



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

Case reference : **LON/00AW/LVT/2020/0003**

HMCTS code (paper, video, audio) : **P: PAPER REMOTE**

Property : **Flats 1-6, 35 Beaufort Gardens, London SW3 1PW**

Applicant : **Sinclair Gardens Investments (Kensington) Limited**

Representative : **PDC Law**

Respondents : **The lessees listed in the application**

Representative : **In person**

Type of application : **Application for the variation of leases**

Tribunal member : **Judge N Hawkes**

London Panel Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **22 December 2020**

DECISION

Covid-19 pandemic: paper determination

This has been a remote determination on the papers which has been consented to by the Applicant and which has not been objected to by any of the Respondents. The form of remote hearing was P:PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and all issues in dispute could be determined on paper. The documents that I was referred to are in a bundle of 208 pages, the contents of which I have noted. The order made is described below.

Decisions of the Tribunal

(1) The parties are directed to vary the Respondents' leases in accordance with the deeds of variation which are contained in the hearing bundle within 42 days of the date of this determination.

(2) The parties have permission to apply for further directions, if required.

The application

1. The Applicant seeks to vary the leases of six flats at 35 Beaufort Gardens, London SW3 1PW ("the Property"), under section 35 of the Landlord and Tenant Act 1987 ("the 1987 Act").
2. The Tribunal has been informed that the Property is a house which has been converted into six leasehold flats.
3. The Applicant seeks an order directing the parties to vary the leases so that each lessees' contribution towards the service charge expenditure amounts to 16.66667% and the total service charge adds up to 100%.
4. At present, Flat 1 is required to pay 17% of the service charge expenditure, Flat 3 is required to pay 22% and the lessees of the other flats are required to pay in accordance with the rateable value. The Tribunal has been informed that, under the leases, the lessees' contributions do not add up to 100% of the service charge expenditure. Further, it appears that since at least 2008, the lessee of each flat has in fact contributed 16.66667% towards the total service charge expenditure.
5. Directions were given on 10 March 2020 which included provision for the Respondents to submit representations by 14 April 2020. The proceedings were then stayed on 19 March 2020 due to the covid-19 pandemic and, by letter from the Tribunal dated 16 October 2020, time for the Respondents to submit representations in response to the application was extended to 29 October 2020.

6. No representations have been received by the Tribunal from the Respondents.

The Tribunal's determinations

7. Section 35 of the 1987 Act provides, so far as is material:

35.— Application by party to lease for variation of lease.

(1) Any party to a long lease of a flat may make an application to the appropriate tribunal for an order varying the lease in such manner as is specified in the application.

(2) The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely—

...

(f) the computation of a service charge payable under the lease;

...

(4) For the purposes of subsection (2)(f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if—

(a) it provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and

(b) other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and

(c) the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would either exceed or be less than the whole of any such expenditure.

...

(8) In this section “service charge” has the meaning given by section 18(1) of the 1985 Act.

(9) For the purposes of this section and sections 36 to 39, “appropriate tribunal” means—

(a) if one or more of the long leases concerned relates to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal;

8. The Tribunal’s power to order a lease variation is contained in section 38 of the 1987 Act. Subsection 38(8) provides:

(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. I am satisfied that the Respondents’ leases fail to make satisfactory provision for the computation of service charge applying subsections 35(2)(f) and 35(4) of the 1987 Act. Under the leases, the lessees’ contributions do not add up to 100% of the service charge expenditure and I note that this application is unopposed. Accordingly, I exercise my discretion to direct the relevant parties to make the variations sought by the Applicant in accordance with the deeds of variation which are contained in the hearing bundle.

Name: Judge N Hawkes

Date: 20 December 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such

reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).