

Lodge



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

Case Reference : CHI/43UG-LVT-2023/0008

Property : Trotsworth Court, Christchurch Road,
Virginia Water, Egham GU25 4AG

Applicant : Trotsworth Court Association Limited

Representative : Property Management Legal Services
Limited

Respondent : The leaseholders of the Property

Representative : None

Type of Application : Lease variations pursuant to section 37 of
the Landlord and Tenant Act 1987

Tribunal Members : Tribunal Judge M Loveday

**Date and venue of
Hearing** : 12 July 2024, paper track

Date of Decision : 12 July 2024 (as amended 23 July 2024)

DETERMINATION AND ORDER VARYING LEASES

Introduction

1. This is an application for a variation of leases under s.37 Landlord and Tenant Act 1987.
2. Sections 37 and 38 provides as follows:

“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—

...

(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.

...

(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.

...

(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.

...

(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.”

Background

3. The application relates to some 78 flats arranged in nine blocks at Trotsworth Court, Christchurch Road, Virginia Water, Egham in Surrey. The applicant is a company owned and controlled by the lessees and is the registered freehold owner. The respondents are the lessees.
4. The application dated 14 June 2024 is accompanied by a statement of case and a copy of a lease of one of the flats. The occupational leases are tripartite in nature, with the developer Wentworth Estates Ltd as a party to the leases (albeit a party without management responsibilities). The applicant states that Wentworth Estates Ltd has been dissolved, although a company by the same name was incorporated in 1982.
5. The application suggests the variations seek to clarify and/or modernise elements of the occupational leases to ensure the leases reflect best management practice and to enable successful and efficient management of the estate. A draft deed of variation accompanied the application and is set out in Appendix A.
6. The applicant has provided details of a consultation carried out on 3 February 2023, which involved sending each lessee a covering letter, draft deed of variation, explanation of the variations and a consent form. The form stated:

“I understand it is proposed to make an application to the First Tier Tribunal (Property Chamber) under section 37 of the Landlord and Tenant Act 1987 to vary the terms of my lease.

I have read and understood the proposed deed of variation. I confirm I consent to the proposed variation in the terms set out in the draft deed of variation.”

7. The bundle includes consent forms completed by 63 lessees and an email from one lessee opposing the variation. These are summarised in Appendix B.

The Tribunal's determination

8. The Tribunal first considers whether the threshold conditions in s.37(5)(b) are met. The landlord is a “party” for the purposes of s.37 and there are 78 flats with qualifying leaseholders who are also parties. Assuming the lessees who completed the consent forms are the qualifying leaseholders of each flat, 81% of parties have consented to the application, whilst 1.3% (one) party have opposed it. The threshold conditions in s.37(5)(b) are therefore met.
9. The bundle includes email exchanges between a director of the applicant and its solicitors, which refers to questions raised by the lessees of Flats 16, 31 and 77. The lessee of Flat 16 opposes the application (see Appendix B). It is unclear the extent to which the other two lessees oppose the application to vary. But even if the questions signified opposition to the application by all three lessees for the purposes of s.37(5)(b), the threshold condition would still be met. Three parties opposing is 3.8% of the total, which is less than 10% of the “total number of the parties concerned”.
10. The Tribunal has also considered the table provided to the lessees setting out the objects to be achieved by each variation. The Tribunal is satisfied under s.37(3) of the Act that the variations in Appendix A cannot be satisfactorily achieved unless all the leases are varied to the same effect.

Order

11. Under s.38(3), the Tribunal therefore makes an order varying each of those leases in the manner specified in Appendix A.
12. It does not appear to the Tribunal that the variations would be likely substantially to prejudice any respondent to the application, or any person who is not a party to the application. The proposals include a commutation of ground rents, but the ground rents are fairly nominal and (as explained by the applicant) have not been collected for many years. The changes to the service charge provisions might well increase the future level of charges, but any such increase is likely to be balanced by a corresponding improvement in the delivery of services to the leaseholders at the premises.
13. No orders are sought under s.38(8) to (1) of the Act.

14. It will be for the Applicant to lodge the Tribunal's determination and schedule of variations so the variations can be recorded at Land Registry.

Judge Mark Loveday

12 July 2024

VARIATIONS TO THE LEASES

I. DELETION AND REPLACEMENT OF EXISTING PROVISIONS

1.1 Clause 1 shall be deleted and shall be replaced as follows:

In pursuance of the said agreement and in consideration of the payment of the costs paid to the Lessor by the Lessee and of the rents and covenants on the part of the Lessee and conditions hereinafter reserved and contained the Lessor hereby demises unto the Lessee first ALL THAT residential flat [*and attic if appropriate over said flat*] being known as flat No.[*insert flat number*] Trotsworth Court and being situated on the [*insert*] floor of the block shown on the said Plan and thereon designated and hereinafter referred to as blocks which relates to all nine blocks within the development and referred to as “Trotsworth Court” and thereon coloured pink SECONDLY ALL THAT piece or parcel of land TOGETHER with garage no. [*insert*] of the fifty three garages (“ hereinafter referred to as “Garages”) Trotsworth Court aforesaid erected thereon or on part thereof as the same is for the purpose of identification delineated on the said Plan and thereon coloured blue (all which premises are hereinafter referred to as “the Demised Premises” TOGETHER as to both the premises First and Secondly hereinbefore described with the easement rights and privileges mentioned in the Second Schedule hereto subject as mentioned in the Third Schedule hereto TO HOLD the Demised Premises unto the Lessee from the date of the term of 999 years YIELDING AND PAYING therefor yearly during the said term

(A) The rent of one peppercorn per annum (if demanded)

(B) AND ALSO PAYING by way of further or additional rent from time to time a proper proportion of the amount which the Lessors may expend in effecting or maintaining the insurance of Trotsworth Court and including the insurance of the Garages (if the Demised Premises include a Garage) shown on the Plan in the full values thereof against loss of rent loss or damage by fire storm impact or aircraft or (while insurable) war risks plus six percent of the full value thereof for architect's fees and two and one half percent of the full value of thereof for quantity surveyor's fees in connection with any rebuilding undertaken by the Lessors such last mentioned rent to be paid without any deduction on the day for payment of the rent and

(C) ALSO PAYING to the Lessors from time to time such sums (hereinafter called “the Development Costs”) as shall be determined to be the maintenance payment under the provisions hereinafter contained such last mentioned sum to be paid (subject to the provisions hereinafter contained) without any deduction on the 1st January annually in advance and on account PROVIDED ALWAYS and it is hereby agreed that the insurance rent and the Development Costs for any year shall be such sum as the Lessors may determine and be the aggregate of

(i) One seventy eighth of the amount of the cost to the Lessors during such year of complying with the Lessor's covenants hereinafter contained so far as the performance of such covenants benefits or affects exclusively Trotsworth Court and the amount for the purpose of this provision

(ii) the amount of all other insurance premiums and all excesses paid in accordance with the covenants hereinafter contained

(iii) the Lessee shall pay to the Lessors in advance and on account of such Development Costs as aforesaid yearly of such amount as may be determined by the Lessors from time to time on the first day of January in each year hereafter and so that when such Development Costs falls due the Lessee shall be given credit for such initial and all such sums paid in advance and not previously taken into account

(iv) The Lessors may decide to establish a fund (hereinafter referred to as "the Blocks Reserve Fund") in order to meet future expenditure which it expects to incur INCLUDING improvement works IN ADDITION the Lessors retain the right to carry out any repair maintenance or improvement works which are not permitted by clause 1 but which the Lessors decide to carry out to improve Trotsworth Court or the building or estate in which the Demised Premises is situated

(D) ALSO PAYING to the Lessors from time to time such sums (hereinafter called "the Garage Costs") [*IF SO DEMISED*] as shall be determined to be the maintenance payment in relation to the management and maintenance of the Garages under the provisions hereinafter contained such last mentioned sum to be paid (subject to the provisions hereinafter contained) without any deduction on the 1st January annually in advance PROVIDED ALWAYS and it is hereby agreed that the insurance for the Garages and the Garage Costs for any year shall be such sum as the Lessors may determine and be the aggregate of

(i) One fifty third of the amount of the cost to the Lessors during such year of complying with the Lessors' covenant hereinafter contained so far as the performance of such covenants benefits or affects exclusively the Garages

(ii) the Lessee shall pay to the Lessors in advance and on account of such Garage Costs as aforesaid yearly of such amount as may be determined by the Lessors from time to time on the first day of January in each year hereafter and so that when such Garage Costs falls due the Lessee shall be given credit for such initial and all such sums paid in advance and not previously taken into account

(iii) The Lessors may decide to establish a fund (hereinafter referred to as "the Garages Reserve Fund") in order to meet future expenditure which it expects to incur INCLUDING improvement works IN ADDITION the Lessors retain the right to carry out any repair maintenance or improvement works which are not permitted by clause 1 but which the Lessors decide to carry out to improve Trotsworth Court or the building or estate in which the Demised Premises is situated

1.2 Clause 2(1) shall be deleted and shall be replaced as follows:

That the Lessee will during the continuance of the term hereby granted pay the said respective yearly rents and other sums of money hereinbefore reserved and

made payable at the times and in the manner in which the same are respectively hereinbefore reserved and made payable without any deduction whatsoever and without exercising any right of offset AND PAY on demand and on a full indemnity basis the total expenditure costs and expenses of the Lessor (including any solicitors' or other professionals' costs and expenses) NOTWITHSTANDING the ability to recover the costs and expenses of the Lessor with or in contemplation of any of the following:

- a) Any action taken in consequence of breach of covenants on the part of the Lessee herein contained;
- b) service of any notice or taking any proceedings in connection with this lease under section 146 or 147 of the Law of Property Act 1925 (notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court);
- c) service of any notice in connection with this lease;
- d) any consent or approval applied for under this lease, whether or not it is granted;

1.3 Clause 2(17) shall be deleted and shall be replaced as follows:

AND ALSO within three calendar months next after any absolute transfer assignment or devolution of his interest under this present lease in the Demised Premises or any part thereof give notice in writing of such transfer assignment or devolution and of the name, quality, place or places of abode of the transferee or the transferees or assignee or assignees to the Lessor or the solicitor and produce to them or him the instrument of such transfer, assignment or devolution and pay to the Lessors or their solicitor the reasonable fees

1.4 Clause 2(21) shall be deleted and shall be replaced as follows and referred to as Clause 2(23):

Will not do or permit to be done or suffer any act matter or thing in or upon the Demised Premises or within Trotsworth Court which may render any increased or extra premium to be payable for the insurance of Trotsworth Court and or the insurance of the Garages or which may make void or voidable any policy for such insurance and to indemnify the Lessor against any increased or additional premium which by reason of any such act or default of the Lessee may be required for effecting or keeping up any such insurance

1.5 Clause 4(i) shall be amended and the words "the Block" be deleted and replaced with "Trotsworth Court"

1.6 Clause 4(iii) shall be deleted and shall be replaced as follows:

That the Lessors will at all times (SUBJECT TO THE AVAILABILITY OF FUNDS) during the term hereby granted maintain the external main walls (including therein the outer walls of the flat including the concrete outings of the windows (notwithstanding the Lessees obligations in respect of the windows) the

main concrete floors, the girders, timbers, foundations, main halls, staircases, landings and roofs of blocks and the pipes and wires and the water drainage, gas and electricity services of Trotsworth Court (other than the pipes, risers and systems serving the flat alone) therein in good and substantial repair and condition except as regards damage caused by or resulting from any act of default of the Lessee or the tenant or occupier of the Demised Premises making all necessary renewals and replacements as may be required thereto provided always and it is expressly agreed that the Lessors shall not in any way be held responsible for any damage caused by neglect or failure to maintain the premises in respect of any damage caused by any defects of or in relation to Trotsworth Court by any want of repair or in or to any pipes or services thereof unless and until notice in writing of any such neglect failure want of repair or defect as aforesaid has been given to the Lessors by or on behalf of the Lessee and the Lessors have failed to make good or remedy such neglect failure want of repair or defect as aforesaid within a reasonable time of receipt of such notice

1.7 Clause 4 (iv) shall be amended and the words “said Block” be deleted and replaced with “each of the blocks”

1.8 Clause 4 (v) shall be amended and the words “said Block” be deleted and replaced with “each of the blocks”

1.9 Clause 4 (vi) shall be deleted and replaced with the following:

That the Lessors may at their absolute discretion throughout the said term employ one or more caretakers and or gardeners for the purpose of keeping clean the common staircase and entrance hall and landings in each of the blocks in Trotsworth Court and of keeping in good order the forecourt and gardens of Trotsworth Court

1.10 Clause 9 shall be deleted and shall be replaced as follows:

Documents and notices served in connection with this lease may be served pursuant to section 196 of the Law of Property Act 1925 without prejudice to the foregoing the Lessors at their absolute discretion may serve any such notices via electronic means

1.11 Other minor, non-material amendments being re-numbering of the following clauses:

| Old | New |
|--------------|--------------|
| Clause 2(18) | Clause 2(20) |
| Clause 2(19) | Clause 2(21) |
| Clause 2(20) | Clause 2(22) |
| Clause 2(21) | Clause 2(23) |

II. INSERTION OF ADDITIONAL PROVISIONS

2.1 The following clause shall be inserted into the Lease:

Clause 2(18) AND ALSO that the Lessee will not assign underlet or part with the possession of part only of the Demised Premises unless assigning underletting or parting with the Garage such assignment underletting or parting is STRICTLY PROHIBITED unless the intended assignee transferee or subtenant is a Lessee of another dwelling within Trotsworth Court AND PROVIDED THAT unless prior to or contemporaneously with the assignment or underletting or disposition the Lessee procures that the assignee transferee or subtenant applies to the Lessor for consent such consent must not be unreasonably withheld or delayed

2.2 The following clause shall be inserted into the Lease:

Clause 2(19) AND THAT the Lessee will ensure that on any such transfer assignment or devolution the transferee or assignee will apply to become a member of Trotsworth Court Association Ltd in accordance with its Articles of Association AND upon becoming a Member will continue to be so whilst he remains a lessee

2.3 The following clauses shall be inserted into the Lease:

Clause 4(x) That the Lessors will throughout the term in its absolute discretion employ agents and managers or any other person reasonably and properly retained by the Lessors to act on behalf of the Lessors in connection with Trotsworth Court or the provision of services

Clause 4(xi) That the Lessors will throughout the term in its absolute discretion make any improvement affecting the Demised Premises or Trotsworth Court or any part thereof

2.4 Clause 10 shall be inserted into the Lease for the following provision:

10 PROVIDED ALWAYS the Lessors reserve the right to amend alter or introduce further and or existing rights and obligations as the Lessors in its discretion may from time to time consider appropriate in accordance with the principles of good estate management PROVIDED THAT notification in writing has been first been given to the Lessee

2.5 Clause 11 shall be inserted into the Lease for the following provision:

11 The Lessors may demand from the Lessee any amount which the Lessors shall reasonably consider necessary for any purpose for which no provision has been made within the service charge and for which no reserve provision has been made without notice such sums payable by the Lessee

APPENDIX B: CONSENTS TO VARIATIONS

| Flat | Page | Consent | Oppose | Flat | Page | Consent | Oppose |
|-------------|-------------|----------------|---------------|-------------|-------------|----------------|---------------|
| 1 | 108 | x | | 41 | | | |
| 2 | 77 | x | | 42 | 81 | x | |
| 3 | 82 | x | | 43 | 114 | x | |
| 4 | 93 | x | | 44 | 107 | x | |
| 5 | 74 | x | | 45 | 118 | x | |
| 6 | 133 | x | | 46 | | | |
| 7 | 100 | x | | 47 | 79 | x | |
| 8 | 115 | x | | 48 | 90 | x | |
| 9 | | | | 49 | 70 | x | |
| 10 | 116 | x | | 50 | 123 | x | |
| 11 | 127 | x | | 51 | 84 | x | |
| 12 | 117 | x | | 52 | 80 | x | |
| 13 | 101 | x | | 53 | 91 | x | |
| 14 | | | | 54 | 129 | x | |
| 15 | 125 | x | | 55 | 89 | x | |
| 16 | | | x | 56 | | | |
| 17 | 124 | x | | 57 | | | |
| 18 | 120 | x | | 58 | 72 | x | |
| 19 | 109 | x | | 59 | | | |
| 20 | 110 | x | | 60 | 106 | x | |
| 21 | 130 | x | | 61 | 95 | x | |
| 22 | | | | 62 | 96 | x | |
| 23 | 102 | x | | 63 | 113 | x | |
| 24 | 97 | x | | 64 | 98 | x | |
| 25 | 85 | x | | 65 | | | |
| 26 | 83 | x | | 66 | 128 | x | |
| 27 | 94 | x | | 67 | 87 | x | |
| 28 | | | | 68 | 76 | x | |
| 29 | 99 | x | | 69 | 88 | x | |
| 30 | 119 | x | | 70 | 122 | x | |
| 31 | | | ? | 71 | 78 | x | |
| 32 | 105 | x | | 72 | 68 | x | |
| 33 | 104 | x | | 73 | | | |
| 34 | 71 | x | | 74 | 131 | x | |
| 35 | | | | 75 | 75 | x | |
| 36 | 92 | x | | 76 | 134 | x | |
| 37 | 73 | x | | 77 | | | ? |
| 38 | 111 | x | | 78 | 112 | x | |
| 39 | 69 | x | | landlord | | x | |
| 40 | 103 | x | | 79 | | 64 | 1 |
| | | | | | | 81.0% | 1.3% |

Appeals

- 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 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.

I hereby certify that under rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, due to a clerical error, accidental slip or omission, corrections should be made to the Tribunal decision dated 12 July 2024 by the addition of the following words at para 14:

“14. It will be for the Applicant to lodge the Tribunal’s determination and schedule of variations so the variations can be recorded at Land Registry.”

A corrected copy of the decision is attached.



.....

Judge MA Loveday

23 July 2024

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