

12107



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

**Case Reference** : CHI/45UC/LVT/2016/0010

**Property** : Flats 1-11 The Quarterdeck, Kings Parade,  
Aldwick, Bognor Regis, West Sussex PO21  
2FZ

**Applicant** : The Quarterdeck Management Company  
Limited

**Representative** : ODT Solicitors

**Respondent** : The Lessees

**Representative** :

**Type of Application** : Landlord & Tenant Act 1987 – S. 37  
Application by majority of parties for  
variation of leases

**Tribunal Member(s)** : Mr D Banfield FRICS

**Date of Directions** : 30 January 2017

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DECISION

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## Summary of decision

**The Tribunal determines pursuant to section 37 of the Landlord and Tenant Act 1987 that each and every lease of Flats 1-11 being part of the development known as The Quarterdeck, Kings Parade, Aldwick, Bognor Regis, West Sussex PO21 2FZ be varied in the terms set out in paragraph 16 of this Decision.**

**It is further ordered that all the clauses, covenants, conditions and provisions of each lease shall continue in full force and effect and shall henceforth be construed as if such amendments were originally contained therein.**

**It is further ordered that the Chief Land Registrar shall make such entries on the registers of 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.**

### Background

1. The Applicant seeks to vary the leases of the 11 flats forming part of a development of 11 flats and 3 houses under Section 37 of the Landlord & Tenant Act 1987 ("the 1987 Act").
2. The Applicant confirms that copies of the application including the statement of case have been served on each Respondent by first class post.
3. At section 12 of the application form is a requirement that for S.37 applications *details of the number of persons consenting to or opposing the proposed variation together with evidence establishing these numbers.*
4. At paragraph 15 of the Application it is stated that at least 75% of the Respondents have provided express consent to the application and that no more than 10% have opposed the application.
5. The grounds of the claim are;
  - (i) The leases do not make provision for a reserve fund
  - (ii) The Applicant is a company formed by the leaseholders/Respondents to own and manage the freehold. They must comply with the administrative requirements of all limited companies but do not have the ability of recovering the costs of doing so.
  - (iii) The leases are defective in that they provide that each unit contributes 1/13<sup>th</sup> to the overall expenditure incurred by the Applicant. There are in fact 14 units thus not providing for 100% recovery.
6. The tribunal identified the following **issues**:

- Should the tribunal order the proposed variations to be made to the leases?
  - Do the proposed variations fall within the grounds set out in section 37(3) of the Act, that is to say, *the object to be achieved by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect.*
  - If it does make an order varying the lease, should the tribunal order any person to pay compensation to any other person (see section 38(10) to the Act).
7. The tribunal made Directions on 1 November 2016 indicating that unless an objection was received the matter would be determined by written representations, requiring the Applicant to send a copy of the Tribunal's Directions to each of the Lessees and to provide evidence of the numbers in favour or opposition to the proposed variation.
  8. The Directions also requested any party objecting to the proposals to send a statement to the Applicant and, if they wished to take an active part in the proceedings to request a copy of the bundle. The Tribunal has not received a request for an oral hearing and no objections have been made. The matter is therefore determined on the papers received from the Applicant.

### **The Evidence and submissions**

9. The Applicant states that it is the freeholder of the Building and also the management company under the leases. The Respondents are the long lessees of the 11 flats.
10. No application is made in respect of the 3 houses, not being subject to Section 37(2) of the Act, although the Applicant and the Lessees of the houses have resolved, pending a determination of the Tribunal to enter into deeds of variation applying the variations now before the Tribunal.
11. The issues are that the leases make no provision for a reserve fund without which the Applicant is unable to equalise annual service charge expenditure and provides no way of financing major works needed.
12. The Applicant is a company formed by the leaseholders/Respondents to own and manage the freehold of which their homes form part yet it has no ability to recover the costs of complying with the administrative requirements place upon it.
13. Finally, the leases are defective in that they provide that each unit contribute 1/13<sup>th</sup> to the overall expenditure incurred by the Applicant whereas there are 14 units resulting in less than 100% recovery.

14. The managing agents have historically collected a reserve fund and although no complaints have ever been received it has recently come to light that the leases do not provide for such a reserve fund.
15. The Applicant considers that the variations would not substantially prejudice any party but would in fact benefit all lessees by ensuring the efficient running of the building and the effect of the variations cannot be achieved unless all the leases are so varied.
16. The variations sought are as follows:-

(1) *At the Fourth Schedule add the following paragraph 11:*

**“Reserve Fund**

*The putting aside of such sums as shall reasonably be necessary by the Landlord and/or the Management Company (in either case whose decision shall be final) to provide reserves or sinking funds for future expenditure to be or expected to be incurred at any time in connection with the performance and observance of each and every covenant on the Landlord and/or the Management Company’s part in this Lease”*

(2) *At the Fourth Schedule add the following paragraph 12:*

**“Company Administration**

*The administration costs and expenses incurred by the Landlord and/or the Management Company in connection with them complying with the Companies Act 2006 (or any statutory re-enactment or modification thereof) to include (without limitation) the costs incurred in filing annual returns and other company documents at Companies House as well as the costs incurred in keeping up to date the company register and other internal company documents and of compiling and producing annual accounts (whether audited or otherwise) and of procuring directors liability insurance and of instructing any solicitor, surveyor accountant or other professional in any capacity connected with matters arising from the ownership or management of the Property”*

(3) *In paragraph 9 of the Particulars, the words “one thirteenth” shall be replaced with the words “one fourteenth*

17. Signed agreements from 10 lessees to the variations proposed have been exhibited to the Tribunal.

**The Law**

18. Section 37 of the Act states:

(1) *Subject to the following provisions of this section, an application may be made to [a leasehold valuation 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 leases are varied to the same effect.*

(4) *An application under this section in respect of any leases may be made by the landlord of any of the tenants under the leases.*

(5) *Any such application may 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.*

Section 38 provides that:

(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 subsection (6) and (7) make an order varying each of the leases in such manner as its specified in the order.*

Section 38 provides;

*(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 any variation would be likely to 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*

## **Decision**

19. The Tribunal is satisfied that the requisite percentage of parties, (including the landlord), consenting to the agreed lease variation has been met. Further, the Tribunal is also satisfied that not more than 10 per cent of the total parties concerned disagree with the proposals and that the statutory criteria have therefore been met.
20. The Tribunal is satisfied that the Applicant's object in seeking the lease variation cannot be met unless all subject leases are varied to the same effect and that none of the reasons for not granting an order as set out in section 38 applies.
21. The Tribunal does not accept the reasoning contained in paragraph 13 above as if each of the 14 lessees is paying 1/13<sup>th</sup> of the total service charge expenditure there is over rather than under recovery. Despite this apparent error of reasoning the Tribunal is satisfied that the variation sought is appropriate.
- 22. The Tribunal therefore makes an order varying the lease as requested and as set out in paragraph 16 above.**
23. No application for compensation has been made under section 38 of the Act and no order for compensation is therefore made.

D Banfield FRICS  
30 January 2017

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. 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.
2. 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.
3. 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.