



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

**Case reference** : **LON/00AY/LVT/2024/0002**

**Property** : **Antiopa House, 1 Coal Lane SW9  
Yorks House, 5 Coal Lane SW9  
Leno House, 11 Coal Lane SW9  
The Offices, Brixton Edge, 86-88  
Gresham Road/Valentia Place SW9**

**Applicant** : **Amy Cameron (“First Applicant”) and  
all applicants listed in Appendix A to the  
Application Notice**

**Representative** : **none**

**Respondent** : **Gateway Property Management Ltd**

**Representative** : **none**

**Type of application** : **To vary two or more leases by a  
majority: s.37 Landlord and Tenant Act  
1987**

**Tribunal members** : **Judge Mark Jones  
Mr S Mason FRICS**

**Venue** : **Decision on Papers**

**Date of decision** : **23 April 2024**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The Tribunal declines to grant the application for the variation of leases under sections 37 and 38 of the Landlord and Tenant Act 1987.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985, that only such costs as may have been reasonably incurred by the Respondent in obtaining professional advice from a third-party legal adviser in connection with the application may be regarded as relevant costs to be taken into account in determining the amount of service charge payable by the Applicants.

## **Introduction**

1. The Tribunal has received application in form Leasehold 4 dated 10 January 2024 pursuant to section 37 of the Landlord and Tenant Act 1987 (“*LTA 1987*”) for a variation of 72 separate leases.
2. The application concerns 4 separate developments, containing a total of 71 residential flats, all held on long leases. The application also seeks to include a commercial lease, in respect of which this Tribunal has no jurisdiction.
3. The Applicants in respect of the residential flats comprise the 54 persons named in Appendix A to the application notice, and Paragon Housing which holds a further 14 long leases within the property.
4. On 30 January 2024 the Tribunal directed the application to be heard on the papers unless a party requested a hearing by 22 March 2024. No such request was received by the Tribunal, and we therefore proceed to determine the application on the papers and without a hearing.
5. The Applicants were directed to serve a copy of the directions upon the Respondent, which was given the opportunity to make representations by 8 March 2024.
6. Albeit late, the Respondent made representations by email from Ms Emma Morris, Corporate Paralegal, dated 19 March 2024. A copy was included in the bundle prepared by the First Applicant and the Tribunal has in the circumstances considered it proper both to have regard to Ms Morris’ observations, and the response of the First Applicant also dated 19 March 2024. We have also had careful regard to the detailed statement on behalf of the Applicants dated 22 March 2024, and the various exhibits accompanying the Applicants’ case.

## **The Leases**

7. Only one copy lease has been provided by the Applicant, being that of the flat at 19 Yorks House, 5 Coal Lane, Brixton SW9 8GG. It is for a term of 125 years commencing on 29 June 2017. The Tribunal understands that all leases in issue are in more or less identical terms, *mutatis mutandis*.
8. The lease is tripartite, between the landlord, defined as “*the Company*”, the Respondent, Gateway Property Management Limited, defined in box LR3 as “*the Management Company*”, and the tenant. The current freeholder is Calibri GR Limited.
9. As might be anticipated from such definition, the lease imposes on the Respondent as management company a series of obligations to manage, maintain and insure the property, and to be reimbursed for the provision of such services by way of service charges paid by the tenants.

## **The Application**

10. The issue on the application concerns the identification in the lease of the Respondent as “*the Management Company*”.
11. To summarise the Applicants’ case, they are highly dissatisfied with the Respondent’s performance of its functions under the lease. The Tribunal understands that other proceedings concerning a dispute as to the reasonableness and/or payability of service charges are pending between the parties under case ref. LON/00AY/LSC/2023/0313. The Applicants wish to replace the Respondent as management company with an alternative entity, The Edge (Brixton) Management Company Limited, Company no. 14585838 (“*The Edge*”).
12. By the application, the Applicants seek, first, to vary their leases by the substitution of The Edge for the Respondent in the definitions section at box LR3.
13. The Applicants seek, additionally, to vary their lease by deletion of clauses 8a and 8b, said to be irrelevant. In the context of the case, the Tribunal presumes this element of the Application not to relate to clause 8 in the main body of the lease, which contains no sub-clauses 8a or 8b, and is concerned with rent review provisions, but rather clauses 8a and 8b to schedule 8 of the lease, setting out a purported contractual mechanism for the substitution of the Respondent.
14. By additional application also dated 10 January 2024, the Applicants seek an order under section 20C of the Landlord and Tenant Act 1985 that all or any of the costs incurred, or to be incurred, by the landlord in

connection with the application are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge.

### **The Issues and the Law**

15. The issues were identified in the directions as:
- (i) What is the object to be achieved by the proposed variation?
  - (ii) Is the proposed variation within the contemplation of sections 37 and 38 LTA 1987?
  - (iii) Is there a sufficient majority for an application under section 37 LTA 1987?
  - (iv) If it does make an order varying the leases, should the Tribunal order any person to pay compensation to any other person, in accordance with section 38(10) of LTA 1987?
  - (v) Should the Tribunal exercise the discretion conferred on it under section 37 LTA 1987 to vary the leases in the manner requested?
16. Sections 37 and 38 LTA 1987 are set out in an annex to this Decision for ease of reference. Section 37 sets out the requirements for an application by a majority of parties for variation of leases, while section 38 deals with the Tribunal's powers in terms of orders on applications under sections 35 to 37 of the Act.

### **What is the object to be achieved by the proposed variation?**

17. As summarised above, this is, first, the substitution for the Respondent by the The Edge, an alternate management company of the Applicants' choosing.
18. Second, the application seeks to delete from the lease the provisions of §§8a and 8b of schedule 8, providing a somewhat flawed contractual mechanism for the removal and substitution of managing agents.

### **Is the proposed variation within the contemplation of sections 37 and 38 LTA 1987?**

19. The aforementioned clauses 8a and 8b of schedule 8 specify a mechanism for the substitution of the Management Company, as defined therein, upon service of notice by a simple majority (being more than 50%) of the lessees of the desire for the obligations of the Management Company under the lease to be undertaken by an

alternative entity, defined as the ‘Nominee’. Upon receipt of such notice, the Management Company is required to transfer to the Nominee any management lease, for consideration of one pound.

20. A number of lessees (being more than 50% of the total) sought to employ this procedure to remove the Respondent, by instructing their solicitors, LMP Law Ltd to serve notice in accordance with clause 8a upon the Respondent, by letter dated 24 January 2023.
21. This prompted the following response from the Respondent, by email from Kerry Coleman, Group Solicitor, dated 31 January 2023:

*“Clause 8(a) of Schedule 8 of the leases of the dwellings refers to the transfer of “any management lease” should the requisite number of lessees serve notice on the Management Company requiring the obligations of the Management Company to be undertaken by a Nominee. In our view, there is no management lease, there are only the leases of the dwellings which Gateway Property Management Limited are embedded into. Accordingly the parties are unable to enter into a transfer as required by clause 8(a).*

*“Clause 8(b) provides that if a Nominee is ‘appointed’ pursuant to clause 8(a) then the Tenant agrees to join, with the other lessees of the dwellings, in arranging the substitution of the Management Company by firstly entering into a deed of covenant with the Nominee and secondly by entering into a separate deed of release with the Outgoing Management Company.*

*“Given the above, we are unable to provide you with a proposed transfer as requested.*

*“Consequently, in order to arrange substitution, we look forward to hearing from you with a draft deed of release, for our approval. Subsequently we suggest that you then arrange to obtain executed deeds of covenant and deeds of release from each lessee, thereafter we can address handover of management from the Outgoing Management Company to the Nominee...”*

22. It appears that the unanimity requested by this email has proved impossible to achieve, where a small proportion of lessees has for various reasons declined to join with the Applicants, and a number are described as having been simply unresponsive to approaches.
23. This is characterised in the application as having “*exhausted every other avenue*” to seek to achieve the objective of removing the Respondent from its management functions.
24. Section 37(3) LTA 1987 provides:

*“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.**” (emphasis added)*

25. While it is not for the Tribunal to give legal advice, the apparent objective of the present application is to give the lessee Applicants the ability to select a management company of their own choice to undertake the current responsibilities of the Respondent under their leases. This is the very essence of the right to manage provisions enshrined in Part II of the Commonhold and Leasehold Reform Act 2002. The Tribunal has been provided with no evidence of any attempt on the part of the Applicants to exercise their rights under those provisions.
26. Further, the Tribunal has seen no evidence of whether the Applicants have sought to exercise their rights under Part II of LTA 1987 to apply to this Tribunal to appoint a manager, on the basis of one or more of the wants of management listed in s.24(2) of that Act.
27. It follows that this Tribunal cannot be satisfied on a balance of probabilities that the object sought to be achieved by the proposed variations cannot be satisfactorily achieved save by variation under s.37. Alternative mechanisms subsist that could be employed by the Applicants to seek their desired objective.
28. Accordingly, the Applicants cannot satisfy section 37(3) LTA 1987. This is fatal to the application.

### **Other Issues identified in the Directions**

29. In consequence of our finding at paragraph 27 of this Decision, the Tribunal considers it unnecessary to determine the other issues identified in the directions, summarised at §15(iii) - (v), above.

### **The Tribunal’s Decision**

30. For the reasons explained above, the Tribunal declines to make an order varying the leases in the manner specified in the application.

### **Application under section 20C Landlord and Tenant Act 1985**

31. As summarised above, the Applicants also applied for an order under section 20C of the 1985 Act so as to prevent the Respondent from claiming its costs of the proceedings as part of any service charge.
32. The Tribunal considers that this litigation has substantially arisen because of the manner in which clause 8a in schedule 8 of the lease has

been drafted, to which the Respondent was a party, while being (as the Tribunal finds) well aware that no management lease existed, thereby frustrating the intended effect of that clause, viz. to afford a majority of lessees the right to appoint a nominee to undertake management functions in their buildings.

33. In the circumstances, the Tribunal considers it just and equitable to make an order in favour of the Applicants, so that only such costs as may have been reasonably incurred in obtaining professional advice from a third-party legal adviser in connection with the application may be regarded as relevant costs to be taken into account in determining the amount of service charge payable by the Applicants. The Tribunal commends the First Applicant for suggesting such equitable course as one of the menu of options in her Grounds at box 13 in the relevant application form.

**Name:** Judge Mark Jones

**Date:** 23 April 2024

### **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).

## **Sections 37 & 38 of the Landlord and Tenant Act 1987**

### **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) 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.