



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

Case Reference : CHI/45UC/LVT/2021/0004

Property : Danehurst, Sylvan way, Bognor Regis PO21
2LR

Applicant : Stonewater Limited

Representative : Shakespeare Martineau LLP

Respondents : The Lessees

Representative : -

Type of Application : Variation of lease: section 37 Landlord and
Tenant Act 1987

Tribunal Member(s) : D Banfield FRICS
Regional Surveyor

Date of Decision : 1 November 2021

DECISION

Background

1. The Applicant lessor seeks to vary all the leases at Danehurst so that the residential scheme manager will be replaced with a non-residential scheme manager with a view to saving costs.
2. It is said that all 22 lessees of these retirement flats have been consulted. 21 responses have been received 18 of which were in favour, 1 against and 2 who expressed no preference.
3. Under section 37 of the Landlord and Tenant Act 1987 the Tribunal can be asked to approve a lease variation if, where there are more than 8 leases, it is not opposed by more than 10% of the parties concerned, and at least 75% agree. The landlord also has a vote. So it is said that in this case 82.6% of the concerned parties have voted in favour (more than 75%) and less than 10% have voted against the change.
4. The tribunal made Directions on 18 August 2021 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.
5. The directions also invited the Respondents to send any objection to the proposals to the Applicant and one was received.
6. On receipt of the hearing bundle the Tribunal considered whether it had sufficient information to make its decision without an oral hearing and decided that it did. There were no disputes as to the facts of the case that could be illuminated by the receipt of oral evidence.

The Law

7. 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

8. The bundle submitted contains the signed responses to the application from the lessees as referred to above.
9. The lessee of Flat 2 refers to the application involving 3 issues. The change of scheme manager to non-residential, the sale of the maisonette and the proportional adjustment to the Lease Charges. There was no objection to these proposals subject to:
 - The new Non-residential Scheme Manager role can be confirmed as on- site during normal working hours.
 - The Application Form be changed to clearly indicate that Flat 4 will be sold to create a 23rd Leaseholder in the scheme.
 - A new draft lease is included in the legal pack so it can be properly considered.
10. In response the Applicant confirmed that the role of the non-residential scheme manager will remain unchanged and that the Warden's flat will be sold allowing for service charges to be spread across an additional property. This information was provided to leaseholders when they completed the ballot. Whilst it is accepted that a new complete lease was provided leaseholders were sent a redacted lease and a copy of the relevant terms and proposed lease variations upon which they were invited to vote.

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 has considered the observations made by the lessee of Flat 2 and the response from the Applicant which it is satisfied satisfactorily provides the assurances required.
13. 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.
14. **The Tribunal therefore makes the following Order as requested.**

IT IS ORDERED THAT:

1. Pursuant to section 38(3) of the Landlord and Tenant Act 1987 ("the Act") all the residential long leases at the Property are varied from the date of this Order, as follows. Any clause not shown remains as per the original lease:

1.1 Paragraph 1 of Lease Recital

WHEREAS:

1. ...
 - (i)...
 - (ii)...
 - (iii) *“the Property” comprises the development at Sylvan Way Bognor Regis PO21 2LR in the County of West Sussex of 23 self-contained one bedroom flats together with car parking communal areas and garden and known as Danehurst and being all that land comprised in the above mentioned title.*

1.2 Paragraph 2 of Lease Recital

It is intended to demise all the units of accommodation in the Property upon terms similar to those herein contained to elderly retired persons and the Lessor will retain the parts of the Property used in common by the lessees of the said units and such other (if any) parts of the Property which are not to be demised as aforesaid.

1.3 Clause 4(1)(b)(ii) of the Lease

4. ...
 - (1) (a)...
 - (b)...
 - (i)...
 - (ii) *from [April of year of lease] and from each succeeding 1st April a due proportion being 4.35% of the Lessor’s estimate of the costs and expenses of providing the said services during the year to which the Service Charge relates...*

1.4 Clause 5(1)(d) of the Lease

(d) employ a warden for general supervision of the Property and maintain a system for the answering at any time of emergency calls of the Lessee either by the warden or by a direct link into a suitable district central alarm system but this shall not include nursing or any other domiciliary services.

1.5 Clause 5(5) of the Lease

(5) That every occupation Lease of residential accommodation which forms part of the Property hereafter granted by the Lessor shall be in substantially the same form as this Lease and shall contain covenants and stipulations to be observed by the Lessee thereof in substantially the same form as those herein contained.

1.6 Paragraph 1 of Part I of the First Schedule of the Lease

1. The costs and expenses incurred by the Lessor in carrying out its obligations (except renewal or replacement) in respect of maintenance and repair of the exterior; common parts of the Property; maintenance of services including the separate heating installation in the flats cleaning and serving and lighting and heating (where applicable) of common parts of the Property; cleaning of the windows of common parts; maintaining driveways car parking spaces forecourts gardens and grounds regular maintenance (but not renewal) of the lift and laundry equipment maintenance and repair of the warden alarm system and portaphone system and master television aerial and the provision of a payphone in the common area and employing the warden.

1.7 Paragraph 3 of Part I of the First Schedule of the Lease

3. The cost of the warden's salary and expenses and the cost of providing a relief for the warden in off-duty hours and during holidays.

2. Pursuant to section 38(9) of the Act it is ordered that the Chief Land Registrar shall make such entries on the registers relating to the titles hereby affected for the purpose of recording and giving effect to the terms of this Order.
3. A copy of the Order is to be sent to each of the 22 Lessees.

D Banfield FRICS
1 November 2021

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. 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.
4. 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 application is seeking.