



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

Case References : **CHI/00MS/LVT/2023/0001**
Paper consideration

Property : **Elmfield North & West Blocks, 24**
Millbrook Rd, Southampton SO15 2 HZ
& SO15 1JA

Applicants : **Clydesdale Properties Limited,**
Company no. 8403360

Representative : **Scott Bailey LLP Solicitors**

Respondent : **The Leaseholders as named on**
Schedule B attached

Representative : **Did not appear and were not**
represented

Type of
Application : **Application to vary a lease**

Tribunal Members : **Judge F J Silverman MA LLM**

Date of paper
consideration : **19 April 2023**

Date of Decision : **12 May 2023**

DECISION

The Tribunal makes an Order in the form attached as Schedule A.

REASONS

1. The Applicant company seeks to vary the leases of the Property as described above (the flats) pursuant to section 37 of the Landlord and Tenant Act 1987.
2. An application to vary the leases for the reasons set out below was made to the Tribunal on 05 January 2023 (page 13) and Directions were issued on 23 February 2023 (page 60).
3. The full list of Respondent leaseholders is set out in Schedule B attached.
4. The Tribunal considered that the matter could be dealt with by a paper consideration which took place on 19 April 2023.
5. In compliance with current Practice Directions the Tribunal did not inspect the property but was able to obtain an overview of the property from Google Earth.
6. The Applicants wish to replace the communal gas boilers at the property with individual boilers installed in each flat. The existing heating and water system is nearing the end of its useful life and it is considered that the replacement of the communal system with individual units in each flat is the most suitable and economic way of ensuring that the leaseholders' current and future needs are met.
7. This will require the flat leases to be varied to remove the requirement for the Applicant to supply hot water to the flats. The Applicant says that its objectives cannot be achieved in the absence of a variation of the leases and that all of the leases within the flats must be varied in the same manner.
8. A vote of the leaseholders was taken and 49 of the 57 leaseholders eligible to vote were in favour of the variation. No leaseholder who voted (almost 90% of those eligible to vote did so) opposed the variation.
9. Clause 6(A)(iv) of the lease provides that the lessor will covenant to supply hot water and central heating to the property to include the flats and by Clause 4 of the lease, each lessee covenants to pay a form of service charge, described in the lease as the 'Maintenance Contribution' which includes, inter alia, a proportionate contribution towards the costs of the heating and hot water.
10. A change of system would require an alteration to each lease at the property to remove the requirement for the lessor to be responsible for provision of hot water and central heating and equally to release the leaseholders from their responsibility to contribute towards that element of the service charge.
11. The Tribunal has read the bundle of documents supplied by the Applicant which includes a detailed explanation of the need for change and of the recommendations made by ITD Consultants Ltd.
12. The Applicant has served notice of its intention to make this application on all of the leaseholders at the property each of whom was served with an explanation as to why the proposed variation was sought, together with a

copy of the ITD Consultants Ltd Report, a form to be returned to indicate whether or not the lessee agreed to or disagreed to proposed variation and a draft deed of variation.

13. The Tribunal is satisfied that the leaseholders have all been properly consulted about the proposed changes and has been informed that no objections have been made to the proposals.
14. In these circumstances the Tribunal is content to permit the Applicant to vary the leaseholders' leases and to make an order to that effect in the form annexed to this Decision as Schedule A.
15. The Law

Landlord and Tenant Act 1987

S37 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 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.

S38 Orders varying leases.

(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 subsections (6) and (7)) make an order varying the lease specified in the application in such manner as is specified in the order.

(2) If—

(a) an application under section 36 was made in connection with that application, and

(b) 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 under section 36,

the tribunal may (subject to subsections (6) and (7)) also make an order varying each of those leases in such manner as is specified in the order.

(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 subsections (6) and (7)) make an order varying each of those leases in such manner as is specified in the order.

(4) The variation specified in an order under subsection (1) or (2) may be either the variation specified in the relevant application under section 35 or 36 or such other variation as the tribunal thinks fit.

(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 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.

(7) A tribunal shall not, on an application relating to the provision to be made by a lease with respect to insurance, make an order under this section effecting any variation of the lease—

(a)which terminates any existing right of the landlord under its terms to nominate an insurer for insurance purposes; or

(b)which requires the landlord to nominate a number of insurers from which the tenant would be entitled to select an insurer for those purposes; or

(c)which, in a case where the lease requires the tenant to effect insurance with a specified insurer, requires the tenant to effect insurance otherwise than with another specified insurer.

(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 a 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 may be) a reference to any variation effected in pursuance of such an order.

(9) A tribunal may by 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 of the variation.

Judge F J Silverman

12 May 2023

Note:
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 Second-tier Tribunal

at the Regional office which has been dealing with the case. Under present Covid 19 restrictions applications must be made by email to 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

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

**DRAFT ORDER
MADE PURSUANT TO SECTION 38 OF THE LANDLORD & TENANT ACT
1987 FOR THE VARIATION OF LONG LEASES OF FLATS AT THE
PROPERTY**

Definitions

In this Order the following words and expressions have the following meanings:

‘The Applicant’	Clydesdale Properties Limited.
‘The Respondents’	The leaseholders (listed in the application).
‘The Opposing Leaseholders’	The leaseholders who filed a statement in reply in accordance with the Tribunal’s directions made on the 23 day of February 2023.
‘The Tribunal’	The First-Tier Tribunal.
‘The Leases’	The long leases demised in flats in the Property in respect of which the Applicant is the immediate landlord.
‘The Leaseholders’	The leaseholders holding under the leases.
‘The 1987 Act’	The Landlord & Tenant Act 1987.
‘The Conditions Precedent’	The Conditions Precedent set out in Schedule 2 to this Order.
‘The Transitional Provisions’	The Transitional Provisions set out in Schedule 2 to this Order.
‘The Enabling Works’	The works to be undertaken by the Applicant to facilitate connection of the lessee’s individual water and heating systems with such ancillary works as are necessary or desirable, the Applicant to obtain such planning, building regulations and any other statutory consents (if any) as may be required for them. The Enabling Works to include: a. The installation of break tanks with booster pump sets to the lower ground floor of each block of apartments or the installation of 57 new individual mains cold water supplies; one for each apartment. b. The upgrading of existing electrical sub-station together with replacement where

necessary of distribution boards throughout the Property (subject to review of current capacity) and sub-mains re-sized to accommodate increased load.

‘Practical Completion’

The date when the Enabling Works are deemed to have been completed by the installing contractor under the terms of the applicable works contract which shall be upon the issuing of a certificate of practical completion/taking-over certificate by the contract administrator under the terms of the applicable works contract.

‘The Cut-off Date’

The date defined in paragraph 2 of Schedule 2 to this Order.

RECITALS

Upon the application of the Applicant made under section 37 of the 1987 Act for the variation of all of the leases

AND UPON HEARING

IT IS ORDERED THAT

1. Pursuant to the power conferred on the Tribunal by section 38(1) of the 1987 Act, but subject to the Conditions Precedent and the Transitional Provisions set out in Schedule 2 to this Order, each of The Leases of Elmfield, North Millbrook Road East, Southampton, SO15 1HY (the Property) shall be varied in accordance with the specimen Deed of Variation set out in Schedule 1 of this Order.
2. The Applicant freeholder shall be responsible for making applications to HM Land Registry to have noted against the freehold title and the leasehold titles of the Property the aforesaid variations.
3. The said variations will not take effect until the Cut-off Date. If the Enabling Works have not been commenced within 24 months of the date of this Order or if for any other reason the Enabling Works are not proceeded with, then the said variations will not take effect. Any entries made at HM Land Registry relating to the variations shall be withdrawn by the Applicant at its expense.
4. The Applicant shall have permission to apply to the Tribunal for further directions for the purposes of bringing this Order into effect.

SCHEDULE 1 – SPECIMEN DEED OF VARIATION

HM LAND REGISTRY

Land Registration Act 2002

Administrative Area: Southampton

Title No:

Property Flat Elmfield
Millbrook Road East
Southampton SO15 1HY

Landlord's Title No:

THIS DEED is made on the _____ day of
2023

BETWEEN

(1) **CLYDESDALE PROPERTIES LIMITED** company registration
no. 8403360 whose registered office is at 55 Millbrook Road East, Southampton,
Hampshire, SO15 1HN (the Lessor) and

(2) _____ of Flat _____
Elmfield House, Millbrook Road East, Southampton, SO15 1HY (the Lessee)

WHEREAS

- a. This Deed is supplemental to the Lease set out in Schedule 1
hereto by which the Property is demised.
- b. The Property is vested in the Lessee and the interest
immediately expectant on the expiry of the term granted by the Lease is vested in the
Lessor.
- c. The parties desire to alter the terms of the Lease in the manner
described in this Deed.

VARIATION

The Lessor and the Lessee agree with each other that:

- 1. From the date of this Deed, the Lease shall be read and
interpreted and take effect as if clause 6(A)(iv) were deleted from the Lease.
- 2. From the date of this Deed, the Lease shall be read and
interpreted and take effect as if Clause 5 of Part II of Schedule 4 were deleted from the
Lease.

3. Except as modified by this Deed, the Lease shall continue in full force and effect in all respects.

EXECUTED AS A DEED by the parties on the day hereof

Executed as a Deed by Clydesdale Properties Limited)
acting by a Director in the presence of)

Signed as a Deed by)
in the presence of)

SCHEDULE 1

THE LEASE

Lease dated the day of

Between

(1)

and

(2)

SCHEDULE 2 – CONDITIONS PRECEDENT AND TRANSITIONAL PROVISIONS

1. The lessor's covenants under the Leases to supply heating and hot water to individual flats as set out in clause 6(A)(iv) of the Leases and such other of the provisions in the Leases to the extent that they relate to the lessor's said obligations to supply hot water and heating to the individual flats, shall remain in force until the Cut-off Date.
2. The Cut-off Date for the Property shall be the date falling 6 months after the Practical Completion of the Enabling Works.

3. The Practical Completion of the said Enabling Works shall be certified by the contract administrator appointed by the Applicant to superintend the Enabling Works.
4. The Applicant shall serve written notice of the date of Practical Completion of the Enabling Works on each leaseholder as soon as practicable after the certificate of completion is issued by the contract administrator and in any event not later than 7 days after the certificate is issued.
5. Installation of individual boilers, radiators, pipework and connections to existing sanitary appliances, sinks, basins, baths and showers and the like within each flat shall (apart from the said Enabling Works) be the responsibility of the respective lessees and the following provisions shall apply to their installation:
 - a. Individual lessees shall be responsible for engaging their own properly qualified contractors to undertake the installation of boilers within their respective flats.
 - b. All boiler installations shall conform to the technical specifications that shall be prepared by the contract administrator.
 - c. The Applicant reserves the right to inspect and approve the installation before each boiler is commissioned. Lessees shall provide access to their respective flats to the contract administrator for this purpose.
6. For the purposes of promoting the orderly and safe installation of individual boilers within each flat, the Applicant shall direct the contract administrator to prepare and supply to all lessees:
 - a. Advice as and when reasonably requested as to the suitability of their proposed contractor to undertake works.
 - b. An appropriate technical specification for the orderly and safe installation of individual boilers, radiators, pipework and connections within the flats, such specifications to include applicable quality standards and safety criteria and to prescribe the location and appearance of the flues so as to maintain the uniformity of appearance of the exterior of the building.
7. For the avoidance of doubt, the Applicant shall be entitled to re-charge as service charge its costs of supplying heating and hot water to individual flats up to and including the Cut-off Date to the full extent permitted by the Leases in their existing form.
8. For the further avoidance of doubt, it is stated that nothing in this Order in any way limits the operation and application of the applicable service charge consultation requirements to the proposed Enabling Works, the proposed Enabling Works being qualifying works within the meaning of section 20 of the Landlord & Tenant Act 1985.
9. For the further avoidance of doubt, it is stated that it shall be a Condition Precedent to the undertaking of the Enabling Works that the Applicant shall obtain such planning, building regulations and any other statutory consents (if any) as may be required.
10. The Enabling Works are to be commenced within 24 months of this Order becoming final. This Order shall become final:
 - a. if not appealed against on the expiry of the time for bringing an appeal; or
 - b. if appealed against and not set aside in consequence of an appeal at the time when the appeal and any further appeal is disposed of –
 - (1) by the determination of it and the expiry of the time for bringing a further appeal (if any) or
 - (2) by it being abandoned or otherwise ceasing to have effect.

11. The Applicant shall exercise all reasonable endeavours to obtain such planning, building regulations and any other statutory consents (if any) as may be required to commence the Enabling Works within 24 months of this Order becoming final.

SCHEDULE B

List of Applicants and Respondents

List of Applicants

Clydesdale Properties Limited (Freeholder)

List of Respondents

Elmfield Leasehold Ltd

Mrs Theresa Caroline Carmichael

Mr Andrew Murren and Ms Josephine Pidcock

Mrs Helen Lockwood

Solent Real Estate Limited

Mr Paul Richard Wilson

Mr Jeremy Martin Surtees

Mr Andrew and Mrs Melissa Chapman

Ms Davina Jane Lester

Mr Robert Peter Hawes

Mr Mark Leslie and Mrs Claire Anne Walker

Ms Diane Robaczynski

Ms Stephanie Gow

Mr Emanuil Zdravkov Svetlinski

Ms Paula Novikova

Ms Janet Linda Gordon

Mr Simon Ashworth and Ms Amanda Skornia

Mr Jonathon Leach

Ms Amanda O'Brien

Ms Davina Jane Lester

Mr James Bratby

Ms Eleanor Roisin Murphy

Miss Rachel Aftanas

Mrs Chloe E Saunders

Mr Edward Philip Walton

Ms Edwina Hingston

Ms Charlotte Elizabeth Dorrington

Mr John Bowditch

Miss Jilly Justine Kanzler

Mr Eghbal Hamidy

Mr Yordan Ivanov Yovkov and Ms Katya Mincheva Yovkova

Mr Paul Mellor