



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

**Case Reference** : CHI/00ML/LVT/2020/0003

**Property** : Wilbury Grange, Wilbury Road, Hove BN3  
3GN

**Applicant** : Wilbury Grange (Hove) Limited

**Representative** : Dean Wilson LLP  
clw@deanwilson.co.uk

**Respondent** : The Lessees

**Representative** :

**Type of Application** : Landlord & Tenant Act 1987 – S. 37  
Application by majority of parties for  
variation of leases

**Tribunal Member(s)** : Mr D Banfield FRICS

**Date of Decision** : On the papers without an oral hearing on  
12 November 2020

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DECISION

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**ORDER**

**The Tribunal orders pursuant to section 37 of the Landlord and Tenant Act 1987 that each and every lease of Flats 1-65 (excluding flat 13) Wilbury Grange, Wilbury Road, Hove BN3 GN be varied in the terms set out in paragraph 6 of this Decision.**

**The Applicant shall be responsible for making applications to the Land Registry to have noted against the freehold title and the leasehold titles of the Property the aforesaid variations.**

## **Background**

1. The Applicant seeks to vary the leases of all 64 flats under Section 37 of the Landlord & Tenant Act 1987 (“the 1987 Act”).
2. The applicant states that following the discontinued use of gas at the premises the freeholder wishes to align the leases with the reality in practice and remove references to the right to run gas supplies.
3. On 12 December 2019 Dean Wilson LLP wrote to each of the Lessees explaining the situation and setting out the variations proposed. Lessees were asked to return a statement that they consented to the variation and that they did not wish to claim any compensation.
4. A list of 57 Lessees said to have consented to the proposal was appended together with copies of 55 acceptances. No Lessee has objected and the freeholder also confirms their consent.
5. The proposed variations were;

### First Schedule Part 2

#### Paragraph 4 shall read

“The free and unencumbered passage and running of electricity water and soil from and to the flat and such other supplies that may be provided by the Lessor from time to time through all or any of its pipes wires conduits cables sewers watercourses and drains or other installations now or hereafter to be laid in or upon or passing through the building”

### Second Schedule

#### Paragraph 1(i) shall read

“Full right and liberty at all times to use and the free and unencumbered passage and running of electricity water and soil and such other supplies that may be provided by the Lessor from time to time from and to the remainder of the building or any part thereof and through all or any of the pipes wires conduits cables sewers watercourses and drains now laid or hereafter to be laid in or upon or passing through the flat or any part thereof”

### Third Schedule

#### Paragraph 14 shall read

“Not to alter add to or damage the heating apparatus installed in the flat nor use the electric lighting system otherwise than for lighting nor alter or add to any electric wiring or other supply except with the prior approval in writing of the Lessor first obtained”

6. The tribunal made Directions on 24 September 2020 indicating that the application was likely to be suitable for determination on the papers alone without an oral hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing to the Tribunal within 28 days of the date of receipt of the directions. No objections have been received and the application is therefore determined on the papers.
7. The directions also invited the Respondents to submit any comments/representations. One query was received and following the Applicant's response the lessee concerned agreed to the variation.
8. No objections to the application have been made.

## **The Law**

9. Section 37 of the Act states:

*(1) Subject to the following provisions of this section, an application may be made to [a leasehold valuation 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 leases are varied to the same effect.*

*(4) An application under this section in respect of any leases may be made by the landlord of any of the tenants under the leases.*

*(5) Any such application may 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.*

Section 38 provides that:

*(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 subsection (6) and (7) make an order varying each of the leases in such manner as its specified in the order.*

Section 38 provides;

*(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 any variation would be likely to 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*

## **Evidence**

10. The bundle submitted contains the signed agreement to the application from the lessees as referred to above. No objections have been received.

## **Decision**

11. The Tribunal is satisfied that the requisite percentage of parties, (including the landlord), consenting to the agreed lease variation has been met. Further, the Tribunal is also satisfied that not more than 10 per cent of the total parties concerned disagree with the proposals and that the statutory criteria have therefore been met.

12. The Tribunal is satisfied that the Applicant's object in seeking the lease variation cannot be met unless all subject leases are varied to the same effect and that none of the reasons for not granting an order as set out in section 38 applies.

**13. The Tribunal therefore makes an order varying the leases as requested and as set out in paragraph 6 above.**

D Banfield FRICS  
12 November 2020

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to RPSouthern@justice.gov.uk. 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.
2. 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 allow the application for permission to appeal to proceed.
3. 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 the party making the appeal is seeking.