



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

Case reference : **LON/00AZ/LVT/2016/0001**

Property : **Holm Court, Le May Avenue,
London, SE12 0BD**

Applicant : **Various leaseholders as set out in
the schedule to the application**

Representative : **Foulds Solicitors**

Respondent : **Holm Court (Grove Park)
Management Company Limited**

Representative : **None**

Type of application : **For the variation of leases pursuant
to section 37 of the Landlord and
Tenant Act 1987**

Tribunal members : **Judge: N Haria
Professional member: M Taylor
FRICS**

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

Date of decision : **18 April 2016**

DECISION

Decisions of the tribunal

- (1) The tribunal does not make an order under section 37 of the Landlord and Tenant Act 1987 for the variation of the leases for the reasons detailed below.

The application

1. The Applicants seek to vary all leases listed in the Schedule of notices of leases on the official register of Freehold Title Number TGL81703 under section 37 of the Landlord and Tenant Act 1987 (“the 1987Act”).
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Application came before the Tribunal for a paper determination. The Tribunal had before it a bundle produced by the Applicants. The Tribunal received no submissions from the Respondent although the bundle from the Applicants did include a witness statement from Mr Geoffrey Willing the leaseholder of Flat 6 and a Director of the Respondent Company.

The background

4. The property which is the subject of this application is a block of 30 flats constructed circa 1993.
5. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
6. The Respondent is the Freeholder of the property and the Management Company with its members being the leaseholders.
7. The Applicants each holds long leases of the flats comprised property as per the Schedule of notices of leases on the official register of Freehold Title Number TGL81703. The specific provisions of the lease and will be referred to below, where appropriate.
8. The Applicants seek a variation of their leases to make provision for the installation of powered gates to control access to the car parking spaces to the rear of the flats at the property. There is currently no gate or other barrier controlling access at the entrance to the property.

9. The Applicant's solicitor Mr Foulds has confirmed that no submissions have been received from the Respondent. He further confirms that at the time of application to the Tribunal 23 out of the 30 leaseholders had confirmed support for the application. Subsequent to the application Mr Foulds confirms the registered leaseholders of flats 1, 9, 21 and 27 have also stated their support for the application.

The tribunal's decision

10. The Tribunal having considered the matter is satisfied that the object to be achieved by the proposed variation of leases cannot satisfactorily be achieved unless all leases are varied to the same effect.
11. The Tribunal finds that the leases as currently drafted fail to make satisfactory provision with respect to the repair or maintenance of any powered gate to the property and that the provision and maintenance of a powered gate is reasonably necessary to ensure that the occupiers of the flats within the property enjoy a reasonable standard of accommodation.
12. The object to be achieved by the proposed variation is to:
- (i) stop non- residents parking at the property,
 - (ii) to inhibit illegal or immoral use by non- residents including drug use,
 - (iii) to prevent thefts and anti-social behaviour,
 - (iv) to aid use by residents of their parking spaces,
 - (v) to prevent fly- tipping and the increased costs of rubbish removal,
 - (vi) to prevent noise nuisance by non-residents,
 - (vii) to prevent abandoned vehicles being left on the property; and
 - (viii) to improve security.
13. The Tribunal has considered the proposed deed of variation but does not consider it makes adequate provision for the powered gate as although the variation includes a provision for the recovery of the costs incurred by the Management Company in installing, maintaining, repairing and keeping in good order the gates, there is no covenant by

the Management Company to install, maintain, repair and keep in good order the gates.

14. In addition the Tribunal considers it prudent to make similar provision for the installing, maintaining, repairing and keeping in good order of any entry system used to operate the gates.
15. The Tribunal also considers it prudent to make provision for the replacement of the gates and entry system in the event that they prove to be unsuitable or financially unviable.
16. The Tribunal would point out that the definition of the Lease in Clause 1.1 of the Lease requires amendment as the leases of the property are in fact made between Wimpey Homes Holdings Limited and Holm Court (Grove Park) Management Company Limited and the named leaseholder.

Application under s.20C and refund of fees

17. In the application, the Applicants confirm that they do not seek an order under section 20C of the 1985 Act.

Name: N Haria

Date: 18 April 2016

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).

Appendix of relevant legislation

Landlord and Tenant Act 1987

Part IV

Variation of Leases

Applications relating to flats

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.

36. Application by respondent for variation of other leases.

(1) Where an application (“the original application”) is made under section 35 by any party to a lease, any other party to the lease may make an application to the court asking it, in the event of its deciding to make an order effecting any variation of the lease in pursuance of the original application, to make an order which effects a corresponding variation of each of such one or more other leases as are specified in the application.

(2) Any lease so specified

(a) must be a long lease of a flat under which the landlord is the same person as the landlord under the lease specified in the original application; but

(b) need not be a lease of a flat which is in the same building as the flat let under that lease, nor a lease drafted in terms identical to those of that lease.

(3) The grounds on which an application may be made under this section are—

(a) that each of the leases specified in the application fails to make satisfactory provision with respect to the matter or matters specified in the original application; and

(b)that, if any variation is effected in pursuance of the original application, it would be in the interests of the person making the application under this section, or in the interests of the other persons who are parties to the leases specified in that application, to have all of the leases in question (that is to say, the ones specified in that application together with the one specified in the original application) varied to the same effect.

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.

Orders varying leases

38. Orders by the court 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 court, the court 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 court with respect to the leases specified in the application under section 36,

the court 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 court with respect to the leases specified in the application, the court 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 court 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 court 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) The court shall not make an order under this section effecting any variation of a lease if it appears to the court—

- (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) The court 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) The court 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) The court 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 the court makes an order under this section varying a lease the court 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 court considers he is likely to suffer as a result of the variation.

39. Effect of orders varying leases: applications by third parties.

(1) Any variation effected by an order under section 38 shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title of those parties), whether or not they were parties to the proceedings in which the order was made or were served with a notice by virtue of section 35(5).

(2) Without prejudice to the generality of subsection (1), any variation effected by any such order shall be binding on any surety who has guaranteed the performance of any obligation varied by the order; and the surety shall accordingly be taken to have guaranteed the performance of that obligation as so varied.

(3) Where any such order has been made and a person was, by virtue of section 35(5), required to be served with a notice relating to the proceedings in which it was made, but he was not so served, he may—

(a) bring an action for damages for breach of statutory duty against the person by whom any such notice was so required to be served in respect of that person's failure to serve it;

(b) apply to the court for the cancellation or modification of the variation in question.

(4) The court may, on an application under subsection (3)(b) with respect to any variation of a lease—

(a) by order cancel that variation or modify it in such manner as is specified in the order, or

(b) make such an order as is mentioned in section 38(10) in favour of the person making the application, as it thinks fit.

(5) Where a variation is cancelled or modified under paragraph (a) of subsection (4)—

(a) the cancellation or modification shall take effect as from the date of the making of the order under that paragraph or as from such later date as may be specified in the order, and

(b) the court may by order direct that a memorandum of the cancellation or modification shall be endorsed on such documents as are specified in the order;

and, in a case where a variation is so modified, subsections (1) and (2) above shall, as from the date when the modification takes effect, apply to the variation as modified.

Applications relating to dwellings other than flats

40. Application for variation of insurance provisions of lease of dwelling other than a flat.

— (1) Any party to a long lease of a dwelling may make an application to the court for an order varying the lease, in such manner as is specified in the application, on the grounds that the lease fails to make satisfactory provision with respect to any matter relating to the insurance of the dwelling, including the recovery of the costs of such insurance.

(2) Sections 36 and 38 shall apply to an application under subsection (1) subject to the modifications specified in subsection (3).

(3) Those modifications are as follows—

(a)

in section 36—

- (i) in subsection (1), the reference to section 35 shall be read as a reference to subsection (1) above, and
- (ii) in subsection (2), any reference to a flat shall be read as a reference to a dwelling; and

(b)

in section 38—

- (i) any reference to an application under section 35 shall be read as a reference to an application under subsection (1) above, and
- (ii) any reference to an application under section 36 shall be read as a reference to an application under section 36 as applied by subsection (2) above.

[E6(4) For the purpose of this section, a long lease shall not be regarded as a long lease of a dwelling if—

(a)

the demised premises consist of three or more dwellings; or

(b)

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

(4A) Without prejudice to subsection (4), an application under subsection (1) may not be made by a person who is a tenant under a long lease of a dwelling if, by virtue of that lease and one or more other long leases of dwellings, he is also a tenant from the same landlord of at least two other dwellings.

(4B) For the purposes of subsection (4A), any tenant of a dwelling who is a body corporate shall be treated as a tenant of any other dwelling held from the same landlord which is let under a long lease to an associated company, as defined in section 20(1).]

(5) In this section “dwelling” means a dwelling other than a flat.

Landlord and Tenant Act 1985 (as amended)

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are

taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.