



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

Case Reference : CHI/00HN/LVT/2016/0008

Property : Flats 5 and 6, 19 Lansdowne Road,
Bournemouth, BH1 1RZ

Applicant : Sorda Limited (freeholder) and
Jordan Future Limited
(leaseholder of Flats 7 and 8)

Representative : Mr Salim Mehson and Ms Nadia
Mehson

Respondent : Miss Carrie Bray (Flat 5) and Mr
Valiant Patrick Dickson (Flat 6)

Representative : Mr Dickson

Type of Application : Variation of lease : Section 35 of the
Landlord and Tenant Act 1987 ("the
1987 Act"); application by
Respondent for an order under
section 20C of the Landlord and
Tenant Act 1985 ("the 1985 Act")

Tribunal Members : Judge P R Boardman (Chairman) and
Mrs J Coupe FRICS

**Date and venue of
Hearing** : 25 January 2017
Marsham Court Hotel Bournemouth,
Russell Cotes Road, East Cliff,
Bournemouth, Dorset, BH1 3AB

Date of Decision : 27 January 2017

DECISION

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Introduction

1. Miss Bray is the leaseholder of Flat 5 under a lease dated 15 January 1987 and made between Anglo City Property Group Limited (1) and The Royal Bank of Scotland and David William Elias (2). Mr Dickson is the leaseholder of Flat 6 under a lease dated 8 November 1985 and made between Anglo City Property Group Limited (1) and Katrina Elizabeth Borthwick (2)
2. In a decision dated 16 July 2013 under case reference CHI/00HN/LIS/2013/0020 (“the Tribunal’s July 2013 decision”), the Tribunal determined an application by Mr Dickson in relation to certain items of service charge payable in relation to Flat 6 for the years ending 2011 and 2012 and, in respect of insurance only, 2013
3. In a decision dated 5 April 2015 under case reference CHI/00HN/LIS/2014/0046 (“the Tribunal’s April 2015 decision”), the Tribunal determined an application by Miss Bray and Mr Dickson in relation to the same items of service charge in relation to Flat 5 as were determined in the Tribunal’s 2013 decision, other items of service charge in relation to Flats 5 and 6 for the years ending 2013, 2014, and 2015, and administration charges
4. This application is to vary the leases of Flats 5, 6, 7, and 8. The grounds of the application are that :
 - a. the original building described in the leases was known as 15 to 19 Lansdowne Road, and comprised eight self-contained flats, including Flats 5, 6, 7, and 8, and the leases provide for each flat to pay one-eighth of all costs
 - b. the landlord has sold the part of the building known as 15 to 17 Lansdowne Road to a different freeholder, leaving 19 Lansdowne Road as the only part of the original building still subject to the leases of Flats 5, 6, 7, and 8
 - c. the landlord has added four new flats to 19 Lansdowne Road, making eight flats in that building, with the leases for those four new flats providing for the apportionment of costs being sought in this application
 - d. the leaseholder of Flats 7 and 8 agrees to the variations sought in this application

Documents

5. The bundle of documents initially before the Tribunal has two sections, respectively paginated A1 to A102 and R1 to R23. In this decision page numbers in those sections are referred to as A1, A2 and so on, and R1 , R2 and so on, respectively
6. The Tribunal also has before it :

- a. a letter from the Applicant dated 20 December 2016, with the following documents :
 - the Tribunal's further directions dated 30 November 2016
 - a draft deed of variation relating to the lease of Flat 5, paginated AA5 to AA10, and annexed to this decision as Appendix 1
 - a draft deed of variation relating to the lease of Flat 6, paginated AA11 to AA16, and annexed to this decision as Appendix 2
 - an additional statement of case, paginated AA17, stating that the Applicant would seek to recover its costs of the application, on the grounds that :
 - the Tribunal's initial directions had stated that the application would be determined without a hearing, but the Respondents had demanded a hearing
 - at a previous service charge hearing in relation to the same property, the Respondents had successfully claimed their costs for the same reason, namely that they had applied for a written determination but the Applicant has asked for a hearing
- b. a letter from Miss Bray dated 12 January 2017, stating that she was unable to attend the hearing, and that Mr Dickson would be representing her
- c. the following documents produced by Mr Dickson at the hearing, and which Mr Mehson, after a short adjournment to enable him to consider them, agreed to their being submitted to the Tribunal :
 - a statement of outstanding issues, including a proposal for replacement wording for paragraph 1 of the third schedule of the lease "to prevent the Tribunal from ordering the Applicant to breach the [lease for the roof space]"
 - a copy of the Respondents' proposed new plan number 1 for the deed of variation in each case, namely the filed plan for Land registry title number DT63592 with the Respondents' proposed red edging
 - various extracts from the Tribunal's April 2015 decision
 - a witness statement by Mr Dickson and his wife dated 23 January 2017, stating that :
 - they had not received any reply from the Applicant to their objections to the proposed variations until they received the bundle for this hearing on 6 January 2017
 - they had not received any request to vary the lease prior to receiving notification, by way of the Tribunal's directions dated 1 November 2016, that the Applicant had applied to the Tribunal for the variations
 - a witness statement by Miss Bray and her husband dated 23 January 2017, in similar terms
 - a letter from the Respondents to the Applicant dated 10 January 2016 setting out the Respondents' case in relation to the amendments proposed in the draft deeds of variation

The leases

7. For the purposes of these proceedings the material parts of the lease of Flat 5 (pages A25 to A37) are as follows :

Preamble

(1) The Lessor is the registered proprietor.....of the property known as 15-19 Lansdowne Road Bournemouth.....(hereinafter called "the Building") which comprises inter alia eight self-contained flats and all of which said premises are hereinafter called "the said property" and shown edged red on the plan numbered 1 attached hereto

Clause 1 [demise]

.....ALL THAT self contained flat (hereinafter called "the Flat") on the first floor of the Building and known as Flat No 5 15-19 Lansdowne Road.....including the floors and ceilings of the Flat (and the joist and beams to which the said floors and ceilings are attached).....together with [easements] and except and reserved [as set out in the second schedule].....(hereinafter collectively referred to as "the demised premises")

Clause 4 : [Lessee's covenants with the Lessor and with the owners or lessees of the other flats comprised in the Building]

(i)

(ii) contribute and pay to the Lessor from time to time.....one equal eighth part of the costs and expenses mentioned in the fourth schedule hereto.....

Fourth Schedule

Cost and expenses.....in respect of which the Lessee is to contribute under clause 4(ii) of this lease

1. *The expenses of maintaining repairing and renewing :*
 - a. *the roof (including the timbers) the gutters rainwater pipes and chimneys of the Building*
 - b. *the main structure of the Building*
 - c. *the entrance porch boundary walls fences driveway and paths of the said property*
 - d. *the drains water and gas pipes and electric cables and wires under or upon the said property and enjoyed or used by the Lessee in common with the occupier of the other flat forming part of the said property*
 - e. *the foundations of the Building below the level of the joist supporting the ground floor of the building*
 - f. *all other parts of the said property used in common by the Lessees with the Lessor or the owners or occupiers of the*

- other flat comprised in the said property
 - 2. The expenses of painting the exterior of the said property.....
 - 3. The expenses of insuring the said property pursuant to clause 5(b)(iii) of this lease
 - 4. The costs charges and expenses of managing agents appointed by the Lessor to manage the said property and to carry out the Lessor's obligations under the lease
8. For the purposes of these proceedings the material parts of the lease of Flat 6 (pages A38 to A47) are as follows :

Preamble

(1) The Lessor is the registered proprietor with Title Absolute of the property known as 15-19 Lansdowne Road Bournemouth aforesaid registered at HM Land Registry under Title number DT63592 (hereinafter called "the Building") which comprises inter alia eight self-contained flats and all of which said premises are hereinafter referred to as "the said property" and shown edged red on the plan numbered 1 attached hereto

Clause 1 [demise]

.....ALL THAT self contained flat (hereinafter called "the Flat") on the first floor of the Building and known as Flat No 6 15-19 Lansdowne Road.....including the floors and ceilings of the Flat (and the joist and beams to which the said floors and ceilings are attached).....together with [easements] and except and reserved [as set out in the second schedule].....(hereinafter collectively referred to as "the demised premises")

Clause 4 : [Lessee's covenants with the Lessor and with the owners or lessees of the other Flat [sic] comprised in the Building]

- (i)
- (ii) contribute and pay to the Lessor from time to time.....one equal eighth part of the costs and expenses mentioned in the fourth schedule hereto.....

First Schedule [rights included in this lease]

8 The right to use the two paladins shown on plan number 2

Fourth Schedule

Costs and expenses.....in respect of which the Lessee is to contribute under clause 4(ii) of this lease

- 5. The expenses of maintaining repairing and renewing :
 - g. the roof (including the timbers) the gutters rainwater

- pipes and chimneys of the Building*
- h. the exterior walls of the Building*
- i. the entrance porch boundary walls fences driveway and paths of the said property*
- j. the drains water and gas pipes and electric cables and wires under or upon the said property and enjoyed or used by the Lessee in common with the occupier of the other flat forming part of the said property*
- k. the foundations of the Building below the level of the joist supporting the ground floor of the building*
- l. all other parts of the said property used in common by the Lessees with the Lessor or the owners or occupiers of the other flat comprised in the said property*
6. *The expenses of painting the exterior of the said property.....*
7. *The expenses of insuring the said property pursuant to clause 5(b)(iv) [sic] of this lease*
8. *The costs charges and expenses of managing agents appointed by the Lessor to manage the said property and to carry out the Lessor's obligations under the lease*
9. *The costs of the paladin [sic] referred to*

Inspection

9. The Tribunal inspected the property on the morning of the hearing on 25 January 2017. Also present were Mr Mehson, Ms Mehson, and Mr Dickson
10. Flats 5 and 6 were flats on the first floor in 19 Lansdowne Road, accessed by an external metal staircase at the rear, and then by an outer door to a small hallway. Flats 7 and 8 were on the second floor, accessed by internal stairs from the small hallway to a small landing. The ground floor of 19 Lansdowne Road comprised a commercial unit, namely Downes Wine bar. There were four further flats on a new third floor, and a new fourth floor
11. At the rear was a tarmac car park. 19 Lansdowne Road was part of a building comprising 13 Lansdowne Road (on the left hand end looking from the rear), 19 Lansdowne Road (on the right hand end) and 15 and 17 Lansdowne Road in between. The parties pointed out where 17 Lansdowne Road ended and 19 Lansdowne Road began

The hearing

12. Those attending the hearing were Mr Mehson, Ms Mehson, and Mr Dickson
13. Mr Mehson confirmed that the variations which the Applicant was seeking were confined to those set out in the draft deeds of variation

comprising Appendix 1 and 2 to this decision, and that the Applicant was no longer seeking the other variations referred to in the application form (pages A5 to A16)

14. Mr Mehson said that the draft deeds had been drawn up by the Applicant's solicitor
15. The parties' submissions on each clause of the draft deeds, and the Tribunal's decision, in cases where the parties disagreed, in each respect, are as follows

Variations to the lease of Flat 5

16. "Parties" (page AA6)

17. Paragraphs (1) and (2)

18. The parties agreed with the Tribunal's suggestion that the words "Lessor" and "Lessee" should be respectively substituted for the words "Landlord" and "Tenant", to be consistent with the wording in that respect in the original lease

19. "Background" (page AA6)

20. Paragraph (A)

21. Mr Dickson said that this clause was not in issue before the Tribunal

22. Paragraph (B)

23. The parties agreed with the Tribunal's suggestion that the words "Lessor" and "Lessee" should be respectively substituted for the words "Landlord" and "Tenant", to be consistent with the wording in that respect in the original lease

24. Paragraph (C)

25. The parties agreed with the Tribunal's suggestion that the word "Lessor" and should be substituted for the word "Landlord", to be consistent with the wording in that respect in the original lease

26. Paragraph (D)

27. The parties agreed with the Tribunal's suggestion that the word "Lessee" should be substituted for the word "Tenant", to be consistent with the wording in that respect in the original lease

28. Interpretation (pages AA6 to AA7)

29.1.1 [definitions]

30. "Lease"

31. Mr Dickson said that this definition was not in issue before the Tribunal

32. "Property"

33. The parties agreed with the Tribunal's suggestion that the words "Demised Premises" should be substituted for the word "Property", to be consistent with the wording of the demise in clause 1 of the original lease

34. "Value Added Tax"

35. The parties disagreed about Mr Dickson's submission that the words "and any additional tax" should be deleted. However, the parties agreed that the only reference to value added tax in the deed of variation was in clause 6 of the deed, and that the definition therefore stood or fell with the Tribunal's decision whether clause 6 should stand or fall. For reasons given later in this decision, the Tribunal has decided that clause 6 of the deed of variation should be deleted. The Tribunal has accordingly decided that the definition of value added tax should also be deleted

36. Paragraph 1.2 [references]

37. The parties agreed with the Tribunal's suggestion that the words "Lessor" and "Lessee" should be respectively substituted for the words "Landlord" and "Tenant", to be consistent with the wording in that respect in the original lease

38. Paragraph 1.3 [references]

39. Mr Dickson said that this paragraph was not in issue before the Tribunal

40. Paragraph 1.4 [references]

41. The parties agreed with the Tribunal's suggestion that this paragraph was redundant in light of paragraph 1.3, and should accordingly be deleted

42. Paragraph 1.5 [references]

43. Mr Dickson said that this paragraph was not in issue before the Tribunal

44. Paragraph 1.6 [meaning]

45. The parties agreed with the Tribunal's suggestion that :

- a. the wording sought to be defined in paragraph 1.6 was "tenant covenants"
- b. the wording for which a definition is given in section 28 of the Landlord and Tenant (Covenants) Act 1995 is "tenant covenant"
- c. the only reference to even vaguely similar wording in the draft deed was in clause 3 : "Tenant's Covenant : The Tenant covenants to observe the tenant's covenants in the lease as varied by this deed"
- d. clause 3 should in any event be amended so as not to contain the word "Tenant", as set out later in this decision
- e. paragraph 1.6 should therefore be deleted

46. Paragraph 1.7 [meaning]

47. The parties agreed with the Tribunal's suggestion that the words "Demised Premises" should be substituted for the word "Property", to be consistent with the wording of the demise in clause 1 of the original lease

48. Paragraphs 1.8 to 1.10 [interpretation]

49. Mr Dickson said that these paragraphs were not in issue before the Tribunal

50. Variations (pages AA7 to AA8)

51. Paragraph 2.1 [preamble]

52. The parties agreed with the Tribunal's suggestion that the words "Lessor" and "Lessee" should be respectively substituted for the words "Landlord" and "Tenant", to be consistent with the wording in that respect in the original lease

53. Paragraph 2.1(a)

54. Mr Dickson submitted that the proposed wording of this paragraph should be replaced with the following :

2.1(a) "Recital 1 shall be deleted and replaced with the following :

"The Lessor is the registered proprietor with Title Absolute of the property known as 19 Lansdowne Road Bournemouth aforesaid registered at HM Land Registry under Title number DT63592 (hereinafter called "the Building") which comprises inter alia eight self-contained flats and all of which said premises are hereinafter referred to as "the said property" and shown

edged red on the plan numbered 1 attached hereto” ”

55. Mr Dickson said that the new “plan numbered 1” to be attached to the deed should be the plan which he had submitted at the hearing, namely the filed plan for Land Registry title number DT63592 with the Respondents’ proposed red edging
56. Mr Mehson agreed that there should be a new plan, and that it should be the filed plan for Land Registry title number DT63592, but said that the Respondents’ red edging was in the wrong place, as shown by the filed plan at page A90. However, in answer to questions from the Tribunal, Mr Mehson conceded that that filed plan was attached to office copy entries dated 15 April 2011 (page A82), and was therefore out of date, and that the freehold to at least two car parking spaces formerly in title number DT63592 had recently been sold
57. The Tribunal indicated that it would accordingly direct the Applicant to send to the Respondents an up to date filed plan for Land Registry title number DT63592, with the Applicant’s proposals for the red edging to be applied, and that the Tribunal would adjourn the application for a short time after its present decision to enable the parties to agree the plan, or, in the absence of agreement, to apply to the Tribunal for a further decision about the plan, either on the papers, or, if requested by a party and agreed by the Tribunal, at a further oral hearing
58. Paragraph 2.1(b)
59. Mr Dickson said that this paragraph was not in issue before the Tribunal
60. Paragraphs 2.1(c) and (d)
61. In relation to paragraphs 1(a), 1(b), 1(c), 1(d), 1(e) (page A36) and 3 (page A37) of the fourth schedule to the lease, Mr Dickson said that he agreed that the proportion payable under the lease of Flat 5 should be one-twelfth in each case
62. In relation to paragraph 1(f) of the fourth schedule to the lease (page A36), following considerable disagreement between the parties, the parties agreed with the Tribunal’s suggestion that the deed of variation should include a new provision, in an appropriate place in the deed, and with appropriate paragraph numbering, in the following terms :
- “In line 2 of paragraph 1(f) of the fourth schedule to the lease the word “solely” shall be inserted after the word “Lessee” ”
63. On that basis Mr Dickson said that he agreed that the proportion payable under the lease of Flat 5 in relation to paragraph 1(f) as amended should be one eighth

64. In relation to paragraph 2 of the fourth schedule to the lease (page A37), following considerable disagreement between the parties, the parties agreed with the Tribunal's suggestion that the deed of variation should include a new provision, in an appropriate place in the deed, and with appropriate paragraph numbering, in the following terms :

“In line 1 of paragraph 2 of the fourth schedule to the lease the words “above the first floor joists” shall be inserted after the word “property” ”

65. On that basis Mr Dickson said that he agreed that the proportion payable under the lease of Flat 5 in relation to paragraph 2 as amended should be one eighth

66. In relation to paragraph 4 of the fourth schedule to the lease (page A37), following considerable disagreement between the parties, the parties agreed with the Tribunal's suggestion that the deed of variation should include a new provision, in an appropriate place in the deed, and with appropriate paragraph numbering, in the following terms :

“In line 1 of paragraph 4 of the fourth schedule to the lease the words “relating to the eight flats in the said property” shall be inserted after the word “expenses” ”

67. On that basis Mr Dickson said that he agreed that the proportion payable under the lease of Flat 5 in relation to paragraph 4 as amended should be one eighth

68. In relation to proposed new paragraph 1(g) of the fourth schedule to the lease, Mr Dickson submitted that this paragraph should not be added. The expenses relating to the communal hall, stairs and landing for Flats 5, 6, 7, and 8 were already covered by paragraph 1(f), and the leaseholders of the flats on the third and fourth floor should pay one eighth of those expenses in the same way as the owners of Flats 5, 6, 7 and 8 paid one eighth of the expenses of the external staircases and access ways leading to the flats on the third and fourth floors. In answer to a question from the Tribunal, Mr Dickson said that there was no lock on the outer door to the communal hall, stairs and landing for Flats 5, 6, 7, and 8

69. Mr Mehson said that there was indeed a lock on the outer door. The leaseholders of the flats on the third and fourth floor could not access, let alone use, the communal hall, stairs and landing for Flats 5, 6, 7, and 8. At page A22 the Tribunal had recorded Mr Dickson's confirmation at a previous hearing that he would pay one quarter of the expenses relating solely to the four flats on the first and second floors of 19 Lansdowne Road

70. Mr Dickson responded that his confirmation in that respect had been when there had only been four flats at 19 Lansdowne Road. The further

four flats on the third and fourth floors had been built subsequently

71. *The Tribunal's decision in relation to paragraphs 2.1(c) and (d)*

72. Having considered all the submissions of both parties in the round, the Tribunal :

- a. finds that the communal hall, stairs and landing for Flats 5, 6, 7, and 8 are already included in the wording of paragraph 1(f) of the lease, as amended earlier in this decision
- b. is accordingly not persuaded that the new proposed clause 1(g) should be added to the fourth schedule of the lease
- c. determines that the words "and one quarter of the costs and expenses mentioned in paragraph 1(g) to the fourth schedule" in paragraph 2.1(c) of the draft deed of variation, and the whole of paragraph 2.1(d) of the draft deed of variation, shall therefore be deleted
- d. determines that the remainder of paragraph 2(c) of the draft deed of variation shall remain as drafted

73. Paragraph 2.2

74. Mr Dickson said that this paragraph was not in issue before the Tribunal

75. Paragraph 3 Tenants' covenant (page AA8)

76. The parties agreed with the Tribunal's suggestion that the heading and wording of this paragraph should be replaced with the following heading and wording :

"3 Lessee's covenant

The Lessee covenants to observe and perform the covenants on the part of the Lessee contained in the lease as varied by this deed"

77. Paragraph 4 Registration (page AA8)

78. Paragraph 4.1 : application for registration

79. Mr Dickson submitted that it was unfair for the Respondents to have to pay for registration because the only reason why the deed of variation was necessary was because the Applicant had altered the building which was subject to the lease by disposing of part of the freehold and adding new flats above

80. On reflection, Mr Mehson agreed that the word "Tenant" should be deleted and the word "Lessor" should be substituted

81. Paragraph 4.2 : requisitions

82. The parties agreed with the Tribunal's suggestion that the word "Tenant" should be deleted and the words "Lessor and Lessee" should be substituted

83. Paragraph 4.3 : office copies

84. The parties agreed with the Tribunal's suggestion that the words "Tenant shall send to the Landlord" should be deleted and the words "Lessor shall ensure that the Lessee receives" should be substituted

85. Paragraph 5 : endorsement (page AA8)

86. Mr Dickson said that this paragraph was not in issue before the Tribunal

87. Paragraph 6 : costs (pages AA8 and AA9)

88. Mr Dickson submitted that it was unfair for the Respondents to have to pay for the Applicant's costs because the only reason why the deed of variation was necessary was because the Applicant had altered the building which was subject to the lease by disposing of part of the freehold and adding new flats above

89. Mr Mehson submitted that, on the contrary, that the unfairness was that the Applicant had been put in the position of having to apply for a deed of variation as a result of the Tribunal's July 2013 decision and the Tribunal's April 2015 decision, namely that a deed of variation was needed. However, when asked by the Tribunal whether he was suggesting that the Tribunal was to blame for the need for the deed of variation, Mr Mehson said that he was not so suggesting. When further asked by the Tribunal whether he accepted that the only reason why the deed of variation was necessary was because the Applicant had altered the building which was subject to the lease by disposing of part of the freehold and adding new flats above, Mr Mehson said that all other leaseholders in the building had happily agreed with the service charge position without the need for three Tribunal hearings and a deed of variation, and, in any event, Miss Bray and Mr Dickson were benefiting from the deed of variation because their share of some of the service charges was now only one twelfth, rather than one eighth

90. *The Tribunal's decision in relation to paragraphs 6.1 and 6.2*

91. Having considered all the submissions of both parties in the round, the Tribunal :

- a. accepts Mr Dickson's submission that the only reason why the deed of variation was necessary was because the Applicant had altered the building which was subject to the lease by disposing of part of

the freehold and adding new flats above

- b. determines that it is therefore unreasonable to expect the Respondents to pay the Applicant's costs in relation to the deed of variation
- c. determines that the whole of paragraph 6.1 of the draft deed of variation shall therefore be deleted
- d. determines that the whole of paragraph 6.2 of the draft deed of variation, which the Tribunal finds to be relevant only if paragraph 6.1 had remained in the draft deed, shall therefore also be deleted

92. Paragraph 7 : governing law (page AA9)

93. Mr Dickson said that this paragraph was not in issue before the Tribunal

94. Paragraph 8 : third party rights (page AA9)

95. Mr Dickson said that this paragraph was not in issue before the Tribunal

96. Further amendments proposed by the Respondents

97. Mr Dickson repeated his written proposal for replacement wording for paragraph 1 of the third schedule of the lease "to prevent the Tribunal from ordering the Applicant to breach the lease for the roof space"

98. However, the Tribunal indicated that if the Respondents were suggesting that the Applicant was acting in breach of covenant, then that was a matter for the county court, and was not a matter for the Tribunal in this application

Variations to the lease of Flat 6

99. The parties agreed that the Tribunal's decisions relating to the deed of variation relating to Flat 5 would also apply to the deed of variation relating to Flat 6 (pages AA11 to AA16), although the Tribunal would also need to make an additional decision about the reference in paragraph 2.1(c) of that deed of variation to paragraph 5 of the fourth schedule to the lease, as there was no such paragraph in the fourth schedule to the lease of Flat 5

100. Paragraph 2.1(c) (page AA13)

101. The Tribunal drew attention to the discrepancy between paragraph 8 of the first schedule to the lease of Flat 6, which gave the lessee the right to use "the two paladins", and paragraph 5 of the fourth schedule, which referred to "the paladin"

102. Mr Dickson said that there were no paladins in any event, and had not

been for many years, and that there were only ordinary council bins shared by twenty one flats, and which were covered by paragraph 1(f) of the fourth schedule to the lease, and for which the lessee of Flat 6 should have to pay no more than one twelfth. However, in answer to a question from the Tribunal, Mr Dickson conceded on reflection that paragraph 1(f) of the fourth schedule to the lease related to "other parts of the said property", whereas a paladin would not be part of the property, as such

103. However, following further submissions by both parties, Mr Mehson said that he would agree to the lessee's contribution to paladin costs being one twelfth

104. *The Tribunal's decision in relation to paragraph 2.1(c) of the draft deed of variation relating to Flat 6, so far as it relates to paragraph 5 of the fourth schedule to the lease*

105. The Tribunal determines that :

- a. in line 4, the words "and 3" shall be deleted, and the words "3 and 5" shall be substituted
- b. in line 5, the words "4 and 5" shall be deleted, and the words "and 4" shall be substituted

106. *The Tribunal's decision in relation to the remainder of the draft deed of variation relating to Flat 6*

107. The Tribunal determines that all the amendments to the deed of variation relating to Flat 5 recorded in this decision as either having been agreed by the parties or as having been decided by the Tribunal, shall also apply to the deed of variation relating to Flat 6

Compensation

108. The Tribunal notes that neither party has suggested that the other party should pay compensation under section 38(10) of the 1987 Act for any loss or disadvantage likely to be suffered as a result of the deeds of variation, and, having considered all the circumstances in the round, the Tribunal finds that it is not appropriate to make any order in that respect

The Respondents' application under section 20C of the 1985 Act (pages R7 to R12)

109. Mr Mehson said that the Applicant would be seeking to include charges for these proceedings in a future service charge. The Applicant had been happy with the Tribunal's direction for the application to be decided on the papers, but the Respondents had insisted on a hearing. Mr Dickson had agreed most points, and there had been no need for an oral hearing

110. Mr Dickson said that :

- a. the only reason why the deed of variation was necessary was because the Applicant had altered the building which was subject to the lease by disposing of part of the freehold and adding new flats above
 - b. the Applicant had not attempted to negotiate the terms of the draft deeds with the Respondents beforehand, but had simply issued the application
 - c. the Respondents had asked for an oral hearing before the recent submission by the Applicant of the draft deeds of variation, which were in very different terms from the variations originally sought in the application
111. Mr Mehson responded that the Applicant had indeed attempted to negotiate and had submitted the draft deeds in accordance with the Tribunal's most recent directions
112. *The Tribunal's decision*
113. The Tribunal :
- a. accepts Mr Dickson's submission that the only reason why the deeds of variation are necessary is because the Applicant has altered the building which was subject to the lease by disposing of part of the freehold and adding new flats above
 - b. finds that the Respondents have, as the Tribunal finds, succeeded on a sufficiently large number of the issues before the Tribunal, particularly in the light of the variations originally sought in the application, to make it appropriate, in all the circumstances of this case, to make an order under section 20C of the 1985 Act
 - c. therefore orders that none of the costs incurred by the Applicant in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents or either of them

Fees

114. Mr Mehson applied at the hearing for an order for reimbursement of the hearing fee of £200, on the grounds that :
- a. the Tribunal's initial directions had stated that the application would be determined without a hearing, but the Respondents had demanded a hearing
 - b. at a previous service charge hearing in relation to the same property, the Respondents had successfully claimed their hearing fee for the same reason, namely that they had applied for a written determination but the Applicant had asked for a hearing
115. Mr Dickson repeated the submissions he had made in relation to the Respondent's application under section 20C of the 1985 Act, namely that :
- a. the only reason why the deed of variation was necessary was

because the Applicant had altered the building which was subject to the lease by disposing of part of the freehold and adding new flats above

- b. the Applicant had not attempted to negotiate the terms of the draft deeds beforehand, but had simply issued the application
- c. the Respondents had asked for an oral hearing before the recent submission of the draft deeds of variation, which were in very different terms from the variations originally sought in the application

116. *The Tribunal's decision*

117. The Tribunal :

- a. again accepts Mr Dickson's submission that the only reason why the deeds of variation are necessary is because the Applicant has altered the building which was subject to the lease by disposing of part of the freehold and adding new flats above
- b. finds that the Respondents have succeeded on a sufficiently large number of the issues before the Tribunal, particularly in the light of the variations originally sought in the application, to make it inappropriate, in all the circumstances of this case, to make an order for reimbursement of the hearing fee
- c. has taken into account when making that decision the fact that the Respondents were the applicants in the previous service charge applications, and one of the reasons why the Tribunal made an order for reimbursement of the hearing fees in the Tribunal's 2015 decision was that, again, the Respondents (as applicants in that application) had succeeded in a sufficiently large number of the issues then before the Tribunal to make it appropriate to make such an order
- d. therefore declines to make an order for reimbursement of the hearing fee paid by the Applicant

Further directions

118. The Tribunal directs that :

- a. the Applicant shall by 13 February 2017 submit to the Respondents a revised draft deed of variation relating to each of Flat 5 and Flat 6, incorporating the amendments recorded in this decision as either having been agreed by the parties or as having been decided by the Tribunal, together with, in each case, the plan to be numbered "1", being an up to date filed plan for Land Registry title number DT63592, with the Applicant's proposals for the red edging to be applied
- b. the Respondents shall by 20 February 2017, in writing, indicate their agreement to the revised drafts and plans, or detail in what way they contend that the revised drafts and plans do not conform with the amendments recorded in this decision as either having been agreed by the parties or as having been decided by the

Tribunal

- c. the Tribunal expects the parties to be able to reach agreement about the final form of each deed of variation and the plan; however, in case for some reason they are not able to do so, the Tribunal adjourns this application until 27 February 2017, following which date the Tribunal will close its file, unless in the meantime either party has applied in writing for a further decision by the Tribunal in relation to any outstanding point about the wording of either deed of variation or the plan; the Tribunal gives notice that any such further decision will be way of a paper determination, unless the Tribunal agrees to a written request by either party for a further oral hearing

Appeals

- 119. A person wishing to appeal against this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case
- 120. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision
- 121. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to admit the application for permission to appeal
- 122. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result which the person is seeking

Dated 27 January 2017

.....
Judge P R Boardman
(Chairman)



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

Case Reference : CHI/00HN/LVT/2016/0008

Property : Flats 5 and 6, 19 Lansdowne Road,
Bournemouth, BH1 1RZ

Applicant : Sorda Limited (freeholder) and
Jordan Future Limited
(leaseholder of Flats 7 and 8)

Respondent : Miss Carrie Bray (Flat 5) and Mr
Valiant Patrick Dickson (Flat 6)

Type of Application : Variation of lease : Section 35 of the
Landlord and Tenant Act 1987 ("the
1987 Act"); application by
Respondent for an order under
section 20C of the Landlord and
Tenant Act 1985 ("the 1985 Act")

Tribunal Members : Judge P R Boardman (Chairman) and
Mrs J Coupe FRICS

Date of Decision : [] January 2017

**DECISION APPENDIX 1
Draft Deed of Variation to Lease of Flat 5**



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

Case Reference : CHI/00HN/LVT/2016/0008

Property : Flats 5 and 6, 19 Lansdowne Road,
Bournemouth, BH1 1RZ

Applicant : Sorda Limited (freeholder) and
Jordan Future Limited
(leaseholder of Flats 7 and 8)

Respondent : Miss Carrie Bray (Flat 5) and Mr
Valiant Patrick Dickson (Flat 6)

Type of Application : Variation of lease : Section 35 of the
Landlord and Tenant Act 1987 (“the
1987 Act”); application by
Respondent for an order under
section 20C of the Landlord and
Tenant Act 1985 (“the 1985 Act”)

Tribunal Members : Judge P R Boardman (Chairman) and
Mrs J Coupe FRICS

Date of Decision : [] January 2017

DECISION APPENDIX 2
Draft Deed of Variation to Lease of Flat 6

AAS

DATED

DEED OF VARIATION OF LEASE

relating to

FLAT 5 19 LANSDOWNE ROAD BOURNEMOUTH BH1 1RZ

between

SORDA LIMITED

and

CARRIE ANNE BRAY

AAG

This deed is dated

2016

HM Land Registry

Landlord's title number: DT63592
Administrative area: Bournemouth
Tenant's title number: DT146922
Administrative area: Bournemouth

PARTIES

- (1) **SORDA LIMITED** (CRN 07455001) whose registered office is at Taylor Cocks Accountants 3 Acorn Business Centre North Harbour Road Cosham PL6 3TH (**Landlord**).
- (2) **CARRIE ANNE BRAY** Flat 5 19 Lansdowne Road Bournemouth BH1 1RZ (**Tenant**).

BACKGROUND

- (A) This deed is supplemental and collateral to the Lease.
- (B) The Landlord and the Tenant have agreed to vary the Lease as set out in this deed.
- (C) The Landlord is entitled to the immediate reversion to the Lease.
- (D) The residue of the term granted by the Lease is vested in the Tenant.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions in this clause apply in this deed.

Lease: a lease of the Property dated 15 January 1987 and made between (1) Anglo City Property Group Limited and (2) The Royal Bank of Scotland PLC and David William Elias and all documents supplemental or collateral to that lease.

Property: Flat 5 19 Lansdowne Road Bournemouth BH1 1RZ as more particularly described in and demised by the Lease.

Value Added Tax: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

- 1.2 References to the **Landlord** include a reference to the person entitled for the time being to the immediate reversion to the Lease. References to the **Tenant** include a reference to its respective successors in title and assigns.
- 1.3 Unless otherwise specified, a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time **OR** as at the date of

447

this deed, taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.

- 1.4 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time **OR** as at the date of this deed under that statute or statutory provision.
- 1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.6 The expression **tenant covenants** has the meaning given to it by the Landlord and Tenant (Covenants) Act 1995.
- 1.7 Unless the context otherwise requires, a reference to the **Property** is to the whole and any part of it.
- 1.8 Except where a contrary intention appears, a reference to a clause is a reference to a clause of this deed.
- 1.9 Clause headings shall not affect the interpretation of this deed.
- 1.10 Except to the extent that they are inconsistent with the definitions and interpretations in clause 1 of this deed, the definitions and interpretations in clause 1 of the Lease shall apply to this deed.

2. **VARIATIONS TO LEASE**

- 2.1 The Landlord and the Tenant agree that with effect from the date of this deed that the Lease shall be amended as follows:
 - (a) In recital 1 line 2 of the Lease the words "15 – 19 Lansdowne Road" shall be deleted and replaced with "19 Lansdowne Road"
 - (b) In clause 1 line 8 of the Lease the words "15 – 19 Lansdowne Road" shall be deleted and replaced with "19 Lansdowne Road"
 - (c) In clause 4(ii) of the Lease the words "one equal eighth part of the costs and expenses mentioned in the Fourth Schedule" shall be deleted and replaced with "one equal twelfth part of the costs and expenses mentioned in paragraphs 1(a), 1(b), 1(c), 1(d) 1(e), and 3 to the Fourth Schedule, one eighth of the costs and expenses mentioned in paragraph 1(f), 2, and 4 to the Fourth Schedule and one quarter of the costs and expenses mentioned in paragraph 1(g) to the Fourth Schedule"
 - (d) There shall be a new paragraph 1(g) to the Fourth Schedule as follows: "the cost of and expenses of maintaining repairing and renewing providing

electricity to and all other incidental costs in respect of the internal common parts of the Building providing access to Flats 5, 6, 7 and 8 including all lobbies, staircases and landings”

2.2 The Lease shall remain fully effective as varied by this deed and the terms of the Lease shall have effect as though the provisions contained in this deed had been originally contained in the Lease.

3. **TENANT'S COVENANT**

The Tenant covenants to observe and perform the tenant's covenants in the Lease as varied by this deed.

4. **REGISTRATION OF THIS DEED**

4.1 **Application for registration**

Promptly following the completion of this deed, the Tenant shall apply to register this deed at HM Land Registry against title numbers DT63592 and DT146922.

4.2 **Requisitions**

The Tenant shall ensure that any requisitions raised by HM Land Registry in connection with an application for registration are dealt with promptly and properly.

4.3 **Official copies**

Within one month after completion of the registration, the Tenant shall send to the Landlord official copies of the respective registered titles.

5. **ENDORSEMENT**

Promptly following completion of this deed both the Landlord and the Tenant shall each endorse a memorandum of variation upon the Lease and its counterpart in the following terms:

“This Lease has been varied by a Deed of Variation dated [DATE] and made between [PARTIES]”.

6. **COSTS**

6.1 On completion of this deed the Tenant shall pay the reasonable costs and disbursements of the Landlord, its solicitors, surveyors and managing agents in

449

connection with this deed including any costs and disbursements incurred or to be incurred by the Landlord in registering this deed.

6.2 The obligations in this clause extend to costs and disbursements assessed on a full indemnity basis and to any Value Added Tax in respect of those costs and disbursements and any Value Added Tax chargeable on the payments by the Tenant except to the extent that the Landlord is able to recover such Value Added Tax.

7. GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

8. THIRD PARTY RIGHTS

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

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

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DATED

DEED OF VARIATION OF LEASE

relating to

FLAT 6 19 LANSDOWNE ROAD BOURNEMOUTH BH1 1RZ

between

SORDA LIMITED

and

VALIANT PATRICK DICKSON

4412

This deed is dated

2016

HM Land Registry

Landlord's title number: DT63592
Administrative area: Bournemouth
Tenant's title number: DT132816
Administrative area: Bournemouth

PARTIES

- (1) **SORDA LIMITED** (CRN 07455001) whose registered office is at Taylor Cocks Accountants 3 Acorn Business Centre North Harbour Road Cosham PL6 3TH (Landlord).
- (2) **VALIANT PATRICK DICKSON** Flat 6 19 Lansdowne Road Bournemouth BH1 1RZ (Tenant).

BACKGROUND

- (A) This deed is supplemental and collateral to the Lease.
- (B) The Landlord and the Tenant have agreed to vary the Lease as set out in this deed.
- (C) The Landlord is entitled to the immediate reversion to the Lease.
- (D) The residue of the term granted by the Lease is vested in the Tenant.

AGREED TERMS

1. INTERPRETATION

1.1 The definitions in this clause apply in this deed.

Lease: a lease of the Property dated 8 November 1985 and made between (1) Anglo City Property Group Limited and (2) Katrina Elizabeth Borthwick and all documents supplemental or collateral to that lease.

Property: Flat 6 19 Lansdowne Road Bournemouth BH1 1RZ as more particularly described in and demised by the Lease.

Value Added Tax: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

1.2 References to the **Landlord** include a reference to the person entitled for the time being to the immediate reversion to the Lease. References to the **Tenant** include a reference to its respective successors in title and assigns.

1.3 Unless otherwise specified, a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time **OR** as at the date of

this deed, taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.

- 1.4 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time **OR** as at the date of this deed under that statute or statutory provision.
- 1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.6 The expression **tenant covenants** has the meaning given to it by the Landlord and Tenant (Covenants) Act 1995.
- 1.7 Unless the context otherwise requires, a reference to the **Property** is to the whole and any part of it.
- 1.8 Except where a contrary intention appears, a reference to a clause is a reference to a clause of this deed.
- 1.9 Clause headings shall not affect the interpretation of this deed.
- 1.10 Except to the extent that they are inconsistent with the definitions and interpretations in clause 1 of this deed, the definitions and interpretations in clause 1 of the Lease shall apply to this deed.

2. VARIATIONS TO LEASE

- 2.1 The Landlord and the Tenant agree that with effect from the date of this deed that the Lease shall be amended as follows:
 - (a) In recital 1 line 2 of the Lease the words "15 – 19 Lansdowne Road" shall be deleted and replaced with "19 Lansdowne Road"
 - (b) In clause 1 line 8 of the Lease the words "15 – 19 Lansdowne Road" shall be deleted and replaced with "19 Lansdowne Road"
 - (c) In clause 4(ii) of the Lease the words "one equal eighth part of the costs and expenses mentioned in the Fourth Schedule" shall be deleted and replaced with "one equal twelfth part of the costs and expenses mentioned in paragraphs 1(a), 1(b), 1(c), 1(d) 1(e), and 3 to the Fourth Schedule, one eighth of the costs and expenses mentioned in paragraphs 1(f), 2, 4 and 5 to the Fourth Schedule, and one quarter of the costs and expenses mentioned in paragraph 1(g) to the Fourth Schedule"
 - (d) There shall be a new paragraph 1(g) to the Fourth Schedule as follows: "the cost of and expenses of maintaining repairing and renewing providing

AA/14

electricity to and all other incidental costs in respect of the internal common parts of the Building providing access to Flats 5, 6, 7 and 8 including all lobbies, staircases and landings”

2.2 The Lease shall remain fully effective as varied by this deed and the terms of the Lease shall have effect as though the provisions contained in this deed had been originally contained in the Lease.

3. **TENANT'S COVENANT**

The Tenant covenants to observe and perform the tenant's covenants in the Lease as varied by this deed.

4. **REGISTRATION OF THIS DEED**

4.1 **Application for registration**

Promptly following the completion of this deed, the Tenant shall apply to register this deed at HM Land Registry against title numbers DT63592 and DT132816.

4.2 **Requisitions**

The Tenant shall ensure that any requisitions raised by HM Land Registry in connection with an application for registration are dealt with promptly and properly.

4.3 **Official copies**

Within one month after completion of the registration, the Tenant shall send to the Landlord official copies of the respective registered titles.

5. **ENDORSEMENT**

Promptly following completion of this deed both the Landlord and the Tenant shall each endorse a memorandum of variation upon the Lease and its counterpart in the following terms:

“This Lease has been varied by a Deed of Variation dated [DATE] and made between [PARTIES]”.

6. **COSTS**

6.1 On completion of this deed the Tenant shall pay the reasonable costs and disbursements of the Landlord, its solicitors, surveyors and managing agents in

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Executed as a deed by SORDA
LIMITED
acting by

_____, a director
in the presence of:

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

.....
[SIGNATURE OF DIRECTOR]
Director

Executed as a deed by
VALIANT PATRICK DICKSON
in the presence of:

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

.....
[SIGNATURE OF TENANT]