

4229



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

**Case Reference** : **VG/LON/00AP/OLR/2016/0742**

**Property** : **2D Bedford Road, London N15 4HA**

**Applicant** : **Elvira Jane Whitehead Montantau**

**Representative** : **Mr. Mathew Dale-Harris of counsel  
instructed by Bishop & Sewell**

**Respondent** : **(1)Wallwood Investments Limited  
(2) West Park Mews (Management  
Limited**

**Representative** : **(1)Mr. Lewis Clement, solicitor  
(2) N/A**

**Types of Application** : **Lease extension**

**Tribunal Members** : **Judge LM Tagliavini  
Miss M Krisko FRICS**

**Date and venue of  
Hearing** : **10 Alfred Place, London WC1E 7LR  
16 August 2016**

**Date of Decision** : **17 August 2016**

## **DECISION**

### **Decisions of the tribunal**

- (i) The tribunal approves the terms of the new lease in the terms as proposed by the Applicant subject to the addition of the following:

1. Definition and Interpretation

Add at 1.12

The Deed of Covenant means the Deed dated 21 May 2004 between West Park Mews (Management) Limited and Elvira Whitehead.

Add at 5.3 line 11

“...hereinbefore provided and as provided in the Deed of Covenant.

- (ii) The tribunal makes no orders for costs pursuant to rule 13 of the First Tier (Property Chamber) Rules 2013.
2. The Applicant is to submit a final draft of the proposed lease amendments to the tribunal within 7 days of the receipt of this decision for its final approval.

### **The application**

1. This is an application made pursuant to section 48 of the Leasehold Reform Urban Development Act 1993 (“the 1993 Act”). All other matters having been agreed between the parties, the only issue the tribunal is asked to determine is the terms of the new lease to be granted to the Applicant.

### **The premises**

2. The subject premises comprise a flat in a building of a total of four flats and is subject to a lease for a term of 99 years from 25 March 1980 (“the Existing Lease”) and made between (1) Herd Construction Limited and (2) Janet Lowther, the parties predecessors in title.
3. Each of the leases for the four flats contains a covenant requiring the lessee to take up shares in a management company and to enter into a Deed of Covenant with that Second Respondent Management Company. A Deed of Covenant was entered into by the Applicant dated 21 May 2004 (“the Deed”) with the Second Respondent. The service

provision for the common parts are not contained within the Existing Lease but are provided for in a Service Lease made between the Landlord and the Management Company known as West Park Mews (Management) Limited dated 25 March 1983 (“the Service Lease”). In default of the Management Company complying with its obligations pursuant to the Service Lease the Existing Lease provides at clause 3(ii) for the Landlord to assume the obligations of the Management Company contained in the Service Lease.

### **The issue**

4. The Applicant seeks a modification to the terms of the existing list pursuant to section 57(6)(a) or (b) of the 1993 Act in order to extend the Landlord’s default liability as set out in clause 3(ii) of the Existing Lease to carry out the insurance and service provisions and to recover their costs beyond the term of the Service Lease due to expire in 2079.

### **Preliminary matters**

5. At the start of the hearing the tribunal were provided with the Applicant’s skeleton argument, an updated draft of the terms of the new lease and documentation from the Council of Mortgage Lenders. The tribunal also satisfied itself that the second respondent had been notified of the hearing but had not corresponded with the tribunal or the other parties and did not appear at the hearing and was not represented.\*

*\*However at the time of writing this decision (17/08/16) it has come to the Tribunal’s attention that notification of this application was sent to the incorrect address and therefore the Second Respondent was unaware of this application until 11 August 2016. The tribunal was also unaware that the Second Respondent had requested a postponement of the hearing of this application in order to seek legal advice. However, having regard to the overriding objective provided by rule 3 of The Tribunal Procedure (First-tier Tribunal (Property Chamber) Rules 2013, the tribunal determines that the Second Respondent could have attended at the hearing on 16/08/2016 to renew the application for a postponement in person and explained to the tribunal, in outline what is, if any, its objection to the proposed lease term(s). The tribunal is also of the view that the Second Respondent is not prejudiced by our decision but can exercise any Part 6 the relevant 2013 rules.*

### **The hearing and evidence**

#### **The Applicant’s case**

6. The Applicant relied upon sections 57(6)(a) or (b) in the alternative and asserted that the proposed clause is necessary for the continuation of the service provisions past the date of the expiry of the Service Lease in

2079. Consequently, without the proposed modification to the New Lease a defect would arise in that the service provision for which the landlord is obliged to fulfil as a “backstop” would not be effective beyond 24 March 2079 and nobody will be entitled to recover the costs of providing such a service. Consequently the absence of service provision for the period after 2079 constitutes a significant defect in the existing lease or alternatively is a term in the Existing Lease that requires modified inclusion in the New Lease.

### **The Respondent’s case**

7. The Respondent made a number of counter-proposals none of which were conceded to fall outside of the tribunal’s jurisdiction and therefore the tribunal did not consider them. The Respondent did not put forward for the Tribunal’s consideration an alternative draft of the terms of the New Lease but submitted that the Landlord would be prejudiced by the continuation of service provision obligations after 2079 as it would burden him with more onerous terms than the current lease.

### **Reasons for the decisions of the tribunal**

8. The tribunal finds that the proposed terms falls under section 57(6)(b) of the 1993 Act as the Existing Lease is not currently defective but the service provision clauses require modification in order to cover the period past 2079. However, for the avoidance of doubt the tribunal determines that reference to the Deed of Covenant is required so that the present and any future parties can be clear as to service provision and the proportion attributable for them to the Applicant.

### **Costs**

9. Both parties sought the costs of this application pursuant to rule 13 of The Tribunal Procedure (First-tier tribunal)(Property Chamber) Rules 2013. However, the tribunal is not satisfied either party has made out the requirements of rule 13 and therefore declines to make any order for costs.

Signed: Judge Tagliavini

Dated: 17 August 2016