



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

**Case reference** : **BIR/00FK/LVL/2023/0001**

**Properties** : **Flats 1 – 29, The Dovedales, 18 Park Road, Mickleover, Derby DE3 0XL**

**Applicant** : **Stonewater Ltd**

**Representative** : **Mr Raghav Trivedi (counsel) instructed by Shakespeare Martineau LLP Solicitors**

**Respondents** : **The leaseholders of the Properties as listed in the Appendix to this decision**

**Representative** : **None**

**Type of application** : **Application for variation of leases under section 37 of the Landlord and Tenant Act 1987**

**Tribunal member** : **Judge C Goodall  
Mr V Ward BSc FRICS – Regional Surveyor**

**Date and place of hearing** : **9 January 2024 by Video Hearing Service**

**Date of decision** : **12 January 2024**

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**DECISION AND REASONS**

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## **Background**

1. On 13 September 2023, the Applicant submitted an application to vary the leases of all twenty nine flats located in its property known as 18 Park Road, Mickleover, Derby (“the Leases”). The leasehold interests in those flats are held by the twenty nine Respondents to this application. Title numbers to the Leases are also shown in the Appendix to the Variation Order.
2. All the Leases contain an obligation upon the Applicant to provide a flat for a resident warden at the property. The proposed variation was to remove that obligation.
3. The application stated that 23 of the Respondents agreed to the variation, as did the Applicant. Three Respondents had objected to the application.
4. Directions were issued on 5 October 2023 for the conduct of the application. The Applicant was to serve the application on the Respondents, who were given an opportunity to provide any comments on the application and to indicate whether they wished to participate in the case. Thereafter the Applicant was to provide a bundle of documents in support of the application, on which, again, any Respondent was permitted to comment or make representations. The application was listed for a hearing by video.
5. The hearing took place on 9 January 2024. The Applicant was represented by Mr Raghav Trivedi of counsel. No Respondent attended the hearing.
6. This decision states the Tribunal’s decision on the application and the reasons for it. It is accompanied by an Order of even date (“the Variation Order”) that orders the lease variations that have been applied for. The two documents should be read together.

## **Law**

7. Variation of leases can in effect be made by the consent of the majority of lessees under section 37 of the Landlord and Tenant Act 1987 (“the Act”). That section, together with section 38, are relevant to the application. These provide.

### *37 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.

### *38 Orders varying leases.*

(1) ...

(2) ...

(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) ...

(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.

8. It can be seen from a reading of these sections that an applicant for a variation of more than eight leases under section 37 of the Act must:
  - a. Satisfy the tribunal that the requisite proportions of respondents satisfy the requirements of section 37(5)(b);
  - b. Establish that the object of the variation cannot be achieved without varying all the leases, under section 37(3); and
  - c. Establish that the variation would not cause substantial prejudice to the respondents (section 38(6)) that could not be compensated for by an award of compensation under section 38(10).

## **Discussion**

### *The required proportions*

9. The Respondents were consulted on the proposal to cease the provision of a resident warden in the Property. The Tribunal was not provided with the full documentation in support of the consultation. We are satisfied, on the assurance of those instructing the Applicant's counsel, that a document setting out the changes to the Leases being sought was provided to the Respondents as part of the consultation, so that all Respondents knew the proposed variations to the Leases that were being sought.
10. The outcome of the consultation was to be indicated through a voting process whereby the Respondents were asked to vote for one of three options: the appointment of a non-residential scheme manager, a residential scheme manager, or a vote for no preference.

11. The Tribunal has analysed the voting returns of all twenty nine Respondents. The voting returns were dated between August 2022 and July 2023. Twenty three votes were in favour of changing the arrangement to a non-residential warden – i.e. were in favour of the variation of the leases to remove the obligation upon the Applicant to provide a flat for a resident warden. Three voters opposed the change. Three responses indicated no preference. The Applicant also has a vote which it goes without saying was in favour of the variation of the leases. When added to the twenty three lessees in favour, that meant there were twenty four votes in favour, three against, and three abstentions.
12. Dealing firstly with the question of whether at least 75% of the parties entitled to indicate their wishes consented to the proposed variation, for these purposes under section 37(5)(b), each lease has one vote, and the Applicant also has one additional vote (see section 37(6)). There are therefore 30 votes (29 lessees and the Applicant).
13. The Applicant must establish that at least 75% of the voters consent to the variation. 75% of 30 is 22.5 voters, so that means twenty three votes must be in favour of the variation. There were twenty three Respondents in favour of the variation plus the Applicant, making a total of 24 – more than 75%.
14. The Tribunal was informed that one lessee had died between casting her vote and the date of submission of the application. Her consent was, in the Tribunal’s view, therefore no longer valid. However, the effect was merely to reduce the number of votes in favour of the variation to twenty three from twenty four, which is still “at least 75%”.
15. We were also informed that there had been no other changes to the identity of the lessees between the date of their responses to the consultation and the date of the application to the Tribunal.
16. We are therefore satisfied that the requisite proportion of parties concerned required by section 37(5) to have consented to the application has been met.
17. Secondly, the application must not be opposed by more than 10% of the parties concerned. There were three opponents, i.e. exactly 10% of the 30 parties concerned. As this is not “more than” 10%, the Applicant has met this requirement also with this regard to section 37(5)(b).

*Can the object be achieved without varying all the leases?*

18. We are satisfied that the answer to this question is “no”. Unless all the leases are varied, the Applicant will still have a contractual obligation to the lessees whose leases are not varied to retain a warden’s flat, thus defeating the object of the variation application.

*Substantial prejudice and compensation*

19. Variation of the leases as requested in the application will benefit both the Applicant and the Respondents. The Applicant will benefit because it intends to sell the vacant wardens flat which will produce a capital sum. The Respondents benefit because it is intended by the Applicant that the new lessee of the former wardens flat will also pay a service charge, thus reducing the proportion of the service charge expenditure payable by each respondent from 3.45% to 3.34% of the service charge expenses. Those expenses are also likely to be a little lower as a result of savings in salary or property outgoings in employing a resident warden and providing him or her with accommodation. We were informed that there is no intention to cease the provision of a warden to the Property.
20. We therefore take the view that there is no substantial prejudice to the Respondents from the variation of the Leases which we are granting, save in respect of the following point. We do take the view that the Respondents should be recompensed for any costs and expenses arising from the registration at H M Land Registry of the Variation Order we make against their own leasehold titles.
21. We therefore order, pursuant to section 38(10) of the Act, that the Applicant must pay the Respondents reasonable costs of registering the Variation Order against the Respondents' leasehold titles. Its counsel indicated to us that it was content to accept this obligation.

**Decision**

22. The specific changes required to the Leases were set out by the Applicant in a document supplied within the hearing Bundle. Readers should refer to the Variation Order for the detailed terms of the variations to be made.
23. Our decision is to grant the application for variation of the Leases in the terms of the Variation Order made of even date to this decision.

**Appeal**

24. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall  
First-tier Tribunal (Property Chamber)

APPENDIX – LIST OF RESPONDENTS

| Flat No | Name                         |
|---------|------------------------------|
| 1       | Godley Mr & Mrs K            |
| 2       | Burch Mr P                   |
| 3       | Stapleton Mrs J              |
| 4       | Willetts Mr & Mrs J          |
| 5       | Sanders Mr G                 |
| 6       | Dolman Mrs O                 |
| 7       | Brakes Mrs P                 |
| 8       | Beattie PR's of Mrs C        |
| 10      | Ross Mr I                    |
| 11      | Sanders Mrs J & Messrs P & G |
| 12      | Woolnough Mrs D              |
| 13      | Lewis Mr & Mrs D             |
| 14      | Ottewell Mrs G               |
| 15      | Poole Mrs J                  |
| 16      | Todd Mr B                    |
| 17      | Goddard Mr M                 |
| 18      | Mitchell Mrs V               |
| 19      | Thornhill Mr M, Ms J & Mrs C |
| 20      | Barker Mrs V                 |
| 21      | Appleby PR's of Mrs C        |
| 22      | Naunton Mrs D                |
| 23      | Ward Mr & Mrs K              |
| 24      | Jackson Mr & Mrs G           |
| 25      | Wood Mr D                    |
| 26      | Fyson Ms B                   |
| 27      | Petersen Mrs E               |
| 28      | Vickers Mrs B                |
| 29      | Phillips Mrs M               |
| 30      | Darby PR's of Mrs A          |