



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

Case Reference : CHI/00HN/LVT/2023/0007

Property : Wimbledon Hall, Derby Road,
Bournemouth, BH1 3PP

Applicant : Synergy Housing Limited

Representative : Birketts LLP
Clive-adams@birketts.co.uk

Respondent : The Lessees

Representative :

Type of Application : Application to vary leases Section 37
Landlord and Tenant Act 1987

Tribunal Member(s) : Judge N Jutton

Date of Directions : 20 December 2023

DECISION

Background

1. By an application dated 16 June 2023 the Applicant seeks an order pursuant to section 37 of the Landlord and Tenant Act 1987 to vary 22 long leases of flats at Wimbledon Hall Derby Rd, Bournemouth BH1 3PS (the property).
2. The applicant says that the property comprises 70 purpose-built flats in a five-storey block of which 22 flats are held on long leases (the lessees being the respondents to this application) and the remaining flats being let under various assured tenancies and which as such are not a party to this application.
3. The variation sought is to change the service charge financial year provided for in the long leases from 1 October to 30 September to a financial year running from 1 April to 31 March so as to more closely align with what is described as the 'traditional financial year'.
4. The specific variation is to change clause 1(p) in the long leases to replace the wording '30th day of September' to instead read '31st day of March' so that the amended clause will read as follows:
5. *' "Maintenance Year" means every twelve monthly period ending on the 31st day of March the whole or part of which falls within the period beginning on the Commencement Date and ending on the date of expiry of the term granted by this lease'.*
6. The Applicant conducted a ballot of the lessees between 7 October 2022 and 22 December 2022 of which it says 20 responded in favour of the proposed variation. That no negative results were cast. That two of the leasehold properties have subsequently been transferred into new ownership. One of those properties has voted in favour of the proposed variation and the other as at the date of the application has not responded. If a vote in favour on the part of the Applicant lessor is added to the application the result is that the 20 the possible 23 parties (86.95%) consent to the variation and there are no votes against.
7. Following directions made by the tribunal on the 21 November 2023 the applicant has filed with the tribunal evidence in the form of emails and ballot papers that 19 of the lessees consent to the proposed variation.
8. The Tribunal also directed that it considered that this application was suitable for determination on the papers alone without an oral hearing and that it would be so determined unless a party objected in writing to the Tribunal within 28 days of receiving the said directions. No objection has been received and the Tribunal has therefore proceeded to determine this application on the papers alone.

The Law

9. Section 37 of the Landlord and Tenant Act 1987 provides that an application may be made to this 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. The grounds upon which the application may be made are that the object to be achieved by the variation cannot be in satisfactory achieved unless all the leases are varied to the same effect.
10. Section 37 (5) provides that such an application should only be made in a case where the application is in respect of more than eight leases (as in this case) if it is not opposed for any reason by more than 10% of the total number of the parties concerned and at least 75% of that number consent to it. The landlord constitutes one of the parties concerned. Section 38(3) provides that if the Tribunal is satisfied that the object to be achieved by the variation cannot be satisfactory achieved unless all of the leases are varied to the same effect the Tribunal may make an order varying each of the leases in such manner as is specified in the order. The Tribunal will not make an order however if it appears to it that the variation would be likely to substantially prejudice any respondent to the application, or any person who is not a party to the application, and that an award of compensation would not afford adequate compensation.

The Decision

11. The Applicant seeks to vary the leases so that the service charge year will run from 31 March to 1 April in each year so as to align more closely with the 'traditional financial year'. The Tribunal is satisfied that that variation cannot satisfactory be achieved unless all of the leases are varied to the same effect. It would not be satisfactory for different service charge years to apply to different leases.
12. There are a total of 23 parties including the Applicant. On the evidence before it the Tribunal is satisfied that 20 of the parties (86.95%) consent to the application. There is no evidence of any party opposing the application. The requirements of section 37(5)(b) of the 1987 Act are therefore met. The Tribunal is satisfied that the proposed variation would not substantially prejudice any of the Respondents or any person who is not a party to this application.
13. Accordingly the Tribunal makes an order to vary the leases in the terms more particularly set out in the attached form of order.

Judge N Jutton

20 December 2023

RIGHTS OF APPEAL

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 First-tier Tribunal at rpsouthern@justice.gov.uk being the Regional office which has been dealing with the case.
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