



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

**Case Reference** : LON/00AN/LVT/2015/0012

**Property** : 616A Fulham Road, SW6 5RP

**Applicants** : Asma Nasim Ahmed (1)  
Claire Hart (2)  
Candice Bordeaux (3)  
Talat El-Sherbiny (4)

**Representatives** : Mr Nicholas Carter & Mr Talat El-Sherbiny

**Respondent** : The Townhouse (Conversions) Limited

**Representative** : None

**Type of Application** : Variation of Lease (S.37 Landlord and Tenant Act 1987)

**Present at hearing** : Mr Carter  
Mr El-Sherbiny  
Mr John Plant (Former Managing Agent)

**Tribunal** : Mr M Martynski  
Mr M Cartwright JP FRICS

**Date of hearing** : 4 February 2016

---

**DECISION**

---

## **Decision summary**

1. The application is dismissed.

## **Background**

2. 616 Fulham Road is a mid-terraced Victorian building ('the Building'). On the ground and basement floors is a restaurant. There are two original floors at first and second floor level. At some point in the past a further flat has been built at roof level. The upper floors contain four residential flats.
3. The Applicants' leases oblige them to pay a Service Charge in respect of, amongst other things, the maintenance and insurance of the Building. Each Applicant pays 22% of Total Expenditure and 25% on common parts expenditure (the common parts not being accessible by the restaurant).
4. The Applicant's application sought a variation of the residential leases to provide that they pay a smaller percentage of the Service Charge for Total Expenditure on the basis that the restaurant occupied a greater area of the Building and so should pay more than 12% of the Service Charge.
5. The Respondent freeholder landlord was not in agreement with the proposal. It appears that the restaurant had not, prior to the hearing of the application, been put on notice of it.

## **The Law**

6. The application was made pursuant to section 37 of the Landlord and Tenant Act 1987 which provides as follows:-

### **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 court 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.

### **Decision**

7. In order for a valid application to be made under section 37, where there are less than nine leases, all but one of the 'parties concerned' must agree to the application. The point at which the number of parties concerned is calculated is at the date of the application<sup>1</sup>.
8. The Act provides that the Landlord is one of the 'parties concerned'. The Building has five leasehold interests. Accordingly there appear to be six 'parties concerned'; that is the five leasehold interests plus the landlord.
9. As at the date of the application (and indeed at the date of the hearing) the number of parties concerned who supported the application numbered four.
10. The application therefore must fail as at the date of the application (and at the date of the hearing) the application did not have the requisite majority of parties concerned.

**Name:** Mark Martynski,  
**Tribunal Judge**

**Date:** 12 February 2016

### **ANNEX - 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 arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. 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

---

<sup>1</sup> Put in case name of upper tribunal decision

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.

4. 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.