



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

Case Reference : **MAN/32UL/LVT/2014/0001**

Property : **Various flats at Spring Meadow, Clitheroe BB7
2BU**

Appellant : **Pimlico Management Company Limited**

Respondent : **(1)The leaseholders of the relevant flats
(see schedule)
(2)Danecarr Limited**

**Type of
Application** : **Landlord & Tenant Act 1987 – Section 37(1)**

Tribunal Members : **Mr J R Rimmer
Mrs E Scull**

Date of Decision : **21st July 2014**

DECISION

© CROWN COPYRIGHT 2014

Order

The Leases relating to Flats 3, 6, 10, 11, 14, 15, 17 and 23, Spring Meadow, Clitheroe are to be varied by the replacement in the definition of Service Charge on page nine of the percentage apportionment therein with the words “each apartment shall pay one twenty-fourth (1/24) of the service charge for the Common Parts for each Account Period”.

Background

- 1 Spring Meadow is a modern development of 24 flats, set in three blocks, situated within a short walking distance of Clitheroe town centre. They have all the usual services that might be expected to be provided to such a development relating to the maintenance and repair of the common parts and grounds, together with those utilities that are required to be shared on a communal basis. Payment of the service charges is governed by the provisions of the respective leases. The flats are situated either on the ground floor, or second floor of each block, although some extend into extra rooms on the third floor via internal staircases in the relevant flats.
- 2 It is a matter of general agreement that at the time of the construction of the properties tripartite leases were created by the developer, Rowland Homes Limited, in favour of Pimlico Management Company Limited, the Applicant, and the respective lessees of the individual flats. For a reason which is apparent to no-one some of the leases impose an obligation to pay a fixed percentage of the annual service charges, those being either 3.85% or 4.62%, dependent on the size of the flat in question, and others simply to pay 1/24th of the total service charge costs. The landlord's interests have now been transferred to Danecarr Limited.
- 3 There was initially a time when the previous managing agents, on behalf of the Applicants, had applied an apportionment based on all flats contributing one or other of the percentages set out in some of the leases, but the current agents, on discovering that most leases referred to the 1/24th apportionment adopted that apportionment across the board and it became apparent that under any combination of the percentage or fractional apportionments provided no total equated to exactly 100% of the charge.

- 4 The Application is to regularise the position on the basis of each leaseholder bearing 1/24th of the cost, thus requiring the variation of those leases in which the percentage apportionment is used. Those leases are fewer in number than those with the fractional apportionment. On the reasonable assumption that all the leases to the flats are in an identical form consistent with those that have been copied to the Tribunal the relevant provision to requiring amendment is the definition of service charge in the definitions section of the lease, to be found at the bottom of page nine.

The Law

- 5 Sections 35 -39 Landlord and Tenant Act 1987 govern the making of an application to vary leases of flats. Although the application was made originally under Sections 35 and 36 it became apparent during the hearing of this matter that there was a broad basis of consent for the matter to move forward under Section 37 which requires:
 - An application to vary two or more leases
 - Which are long leases, not necessarily in the same building, nor with identical terms, but with the same landlord
 - The object to be achieved by the variation cannot be achieved satisfactorily without the variation
 - There is an appropriate majority of the parties in favour of the variation.

The hearing and determination

- 6 This matter first came for hearing before the Tribunal at Blackburn on 19th May 2014 when it was quite clear to the Tribunal that all prospective parties had been notified of the variation sought but that not all of them had responded to provide their consent, or, alternatively had provided equivocal consent, depending upon the views of others. There was also apparently one dissenting voice.
- 7 Notwithstanding the effort involved, Mr Hardie, a director of the Management Company indicated his willingness to co-ordinate a further attempt to secure and clarify those consents which had been obtained, particularly as it was now clear that one of the leases originally thought to contain the percentage apportionment had now been found to contain the fractional apportionment (that being the lease in respect of number 9) . This brought the application within section 37(5)(a) Landlord and Tenant Act 1987 as there were now less than nine leases to be varied. If the application was to be successful there can be no more than one dissenting party. The landlord is also a party to the application for this purpose. Further directions were therefore given as to what was required and the mechanism identified for any dissent to be clearly identified.

- 8 The Flats to which the application thereafter related were numbers 1, 3, 10, 11, 14, 15, 17, and 23, Spring Meadow.
- 9 In due course the consents of 8 of the 9 relevant parties were obtained and this satisfies the requirements of Section 37(5)(a). All but two of these were unequivocal. The tenant of Flat 10 provided consent that they did not incur any direct costs in relation to the application and the landlord's consent was contained in a letter dated 16th May 2014 which raised a number of issues in relation to the funding of any variation but consent would be given if no cost was incurred by them. No written response appears to have been received in respect of flat 14.
- 10 The Tribunal reconvened to consider the matter on 21st July 2014 and was happy to approve the variation to the leases to bring the requested uniformity to the apportionment of the service charge.
- 11 On behalf of the Management Company Mr Hardie raised the issue of costs incurred by the company in relation to the making of the application. These are part of the costs of the Management company and its estate manager and will form part of the service charge costs for the year in which they are incurred and may be subjected to the usual scrutiny available in relation to such charges and the Tribunal makes no order in relation to the costs of this application itself in view of its resolution by consent. There are therefore no direct costs falling on any of the leaseholders, or the landlord, in relation to the application.
- 12 It will be necessary to effect an amendment to each of the leases in question to confirm the position for the future either by having each lease annotated or annexing a copy of the order to the lease in question.

Annex

Mrs	M.	Parker	Apartment 1	Spring Meadow	Clitheroe	BB7 2BU
Mr & Mrs	L.	Bowtell	Apartment 2	Spring Meadow	Clitheroe	BB7 2BU
Mr & Mrs	G.	Wilson	Apartment 3	Spring Meadow	Clitheroe	BB7 2BU
Ms	G.	Haselden	Apartment 4	Spring Meadow	Clitheroe	BB7 2BU
Mr	J.	Kok	Apartment 5	Spring Meadow	Clitheroe	BB7 2BU
Mr & Mrs	D.	Hardie	Apartment 6	Spring Meadow	Clitheroe	BB7 2BU
Mr & Mrs	K.	Harwood	Apartment 7	Spring Meadow	Clitheroe	BB7 2BU
Ms	J.	Ripley	Apartment 8	Spring Meadow	Clitheroe	BB7 2BU
Mr & Mrs	A.	Rowlandson	Apartment 9	Spring Meadow	Clitheroe	BB7 2BU
Mr & Mrs	G.	Duckworth	Apartment 10	Spring Meadow	Clitheroe	BB7 2BU
Mr & Mrs	C.	Brierley	Apartment 11	Spring Meadow	Clitheroe	BB7 2BU
Mr & Mrs	R.	Black	Apartment 12	Spring Meadow	Clitheroe	BB7 2BU
Mr & Mrs		Gosling	Apartment 14	Spring Meadow	Clitheroe	BB7 2BU
Mr	A.	Tomlinson	Apartment 15	Spring Meadow	Clitheroe	BB7 2BU
Mrs	J.	Birchenough	Apartment 16	Spring Meadow	Clitheroe	BB7 2BU
Mr	H.	Bradshaw	Apartment 17	Spring Meadow	Clitheroe	BB7 2BU
Mr & Mrs	T.	Robinson	Apartment 18	Spring Meadow	Clitheroe	BB7 2BU
Mr & Mrs	R.	Hartley	Apartment 19	Spring Meadow	Clitheroe	BB7 2BU
Mrs	M.	Hammond	Apartment 20	Spring Meadow	Clitheroe	BB7 2BU
Mr & Mrs	M.	McGrail	Apartment 21	Spring Meadow	Clitheroe	BB7 2BU
Mr & Mrs	J.	Jolly	Apartment 22	Spring Meadow	Clitheroe	BB7 2BU
Mrs	J.	Hargreaves	Apartment 23	Spring Meadow	Clitheroe	BB7 2BU
Mr	J.	Pickles	Apartment 24	Spring Meadow	Clitheroe	BB7 2BU
Mrs	M.	Lumley	Apartment 25	Spring Meadow	Clitheroe	BB7 2BU

