



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

Case Reference	:	LON/00AT/LVL/2015/0003
Property	:	1-34 Trefusis Court, Bath Road, Hounslow, TW5 9SY
Applicant	:	Trefusis Court Management Limited
Representative	:	SLC Solicitors
Respondents	:	The leaseholders of the 34 flats in the property
Tribunal Members	:	Judge Dickie
Date of Order	:	23 July 2015

DECISION AND REASONS

1. The Applicant, being the freeholder and management company of the subject premises, a purpose built block of 34 residential flats, has applied under S.37 of the Landlord and Tenant Act 1987 ("the Act") for an order varying all of the leases to those flats. A copy of s.37 and s.38 of the Act is attached to this decision. The tribunal issued directions on this application on 26 May 2015, which have been served on all Respondents. The matter is considered suitable for determination on the papers and no party has requested an oral hearing.
2. Clause 2(9)(d) of the Lease, being a leaseholder's covenant, provides:
"He may as resident landlord (as defined by the Rent Act 1977) and with the Consent of the Society first obtained sublet the whole of the premises"
3. A "Resident Landlord" is not defined by the Rent Act 1977 but section 12 of the Rent Act 1977 refers to a resident landlord as a person occupying as his residence another dwelling house which forms part of the building. The Applicant therefore envisages that sub-letting is only permissible under the Leases if the leaseholder owns more than one flat in the building and occupies the other flat as his dwelling-house. This is not a condition which can be

fulfilled by any of the current leaseholders, and is considered to make the properties less attractive for sale on the open market, in which leasehold properties are often purchased as “buy to let” properties, and more difficult to mortgage for that purpose.

4. The object of the lease variation is to amend a term in all the leases which is outdated and unworkable, in order to permit subletting of all flats across the estate in a single and straightforward step. Such a variation would be likely to increase the market value of the properties, and could be achieved economically by this means.
5. The tribunal has received written consent to the application from the leaseholders of 27 of the flats, and no objection from any remaining leaseholders. I therefore find that at least 75% of the parties (who number 35 in total including the landlord) have consented to the application and that the condition in section 37(5) is therefore satisfied.
6. I am satisfied that the ground in Section 37(3) is made out, in that the object to be achieved by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect.
7. It does not appear that the variation would be likely substantially to prejudice any Respondent to the application or any person who is not a party to the application.
8. I consider it is reasonable in the circumstances to make an order under section 38(3) varying each of the leases in the manner sought.

ORDER

I order that each of the leases of the 34 flats in the subject premises are varied in such such manner as is specified in the attached Draft Deed of Variation.

Name: F Dickie

Date: 23 July 2015

DATED

DEED OF VARIATION

relating to

[] TREFUSIS COURT, BATH ROAD, CRANFORD, HOUNSLOW

between

TREFUSIS COURT MANAGEMENT LIMITED

and

TENANT

CONTENTS

CLAUSE

1.	Interpretation
2.	Variations of the Lease
3.	Tenant's covenant.....
5.	Registration of this deed.....
6.	Endorsement.....
7.	Costs
8.	Governing law

SCHEDULE

SCHEDULE	VARIATIONS TO THE LEASE
1.	Replacement of existing clauses Error! Bookmark not defined.

This deed is dated the _____ day of _____ 2015

[HM Land Registry

Landlord's title number: NGL406144

Administrative area: Hounslow

Tenant's title number:

Administrative area:]

PARTIES

- (1) TREFUSIS COURT MANAGEMENT LIMITED incorporated and registered in England and Wales with company number 01580133 whose registered office is at 140, Heath Row, Bishop's Stortford, Hertfordshire CM23 5DQ (**Landlord**).
- (2) (**Tenant**).

BACKGROUND

- (A) This deed is supplemental and collateral to the Lease.
- (B) The Landlord and the Tenant have agreed to vary the Lease on the terms 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.

1. INTERPRETATION

1.1 The definitions in this clause apply in this deed

Property: [ADDRESS/DESCRIPTION OF THE PROPERTY] as [more particularly described in and] demised by the Lease.

- 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 A reference to the Lease includes any deed, licence, consent, approval or other instrument supplemental to it.
- 1.4 A reference to laws in general is to all local, national and directly applicable supra-national laws in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them.

- 1.5 A **person** includes a corporate or unincorporated body.
- 1.6 Each of the expressions **landlord covenant** and **tenant covenant** have the meaning given to them 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 or Schedule, is a reference to a clause of, or Schedule to, this deed and a reference in a Schedule to a paragraph is to a paragraph of that Schedule.
- 1.9 Clause, Schedule and paragraph headings do not affect the interpretation of this deed.

2. VARIATIONS OF THE LEASE

2.1 Variations made

From and including [the date of this deed] the Lease shall be read and construed as varied by the provisions set out in the Schedule.

2.2 Lease remains in force

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.

- 3.1 Nothing in this deed shall prevent or limit the operation of section 18 of the Landlord and Tenant (Covenants) Act 1995.]

4. REGISTRATION OF THIS DEED

4.1 Application for registration

Promptly following the completion of this deed, the Tenant and the Landlord shall apply to register this deed at HM Land Registry against the Tenant's registered title number and the Landlord's registered title number

4.2 Requisitions

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

5. COSTS

5.1 On completion of this deed the Tenant shall pay the reasonable costs and disbursements of the Landlord, its solicitors, surveyors and managing agents in connection with this deed including any costs and disbursements incurred or to be incurred by the Landlord in registering this deed.

5.2 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

6. 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.

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

Schedule Variations to the Lease

1. REPLACEMENT OF EXISTING CLAUSES

Clause 2(9) (d) [NUMBER[ED]] of the Lease shall be deleted and replaced by the following clause:

"He may sub-let the whole of the Premises"

Executed as a deed by Trefusis Court management Limited acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]
Director
.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]
[Director **OR** Secretary]

Executed as a deed by [NAME OF TENANT] a director, in the presence of:
.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

.....
[SIGNATURE OF TENANT]

Sections 37 & 38 of the Landlord and Tenant Act 1987

37.— Application by majority of parties for variation of leases.

- (1) Subject to the following provisions of this section, an application may be made to the appropriate 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 the leases are varied to the same effect.
- (4) An application under this section in respect of any leases may be made by the landlord or any of the tenants under the leases.
- (5) Any such application shall 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.

38.— Orders varying leases.

- (1) If, on an application under section 35, the grounds on which the application was made are established to the satisfaction of the tribunal, the tribunal may (subject to subsections (6) and (7)) make an order varying the lease specified in the application in such manner as is specified in the order.
- (2) If—
 - (a) an application under section 36 was made in connection with that application, and
 - (b) 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 under section 36,

the tribunal may (subject to subsections (6) and (7)) also make an order varying each of those leases in such manner as is specified in the order.

(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 subsections (6) and (7)) make an order varying each of those leases in such manner as is specified in the order.

(4) The variation specified in an order under subsection (1) or (2) may be either the variation specified in the relevant application under section 35 or 36 or such other variation as the tribunal thinks fit.

(5) If the grounds referred to in subsection (2) or (3) (as the case may be) are established to the satisfaction of the tribunal with respect to some but not all of the leases specified in the application, the power to make an order under that subsection shall extend to those leases only.

(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 the variation would be likely 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.

(7) A tribunal shall not, on an application relating to the provision to be made by a lease with respect to insurance, make an order under this section effecting any variation of the lease—

- (a) which terminates any existing right of the landlord under its terms to nominate an insurer for insurance purposes; or
- (b) which requires the landlord to nominate a number of insurers from which the tenant would be entitled to select an insurer for those purposes; or
- (c) which, in a case where the lease requires the tenant to effect insurance with a specified insurer, requires the tenant to effect insurance otherwise than with another specified insurer.

(8) A tribunal may, instead of making an order varying a lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified; and accordingly any reference in this Part (however expressed) to an order which effects any variation of a lease or to any variation effected by an order shall include a reference to an order which directs the parties to a lease to effect a variation of it or (as the case may be) a reference to any variation effected in pursuance of such an order.

(9) A tribunal may by order direct that a memorandum of any variation of a lease effected by an order under this section shall be endorsed on such documents as are specified in the order.

(10) Where a tribunal makes an order under this section varying a lease the tribunal may, if it thinks fit, make an order providing for any party to the lease to pay, to any other party to the lease or to any other person, compensation in respect of any loss or disadvantage that the tribunal considers he is likely to suffer as a result of the variation.