



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

Case Reference : **CHI/43UB/LVT2013/0013**

Property : **Hampton Court Mews, East Molesey, Surrey**

Applicant : **Hampton Court Mews Management
Company Limited & Eight consenting
lessees**

Representative : **Brethertons Solicitors**

Respondent : **Houseproud Estates Limited, R Narendran
& S Hall**

Type of Application : **Lease variation under Section 35 or 37 of the
Landlord and Tenant Act 1987**

Tribunal Members : **Judge D. R. Whitney
Mr. R. A. Potter FRICS**

**Date of
Hearing** : **31st January 2014**

Date of Decision : **26th February 2014**

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DECISION

1. This is an application to vary the residential leases at Hampton Court Mews, East Molesey, Surrey ("the Property").
2. The application was made by the management company for the development and supporting leaseholders by way of application dated 25th October 2013. The application was made as the service charge apportionments at the Property do not add up to 100% and a variation was sought to correct this defect.
3. Directions were given on 6th November 2013 requiring the Applicants to serve on the Respondents all documents upon which they intended to rely. The Respondents were then given an opportunity to respond. No responses were received and the Tribunal directed that the matter would be dealt with by way of written representations.

THE LAW

4. The relevant law is contained in sections 35 and 37 of the Landlord and Tenant Act 1987:

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 court 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) Rules of court 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.

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 court 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

DISCUSSION

5. The Tribunal noted that no objection or negative response had been received from any party prior to the hearing. 10 of the 12 residential leaseholders had

consented to the variation sought as had the freeholder, Houseproud Estates Limited.

6. The Tribunal had before it an undated document headed "Outline Submissions on behalf of the Applicants". This outlined and explained the deficiency in the lease. In short the proportion payable to what is referred to as the Estate Charge due from the residential and commercial leaseholders is less than 100%. This means that the management company cannot currently recover all of the costs. The Tribunal was supplied with a specimen lease being that for Flat 2 dated 30 May 2006.
7. The management company submits that the proportion recovered from the commercial units is correct and it is the percentages due from the leaseholders which needs to be amended so that there is no deficit in the money collected by way of Estate Charge.
8. The Applicant contends that given 10 of the 12 leaseholders have consented more than 75% of interested parties are in agreement and given no formal objections to the proposed variation the Tribunal may order the same pursuant to section 37 (as set out above).
9. If wrong on this the Applicants rely upon section 35 and submit that the terms of the lease may be varied relying upon this provision.
10. The Applicants suggest alternative percentages which should be payable by each of the 12 leaseholders of the Property. The Applicant contends that given the original percentages were calculated having regard to the internal floor areas the percentages for each have been increased proportionately to allow 100% recovery.
11. Finally the Applicant rely upon Brickfield Properties Limited v. Bolten [2013] UKUT 133 (LC) in support of their submission that the Tribunal may make an order that the variation may take effect from the date of the grant of the original lease and that therefore the variation may be retrospective.

DECISION

12. The Tribunal is satisfied that 11 out of 13 interested parties being about 84% have consented to the Application. The two remaining leaseholders have not filed any objection in accordance with the Tribunal's directions.
13. The Tribunal is satisfied that the provisions of the lease in connection with the service charge are defective. The Tribunal is satisfied that it would be just and

equitable to amend the same by way of variation of the lease so that the Applicant management company can recover 100% of the Estate Charge costs which it properly incurs under its covenants' in the various leases. The Tribunal is satisfied that increasing the service charge proportions proportionately to make up the shortfall is a reasonable method by which the amounts may be varied.

14. The Tribunal has had regard to the decision in Brickfield Properties Limited v. Bolten [2013] UKUT 133 (LC) and it is satisfied that it is entitled to order that any such variation may apply retrospectively. Given that the purpose of the rectification in the present case is for a similar purpose as the Brickfield case in that it is to recover an underpayment of service charge expenses and also taking account of the fact that the Applicant is a residents management comp[any the Tribunal is satisfied that it is just and equitable to allow the variation to apply from the date of the grant of the leases.
15. The Tribunal is satisfied that the Applicant is entitled to a variation of the leases pursuant to section 37 of the Landlord and Tenant Act 1987. If the Tribunal is wrong in this regard the Tribunal would have made an order pursuant to section 35 of the Landlord and Tenant Act 1987 on the basis that the leases of the Property fail to make satisfactory provision for recovery of service charge expenditure and it was just and equitable to vary the lease.
16. The Tribunal orders that the leases of the twelve residential apartments at the Property do be varied as per the Order annexed hereto.

Judge David Whitney
Chair

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.

Case Number: [insert case number]

CHI 14308/LVT/2013/0013

IN THE MATTER OF AN APPLICATION UNDER SECTION 35 & 37
OF THE LANDLORD AND TENANT ACT 1987

BETWEEN:

HAMPTON COURT MEWS MANAGEMENT COMPANY LIMITED (1)

THE CONSENTING LESSEES LISTED IN THE FOURTH SCHEDULE (2)

Applicants

And

HOUSEPROUD ESTATES LIMITED (3)

RATNASABAPAHY NARENDRAN (4)

SHEENA SUZANNE HALLS (5)

Respondents

ORDER

UPON DETERMINING THAT each of the twelve apartment leases, together known as 1 – 12 (inclusive) Hampton Court Mews, East Molesey, Surrey (the details of which are more particularly set out in the First Schedule hereto) ("Leases" and "Lease" respectively) fails to make satisfactory provision with respect to the computation of a service charge payable under the lease.

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AND UPON DETERMINING THAT the object to be achieved cannot be satisfactorily achieved unless all of the leases are varied to the same effect


AND UPON NOTING THAT the variations sought by the Applicant and set out in the Second Schedule hereto are 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

Pursuant to Section 37 and Section 35(2)(f) of the Landlord and Tenant Act 1987 **IT IS HEREBY ORDERED** that the Leases are varied in the terms set out in the Second Schedule hereto.

IT IS FURTHER ORDERED that the said variation of the Leases should take effect from the date of the original grant of the Lease in each case.

IT IS FURTHER ORDERED that subject only to the variations expressed in this Order all the clauses, covenants, conditions and provisions of each Lease (as varied if applicable) shall continue in full force and effect and the Lease shall henceforth be construed as if such amendments were originally contained herein.

AND IT IS FURTHER ORDERED that the Chief Land Registrar shall make such entries on the registers relating to the titles hereby affected or to open a new title or titles as shall be deemed appropriate for the purpose of recording and giving effect to the terms of this Order.

 26th February 2014

THE FIRST SCHEDULE

Title Number: SY746452
Property: 1 Hampton Court Mews, 11-13 Bridge Road, East Molesey
KT8 9EU
Lease Date: 19th December 2005
Term: 155 years from 1st December 2005
Parties: (1) Barratt Homes Limited
(2) Hampton Court Mews Management Company Limited
(3) Krishna Ramanthan

Title Number: SY753706
Property: 2 Hampton Court Mews, Feltham Avenue, East Molesey
KT8 9BT
Lease Date: 30th May 2006
Term: 155 years from 1st December 2005
Parties: (1) Barratt Homes Limited
(2) Hampton Court Mews Management Company Limited
(3) Penny Ann Rainbow

Title Number: SY750293
Property: 3 Hampton Court Mews, Feltham Avenue, East Molesey
KT8 9BT
Lease Date: 26th May 2006
Term: 155 years from 1st December 2005
Parties: (1) Barratt Homes Limited
(2) Hampton Court Mews Management Company Limited
(3) Karen Jane Piggott

Title Number: SY751498
Property: 4 Hampton Court Mews, Feltham Avenue, East Molesey
KT8 9BT
Lease Date: 18th May 2006
Term: 155 years from 1st December 2005
Parties: (1) Barratt Homes Limited
(2) Hampton Court Mews Management Company Limited
(3) Ratnasabapahy Narendran

Title Number: SY756832
Property: 5 Hampton Court Mews, Feltham Avenue, East Molesey
KT8 9BT
Lease Date: 29th September 2006
Term: 155 years from 1st December 2005
Parties: (1) Barratt Homes Limited
(2) Hampton Court Mews Management Company Limited
(3) Gavin Alexander Orr

Title Number: SY754228
Property: 6 Hampton Court Mews, Feltham Avenue, East Molesey
KT8 9BJ
Lease Date: 31st August 2006
Term: 155 years from 1st December 2005
Parties: (1) Barratt Homes Limited
(2) Hampton Court Mews Management Company Limited
(3) George Smith and Gillian Smith

Title Number: SY755099
Property: 7 Hampton Court Mews, Feltham Avenue, East Molesey
KT8 9BT
Lease Date: 26th June 2006
Term: 155 years from 1st December 2005
Parties: (1) Barratt Homes Limited
(2) Hampton Court Mews Management Company Limited
(3) Neal Fenwick and Christina Dann-Fenwick

Title Number: SY757488
Property: 8 Hampton Court Mews, Feltham Avenue, East Molesey
KT8 9BT
Lease Date: 6th October 2006
Term: 155 years from 1st December 2005
Parties: (1) Barratt Homes Limited
(2) Hampton Court Mews Management Company Limited
(3) Futtocksend Limited

Title Number: SY756183
Property: 9 Hampton Court Mews, Feltham Avenue, East Molesey
KT8 9BT
Lease Date: 29th September 2006
Term: 155 years from 1st December 2005
Parties: (1) Barratt Homes Limited
(2) Hampton Court Mews Management Company Limited
(3) Shamshudin Ahmedali Rantansi Datoo

Title Number: SY756087
Property: 10 Hampton Court Mews, Feltham Avenue, East Molesey
KT8 9BT
Lease Date: 6th October 2006
Term: 155 years from 1st December 2005
Parties: (1) Barratt Homes Limited
(2) Hampton Court Mews Management Company Limited
(3) Futtocksend Limited

Title Number: SY754973
Property: 11 Hampton Court Mews, Feltham Avenue, East Molesey
KT8 9BT
Lease Date: 5th September 2006
Term: 155 years from 1st December 2005
Parties: (1) Barratt Homes Limited
(2) Hampton Court Mews Management Company Limited
(3) Ratnasabapathy Narendran

Title Number: SY753194
Property: 12 Hampton Court Mews, Feltham Avenue, East Molesey
KT6 9BJ
Lease Date: 31st July 2006
Term: 155 years from 1st December 2005
Parties: (1) Barratt Homes Limited
(2) Hampton Court Mews Management Company Limited
(3) Janet Ann Poyser and Timothy Keith Poyser



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THE SECOND SCHEDULE

VARIATIONS TO LEASES OF FLATS 1 TO 12 (INCLUSIVE), HAMPTON COURT MEWS, EAST MOLESEY, KT8

The percentage figure specified in the definition of "Part A Proportion" shall be deleted from the Particulars of each and every Lease and substituted in each case with the corresponding figure set out in the Third Schedule hereto

THE THIRD SCHEDULE

Flat Number	Revised "Part A Proportion"
1	5.7886%
2	5.4814%
3	6.0458%
4	4.6940%
5	8.2145%
6	6.2921%
7	6.5624%
8	8.1837%
9	6.5624%
10	6.3539%
11	4.8532%
12	5.1341%

Dated this

day of

2013



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

Case Reference : **CHI/43UE/LIS/2013/0108**

Property : **CHURCH COURT, CHURCH STREET,
DORKING, RH4 1DS**

Applicant : **Jeremy Robson**

Respondent : **Church Court Residents Association Limited**

Representative : **Downs Solicitors**

Type of Application : **Section 27A of the Landlord and Tenant Act 1987**

Tribunal Members : **Judge D. R. Whitney LLB(Hons)
R. A. Potter FRICS**

Date of Hearing : **31st January 2014**

Date of Decision : **26th February 2014**

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DECISION

1. This is an application by Jeremy Robson the long residential leaseholder of 14 Church Court, Church Street, Dorking ("the Property"). The Respondent is the freeholder of the Property and also a company whose members are all leaseholders in Church Court.
2. The Applicant challenges the Respondents right to recover reserve funds alleging that the lease does not allow recovery of the same. Directions were given on 29th

October 2013 which required the Respondents to reply to the application and then for the Applicant to file a statement in reply. It was further directed that the matter would be dealt with by written representations unless either party objected. No objection was received and a bundle of documents as directed by the Tribunal was submitted including the original application, Respondents reply and Applicants reply to this together with supporting documents.

THE LAW

3. The relevant sections for this application are section 27A of the Landlord and Tenant Act 1987 and section 20C of the Landlord and Tenant Act 1985. IN reaching its conclusion the Tribunal had regard to these sections and the full wording of the same.

DISCUSSION

4. The Tribunal had regard to the documents filed and in particular the lease for the Property. This was dated 16th August 1995 and was subject to a variation dated 28th June 1997. The Applicant contends that there is no clause within the document which allows recovery of a reserve fund as a service charge expense or under the lease.
5. At paragraph 11 of the Respondents reply dated 26th November 2013 it was conceded that there was no express provision. The Respondent submits that under clause 3(e) the Leaseholder covenants to pay amounts mentioned in the Fourth Schedule. It appears to be suggested on behalf of the Respondents that they can impliedly collect a reserve fund as this is a proper management function.
6. The Respondent also relies upon the fact that the lease contains a dispute resolution clause providing that the determination of the Respondents surveyor shall be binding.
7. The Respondent goes on to add that the Memorandum and Articles of Association of the Company allow for a reserve fund to be collected and if the Tribunal determines that the lease does not allow recovery then this creates a conflict and that this Tribunal should refer the matter to the Courts.
8. In respect of the section 20C costs application made by the Applicant it is submitted by the respondent that if such an order is made then this could cause various issues for the Respondent which could give rise to further litigation or insolvency of the Respondent.
9. In reply the Applicant submits that any previous payments made have been on a voluntary basis and the correct way to proceed is for all the leaseholders to collectively agree to vary the leases. The Applicant submits the lease does not allow collection of a reserve fund and he disputes the Respondents interpretation of the Memorandum and Articles of association.
10. The Applicant submits that he understands the Respondent estimated its costs as being £6,000. He suggests he had no choice but to make the application and the financial stability or otherwise of the Respondent should not be a factor in determining this issue.

DECISION

11. The Tribunal had regard to its jurisdiction to deal with such applications. The Tribunal reminded itself that under such an application the starting point was to determine if any sums which the Respondent sought to recover from the Applicant were recoverable under the lease. If the Tribunal finds not then that determines matters in respect of the application under section 27A of the Landlord and Tenant Act 1987.
12. The Tribunal does express regret that in a building consisting of a relatively limited number of leaseholders where all are members of the Respondent freeholder that an application like this has been necessary.
13. The Tribunal has regard to the concession by the Respondent that there is no express covenant allowing recovery of a reserve fund in the Applicants lease. The Tribunal does not agree with the Respondents interpretation of the lease and particular clause 3(e) and the Fourth Schedule. In the Tribunals determination it cannot be implied from the words of the lease that a reserve fund may be collected as a service charge expense. Whilst the Tribunal can readily see that this may be prudent (and necessary to ensure the Respondent has funds to settle amounts as and when they fall due) the lease itself does not allow recovery. The terms of the lease are to be given a simple and clear meaning and it is inappropriate for the Tribunal to imply recovery of other amounts not expressly stated within the lease.
14. For the above reasons the Tribunal determines that under the lease (as varied) the Applicant is not required to contribute to reserve funds for the year 2011-2012 and future years under the current lease.
15. Whilst the Tribunal had regards to the history and the Respondents submissions in respect of the Company and its memorandum and articles of association this is not a matter over which this Tribunal has jurisdiction. Further the Tribunal does not have jurisdiction to refer such matters to the court.
16. In respect of the application under section 20C of the Landlord and Tenant Act 1985 the Tribunal makes such an order.
17. The Tribunal was not referred to any clause within the lease which would allow recovery of any costs. From the Tribunals review of the lease it is not satisfied that the respondent would be entitled to recover such costs in any event.
18. The Tribunal does accept that it is appropriate to consider all matters in reaching such a decision and that having regard to the financial stability of the Respondent in these circumstances may be a relevant consideration.
19. However the Tribunal notes that the Respondents have actively challenged and defended the application. The Tribunal is mindful that the Respondent employs professional managing agents and has employed solicitors. It was always open to the Respondent to concede the application. The Respondent did not but choose to pursue defending the application, including submitting a lengthy reply dealing with matters outside of the Tribunals jurisdiction.
20. For the above reasons and having regard to the fact that the Applicant has been wholly successful it is just and equitable in the Tribunals determination to make an order under section 20C preventing the Respondent recovering its costs from the Applicant as a service charge expense.

Judge David Whitney LLB(Hons)
Chair

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.