



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

Case Reference : CHI/43UB/LVT/2023/0004

Property : Leicester House & Raleigh House, Ditton Close, Watts Road, Thames Ditton, KT7 0DA

Applicant : Ditton Close Residents Association Limited

Representative : Fairweather Law

Respondent : 24 Leaseholders

Representative :

Type of Application : Section 37 Landlord and Tenant Act 1987 – to vary two or more leases by a majority

Tribunal Member : D Banfield FRICS

Date of Decision : 26 June 2023

DECISION

Background

1. The Application states:

“Background of application

Ditton Close is a development of 24 flats in two buildings, Raleigh House and Leicester House, in Watts Road, Thames Ditton, Surrey. Raleigh House and Leicester House each contain 12 flats.

The landlord, Ditton Close Residents Association Limited, is a tenant controlled company which has no business, other than owning and managing the development.

All the flats are let on long leases, as defined in section 59 Landlord and Tenant Act 1987 (the Act), by virtue of being granted for a term exceeding 21 years.

All the leases are, for the purposes of this application, on materially the same terms.

Grounds of application

The objects to be achieved by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect.

Tenant support

The application is in respect of 24 tenants. 20 of the tenants [sic] support all the variations. One tenant supports all variations except variation 9 (use of apartments as temporary sleeping accommodation). Three tenants have not responded.

If considering Raleigh House and Leicester House separately:

For Raleigh House nine leaseholders support all the variations. One tenant supports all variations except variation 9 (use of apartments as temporary sleeping accommodation [sic]). Two tenants have not responded.

For Leicester House eleven leaseholders support all the variations. One leaseholder has not responded.

The application is supported by the landlord.

The application is therefore supported by at least 75 per cent of parties and is not opposed by more than 10 per cent.

Please see 'Variation of Ditton Close Lease Consent' document.

Evidence of consent is provided in the attached file 'Ditton Close - Evidence of Consent'

Prejudice

For the purposes of section 38(6)(a) of the Act, the application does not prejudice any respondent to the application or any person who is not a party to the application.

Reasonableness

For the purposes of section 38(6)(b) of the Act, there is no other reason why it would not be reasonable in the circumstances for the variation to be effected.

Insurance

The proposed variation does not engage the circumstances referred to in section 38 (7) of the Act.”

2. The Applicant seeks eleven variations of the long leases, as set out in a schedule of proposed variations appended to the application, which include, enabling the landlord to accumulate reserves; advance payment of service charges; recovery through the service charge of expenditure incurred on landlord’s improvements and recovery of landlord’s costs; use of apartments as temporary sleeping accommodation and some other matters.
3. The Applicant confirmed that each of the leaseholders affected by the application had been served with notice of the application. Appended to the application was a schedule, with evidence, listing those leaseholders who consented to the application. A sample lease was not provided.
4. The Tribunal has to be satisfied that the object of the variation of the lease cannot be satisfactorily achieved unless all leases are varied to the same effect. If the Tribunal is so satisfied it may make the Order requested provided that the variation would not be likely substantially to prejudice any leaseholder or there are no reasons when it would not be reasonable to make the variation.
5. Under section 37 of the Landlord and Tenant Act 1987 the Tribunal can be asked to approve a lease variation if, where there are more than 8 leases, it is not opposed by more than 10% of the parties concerned, and at least 75% agree. The landlord also has a vote. So it is said that in this case 82.6% of the concerned parties have voted in favour (more than 75%) and less than 10% have voted against the change.
6. The tribunal made Directions on 26 June 2023 listing the application for determination at an oral hearing on 8 August 2023. On receipt of the bundle however it became apparent that the application was unopposed indicating that it was suitable for determination on the papers alone without an oral hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013, the application is therefore determined on the papers.

The Law

7. 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

8. In addition to copy leases The Application contained copies of the signed forms received from 21 lessees 20 of which approved all of the variations and one of which approved all except variation 9 regarding temporary sleeping accommodation.

Decision

9. 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.
10. 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.
11. **The Tribunal therefore makes the requested Order as appended hereto.**
12. 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.
13. A copy of the Order is to be sent to each of the 24 Lessees.

D Banfield FRICS
8 August 2023

Order for Variations

1. The Applicant made an application under section 37 Landlord and Tenant Act 1987 to vary two or more leases by a majority.

2. The Tribunal makes this order exercising its powers under section 38 of the Landlord and Tenant Act 1987 to vary all the leases of the development known as Leicester House and Raleigh House, Ditton Close, Watts Road, Thames Ditton, KT7 ODA contained within the Schedule of notice of leases of title number SY222389 as specified in this order.

a. Clause 2 is varied by adding after 2(13) a new clause 2(14)

*2 (14) To pay to the Landlords with the payments required by 2(13):
i. a one-twelfth annual contribution to the Building Reserve Fund (as defined below) and the Building Improvements Fund (as defined below)*

ii. a one-twenty fourth annual contribution to the Estate Reserve Fund (as defined below) and the Estate Improvements Fund (as defined below)'

b. Clause 3 is varied by adding after 3(iii) a new clause 3(iv):

'3(iv) The Landlords shall have power in their reasonable discretion by reference to a planned maintenance programme to accumulate:

i A fund (the Building Reserve Fund) to pay for expenditure in future years to comply with the Landlord's obligations under 3 (A) (C) (E) (G) and (H) and

ii A fund (the Estate Reserve Fund) to pay for expenditure in future years to comply with the Landlord's obligations under 3 (B), (D) and (F).'

c. Clause 2 is varied by adding after 2(14) a new clause 2(15):

2 (15) To pay to the Landlords in advance in two equal instalments on 1 January and 1 July in each calendar year the sum which the Landlords reasonably estimates by reference to the Landlord's budget for the relevant year as the amount which the Tenant must pay to discharge the Tenant's obligations under 2 (13) and 2 (14). If there is a credit at the end of the calendar year, the amount is to be credited against the next year's payment (not refunded). '

- d. Clause 2 is to be further varied by adding after 2(15) a new clause 2(16):
- '2 (16) Not to do anything which may make the insurance of the Building void or voidable or which may cause an increase in the premium'*
- e. Clause 2 is to be further varied by adding after 2(16) a new clause 2(17)
- '2 (17) To comply with the reasonable requirements of the insurer of the Building of which the Tenant is notified'*
- f. Clause 3 is to be varied by adding new clauses 3 (v) (vi) and (vii):
- '3(v) Subject to 3 (vii), the Landlords have power to accumulate funds (the Building Improvement Fund) and to use such funds to carry out improvements to the Building and service infrastructure which exclusively benefits the Building*
- 3(vi) Subject to 3(vii) the Landlords have power to accumulate funds (the Estate Improvement Fund) and to use such funds to carry out improvements to the courtyards, paths roads gardens and service infrastructure which provides non-exclusive benefit to the Building.*
- 3(vii) Before carrying out improvements the Landlords must consult with tenants contributing to the expenditure and not less than 75 per cent of those tenants must support the Landlords' proposal'*
- g. Clause 2 is to be varied by adding after 2(3) a new clause 2(3A) as follows:
- '2 (3A) Not to replace the windows and doors of the demised premises or alter their design materials or decorative finish except in compliance with the Landlords' design materials and decorative finish requirements from time to time'*
- h. Clause 3 is to be varied by adding a new clause 3(i) (H)
- '3 (i) (H) To comply with regulatory requirements in respect office safety for the structure and common areas of the Building including fire doors, to carry out an annual fire risk assessment and to comply with the requirements of the assessment; and To draft and implement an emergency evacuation plan '*
- i. Clause 2(13) after (G) is to be varied by adding '(H)'
- j. In clause 2, a new clause 2(18) is to be added:

2 (18) To pay the Landlords' reasonable and proper costs incurred in connection with:

i The Tenant's applications for consent (whether or not such consent is granted)

ii Enforcement of the Tenant's covenants in this clause 2.

k. A new clause 5A is to be added after clause 5 as follows:

'5A the Landlords will not exercise their powers under clause 5 without notice to the Tenant's mortgagee (if there is one) such notice giving brief details of the Tenant's breach of covenant, and if the breach is capable of remedy giving a brief description of what the Tenant needs to do to remedy the breach and a reasonable timescale to do so'

l. Clause 2 is to be varied by adding a new clause 2(7 A):

'2 (7A) Not to use the demised premises as temporary sleeping accommodation and not to sub-let the demised premises except on a sub-tenancy for an initial fixed period of not less than 6 months. '

m. Clause 3 is to be amended by adding after 3(i) (H) a new (I) as follows:

'3(i)(I) To arrange for annual accounts of the Landlords' expenditure under this clause 3 to be prepared in accordance with technical guidance current from time to time and for those accounts to be examined and certified by an independent accountant'

n. Clause 2 (13) after (F) is to be varied by adding '(I)'

3. Exercising its powers under section 38 of the Landlord and Tenant Act 1987 The Tribunal additionally orders the variation of the leases of 8 Leicester House, 3 Raleigh House, 5 Raleigh House and 6 Raleigh House registered under title numbers SY203154, SY205558, SY210369 and SY869645 as specified below.

a. Clause 2(5) is deleted

b. Clause 3(i)(D) of the Lease shall be deleted and there shall be substituted therefor a new Clause 3(i)(D) as follows:

'3(i) (D) To keep the gardens and courtyards of the Building tidy and in good order and to insure and keep insured the Building (unless such insurance shall be vitiated by any act or default of the Tenant or any person claiming through the Tenant or his or their servants, agents, licensees, or visitors) in such insurance office or with such

underwriters and through such agency as the Landlord shall from time to time think fit against loss or damage by fire, lightning, aircraft, explosion, earthquake, storm, flood, tempest, escape of water or oil, riot, malicious damage, theft or attempted theft, falling trees and branches and aerials, subsidence, heave, landslip, collision, accidental breakage of glass and sanitary ware, accidental damage to underground services, risk of explosion and damage in connection with the boilers and heating apparatus and all plant associated therewith and such other risks (if any) as the Landlord thinks fit in the full value reinstatement thereof including an amount to cover professional fees and other incidental expenses in connection with the rebuilding and reinstating of the Building and to insure the fixtures and fittings plant machinery of the Landlord against such risks as are usually covered by a flat owners comprehensive policy and to insure against third party claims in respect of the Building and in the event of the Building or any part thereof being damaged or destroyed by fire or other insured risk as soon as reasonably practicable to lay out the insurance monies in the repair, rebuilding or reinstatement of the Building (or of that part so damaged or destroyed) subject to the Landlord at all times being able to obtain all necessary licenses consents and permissions from all relevant authorities in this regard

PROVIDED ALWAYS that if the rebuilding or making good of such destruction or damage becomes impossible of performance, then the said obligation shall thereupon be deemed to have been discharged and the Landlord shall stand possessed of all monies paid to it under and by virtue of the policies of insurance hereinbefore required to be maintained upon trust to pay to the Tenant such proportion (if any) of the said monies as may be agreed in writing between the Landlord and the Tenant or in default of agreement as aforesaid as shall be determined by a Valuer appointed at the request of either party by the President of the Royal Institution of Chartered Surveyors to be fair and reasonable having regard to the relative values of the respective interests of Landlord and the Tenant in the Premises immediately before the occurrence of the said destruction or damage and it is hereby declared that any such determination as aforesaid shall be deemed to be made by the said Valuer as an expert and not as an arbitrator'

c. Clause 2 (13) after (D) is to be varied by deleting 'and (F)' and replacing with '(F) and (G)