



**Eastern Rent Assessment Panel
Leasehold Valuation Tribunal**
Case Ref: CAM/11UF /LSC/2013/0004
Case Ref: CAM/11UF /LVL/2013/0001

Property : **The Quarters, Ryemead Boulevard
High Wycombe, HP11 1GG**

Applicant : **St James Group Limited**
Represented by : **Mr Toby Watkin Counsel**

Respondents : **(1) St James Gate (High Wycombe)
Residents Company Limited**
(2) The Lessees of apartments within:
Ream Court Block A
Millers Court Block B
Woodhouse Lodge Block D1
Rollings House Block D2
Papermakers Lodge Block E

Represented by : **None save Mr Calvin Taylor CA of 1
Ream Court represented himself**

Dates of Applications : **3 January and 8 March 2013**

Type of Applications : **To determine service charges payable
– Section 27A Landlord and Tenant
Act 1985 (the Act)**
**To vary 11 leases – Section 35 Landlord and
Tenant Act 1987**

Tribunal : **Mr John Hewitt Chairman**
Ms Marina Krisko BA BSc (EST MAN)
FRICS
Mr Jeremy Sims Solicitor

**Dates and Venue of
Hearing** : **16 and 17 May 2013**
The Bellhouse Hotel, Oxford Road
Beaconsfield HP9 2XE

Date of Decision : **27 June 2013**

DECISION

Decision

1. The decision of the Tribunal is that:
 - 1.1 For the purposes of applying the service charge provisions of the leases as regards Ream Court, Millers Court and Papermakers Lodge the 'Estate' as defined in those leases is the land within Title Number BM298641;
 - 1.2 For the purposes of applying the service charge provisions of the leases as regards Woodhouse Lodge and Rollings House the 'Estate' as defined in those leases is the land within Title Numbers BM318182 and BM274575;
 - 1.3 The Applicant has not made any declaration under any of the leases by which the definition of 'Estate' set out therein has been varied or that land has been added to or removed from the Title Number(s) cited therein;
 - 1.4 An order shall be made, and is hereby made, that each of the leases of the eleven Respondents to the Section 35 Landlord and Tenant Act 1987 application shall be varied in accordance with the provisions set out in the Schedule attached to this Decision and in each case such variation shall take effect as from the date grant of the subject lease;
 - 1.5 The Applicant shall by **5pm Friday 26 July 2013** make an application to Land Registry to enter on the register of the relevant freehold interest(s) and on each leasehold interest affected a notice recording the making of the order set out in paragraph 1.4 above; and
 - 1.6 By the consent of the Second Respondent an order shall be made, and is hereby made, to the effect that none of the costs incurred by the Second Respondent in connection with these proceedings shall be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the Respondent lessees.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the volume number and the page number of the hearing files provided to us for use at the hearings.

Background

2. These two separate applications are so closely inter-related that it is both helpful and convenient for the determination of them to be set out in one Decision.
3. The principle issue in the first application – made pursuant to section 27A Landlord and Tenant Act 1985 (the 1985 Act) concerns the

definition of the expression 'the Estate' which is critical in determining what expenditure may properly fall within the service charge regime and be shared amongst the relevant lessees of that Estate.

4. The principle issue in the second application is the variation of 11 leases to correct errors, principally as regards Title Numbers and the definition of 'the Estate' in order to facilitate the computation and hence recovery of service charges.
5. The subject five blocks of apartments are located around the periphery of a small retail park and its attendant car parking area. Evidently the scheme was originally styled or marketed as 'The Quarters' or 'Point25'. In all there are 99 apartments. Blocks A, B and E are of a similar architectural style laid out over several floors with underground car parking, communal pumped water supply and each has 2 lifts. Blocks D1 and D2 are of a quite different style being laid out on two floors (with a part third floor on one block) with no lifts or underground car parking and with each apartment having its own individual water meter.
6. The leases of Blocks A, B and E were granted between 25 January and 28 April 2006 and the leases of Blocks D1 and D2 were granted between 21 November 2007 and 28 March 2008. In most, if not all, cases the leases were sold off plan pursuant to agreements for lease.
7. Each lessee is obliged to become a member of the Second Respondent (the Residents Company); the leases oblige the Residents Company to effect buildings insurance, to carry out repairs and maintenance and to provide other services as set out in some detail. The plan was that at some time control of the Residents Company will pass to the lessees, but at the moment it is still controlled by the Applicant developer (St James) which appoints the directors.
8. Originally, and due to an error in understanding on the part of the St James and/or the Residents Company, all five blocks were treated as if they were one 'Estate' and service charges have been apportioned accordingly. In consequence the lessees of Blocks D1 and D2 are liable to contribute to the costs of the repairs and maintenance of the lifts, underground car park areas and the communal water supply in Blocks A, B and E even though they do not have similar facilities and pay their own water charges direct to the utility company. This was perceived to be unfair and contrary to the original plans of the developer. Eventually and after a great deal of investigation and detailed consideration of all 99 leases and the scheme, St James contends that there are two separate 'Estates' one for blocks A, B and E and one for D1 and D2.
9. Pending sorting this out St James has subsidised the service charge account so that the lessees of Blocks D1 and D2 have not actually been asked to contribute to costs which St James has deemed unfair. In consequence the lessees of blocks A, B and E have paid a little less than otherwise would have been payable. St James has stated that if the

outcome of the section 27A application is successful, from its point of view, the service charge regime will be put on a proper and fair footing going forward, which is its principal concern. St James says it will not seek to re-open prior service charge accounts or attempt to recoup from the lessees of Blocks A, B and E the underpayments made by those lessees since 2006. However, given the consequent adjustment to percentage contributions of those lessees they will, in the future, be marginally higher than hitherto.

10. All 99 lessees were notified of the section 27A application and invited to indicate whether they wished to be Participating Respondents. Directions were given for the Participating Respondents to serve a statement of case and for St James to reply to it. In the event only Mr Taylor of 1 Ream Court, a Ms C Knowles and a Ms Cherry had each served a statement of case. Mr Taylor opposed the application. Ms Knowles supported the application and Ms Cherry has subsequently withdrawn from participation.
11. As regards the section 35 application none of the 11 lessees whose leases were proposed to be varied served has a statement of case or raised any opposition or objection to the application. We were told that some of them had already indicated to St James a willingness to execute a deed of variation if required.

Inspection and Hearing

12. On the morning of 16 May 2013 the tribunal had the benefit of an inspection of the retail park and the adjacent residential development. Present was Mr Taylor, legal representatives of St James and representatives of the managing agents, Hallmark Property Management.
13. The hearing commenced at about 11:15. St James was represented by Mr Watkin and Mr Taylor appeared in person to represent himself.
14. Mr Watkin opened his case. He called Ms Natalie Minott and Mr Thomas Piper, both of whom are solicitors with Eversheds, to give evidence. Both did so and both were cross-examined by Mr Taylor. Their witness statements are in the files as follows:

Ms Minott [1/103]

Mr Piper [1/105], [4/73], [5/1] and [5/78]

Mr Taylor had not served a separate witness statement but relied upon his statement of case which is at [1/49] which he stated was true. Mr Taylor was cross-examined.

15. Following conclusion of the evidence both Mr Watkin and Mr Taylor made final submissions to us.

16. The hearing closed at 17:30. Mr Taylor told us that he had no interest in the section 35 application and did not propose to attend the following day for the hearing of that application.
17. The section 35 application was heard on 17 May 2013 when Mr Watkin presented the case for St James.

Background facts not in dispute.

The Land Registry titles

18. A very large parcel of land in High Wycombe, very possibly a brown field site formerly used for commercial and/or water utility purposes became available for development. In or about 2002 Kennet Properties Limited obtained a planning permission for a scheme known as Wycombe March Redevelopment. The Master Phase 1 Site Plan is at [1/86].

Title was registered with Title Number BM274575 [2/19]. All or the material part of this title was acquired by Kennet Properties Limited.

Commencing around November 2004 a series of transfers of part were executed. In consequence now only a very small parcel of land remains in Title Number MB274575. It is shown on the Title Plan at [2/24] and comprises a small area in the south east corner of the site upon which sits a hall or meeting room, presently unoccupied.

19. Material for present purposes Title Number BM298641 [2/1] was created as a result of a transfer of part dated 19 November 2004 to which the parties were Kennet Properties Limited and St James. On 3 February 2005 St James was registered as proprietor. The Title Plan is at [2/12]. It can be seen that the title originally comprised 4 separate parcels of land. These were blocks A, B, C and E and their immediate environs. Subsequently block C, which comprises affordable housing, was taken out of this title and registered with a separate Title Number.
20. Evidently prior to the transfer to St James, Kennet Properties Limited began to enter into a series of agreements for lease of apartments evidently commencing with block B. All of the leases in these 3 blocks were granted by St James between January and April 2006. Most of the leases were registered at Land Registry during 2006 and 2007 with the final lease being registered on 4 June 2008.
21. Also material for present purposes Title Number BM318182 [2/13] was created as a result of a transfer of part dated 7 November 2006 to which the parties were Kennet Properties Limited and St James. On 30 November 2006 St James was registered at the proprietor. The Title Plan is at [2/17]. It shows one parcel of land which comprises blocks D1 and D2 and their immediate environs.

All of the leases in D1 and D2 were granted in November 2007, save for one – 7 Rollings House which was not granted until 28 March 2008.

22. We pause to observe and emphasise that all of the leases in blocks A, B and E had been granted by April 2006, some 6 months before November 2006 when St James acquired the title to the land on which it developed D1 and D2.
23. The acquisition of the site and the subsequent conveyancing was undertaken by solicitors acting for St James, Laytons Solicitors. Mr Piper of Eversheds, an experienced property transaction solicitor, has undertaken a full and detailed study of the conveyancing history and some of the transactions. In his witness statement at [1/111] in the context of explaining an error he makes the observation:

"It is another element in the very messy conveyancing that appears to have occurred in this case."

From what we have seen that is a relatively understated and mild observation and we consider a more robust description would be apposite.

24. By the time that the leases began to be granted reference in them should have been made to the 'new' Title Numbers, BM298641 for blocks A, B and E and BM318182 for blocks D1 and D2. This did not occur as it should have done. This had led to a deal of confusion and complexity
25. Most of the leases of apartments in blocks A, B and E define 'the Estate' as:

"The Lessor's estate being the land comprised in title number BM298641 on the 16th February 2005 subject to variation from time to time by the addition of all or any other land or lands which the Lessor shall at any time within 25 years of the date hereof declare to be part of the Estate and the removal of any land or lands which shall not be developed by the Lessor"

There are 4 exceptions, 4, 10, 21 and 23 Ream Court all of which instead refer to:

"...title number BM274575 on the 15th June 2004 ..."

26. The leases of apartments in blocks D1 and D2 show a wider range of variations, some with a number of manuscript amendments purporting to correct errors.

All but 7 of these leases define 'the Estate' as:

"The Lessor's estate being the land comprised in title number BM318182 and BM274575 subject to variation from time to time by the addition of all or any other land or lands which the Lessor shall at any time within 25 years of the

date hereof declare to be part of the Estate and the removal of any land or lands which shall not be developed by the Lessor”

The errors in the 7 ‘erroneous leases’ vary in extent. Also some of them have had incorrect Title Numbers inserted into boxes LR1 and LR2. Land Registration Rules require that specified particulars must be set out in designated boxes at the front of each lease. The information so set out is generally referred to as ‘the prescribed particulars’. We shall return to the implications of this shortly.

27. Also material is the definition of ‘Manager’s Land’ to be found in all of the leases in the following terms:

“The area of land within the Estate from time to time provided for the communal use and enjoyment of residents of Apartments and/or Houses on the Estate (but subject to reduction or variation from time to time) together with any other area adjacent to it which is designated from time to time as part of the Manager’s Land including (but not limited to) any gate lodge and entrance gates and other security gates any security cameras and their supports and all boundary walls railings fences Common Parts Roads Accessways and Footpaths and the car parking areas including the Parking Space and the Visitor’s Parking Spaces within the Estate and the Refuse Areas and Cycle Stores and the landscaped areas and other parcels of land (if any) on the Estate that are nominated from time to time by the Lessor as being part of the Manager’s Land TOGETHER WITH the Transmission Media serving more than one property on the Estate”

The leases grant rights in common to use the areas within the Manager’s Land designated as Refuse Areas, rights in common to pass and repass on foot for the purposes of access to and egress from the demised premises and the Refuse Areas and Cycle Stores and the Parking Space and rights in common to use and enjoy for quiet relaxation those parts of the Manager’s Land designed for such use and so made available.

28. The definition of ‘the Estate’ in each lease is critical to establish the service charge percentage contribution payable by the lessee. The Sixth Schedule to each lease in blocks A, B and E provides:

“Estate Service Charge

The proportion shall be calculated using the formula:-

$$\frac{A}{B}$$

*where A = the net internal floor area of the Premises, and
B = the aggregate of the net internal floor areas of all*

Apartments and Houses on the Estate (including the Premises) which are physically complete ...”

“Apartments Service Charge

$\frac{C}{D}$

*where C = the net internal floor area of the Premises, and
D = the aggregate of the net internal floor areas of all
Apartments on the Estate (including the Premises) which
are physically complete ...”*

The equivalent provision in the leases of Blocks D1 and D2 is virtually the same save that as regards the Estate Service Charge there is no reference to “*and Houses*”. In fact the only houses within the wider development are in Block C with which we are not concerned.

29. Before leaving the titles a couple of points should be noted.
30. First, that in respect of Title Number BM 298641 (the Blocks A, B and E title) entry 6 in the Charges register reads [2/2]:

“6. The land is subject to the rights granted by leases of flats lying to the south of the land in this title within St James Gate for a term of 999 years from 1 January 2004

It was not in dispute that the “*land lying to the south*” is a reference to the land on which blocks D1 and D2 sit.

It was also not in dispute that there was no corresponding provision in the Charges register for Title Number BM318182.

31. Secondly in Title Number BM312205, the leasehold title for 10 Ream Court, records in the Property Register [2/69]:

“Note: the rights granted by the lease are included in the registration only so far as they are granted over the land now or formerly in title number LT298641:

It was not in dispute that reference to ‘LT’ was probably a typographical error and that it had been intended to refer to ‘BM’.

The Section 27A Application – the issue

32. The sole issue in the section 27A application which we have to determine is whether or not the Applicant has exercised the option in the definition of the ‘Estate’ in the apartment leases and made a declaration to add additional land, namely that comprised in Title Number BM318182 – blocks D2 and D2.
33. The Applicant says it has not. Mr Taylor says it has. Both Mr Watkin and Mr Taylor agree that the exercise of such an option and the making of such a declaration requires a degree of formality and notification and communication of it to those persons affected by it. It was also agreed

that the making of such a declaration involves and affects property rights of St James, the Residents Company and those individual lessees affected.

Findings of fact

34. We find that when the development got underway the original developer, Kennet, had in mind one Estate, that is to say, one that was covered by Title Number BM274575. In November 2004 and in consequence of the transfer of part and the creation of Title Number BM298641 St James had in mind one estate for that title which then was to comprise blocks A,B,C and E. Later block C was removed from the title. Hence this Title Number was (or should have been) cited in all the leases granted by St James. Given the size of the Kennet's land holding and the possibility of St James acquiring adjacent or nearby parcels of land to develop later, the draftsman of the leases included in the definition of the Estate the option to adjust the extent of the Estate by the making of a declaration to add land to it or remove from it land which St James had not developed. We restate that at the time when the leases of blocks A, B and E were granted St James had not acquired the land on which it subsequently developed blocks D1 and D2
35. Kennet Properties granted a series of agreements for lease before it executed the transfer of part to St James of that parcel of land which was eventually registered with Title Number BM298641. Those agreements for lease (and any draft lease appended to them) may well properly have referred to Title Number BM274575. However in consequence of the transfer of part when the leases came to be granted by St James they should have referred to Title Number BM298641 in the definition of the Estate.
36. Whilst Kennet Properties had not, so far as we are aware, entered into any agreements for lease of apartments in blocks D1 and D2 it is clear to us that the intention of St James was that the Estate for those blocks was to be Title Number BM318182 and BM274575, the latter comprising the small undeveloped rump of the once much larger parcel of land.
37. Mr Piper explained that in all probability a senior property lawyer within Laytons acting for St James would have been involved in the acquisition of the development and the strategy to sell off the long leases of the apartments and may well have assisted with drafting precedent documents to comprise a sales pack to submit to those acting for prospective purchasers. The individual transactions, sometimes referred to as plot sales, are more than likely than not to have been handled by a team of para-legals, possibly under some level of supervision. We accept that evidence which strikes a chord with our experience. Mr piper went on to tell us that he had carried out or supervised the carrying out of a very substantial review of each of the 99 leases and a number of transactions files. Mr Piper took us through some sample transactions files and told us of his conclusion that some of the conveyancing was incoherent. It was plain that some of the

persons handling some of the transactions did not fully understand the title history and some responses to questions from purchasers' solicitors were simply wrong. We accept that evidence. In consequence, we can see readily how it has come about that incorrect Title Numbers have been adopted and used and that in some cases late manuscript amendments have been made to try and correct an error; sometimes successfully and sometimes not. Mr Piper also told us, and we accept, that there was nothing that was seen by him or drawn to his attention in the course of the detailed review supervised by him to suggest that St James had made a declaration with regard to the definition of Estate in the leases of apartments within blocks A, B and E which extended that estate to include Title Number BM318182 and/or blocks D1 and D2.

The gist of Mr Taylor's case

38. It is against the above background that we have to consider the case put forward by Mr Taylor. We are grateful to Mr Taylor for the clear way in which he has put his case both in writing [1/49] and in his oral submissions to us. During the course of the hearing Mr Taylor felt able to modify or withdraw some of the points made in his written statement of case.
39. In support of his case that St James had made and communicated a formal and explicit statement or announcement such that it had made a declaration to add land to the definition of Estate in the leases of blocks A, B and E, by adding the title for blocks D1 and D2 Mr Taylor relied upon the following:

Declaration to Land Registry

40. The fact that the charges register of Title Number BM298641 expressly states that the title is subject to the rights granted by the leases of apartments in blocks D1 and D2. Mr Taylor submitted that this was evidence that a declaration had been made and that St James was keen to ensure that the rights granted to the lessees of blocks D1 and D2 were properly noted on the title of blocks A, B and E. He said that if the material declaration had not been made St James would not have requested Land Registry to cause the entry on the title to be made.
41. Mr Piper explained in evidence how that entry came about. The date of the entry on the register is the date on which the first three leases of apartments in block D1 were lodged at Land Registry for registration. Mr Piper said that the subject three leases (and indeed all of the non-defective leases of apartments in D1 and D2) did not contain any operative clause which in law granted rights over BM298641. He said that the entry came about because of an entry in the Prescribed Clauses in the leases.
42. Land Registration Rules require that leases submitted to Land Registry for registration must comply with certain rules, including completion of a number of boxes which are generically known as the Prescribed Clauses. This information is required by Land Registry for ease of its

administration and so that key information required for registration purposes is readily identified in short form at the commencement of the document. In essence it saves the Land Registry officer having to read the whole of might may well be a lengthy document to ascertain information necessary for registration purposes.

43. The Prescribed Clauses run to 14 boxes (numbered LR1 to LR14 each of which has to be completed if appropriate.
LR1 is the box for the date of the lease.
LR2 relates to Title numbers and is sub-divided into two parts:

*“LR2.1 Landlord’s title number(s)
(Title number out of which the lease is granted. Leave blank if not registered)*

*LR2.2 Other title numbers
(Existing title number(s) against which entries of matters referred to in LR9, LR10, LR11 and LR13 are to be made)*

LR9 concerns rights of acquisition;
LR10 concerns restrictive covenants granted by the landlord over other land;
LR 11 concerns easements: and
LR 13 concerns applications for standard forms of restriction.

Mr Piper explained to us that if the lease had granted rights over other land the Title Number affected should be cited in box LR2.2. Mr Piper said that in his experience Land Registry would not usually carry out an independent check to see if the lease did actually confer such rights, but as a matter of administration would record on the property register that a claim to such rights had been made. In the present case of course by the time of the registration of the blocks D1 and D2 leases, St James was the registered proprietor of both titles BM318182 and BM298641 and so if a Land Registry official had made a check it may not have raised an obvious cause for concern.

44. The evidence of Mr Piper was to the effect that boxes LR2.2 were completed by St James’ property lawyer or para-legal in error and that in consequence of that error Land Registry caused the subject entry to be made on Title Number BM298641.
45. We accept the evidence of Mr Piper on this issue. It strikes a chord with the experience and expertise of members of the tribunal. We are reinforced in this finding because upon a proper review of the three leases in question, they do not, as a matter of law, grant any rights over Title Number BM298641.
46. In these circumstances we reject Mr Taylor’s submission that the fact of the entry in the charges register of Title Number BM298641 is evidence of St James having made and communicated the material declaration.

Declaration to Companies House

47. Mr Taylor drew to our attention annual accounts filed by the Residents Company at Companies House. He said that the Residents Company had not yet been handed over to the lessees and that it was still controlled by St James which had to take responsibility for what it did. Mr Taylor said (and it was not in dispute) that the accounts for the year ended 30 June 2011 had been sent to all lessees and that they stated:

“The company’s principal activity is that of the management and maintenance of the estate at The Quarters, High Wycombe.”

Mr Taylor submitted that this showed that the Residents Company, and hence St James, recognised there was one estate and thus a declaration to that effect must have been made by St James sometime previously.

48. Mr Watkin submitted that the accounts were not directed to defining the ‘Estate’ and were not created for that purpose or for the purpose of communicating a formal declaration or decision to lessees. He also said that the wording was equally consistent with the non-existence or existence of a declaration.
49. We prefer the submissions of Mr Watkin. We observe that accounts have to be filed at Companies House in compliance with certain rules, one of which is a brief summary of the principal activities undertaken. The wording adopted is not limited to there being one estate. If, as a fact, there are two separate estates at The Quarters administered by the Residents Company the wording adopted is an equally apposite brief description of those activities.
50. We reject Mr Taylor’s submission that the accounts relied upon demonstrate the fact that the material declaration has been made and communicated by St James.

Declaration via request for directors

51. Mr Taylor relied upon a letter sent by St James to all leaseholders in August 2008 which invited nominations for the appointment of directors to the Residents Company. The letter included the statement:

“We are writing to confirm that the Development, The Quarters, is complete.”

Mr Taylor submitted that this statement was consistent only with their being one development and hence one estate. He said that the words ‘estate’ and ‘development’ are used interchangeably.

52. Mr Watkin submitted that there is nothing inconsistent with the Residents Company having the responsibility to manage two separate estates within the overall development known as The Quarters and it being referred to as such.

53. We were not persuaded by Mr Taylor's argument that this letter amounts to a formal declaration or that it is evidence that such a declaration must have been made sometime previously.

Declaration through common management structure/custom and practice/developer communications

54. It is convenient to take these together. Mr Taylor submitted that St James and/or the Residents Company had set up one management structure, had one pool of service charges and operated as if there were one Estate. Mr Taylor relied upon numerous documents, some historic to support his case that St James and others controlled or appointed by St James regularly regarded the development as one single Estate and that words such the development/the Estate/The Quarters were used interchangeably.

He said this was evidence that a declaration had been made and was communicated by way of a series of service charge demands and accounts.

55. Mr Watkin acknowledged that whilst the submission was not without some merit as far as it goes, it does not amount to evidence that St James has in fact brought such an intention into effect by making a formal declaration.
56. Mr Watkin said that conduct relied upon was equally consistent with St James and its advisers being under a mistake as to the true meaning and proper construction of the leases in question until quite recently. Mr Watkin submitted that the fact of such a mistake did not amount to the making of a declaration and it did not amount to evidence of such a declaration.
57. We prefer the submissions made by Mr Watkin. They strike a chord with us. We find that St James and its advisers were under a misapprehension and although at times they may have acted as if there were one Estate, such conduct is not evidence of the making of a formal declaration. Mr Taylor confirmed that no issues of estoppel arose. In these circumstances we find that having had the mistake drawn to its attention it is open to St James to revert and to operate on the basis of two separate estates.

Previous LVT proceedings

58. Mr Taylor drew attention to the previous proceedings and to submissions made on behalf of St James. To some extent there is an overlap with the points made in paragraphs 54 to 57 above.
59. The previous proceedings were an application to vary leases and were made pursuant to section 35 Landlord and Tenant Act 1987. At the time of those proceedings St James was under the mistaken impression as to the true meaning of the leases and that focus on the title structure only came about as a result of Mr Hewitt (who chaired the previous tribunal as well as this one) asking material questions. By letter dated 4 July

2012 [1/68] St James wrote to all lessees commenting on the outcome of those proceedings and raised and explained the definition of 'the Estate' point, the errors in some of the block D leases and made proposals to vary the defective leases. Mr Taylor placed reliance in this letter in support of his case. He submitted that if St James did not believe that a declaration had been then the only type of action they should have taken in July 2012 would have been one seeking clarification of the leases, rather than attempting to amend them. He thus concluded that St James knew in July 2012 that they had made a declaration previously. Mr Watkin submitted that the July 2012 letter was simply to propose a method of correction. If a declaration had been made previously it could not be undone at all and certainly not by deleting a Title Number from certain leases. He further submitted that the letter is inconsistent with St James having made a declaration sometime previously.

60. In the event the previous tribunal concluded that it did not have jurisdiction to make the order sought and so there was no determination of an issue. Thus there is no question of issue estoppel arising. We are satisfied that nothing was said in the previous proceedings which can amount to St James making and communicating any declaration and nor was anything done or said which amounts to evidence that such a declaration was made on some earlier occasion. Similarly we prefer the submissions of Mr Watkin on the effect of the July 2012 letter and we find that it does not evidence that St James had made a declaration previously.

Discussion

61. In the light of the foregoing we are satisfied that there is no evidence before us upon which we can rely with any confidence that St James has made any declaration to add to or remove land from the definition of Estate as used in the leases granted out of Title Number BM298641.
62. Accordingly for the purposes of calculating the percentage contributions to service charges payable by the lessees of blocks A, B and E, the Estate is to be regarded as that parcel of land the subject of Title Number BM298641.
63. For similar reasons and as explained above as regards blocks D1 and D2 the Estate is to be regarded as those parcels of land the subject of Title Numbers BM318182 and BM274575.

The section 20C Application – limitation of costs of the proceedings

64. Mr Taylor made an application under s20C of the Act with regard to the Residents Company's costs incurred or to be incurred in connection with these proceedings and an order was sought that those costs ought not be regarded as relevant costs in determining the amount of any service charge payable by the lessees.

65. Mr Watkin told us that he appeared for the Residents Company and he was instructed to consent to such an order being made. We have therefore made such an order.
66. In the light of the above Mr Taylor told us that he wished to withdraw his application for a costs order.

Reimbursement of Fees

67. No application was made for the reimbursement of fees paid to the tribunal in connection with these proceedings.

The section 35 application

68. The second application before us is made pursuant to section 35 Landlord and Tenant Act 1987. St James seeks an order that 11 leases be varied to correct drafting errors which impact on the computation of and the amount of the service charges payable by the lessees of those leases.
69. None of the 11 lessees concerned has taken any part in these proceedings or taken any objection to the variation of their respective leases.
70. The relevant statutory provisions are set out in the Appendix to this Decision.
71. As explained above Mr Piper of Eversheds has supervised the task of checking all 99 leases of apartments within the two Estates within the overall development. Mr Piper has commented upon the messy or incoherent drafting of some parts of some of those leases. He has identified 11 leases which contain material errors, mostly within the definition of the Estate in those leases. Those errors impact directly upon the percentage contributions to the service charges payable by the lessee and hence to amount recoverable by the Residents Company; and also on the computation of the amount of service charges payable.
72. We are satisfied that the Applicant has made out its case that the application falls within the grounds set out in section 35(2)(e) and (f) of the Act.
73. We are also satisfied that this is an appropriate case in which we should exercise the wide discretion conferred upon us by section 38 of the Act.
74. We are also satisfied that it is appropriate that the 11 leases in question shall be varied to the extent set out in the Schedule to this Decision and that in each case the variation shall take effect as from the date of grant the lease.
75. The leases so varied will reflect accurately the service charge regime to be adopted and will avoid any future doubt or uncertainty as to the basis on which the service charge contributions are to be calculated.

76. We have considered it sensible to include a provision requiring St James to make applications to Land Registry seeking the entry of notices on the relevant titles drawing attention to this order so that in the event of any future dealings with either the freehold title or the leasehold title a person undertaking a title search will be on notice of the fact of this order.

The Appendix
The Statutory Provisions
Landlord and Tenant Act 1987

Section 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 a leasehold valuation 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 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.
- (7) ...
- (8) In this section “service charge” has the meaning given by section 18(1) of the 1985 Act.

38. Orders 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 tribunal, the tribunal 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 [tribunal] with respect to the leases specified in the application under section 36, the tribunal 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 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.
- (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 tribunal 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 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.
- (7) A tribunal 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) 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 court considers he is likely to suffer as a result of the variation.

.....
John Hewitt
Chairman
27 June 2013

Schedule of lease amendments,
effective from the date of the grant of each lease identified below

Part 1: Properties within Rollings House & Woodhouse Lodge

	Property address (and original plot number)	Leasehold title number	Date of lease	LR2.1	LR2.2	Title Numbers, p. 4 of lease	Definition of "Estate" (clause 1.1), p. 6 of lease	Demise (Clause 2), page 10 of lease
1.	4 Rollings House, Wrights Meadow Road, High Wycombe HP11 1NQ (Plot D2)	BM330884	9.11.07	No change	Amend stated title number to "None"	Delete reference to title number "BM298641" and add reference to title number "BM274575"	Replace definition of "Estate" with "The Lessor's estate being the land comprised in title numbers BM318182 and BM274575 subject to variation from time to time by the addition of all or any other land or lands which the Lessor shall at any time within 25 years of the date hereof declare to be part of the Estate and the removal of any land or lands which shall not be developed by the Lessor"	Replace all title numbers in clause 2 with "BM318182 and BM274575"
2.	2 Rollings House, Wrights Meadow Road, High Wycombe HP11 1NQ (Plot D6)	BM330969	2.11.07	Amend stated title numbers to "BM318182"	Amend stated title number to "None"	Replace stated title numbers with "BM318182 and BM274575"	Replace definition of "Estate" with "The Lessor's estate being the land comprised in title numbers BM318182 and BM274575 subject to variation from time to time by the addition of all or any other land or lands which the Lessor shall at any time within 25 years of the date hereof declare to be part of the Estate and the removal of any land or lands which shall not be developed by the Lessor"	Replace all title numbers in clause 2 with "BM318182 and BM274575"

	Property address (and original plot number)	Leasehold title number	Date of lease	LR2.1	LR2.2	Title Numbers, p. 4 of lease	Definition of "Estate" (clause 1.1), p. 6 of lease	Demise (Clause 2), page 10 of lease
3.	12 Rollings House, Wrights Meadow Road, High Wycombe HP11 1NQ (Plot D7)	BM330978	7.11.07	no change	Amend stated title number to "None"	Delete reference to title number "BM298641" and add reference to title number "BM274575"	Replace definition of "Estate" with "The Lessor's estate being the land comprised in title numbers BM318182 and BM274575 subject to variation from time to time by the addition of all or any other land or lands which the Lessor shall at any time within 25 years of the date hereof declare to be part of the Estate and the removal of any land or lands which shall not be developed by the Lessor"	Replace all title numbers in clause 2 with "BM318182 and BM274575"
4.	7 Rollings House, Wrights Meadow Road, High Wycombe HP11 1NQ (Plot D8)	BM334493	28.3.08	no change	No change	Replace stated title numbers with "BM318182 and BM274575"	Replace definition of "Estate" with "The Lessor's estate being the land comprised in title numbers BM318182 and BM274575 subject to variation from time to time by the addition of all or any other land or lands which the Lessor shall at any time within 25 years of the date hereof declare to be part of the Estate and the removal of any land or lands which shall not be developed by the Lessor"	Replace all title numbers in clause 2 with "BM318182 and BM274575"
5.	11 Rollings House, Wrights Meadow Road, High Wycombe HP11 1NQ (Plot D12)	BM336542	9.11.07	no change	Amend stated title number to "None"	Replace stated title numbers with "BM318182 and BM274575"	Replace definition of "Estate" with "The Lessor's estate being the land comprised in title numbers BM318182 and BM274575 subject to variation from time to time by the addition of all or any other land or lands which the Lessor shall at any time within 25 years of the date hereof declare to be part of the Estate and the removal of any land or lands which shall not be developed by the Lessor"	Replace all title numbers in clause 2 with "BM318182 and BM274575"

	Property address (and original plot number)	Leasehold title number	Date of lease	LR2.1	LR2.2	Title Numbers, p. 4 of lease	Definition of "Estate" (clause 1.1), p. 6 of lease	Demise (Clause 2), page 10 of lease
6.	15 Rollings House, Wrights Meadow Road, High Wycombe HP11 1NQ (Plot D14)	BM331252	2.11.07	no change	Amend stated title number to "None"	Delete reference to title number "BM298641" and add reference to title number "BM274575"	Replace definition of "Estate" with "The Lessor's estate being the land comprised in title numbers BM318182 and BM274575 subject to variation from time to time by the addition of all or any other land or lands which the Lessor shall at any time within 25 years of the date hereof declare to be part of the Estate and the removal of any land or lands which shall not be developed by the Lessor"	Replace all title numbers in clause 2 with "BM318182 and BM274575"
7.	6 Woodhouse Lodge, Wrights Meadow Road, High Wycombe HP11 1NW (Plot D18)	BM331066	16.11.07	no change	Amend stated title number to "None"	Delete reference to title number "BM298641" and add reference to title number "BM274575"	Replace definition of "Estate" with "The Lessor's estate being the land comprised in title numbers BM318182 and BM274575 subject to variation from time to time by the addition of all or any other land or lands which the Lessor shall at any time within 25 years of the date hereof declare to be part of the Estate and the removal of any land or lands which shall not be developed by the Lessor"	Replace all title numbers in clause 2 with "BM318182 and BM274575"

Part 2: Properties within Ream Court

	Property address (and original plot number)	Leasehold title number	Date of Lease	Title Numbers, Page 1 of lease	Estate definition (Clause 1.1), page 3 of lease	Demise (Clause 2), pages 7-8 of lease
8.	4 Ream Court, Ryemead Boulevard, High Wycombe HP11 1GG (Plot A4)	BM315597	12.5.05	Replace stated Title number with "BM298641"	Amend definition of "Estate" to read " <i>The Lessor's estate being the land comprised in title number BM298641 on 16 February 2005 subject to variation from time to time by the addition of all or any other land or lands which the Lessor shall at any time within 25 years of the date hereof declare to be part of the Estate and the removal of any land or lands which shall not be developed by the Lessor</i> "	Replace all stated title numbers within Clause 2 with title number "BM298641"
9.	10 Ream Court, Ryemead Boulevard, High Wycombe HP11 1GG (Plot A10)	BM312205	15.5.06	Replace stated Title number with "BM298641"	Amend definition of "Estate" to read " <i>The Lessor's estate being the land comprised in title number BM298641 on 16 February 2005 subject to variation from time to time by the addition of all or any other land or lands which the Lessor shall at any time within 25 years of the date hereof declare to be part of the Estate and the removal of any land or lands which shall not be developed by the Lessor</i> "	Replace all stated title numbers within Clause 2 with title number "BM298641"
10.	21 Ream Court, Ryemead Boulevard, High Wycombe HP11 1GG (Plot A20)	BM314201	24.4.06	no change	Amend definition of "Estate" to read " <i>The Lessor's estate being the land comprised in title number BM298641 on 16 February 2005 subject to variation from time to time by the addition of all or any other land or lands which the Lessor shall at any time within 25 years of the date hereof declare to be part of the Estate and the removal of any land or lands which shall not be developed by the Lessor</i> "	Replace all stated title numbers within Clause 2 with title number "BM298641"

11.	23 Ream Court, Ryemead Boulevard, High Wycombe HP11 1GG (Plot A22)	BM320854	13.4.06	Replace stated Title number with "BM298641"	Amend definition of "Estate" to read " <i>The Lessor's estate being the land comprised in title number BM298641 on 16 February 2005 subject to variation from time to time by the addition of all or any other land or lands which the Lessor shall at any time within 25 years of the date hereof declare to be part of the Estate and the removal of any land or lands which shall not be developed by the Lessor</i> "	Replace all stated title numbers within Clause 2 with title number "BM298641"
-----	--	----------	---------	---	---	---