



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

Case Reference	:	CAM/00UF/LVL/2014/0001
Properties	:	Flats 1-10, 39 Baddow Road, Chelmsford CM2 0DA Flats 1-10, 41 Baddow Road, Chelmsford CM2 0DP Flats 1-4, 43 Baddow Road, Chelmsford CM2 0DD
Applicants	:	Mrs Julia Leat Mrs Olivia Leat Mr Daniel Cusack
Representative	:	Mr Jonathan Daniels, Comptons Solicitors LLP
Respondents	:	The 24 Lessees of the long leases of each of the Properties
Representative	:	None
Type of Application	:	Section 35 Landlord and Tenant Act 1987 – to vary each of the leases of the Properties
Tribunal Members	:	Judge John Hewitt Mr Stephen Moll FRICS
Date of Decision	:	8 July 2014

DECISION

Decisions of the tribunal

1. The tribunal determines that:
 - 1.1 An order shall be made, and is hereby made, that each of the leases of the Properties shall be varied in accordance with the provisions set out in the document headed 'Lease Variation Details' annexed to this Decision so that the percentages set out in the Columns headed 'Proposed percentage Variation to Clause 3(1)(b)' shall be substituted for the percentages set out in the Columns headed 'Current percentages in Clause 3(1)(b)'.
 - 1.2 In each case the variation shall take effect on the 1st January 2014.
 - 1.3 The applicants shall by **5pm Friday 1 August 2014** make an application to Land Registry to enter on the relevant freehold title and on each of the 24 leasehold titles a notice recording the making of the orders set out in paragraphs 1.1 and 1.2 above.
2. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for our use.

Procedural background

3. On 24 June 2013 the applicants were registered at Land Registry as the proprietors of the freehold of 39-43 (odd) Baddow Road, Chelmsford CM2 0DD title to which is registered with Title Number EX525520 [2].
4. The register of title includes a schedule of some 46 leases which have been granted out of the freehold title, including the 24 leases of the subject Properties. Those leases appear to have been granted between January and December 2005 [4-7].
5. On 27 January 2014 the tribunal received an application [9] pursuant to section 35 Landlord and Tenant Act 1987 (the Act). The applicants sought to vary the leases. The gist of the application was to adjust the service charges percentages because, the leases as drawn, did not provide for the recovery of 100% of service charge expenditure.
6. The service charge percentages of the leases as drawn is set out in the middle columns of the document headed 'Lease Variation Details' annexed to this decision and the variations sought were to delete those percentages and to substitute the percentages set out in the right hand columns of that document. Evidently prior notification with the respondents about the proposal to vary the leases in this manner did not give rise to any dissent.
7. Directions were given which required the applicants' solicitors to send to each respondent copies of the application, the directions and a 'Notice of Participation'. Any respondent who wished to participate in

these proceedings was required to complete the Notice of Participation and deliver it to the Applicants' solicitors by 7 March 2014.

8. By letter dated 14 March 2014 the applicants' solicitors informed the Tribunal office that it had served the documents and the Notice of Participation on each of the Respondents and that they had received back three notices from lessees, all of which stated that they did not wish to participate. Thus, for the purposes of the directions there were no Participating Respondents.
9. In the absence of any active opposition to the application by any of the respondents, the applicants made an application that a substantive determination be made without an oral hearing.
10. On or about 26 March 2014 the directions were varied and notice was given that the tribunal proposed to determine the application without an oral hearing pursuant to Rule 31. Notice was also given that the tribunal proposed to determine the application on the basis of the documents filed or to be filed with the tribunal and that it anticipated doing so during week commencing 5 May 2014.
11. The tribunal has not received any objections to those notices and consent is deemed to have been given to a determination without an oral hearing by virtue of Rule 31(3).
12. Following an initial consideration of the applicants' statement of case dated 23 April 2014 the tribunal requested clarification of certain matters. That clarification was set out in a supplemental statement of case dated 28 May 2014.

Consideration of the papers

13. We have given careful consideration to the papers provided to us in support of the application including the applicants' statement of case dated 23 April 2014 and their supplemental statement of case dated 28 May 2014.
14. It appears, and we accept, that when the subject leases were drafted incorrect percentages were included by reason of arithmetical error on the part of the grantor of the leases, James Smith Estates Plc or one of its advisers. In consequence there has been a shortfall in recovery by the landlord of service charge expenditure.
15. The variations sought will enable the applicants to recover 100% of the relevant service charge expenditure.

The statutory provisions

16. The relevant statutory provisions are set out in the schedule to this decision.

Discussion

17. We are satisfied that the circumstances of this case fall within section 35(2)(f) of the Act having regard to the provisions of section 35(4).
18. We are satisfied that there is nothing within section 38 of the Act which leads us to conclude an order varying the leases should not be made.
19. We are reinforced in our conclusions by the fact that none of the respondents have chosen to take an active part in these proceedings or to oppose or object to the variations sought.
20. We have ordered that the variation shall effect as from 1 January 2014 because that is the commencement date of the current service charge period for Annual Contributions referred to in clause 3(1) of the lease [25] and it seems to us to be an appropriate and convenient date from which the variations shall take effect.
21. We have considered it sensible to include, by way of paragraph 1.3, a provision requiring the applicants to make applications to Land Registry seeking the entry of notices on the relevant titles drawing attention to our order so that in the event of any future dealings with either the freehold or any of the leasehold titles a person undertaking a title search will be on notice of the fact of this order.
22. No respondent has submitted to us that they would suffer loss or disadvantage by reason the variations proposed by the applicants and in consequence we have not ordered any party to the lease to pay compensation to any other party to the lease.

Judge John Hewitt
8 July 2014

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 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;
 - (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.
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- (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.

LEASE VARIATION DETAILS

Property	Lease Date	Title	Term	Current percentages in Clause 3 (1)(b)			Proposed percentage Variation to Clause 3 (1)(b)		
				(i)	(ii)	(iii)	(i)	(ii)	(iii)
Flat 1, 39	04-Feb-05	EX743934	125 yrs from 01.01.04	4.18591	3.13552	5.16	3.26192	3.98501	5.24337
Flat 2, 39	02-Feb-05	EX758457	125 yrs from 01.01.04	4.1373	3.09912	5.1	3.22404	3.99875	5.18240
Flat 3, 39	04-Feb-05	EX743936	125 yrs from 01.01.04	4.2236	3.16283	5.2	3.29129	4.01972	5.28402
Flat 4, 39	23-Mar-05	EX746215	125 yrs from 01.01.04	2.89186	2.1662	3.56	2.25352	2.75308	3.61752
Flat 5, 39	31-Jan-05	EX743578	125 yrs from 01.01.04	4.18591	3.13552	5.16	3.26192	3.98501	5.24337
Flat 6, 41	03-Feb-05	EX744272	125 yrs from 01.01.04	4.1373	3.09912	5.1	3.22404	3.99875	5.18240
Flat 7, 39	11-Feb-05	EX743639	125 yrs from 01.01.04	4.22236	3.16283	5.2	3.29033	4.01972	5.28402
Flat 8, 39	04-Feb-05	EX748687	125 yrs from 01.01.04	2.89186	2.1662	3.56	2.25352	2.75308	3.61752
Flat 9, 39	22-Dec-05	EX781637	125 yrs from 01.01.04	5.91738	4.43251	7.29	4.61119	5.63339	7.40778
Flat 10, 39	03-May-05	EX753080	125 yrs from 01.01.04	4.18677	5.59931	6.88	3.26259	7.10360	6.99116
Flat 1, 41	25-Jan-05	EX743057	125 yrs from 01.01.04	4.08262	3.05815	5.3	3.18143	3.88668	5.38563
Flat 2, 41	25-Jan-05	EX743415	125 yrs from 01.01.04	3.27181	2.52571	4.15	2.54960	3.20999	4.21705
Flat 3, 41	11-Feb-05	EX743707	125 yrs from 01.01.04	3.46902	2.59853	4.27	2.70328	3.30254	4.33899
Flat 4, 41	21-Feb-05	EX748133	125 yrs from 01.01.04	3.20778	2.40284	3.95	2.49970	3.05383	4.01382
Flat 5, 41	25-Jan-05	EX746273	125 yrs from 01.01.04	3.05815	4.08262	5.03	2.38311	5.18871	5.11127
Flat 6, 41	25-Jan-05	EX743416	125 yrs from 01.01.04	3.37181	2.52571	4.15	2.62753	3.20999	4.21705
Flat 7, 41	28-Jan-05	EX743405	125 yrs from 01.01.04	3.46902	2.59853	4.27	2.70328	3.30254	4.33899
Flat 8, 41	02-Sep-05	EX754547	125 yrs from 01.01.04	3.20778	2.40284	3.95	2.49970	3.05383	4.01382
Flat 9, 41	11-Feb-05	EX743494	125 yrs from 01.01.04	5.17618	3.87731	6.37	4.03360	4.92777	6.47292
Flat 10, 41	13-Jun-06	EX770539	125 yrs from 01.01.04	4.02749	5.37667	4.76	3.13847	6.83335	4.83691
Flat 1, 43	23-Feb-05	EX751082	125 yrs from 01.01.04	3.1774	2.38		2.47603	3.02480	
Flat 2, 43	21-Feb-05	EX744837	125 yrs from 01.01.04	3.76063	2.81697		2.93052	3.58016	
Flat 3, 43	09-Dec-05	EX768465	125 yrs from 01.01.04	8.1045	6.07081		6.31554	7.71555	
Flat 4, 43	23-Feb-05	EX752027	125 yrs from 01.01.04	3.76063	2.81697		2.93052	3.58016	

Percentage	96.12508	78.68282	98.41	74.90667	100.00001	100.00001
Totals						