

10243



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

**Case Reference** : CHI/21UC/LVT/2014/0007

**Property** : 56 Hamilton Quay, Sovereign Harbour,  
Eastbourne, BN23 5PZ

**Applicant** : Hamilton Quay Management Co Ltd

**Respondent** : Mrs Clement and Mr Kelly

**Type of Application** : Lease variation – LTA 1987

**Tribunal Members** : Judge D Dovar  
Mr N I Robinson FRICS

**Date of Decision** : 18th November 2014

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**DECISION**

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1. This is a determination of a preliminary issue as to whether the town houses in the development at Hamilton Quay are 'flats' for the purposes of the provisions enabling applications for lease variations under ss35-8 of the Landlord and Tenant Act 1987 ('the 1987 Act').
2. On 22<sup>nd</sup> July 2014, the Tribunal gave directions which required the Applicant to serve the application on the Respondents. It also provided for any Respondent to submit representations by 25<sup>th</sup> September 2014; no submissions were made. Finally, the Tribunal gave notice that this issue would be dealt with without a hearing under Rule 31 of the Tribunal Procedure Rules unless any party objected; no objections were made.

#### **Site View / layout and construction of the development**

3. The Tribunal inspected the Hamilton Quay development which is a residential development comprising 74 flats and 24 houses. Along with a road and walkway, the houses and flats all sit on a concrete slab (described by the Applicant as a podium). Underneath the podium and therefore partly underneath the flats and houses is car parking and storage space.
4. The residential units are split so that there are thirty seven flats and twelve houses either side of the road in a continuous terrace comprising a central block of flats with six houses either side of the central flats, which are bookended with further flats at either end.

5. As stated above, the houses and flats are all built off the podium slab, although all the properties have staircases piercing the podium slab with the flats having some store rooms and the houses both garages and storage areas below.
6. Whilst the flats over sail the ground level car parking, the houses in general terms continue down to the ground level floor slab. However, the front walls of the houses at above podium level are not directly above the walls visible in the car park, below the podium, but slightly offset and it could also be seen that the whilst the walls in the car park are straight, at podium level the front walls of the houses step in and out, altering the design and footprint at that level. Similar changes could be seen at the rear of the houses.
7. Each house has the benefit of a demised large rear terrace and this clearly extended over the ground level car park to the outer boundary wall of the car park.
8. The demises of the houses included terraces which were constructed above parts of the car park, which did not form part of the demise. Further, from the lease plans, it was clear that at the front and back of the houses, the demise on the lower ground floor was considerably less extensive in area than the demise on the ground floor.

### **Legislation**

9. Section 60 of the 1987 Act provides a definition of a flat as

*“a separate set of premises, whether or not on the same floor, which*

*(a) Forms part of a building, and*

*(b) Is divided horizontally from some other part of the building, and*

*(c) Is constructed or adapted for use for the purposes of a dwelling.”*

10. Notwithstanding the reference to the units as ‘houses’ in the demises, for the purposes of the 1987 Act, those units may be flats if they fit the definition.
11. The town houses are separate sets of premises which have been constructed for the purposes of a dwelling. They include within their demise the terraces at the rear and land at the front of the house.
12. The Tribunal considers that in this case the ‘building’ is the structure that includes the undercroft car parking, the storage spaces, the rear terraces (which sit on top of the car park) the flats and the houses. They are all joined by the concrete slab which sits under the dwellings and above the storage and car parks. They all form one contiguous structural unit which can be considered as a building.
13. It therefore follows, that the houses (which definition includes the terraces at the rear) are part of a ‘building’. Further it also follows that as the houses partly sit above the car park (the actual house less so than the terraces to the houses which are completely above the car park), there is a horizontal division from other parts of the building.

### **Conclusion**

14. Therefore for the purposes of the 1987 Act, the town houses are flats.

A handwritten signature in black ink, appearing to read "J. Dovar". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Judge D Dovar

## **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.