



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

Case reference : **LON/00BD/LVT/2022/0001**

**HMCTS code
(paper, video,
audio)** : **P: PAPERREMOTE**

Property : **Rivermead Gatehouse, Rivermead
Close, Broom Road, Teddington, TE11
9NL**

Applicant : **Riversmead Close Block E Freehold
Limited**

Representative : **Nicholas Potts**

Respondents : **(1) James Peter Murray
(2) Anita Murray**

Representative : **Levins Solicitors**

Type of application : **An Application for Variation of the
Terms of Leases pursuant to section 35
of the Landlord and Tenant Act 1987**

Tribunal member : **JUDGE SHAW**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **1st August 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has not been not objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because all issues could be determined in a remote hearing on paper. The documents that the Tribunal were referred to are

contained in 4 separate bundles, running to several hundred pages, which documents have been considered by the Tribunal.

DECISION OF THE TRIBUNAL

The parties are directed to vary the leases dated in accordance with the Deed of Variation appearing at pages 65-70 of the Hearing Bundle and attached hereto.

THE APPLICATION

1. This Application is dated 4th March 2022. A Directions Order was made on 8th April 2022. The Applicant seeks variations of 2 leases. The first is dated 19th April 2013 (Flat 53) and the leaseholder is Nicholas Alexander Potts. The second is dated 10th April 2014, and the leaseholders are Mr and Mrs Murray – the Respondents to this application.
2. The Application relates to the original gatehouse at the entrance to what appears to be a substantial estate development, containing multiple blocks and residential units. The estate and the gatehouse have a complex conveyancing history which is set out in detail in the Applicant's Statement of Case. Suffice it to say that the 2 flats which are specifically the subject of this application, are contained within the gatehouse which originally served as accommodation and workspace for the concierge of the estate. It provided a residential unit coupled with some office and workshop facilities.
3. The gatehouse has however over the years, enjoyed several different incarnations, as various different extensions and reconfigurations have taken place. In addition, the identity of the freeholder has changed, and there may have been other alterations on the estate. As understood by the Tribunal, the current position is that the service charge provision in the leases allows for recovery only of a fraction of the true service expenses. The leases mentioned above, were drawn at a time when the gatehouse, although situate on the same footprint, was a very different structure.
4. Again as understood by the Tribunal, the Applicant is a company owned by Mt Potts (who is a Director of the Applicant) and the Respondents, and it is presently unable to administer the proper recovery of the service charge expenditure on the leases as originally drafted. The current provision in respect of Part A expenditure for Flat 52 is 3.4600% and for Part B is 3.030%. The corresponding figures for Flat 53 are 1.775% and

1.5152%. In neither case does this reflect a fair proportion, and is certainly not consistent with the respective internal floor areas.

5. The Applicant commissioned a report from Wonnacott Chartered Surveyors, which report appears at pages 170-177 of the bundle. A table containing the original and current respective internal square metre floor areas is at paragraph 33 of the Statement of Case. The Applicant proposes that the service expenditure should be split between the 2 flats in accordance with the internal floor areas contained in that table.

THE LAW

6. The provisions entitling the Tribunal to order a variations of a lease or leases are contained within section 35 of the Act which together with amendments, are set out below:

35 Application by party to lease for variation of lease.

(1) Any party to a long lease of a flat may make an application to [the appropriate tribunal] for an order varying the lease in such manner as is specified in the application.

(2) The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely—

(a) the repair or maintenance of—

(i) the flat in question, or

(ii) the building containing the flat, or

(iii) any land or building which is let to the tenant under the lease or in respect of which rights are conferred on him under it;

(b) the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);

(c) the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation;

(d) the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, and whether they are services provided for the benefit of those occupiers or services provided for the benefit of the occupiers of a number of flats including that flat);

(e) the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the

benefit of that other party or of a number of persons who include that other party;

(f) the computation of a service charge payable under the lease.

[(g) such other matters as may be prescribed by regulations made by the Secretary of State.]

(3) For the purposes of subsection (2)(c) and (d) the factors for determining, in relation to the occupiers of a flat, what is a reasonable standard of accommodation may include—

(a) factors relating to the safety and security of the flat and its occupiers and of any common parts of the building containing the flat; and

(b) other factors relating to the condition of any such common parts.

[(3A) For the purposes of subsection (2)(e) the factors for determining, in relation to a service charge payable under a lease, whether the lease makes satisfactory provision include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.]

(4) For the purposes of subsection (2)(f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if—

(a) it provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and

(b) other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and

(c) the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would **[either exceed or be less than]** the whole of any such expenditure.

(5) **[Procedure regulations under Schedule 12 to the Commonhold and Leasehold Reform Act 2002] [and Tribunal Procedure Rules] shall make provision—**

(a) for requiring notice of any application under this Part to be served by the person making the application, and by any respondent to the application, on any person who the applicant, or (as the case may be) the respondent, knows or has reason to believe is likely to be affected by any variation specified in the application, and

(b) for enabling persons served with any such notice to be joined as parties to the proceedings.

[(6) For the purposes of this Part a long lease shall not be regarded as a long lease of a flat if—

(a) the demised premises consist of or include three or more flats contained in the same building; or

(b) the lease constitutes a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.]

(8) In this section “service charge” has the meaning given by section 18(1) of the 1985 Act.

[(9) For the purposes of this section and sections 36 to 39, “appropriate tribunal” means—

(a) if one or more of the long leases concerned relates to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) if one or more of the long leases concerned relates to property in Wales, a leasehold valuation tribunal.]

7. Although served with the Application by both the Applicant and the Tribunal, no response or observations have been received from the Respondents. The Tribunal is therefore treating this Application as unopposed.

DETERMINATION OF THE TRIBUNAL

8. The Tribunal is satisfied for the purposes of section 35(1)(e) above that the variation sought in this case is required, because the leases fail to make satisfactory provision for the recovery by one party to the lease from another party to it, of expenditure incurred or to be incurred by that party. The Tribunal has given consideration to the making of a compensation order in this case. It is satisfied that no such order is appropriate, given that the variation is necessary for the proper administration of the property, and that the Applicant is a corporate vehicle formed for the sole purpose of ownership and administration of the freehold, and would have no funds to pay such compensation.

ORDER

9. The Tribunal approves and orders variation in accordance with the Deed of Variation submitted with the Application and attached hereto. The Tribunal notes that the Schedule referred to in the Deed of Variation does not particularise the changes to percentage contributions, by reference to the 2 leases, and proceeds on the basis that this Deed, presumed drafted with or pursuant to legal advice, is adequate for the Applicant’s purposes.

JUDGE SHAW

1st August 2022

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).