

11944



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

Case Reference : **CAM/12UD/LVT/2016/0002**

Property : 11, 15, 19, 27, 31, 37, 39, 49, 53 & 57 John F Kennedy Court, Wisbech, Cambs PE13 2AG

Applicant : Roddons Housing Association Ltd

Representative : Capsticks Solicitors LLP

Respondents : see Schedule 1 attached

Representative : n/a

Type of Application : For the variation of a lease or leases
[LTA 1987, Part IV]

Tribunal Members : G K Sinclair, J R Morris & D S Brown FRICS

Date of Inspection & Determination : 14th December 2016

Date of Decision : 19th January 2017

DECISION

Summary

1. John F Kennedy Court comprises a cluster of what have been described as three tripod blocks of nine flats and two linear blocks of eight flats on the southern approach to Wisbech town centre. There are thus 43 flats in total. Originally owned and leases granted by Fenland District Council, the applicant housing association was registered as proprietor of the freehold interest under Title No CB314972 on 17th March 2008. Some of the flats are held on 125 year leases while the rest are occupied by “general needs” tenants on short tenancies.
2. This application concerns the service charge apportionments provided for in the various long leases. This is split between “building” costs and “estate” costs, but as leases have been granted at varying dates and with slightly different wording mistakes have been made in the apportionment of “building” costs, with the result that while some of the tripod flats must pay 1/9th (as there are nine flats in the building) others are obliged to pay only 1/27th (the three tripods being lumped together) or even 1/43rd. In at least one case the “estate” cost is also incorrectly limited to 1/27th. In consequence the freeholder is unable to recoup the whole of its expenditure. There are also some mistakes with the lease plans, some showing only 27 properties on the estate instead of 43. Some lessees are therefore liable for a greater proportion of estate costs than a proper 1/43rd share.
3. For the reasons which follow, and after due consideration of the documents and written submissions received, the tribunal grants the application brought under section 35(2)(f), but in the more restricted form appearing in Schedule 2 to this decision (i.e. disallowing the discretionary element).

Relevant statutory provisions

4. As set out in detail in the applicant’s written submissions, the tribunal derives its jurisdiction to vary residential long leases as sought here from section 35 of the Landlord and Tenant Act 1987. The material parts of the section provide as follows :

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 appropriate 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;
 - (...)
 - (f) the computation of a service charge payable under the lease;
 - (...)
- (...)
- (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 and Tribunal Procedure Rules 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.
- (...)
- (8) In this section “service charge” has the meaning given by section 18(1) of the 1985 Act.
- (9) For the purposes of this section and sections 36 to 39, “appropriate tribunal” means –
- (a) if one or more of the long leases concerned relates to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and
 - (b) if one or more of the long leases concerned relates to property in Wales, a leasehold valuation tribunal.

Material before the tribunal

5. As had been directed, the applicant prepared and filed application bundles with the tribunal, none of the parties having sought an oral hearing and a single written reply being received from one lessee querying only the need for him to attend to make his flat available for inspection. He was assured by the tribunal that this would not be necessary.
6. The application bundle includes every material lease, fronted by a page setting out the amendment sought. At tab 2 are the tribunal’s directions, at tab 3 the applicant’s more detailed statement of case, and at tab 4 some correspondence with the tribunal – including a query by the regional judge as to the extent of the variation sought for flat 15 and, by letter dated 19th October 2016, a concession by the applicant that a substantially reduced variation was all that was required.
7. The tribunal also benefited from a short inspection of the exterior of the buildings and a walk around the estate before adjourning to a local hotel to consider the matter. This inspection confirmed what appeared on some of the plans, namely that there are in fact two linear two-storey blocks of eight flats sited end on end, but separated by a walkway from front to back, and not the one block comprising

16 flats as mentioned in paragraph 9 of the applicant's statement of case.

Findings

8. The respondents did not contribute to this determination, probably because they understand and sympathise with the applicant's desire to correct obvious mistakes in the leases which, if strictly applied, would result in lessees having to pay unjustly differing amounts by way of service charge – especially when some major expenditure is contemplated – and where the freeholder would be unable to recoup all of its expenditure, regardless of how reasonable that may be.
9. Nonetheless, the tribunal observes that no lessee appears to have obtained legal assistance and it is mindful of the reasons for which the statute enables it to vary certain provisions in the leases. Under section 35(2)(f) the lease must fail to make satisfactory provision with respect to “the computation of a service charge payable under the lease”. It is not a general power radically to rewrite the lease because the result accords better with modern management practice, etc., but in the case of flat 15 the words “renewal or replacement” are inserted to ensure that the ability to recover the cost of works through the service charge is consistent across all flats.
10. The tribunal therefore takes no issue with standardising the lease plans (and, in some cases, the definition of “the Communal Areas”) so that all leases accurately record the full extent of the estate and its buildings. The relevant plan from those scale plans dated Jan 2016 annexed to the application at pages 278–287 shall therefore replace those appended to each lease in question. Each drawing number refers to the flat bearing the same number. Erroneous references to the name of the development are also corrected, at the applicant's request, purely for accuracy and consistency.
11. So too, the tribunal has no qualms about correcting the various proportions so that flats in a nine flat tripod pay $1/9^{\text{th}}$ of the service charge costs incurred with respect to that building, and flat 57 – in one of the linear blocks – pays $1/8^{\text{th}}$. All shall pay $1/43^{\text{rd}}$ of the cost of expenditure on the communal areas, i.e. the surrounding drying areas, soft landscaping and hardened areas.
12. However, as this is a mature estate where no additional development is either contemplated or practically possible the tribunal struggles to see why it should be necessary or desirable for the freeholder to be able to substitute for the precise fractions “such other proportion as [it] may determine to be reasonable in the circumstances”. That is not required to cure an unsatisfactory provision for the computation of either service charge. The correction of the fractions in the leases is sufficient to achieve that outcome. That additional proposed variation is in each case disallowed.
13. The variations authorised by this decision are therefore the modified versions of the drafts appearing in Schedule 2, with substitution of the relevant scale plan from amongst those appearing at pages 278–287 in the application bundle for the original lease plans. In each case the Land Registry should be notified and the variations recorded on the registered leasehold title.

Dated 19th January 2017

Graham Sinclair

Tribunal Judge

- Annexe – Rights of appeal
- Schedule 1 – List of respondent lessees
- Schedule 2 – Approved variations

ANNEXE - RIGHTS OF APPEAL

1. 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.
2. 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 sought by the party making the application.
3. 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.
4. 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 it being outwith the time limit.

SCHEDULE 1

List of respondent lessees

Flat	Title No	Lessee
11	CB182303	Christopher John Boor
15	unregistered	Betty St Clair Macfarlane
19	CB276227	Frances Lillian Johnson
27	CB105775	David Colin Bates & Margaret Anne Bates
31	CB325633	Olga White
37	CB291443	Graham Anthony Battershill & Toni Rose Marie Battershill
39	CB252278	Anthony Bernard Roughton & Lesley Ellen Roughton
49	CB144465	Margaret Joan Longmate
53	CB241651	Joshua Adams #
57	CB153101	Philip Richard Adams & Julia Ruth Adams

Note # : At the date when the tribunal met to determine this application flat 53 was in the process of being sold to a third party.

SCHEDULE 2

Variations approved

CB182303 **11 John F Kennedy Court** – lease dated 14th October 1994

The following variations shall be made to the lease :

1. In the Sixth Schedule, paragraph 22(a), the words “one twenty seventh part” shall be deleted and the words “one forty third part” shall be inserted in substitution.
2. The plans attached to the lease shall be replaced by the relevant scale plan dated Jan 2016 attached to the application.

[Unregistered] **15 John F Kennedy Court** – lease dated 27th July 1981

The following variations shall be made to the lease :

1. In clause 2(3) :
 - a. the words “renewal or replacement” shall be inserted after the words

“repairs maintenance” in the third line of this clause

- b. the wording “and the Estate (shown edged red on the plan annexed hereto) in which the Building is situated” shall be inserted after the word “Building” in the fourth line
2. The plans attached to the lease shall be replaced by the relevant scale plan dated Jan 2016 attached to the application.

CB276227 19 John F Kennedy Court – lease dated 1st September 2003

The following variations shall be made to the lease :

1. In clause 1(e) the number “13” shall be deleted
2. In the Sixth Schedule, paragraph 22(a), the words “one twenty seventh part” shall be deleted and the words “one forty third part” shall be inserted in substitution
3. The plans attached to the lease shall be replaced by the relevant scale plan dated Jan 2016 attached to the application.

CB105775 27 John F Kennedy Court – lease dated 6th February 1989

The following variations shall be made to the lease :

1. In clause 1 :
 - a. Clause 1(c) shall be deleted and the following clause inserted in substitution :

““The Council’s John F Kennedy Development” means the property described in the First Schedule hereto and any references in this lease to the Council’s John Kennedy Court Development shall be taken to be references to The Council’s John F Kennedy Court Development.”
 - b. In clause 1(e) the words “numbered 21 to 37 (odd)” shall be inserted after the words “comprising flats”
2. In the Sixth Schedule :
 - a. In paragraph 22(a) the words “one twenty seventh part” shall be deleted and the words “one forty third part” shall be inserted in substitution
 - b. In paragraph 22(b) the words “one twenty seventh part” shall be deleted and the words “one ninth part” shall be inserted in substitution
3. The plans attached to the lease shall be replaced by the relevant scale plan dated Jan 2016 attached to the application.

CB325633 **31 John F Kennedy Court** – lease dated 6th August 2007

The following variations shall be made to the lease :

1. In clause 1 :
 - a. Clause 1(c) shall be deleted and the following clause inserted in substitution :

““The Council’s John F Kennedy Development” means the property described in the First Schedule hereto and any references in this lease to the Council’s John Kennedy Court Development shall be taken to be references to The Council’s John F Kennedy Court Development.”
 - b. In clause 1(e) the words “numbered 25, 31 and 37” shall be deleted and the words “numbered 21 to 37 (odd)” shall be inserted in substitution
2. In the Sixth Schedule :
 - a. In paragraph 22(a) the words “one twenty seventh part” shall be deleted and the words “one forty third part” shall be inserted in substitution
 - b. In paragraph 22(b) the words “one twenty seventh part” shall be deleted and the words “one ninth part” shall be inserted in substitution
3. The plans attached to the lease shall be replaced by the relevant scale plan dated Jan 2016 attached to the application.

CB291443 **37 John F Kennedy Court** – lease dated 10th January 2004

The following variations shall be made to the lease :

1. Clause 1(c) shall be deleted and the following clause inserted in substitution :

““The Council’s John F Kennedy Development” means the property described in the First Schedule hereto and any references in this lease to the Council’s John Kennedy Court Development shall be taken to be references to The Council’s John F Kennedy Court Development.”
2. In the Sixth Schedule, paragraph 22(a), the words “one twenty seventh part” shall be deleted and the words “one forty third part” shall be inserted in substitution.
3. The plans attached to the lease shall be replaced by the relevant scale plan dated Jan 2016 attached to the application.

CB252278 **39 John F Kennedy Court** – lease dated 8th October 2001

The following variations shall be made to the lease :

1. In clause 1 :

- a. Clause 1(c) shall be deleted and the following clause inserted in substitution :

““The Council’s John F Kennedy Development” means the property described in the First Schedule hereto and any references in this lease to the Council’s John Kennedy Court Development shall be taken to be references to The Council’s John F Kennedy Court Development.”
- b. In clause 1(e) the word “odd” shall be inserted after “numbered 39 to 55”
2. In the Sixth Schedule, paragraph 22(a), the words “one ninth part” shall be deleted and the words “one forty third part” shall be inserted in substitution.
3. The plans attached to the lease shall be replaced by the relevant scale plan dated Jan 2016 attached to the application.

CB144465 49 John F Kennedy Court – lease dated 2nd March 1992

The following variations shall be made to the lease :

1. In the Sixth Schedule :
 - a. In paragraph 22(a) the words “one twenty seventh part” shall be deleted and the words “one forty third part” shall be inserted in substitution
 - b. In paragraph 22(b), after the word “Council”, the word “one” shall be inserted immediately before the words “ninth part”
2. The plans attached to the lease shall be replaced by the relevant scale plan dated Jan 2016 attached to the application.

CB241651 53 John F Kennedy Court – lease dated 23rd May 1988

The following variations shall be made to the lease :

1. In clause 1 :
 - a. Clause 1(c) shall be deleted and the following clause inserted in substitution :

““The Council’s John F Kennedy Development” means the property described in the First Schedule hereto and any references in this lease to the Council’s John Kennedy Court Development shall be taken to be references to The Council’s John F Kennedy Court Development.”
 - b. In clause 1(e) the words “flats 41, 47 and 53” shall be deleted and the words “flats numbered 39 to 55 (odd)” shall be inserted in substitution
2. The Second Schedule shall be deleted and the following substituted :

“The Second Schedule before referred to

The Communal Areas

All those parts of the Council’s John F Kennedy Court Development which comprise the whole of it other than the Blocks of Flats such parts being shown coloured brown coloured green and coloured blue on the said plan that part coloured brown consisting of drying areas that part coloured green consisting of soft landscaping areas that part coloured blue consisting of hardened areas,”

3. In the Sixth Schedule, paragraph 22(b), the words “1/43rd part” shall be deleted and the words “one ninth part” shall be inserted in substitution
4. The plans attached to the lease shall be replaced by the relevant scale plan dated Jan 2016 attached to the application.

CB153101 57 John F Kennedy Court – lease dated 1st August 1988

The following variations shall be made to the lease :

1. Clause 1(c) shall be deleted and the following clause inserted in substitution :

““The Council’s John F Kennedy Development” means the property described in the First Schedule hereto and any references in this lease to the Council’s John Kennedy Court Development shall be taken to be references to The Council’s John F Kennedy Court Development.”

2. The Second Schedule shall be deleted and the following substituted :

“The Second Schedule before referred to

The Communal Areas

All those parts of the Council’s John F Kennedy Court Development which comprise the whole of it other than the Blocks of Flats such parts being shown coloured brown coloured green and coloured blue on the said plan that part coloured brown consisting of drying areas that part coloured green consisting of soft landscaping areas that part coloured blue consisting of hardened areas,”

3. In the Sixth Schedule, paragraph 22(a), the words “one eighth part” shall be deleted and the words “one forty third part” shall be inserted in substitution
4. The plans attached to the lease shall be replaced by the relevant scale plan dated Jan 2016 attached to the application.

— SCHEDULE ENDS —



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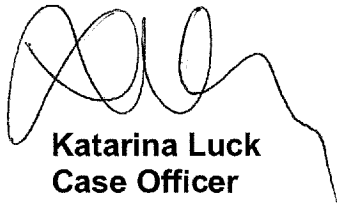
Wednesday, January 25, 2017

Dear Sirs,

NOTIFICATION OF DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

Please find enclosed a copy of the Tribunal's decision for your information.

Yours faithfully,



**Katarina Luck
Case Officer**



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : **CAM/22UF/OLR/2016/0155**

Properties : **9 & 11 George Court,
37 George Street,
Chelmsford,
CM2 0JU**

Applicants : **Christopher & Stella Regine Willey (9)
Joseph Patrick McCann (11)**

Represented by **Katie Gray of counsel (The Beavis
Partnership LLP)**

Respondent : **Sinclair Gardens Investments
(Kensington) Ltd.**

Represented by **Geoff Holden FRICS**

Date of Applications : **21st October 2016**

Type of Application : **To determine the terms of acquisition
and costs of the lease extensions of the
properties**

Tribunal : **Bruce Edgington (lawyer chair)
Stephen Moll FRICS
Gerard Smith MRICS FAAV**

**Date and venue of
Hearing** : **11th January 2017 at Marygreen Manor
Hotel, London Road, Brentwood CM14 4NR**

CORRECTION CERTIFICATE

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1. Following the distribution of the decision in this case dated 18th January 2017, it has been drawn to the Tribunal's attention that an error has been made in the calculation of the premiums payable.
2. This was an error which had previously been understood by the members of the Tribunal when a PDF version of the calculation had been prepared and corrected. When the calculation was transferred to an Excel version for endorsement into the decision itself, the previous error was not corrected.

3. The Tribunal is grateful for having this pointed out and the PDF correct version of the calculation with the premium of £12,572.61 is attached to this correction certificate.

.....
Bruce Edgington
Regional Judge
25th January 2017

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.

9 & 11 Georges Court

Lease-Original Term	99
From	01/01/1984
Date of Valuation	10/03/2016
Capitalisation Rate	7.00%
Deferment Rate	5.00%
Relativity	90%
Ground Rent:	
1st Period	0.81 £50
2nd Period	33 £70
3rd Period	33 £100
Unimproved existing value	£157,500
Unimproved Long lease Value	£175,000

DIMINUATION IN VALUE OF LANDLORD'S INTEREST

Ground Rent Revived

1st Period		£50				
	YP	0.81	7.00%	0.7618	£38.09	
2nd Period		£70				
	YP	33	7.00%	12.7538		
	PV £1 def.	0.81		<u>0.9467</u>		
				12.07402	£845.18	
3rd Period		£100				
	YP	33	7.00%	12.7538		
	PV £1 def.	33.81		<u>0.1015</u>		
				1.294511	<u>£129.45</u>	
					£1,012.72	(a)

Reversion to Freehold Interest

Unimproved Long lease Value		£175,000				
	PV £1 def.	66.81	5.00%	0.0384	£6,720	(b)

Freeholder's Present Interest

£7,732.72 (a+b)

Freeholder's Interest after grant of New Lease

Unimproved Long lease Value		£175,000				
	PV £1 def.	156.81	5.00%	0.0005	<u>£87.50</u>	(c)
					£7,645.22	(d)=(a+b-c)

CACULATION OF MARRIGE VALUE

Value of FH interest after grant of New Lease:

Freeholder's Interest		£87.50				
Leaseholder's Interest		<u>£175,000</u>				
					£175,087.50	(e)

Value of Existing Interests:

Freeholder's Interest		£7,732.72				
Leaseholder's Interest		<u>£157,500</u>				
					£165,232.72	(f)

Marriage Value		<u>£9,854.78</u>				(e-f)
50%		£4,927.39				(g)

Premium £12,572.61 (d+g)