

12308



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

Case reference : **LON/00BG/LVT/2017/0002**

Property : **1-24, 26-60, 61-94, Cinnabar Wharf, 22, 24 & 28 Wapping High Street**

Applicant : **The leaseholders of 77 flats who have consented to the application**

Representative : **Savills**

Respondent : **(1) Berkely Homes (Eastern) Limited
(2) FirstPort Bespoke Property Services Limited
(3) The leaseholders of the 94 flats who have not consented to the application**

Representative : **None**

Type of application : **To vary two or more leases by a majority**

Tribunal member(s) : **Mrs S O'Sullivan
Mr T Sennett MA FCIEH**

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

Date of decision : **10 July 2017**

DECISION

Decisions of the tribunal

- (1) The tribunal grants the variations sought as set out in the Schedule attached to this decision.
- (2) There were no applications for costs before us.

The application

1. The applicants seek a variation of 94 leases under section 37 of the Landlord and Tenant Act 1987 (the "1987 Act") of properties known as 1-24, 24-60, 61-94 Cinnabar Wharf, 22, 24 & 28 Wapping High Street, London E1W(the "Property").
2. The variation proposed is to change the named Manager under the various leases to a new Manager - Cinnabar Wharf RMC Limited. The Manager was named as an applicant but section 37(4) of the Act provides that the applicant may only be a tenant or landlord. The consenting tenants were therefore substituted as applicants by the directions order dated 6 April 2017.
3. Directions were made dated 6 April 2017 which provided for various steps to be taken. These provided that the application was to be considered by way of a paper determination unless a party requested an oral hearing. As no oral hearing was requested the application was considered on the basis of the papers on 10 July 2017.

The Applicants' case

4. The applicants relied on a statement made by Sean Dooley of Savills dated 14 June 2017.
5. The applicants relied on the statement, a bundle of documents containing a schedule of leaseholders who have consented to the application, a draft deed of variation and statements from two of the respondents in support of the application.
6. Mr Dooley has confirmed that there is no opposition to the application.
7. The proposed variation of the lease is to replace the existing Manager "OM Property Management Services" with "Cinnabar Wharf RMC Limited" as set out in the detailed draft of variation.
8. Cinnabar Wharf RMC Limited is a company which has been set up on behalf of the leaseholders. The object to be achieved is stated to be to hand control of the running of the Property to the leaseholders as the

largest stakeholders and all named Respondents are said to consider this correct as the leaseholders will have the necessary means to manage and make decisions in respect of their development.

9. The tribunal is informed that the various leases contain a mechanism by which a manager can be appointed at clause 6.10 (agreements and declarations) and consideration has been given to this route. However having taken legal advice it is considered that this is not enforceable in practice as the incumbent manager would remain in place and remain responsible and liable and only the managing agent would change. In contrast with the lease variation the manager under the terms of the leases would change to the leasehold company and they will be able to make decisions as required.
10. It is also said that the proposed variation is within the contemplation of sections 37 and 38 of the 1987 Act.
11. The applicants also attach a schedule setting out those consenting to the application. This shows a total of 72 out of 94 leaseholders consent to the application, in excess of 75%. There are no dissenters.
12. It is also not considered that it is appropriate for an order for compensation to be made to any other person pursuant to section 38(10).
13. In a statement dated 23 May 2017, Azmon Rankohi, a solicitor in the employ of FirstPort Property Services ("First Port") confirmed that First Port agreed to the variation. He confirmed that FirstPort consider that an RMC-type set up is a recommended way for a development to be run and that the variation will give the leaseholders control over which managing agent is appointed to manage the Property.
14. In a statement dated 15 June 2017 Danielle Cheese, an Estate Manager in the employ of Berkeley Homes, confirmed that Berkeley Homes consents to the application. It considers that the variation will ensure the development is properly and effectively managed and will provide greater transparency in respect of the leasehold structure.

The tribunal's decision

15. We noted that the application was supported by in excess of 75% of the leaseholders and that none opposed the application. We also noted that the current Manager, FirstPort Services and Berkeley Homes, the freeholder, also supported the application.
16. We were satisfied that the grounds set out cannot be satisfactorily achieved unless all of the leases are varied to the same effect.

17. We were also satisfied that it is not appropriate to 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 as we do not consider any is likely to be suffered as a result of the variation.
18. Accordingly we grant the variations sought as set out the draft Deed of Variation attached as Schedule to this decision.
19. We note that there are no applications for costs before us.

Name: S O'Sullivan

Date: 10 July 2017

Sections 37 & 38 of the Landlord and Tenant Act 1987

37.— Application by majority of parties for variation of leases.

- (1) Subject to the following provisions of this section, an application may be made to the appropriate 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 the leases are varied to the same effect.
- (4) An application under this section in respect of any leases may be made by the landlord or any of the tenants under the leases.
- (5) Any such application shall only be made if—
 - (a) in a case where the application is in respect of less than nine leases, all, or all but one, of the parties concerned consent to it; or
 - (b) in a case where the application is in respect of more than eight leases, it is not opposed for any reason by more than 10 per cent. of the total number of the parties concerned and at least 75 per cent. of that number consent to it.
- (6) For the purposes of subsection (5)—
 - (a) in the case of each lease in respect of which the application is made, the tenant under the lease shall constitute one of the parties concerned (so that in determining the total number of the parties concerned a person who is the tenant under a number of such leases shall be regarded as constituting a corresponding number of the parties concerned); and

- (b) the landlord shall also constitute one of the parties concerned.

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 tribunal considers he is likely to suffer as a result of the variation.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

DATED

20

(1) BERKELEY HOMES (EASTERN) LIMITED

and

(2) CINNABAR WHARF RMC LIMITED

and

(3) [The Tenant[s]]

DEED OF VARIATION

of a lease made between (1) Berkeley Homes (Eastern) Limited and (2) OM Management Services Limited and (3) [The Tenant[s]] relating to Flat No [] Cinnabar Wharf [East/Central/West],

THIS DEED is made the

day of

20

BETWEEN

- (1) BERKELY HOMES (EASTERN) LIMITED (company registration number 02630863) whose registered office of which is Berkeley House, 19 Portsmouth Road, Cobham, Surrey, KT11 1JG (the **Landlord**);
- (2) CINNBAR WHARF RMC LIMITED (company registration number 10143139) whose registered office is 33 Margaret Street, London, W1G 0JD (the **New Management Company**); and
- (3) [[] and []] [both] of [] (the **Tenant**)

RECITALS

- (A) The Landlord and the Management Company and the Tenant are party to the Lease.
- (B) The Landlord and the Management Company and the Tenant have agreed to vary the Lease as provided for by this deed by substituting the Previous Management Company (defined below) with the New Management Company Cinnabar Wharf RMC Limited.

IT IS AGREED AS FOLLOWS:

1 Definitions

The following definitions apply in this deed:

Demised Premises	has the same meaning as defined in the Lease;
Landlord	the party to this deed and its successors in title;
Lease	a lease relating to the Demised Premises made between (1) Berkeley Homes (Eastern) Limited and (2) the Previous Management Company and (3) [The Tenant] and dated [] and any document supplemental to or varying such lease whether entered into before or after the date of this deed and including this deed;
Previous Management Company	OM Management Services Limited (Now FirstPort Bespoke Property Services Limited Co no 01623496);
Tenant	the party to this deed and its successors in title.

2 Interpretation

- 2.1 The clause headings are for reference only and do not affect the construction of this deed.
- 2.2 Obligations owed by or to more than one person are owed by or to them jointly and severally.
- 2.3 Unless otherwise specified, a reference to legislation is to that legislation as consolidated, amended or re-enacted from time to time and includes all orders, regulations, consents, licences, notices and bye-laws made or granted under such legislation.
- 2.4 A reference to a person includes an individual, a corporation, company, firm or partnership, or government body or agency, whether or not legally capable of holding land.
- 2.5 Words importing one gender include all other genders and words importing the singular include the plural and vice versa.

3 Variation

The parties agree that the Lease shall, with effect from the date of this deed be varied so that the references to the Management Company contained within it shall be construed to mean the New Management Company and not the Previous Management Company and the Lease shall from the date of this deed take effect and be read and construed accordingly.

4 Costs

Each party shall bear their own costs in connection with this deed.

5 General

- 5.1 This deed is supplemental to the Lease.
- 5.2 Except as expressly varied by this deed, the Lease remains in full force and effect.
- 5.3 This deed will not release or lessen the liability under the Lease of the parties or any other person whether before or after the date of this deed.
- 5.4 Unless expressly stated nothing in this deed will create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

6 Registration at the Land Registry

- 6.1 The Tenant shall:
- 6.1.1 register this deed at the Land Registry within one month of the date of this deed; and

6.1.2 within one week of the registration of the deed deliver to the Landlord official copies of the Tenant's registered title.

6.2 The Landlord shall not be liable to the Tenant for the Tenant's failure to register and/or to protect this deed or any rights granted by it.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Signed as a deed by BERKELEY HOMES)
(EASTERN) LIMITED acting by) Director
, a director and)
,)
a director OR its secretary)
) Director OR Secretary

Signed as a deed by CINNABAR WHARF)
RMC LIMITED acting by) Director
, a)
director and ,)
a director OR its secretary)
) Director OR Secretary

Signed as a deed by [The Tenant])
in the presence of)

Witness Signature
Witness Name
(block capitals)
Witness Address
.....

Signed as a deed by [The Tenant])
in the presence of)

Witness Signature
Witness Name
(block capitals)
Witness Address
.....