord
and Tenant Act 1987**

Tribunal member(s) : **Tribunal Judge Jodie James-Stadden,
Tribunal Judge Laurence Bennett**

Date of decision : **17 February 2023**

DECISION

Decision of the Tribunal

The amended application, dated 16 January 2023, is granted and the Tribunal makes the Order set out at paragraphs 23 and 24 below.

The Application

1. By an application dated 03 March 2020, the Applicants applied to the Tribunal under section 37(1) of the Landlord and Tenant Act 1987 (“the Act”) for an order varying each of the long leases (“the Leases”) of the 9 residential flats which comprise Alvon Court, Mottram Road, Hyde, SK14 2SY (“the Property”).
2. The Applicants are named as the freeholder of Alvon Court, namely Alvon Court (Freehold) Limited, and the leaseholders of each of the 9 residential flats at the Property. Those same parties are named as the Respondents to the application.
3. The names of each of the leaseholders are given in the Annex hereto, together with their apartment numbers and the dates on which their respective leases were granted. Each lease was granted in either 1984 or 1985 for a term of 125 years from 01 January 1984 and is in common form.
4. The application dated 03 March 2020 was accompanied by:
 - a. a witness statement dated 03 March 2020 from Deborah Frances Whiteley, solicitor on behalf of the Applicants, confirming that each of the freeholder and the leaseholders had been served with a copy of the application;
 - b. documents signed by each of the freeholder and the leaseholders confirming their individual consents to the proposed variation;
 - c. copies of each of the 9 Leases; and
 - d. office copy entries in respect of each flat at the Property and of the freehold to it.
5. Essentially, the principal object of the application was to vary each of the Leases to address the fact that the management company appointed by the Leases was struck off and dissolved in 1987.
6. To expand upon that, under the terms of the Leases, the management company is responsible for (inter alia) the repair, maintenance and insurance of the Property, and each of the Leaseholders is obliged to pay a proportionate part of the company’s expenditure upon the same by way of a service charge, the mechanism for which is also set out in the Leases. In the now absence of that company, there is no party with any obligation to undertake these responsibilities nor any ability for any party which does so to recoup the expenditure of so doing.
7. The Tribunal gave directions on 04 May 2022. The directions stated that the Tribunal considered the matter to be one that could be determined by

way of a paper determination and indicated that, if any party wished to make representations at an oral hearing, that party should inform the Tribunal of this in writing within 42 days from the date of the directions. No such request was made.

8. The directions also provided that any Respondent who wished to participate in the proceedings must within 28 days of the date of the directions send to the Applicants and the Tribunal a bundle including any statement in response to the application and any documents upon which they sought to rely. No such documents were received from any Respondent.
9. Subsequently, following a number of case management hearings, the original application was amended and resubmitted dated 16 January 2023. As amended, the application seeks to insert a clause 4A into the Leases as follows:

“4A. If the Company shall at any time make default in the performance and observance of any of the covenants on its part herein contained or if the Company shall cease to exist it shall be lawful but not obligatory for the Lessor (without prejudice to any other right or remedy of the Lessor against the Company or the Tenant or any other person) to enter and perform or observe the said covenants respectively and the expenses thereof shall be repaid to the Lessor on demand in accordance with the terms of the Lease as if the same had been demanded by the Company”.
10. The application as amended was accompanied by documents signed by each of the freeholder and the leaseholders confirming their individual consents to the proposed variation, as now amended.
11. The Tribunal has determined the amended application on the papers submitted by the Applicants, no party having made any request for an oral hearing. In any event, the Tribunal is satisfied that this matter is suitable for determination without a hearing: the issues to be decided are clear and the application is unopposed.

The Law

12. A landlord or a tenant may apply to the Tribunal under section 37 of the Act for an order varying leases in such manner as is specified in the application. The application must relate to two or more leases, and those must be long leases of flats under which the landlord is the same person. The leases need not be drafted in identical terms.
13. The grounds on which an application under section 37 may be made are that the object to be achieved by the variation cannot be satisfactorily achieved unless all of the leases are varied to the same effect (section 37(3)).
14. Where, as here, the application is in respect of more than eight leases, it must not be opposed for any reason by more than 10% of the total number

of the parties concerned and at least 75% of that number must consent to it (section 37(5)(b)). The landlord counts as one of the parties for this purpose.

15. The Tribunal's powers on an application under section 37 are set out in section 38 of the Act. If the grounds for the application are established to the Tribunal's satisfaction, then it may make an order varying each of the leases concerned in such manner as is specified in the order (section 38(3)).
16. The Tribunal thus has a broad discretion to grant an application for a variation.
17. That said, section 38(6) of the Act provides that the Tribunal must not grant an application if it appears that:
 - a. the variation would be likely substantially to prejudice any respondent to the application (or a third party) and that an award under section 38(10) would not afford him adequate compensation; or
 - b. for any other reason it would not be reasonable in the circumstances for the variation to be effected.
18. Section 38(10) of the Act provides that, where the Tribunal makes an order varying a lease, it may, if it thinks fit, make an order 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 of the variation.

Conclusions

19. The object to be achieved by the proposed variation of the Leases (as per the amended application) is essentially that, following the dissolution of the management company, the freeholder of the Property be permitted to perform those covenants that were previously the responsibility of the management company, such as, the repair, maintenance and insurance of the Property, and that, in the event that it should do so, it be able to recover its expenditure upon the same from the leaseholders in accordance with the service charge provisions in the Leases.
20. The Tribunal is satisfied that this object cannot be satisfactorily achieved unless all of the Leases are varied to the same effect. Were that not to be done, there would, for example, be no uniformity in the operation and enforceability of the service charge provisions.
21. The Tribunal is also satisfied that the requirements of section 37(5)(b) of the Act are met. As noted above, each of the leaseholders have provided written confirmation of their individual consents to the application (as amended). Thus, more than 75% of the parties consent to the application and less than 10% oppose it.

22. The Tribunal does not consider that the proposed variation would be likely substantially to prejudice any Respondent to the application (or any third party), or that for any other reason it would not be reasonable in the circumstances for the variation to be effected. Nor does the Tribunal consider it appropriate to order any party to pay compensation to any other person as a condition of granting the application.
23. Accordingly, the Tribunal is satisfied that it is appropriate to grant the application and orders that each of the Leases is varied by the inclusion of a new paragraph 4A as follows:
- “4A. If the Company shall at any time make default in the performance and observance of any of the covenants on its part herein contained or if the Company shall cease to exist it shall be lawful but not obligatory for the Lessor (without prejudice to any other right or remedy of the Lessor against the Company or the Tenant or any other person) to enter and perform or observe the said covenants respectively and the expenses thereof shall be repaid to the Lessor on demand in accordance with the terms of the Lease as if the same had been demanded by the Company”.
24. The Tribunal further directs, pursuant to section 38(9) of the Act that a memorandum of the aforesaid variation shall be endorsed on each of the Leases.

ANNEX

<u>Name</u>	<u>Flat Number</u>	<u>Date of Lease</u>
Brian Dean	1	19 August 1985
Spencer John Wright	2	21 December 1984
William & Irene Stephenson	3	24 October 1984
Patricia Shaw	4	27 March 1985
Michael Anthony Woolstencroft	5	20 December 1984
Alistair James Taylor	6	18 January 1985
Keith Eric Johnston	7	11 January 1985
Kenneth & Marjorie Jones	8	29 August 1984
Jane Deborah Stewart	9	25 October 1984

Tribunal Judge Jodie James-Stadden,

Date: 17 February 2023

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber)