



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

**Case Reference** : **CHI/00ML/LVT 2013/0014**

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

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

**Representative** : **ODT Solicitors Limited**

**Respondent** : **The 64 Long Leaseholders**

**Type of Application** : **Variation of the lease: Section 37 Landlord  
Tenant Act 1987**

**Tribunal Members** : **Judge D. R. Whitney  
B.H.R. Simms FRICS**

**Date of Hearing** : **28<sup>th</sup> March 2014**

**Date of Decision** : **4<sup>th</sup> April 2014**

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**DECISION**

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1. This is an application by the freehold owner of Wilbury Grange, Hove, East Sussex ("the Property") to vary the 64 long residential leases. Application was made on 27<sup>th</sup> November 2013 and directions were given on 17<sup>th</sup> December 2013.
2. No responses were received by the tribunal from any leaseholder opposing the application. The application proceeded by way of a paper determination.

#### THE LAW

3. The relevant law is found in section 37 of the Landlord and Tenant Act 1987 which provides:

#### **Section 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 court 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

#### DISCUSSION & DETERMINATION

4. The tribunal was provided with various documents which included a draft order, statement of case and supporting documents all of which were submitted with the application. In making its decision the tribunal had regard to these documents.
5. The tribunal notes that the Respondents are the 64 long leaseholders. The flats are numbered 1-65 with no flat 13. The tribunal had regard to the bundle of official copy

entries for the freehold and various leasehold titles. The tribunal was satisfied that the leases were all long residential leases of flats.

6. Including the freeholder for the purposes of Section 37 there are 65 interested parties. Including the freeholder 56 have positively indicated that they agree and support the application. This means that the application is supported by about 86% of the interested parties being in excess of the 75% required under the section of the Act.
7. It appears that no reply has been received from 9 leaseholders of the Property although none have opposed the application.
8. The draft order seeks to make three changes to the lease. The Applicants look to add a clause entitling the Applicant to seek a payment on account of service charges, a clause to allow a reserve fund to be established and monies collected for it and finally a modernisation of the terms relating to the registration of dispositions of the lease.
9. It seems to the tribunal that it is good management practice for sums to be collected on account of works to be undertaken and for a reserve fund to be established. Both would assist in the good management of the building and the tribunal accepts that it would be prudent for all leases to be varied to include such provision.
10. In respect of the change to the registration fee the Applicant refers to the fact that a "guinea" is no longer a recognised coin although the tribunal notes that a guinea was a defined amount of money being £1.05. The tribunal does however accept that it is appropriate to vary the clause in the agreement to provide that a reasonable registration fee should be payable. Again the tribunal accepts that good management requires all dispositions of the leases to be registered with the Applicant. The tribunal accepts that the Applicant should be able to recover all reasonable costs of the same and that it would be desirable for all leases to be so varied.
11. The tribunal accepts that the requirements of section 37 of the Landlord and Tenant Act 1987 have been made out and therefore makes an Order varying the Respondents leases in the terms of the draft annexed to this decision,

JUDGE D. R. WHITNEY

### Appeals

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 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.

IN THE FIRST-TIER TRIBUNAL PROPERTY CHAMBER

Case number: [ ]

IN THE MATTER OF FLATS 1-65, WILBURY GRANGE, WILBURY ROAD, HOVE

Between:

WILBURY GRANGE (HOVE) LIMITED

Applicant

-and-

LONG LEASEHOLDERS OF THE BUILDING

Respondents

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DRAFT ORDER

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It is hereby ordered as follows:

1. In accordance with s.38 (3) of the Landlord and Tenant Act 1987 all sixty four leases at the Building to be varied as follows:

*Clause 2 (ii) (a) – Replace the existing clause with the following wording:  
To pay to the Lessor in addition to the rent reserved such sum as the Lessor or its Managing Agent or Surveyor shall specify at their discretion to be a reasonable basic maintenance charge on account of the expenditure incurred or to be incurred by the Lessor in carrying out its obligations under Clause 3(i)(ii) and (iii) and Clause 4 hereof (hereinafter called the “basic maintenance charge”)*

*Clause 2 (ii) (d) – Delete in its entirety.*

*Clause 2 (xxii) – Replace the words “Three Guineas as a fee” with “such reasonable fee as the Lessor or its Managing Agent shall specify” in the 10th line.*

*Clause 4 (xii) – Add a new clause reading:*

*The Lessor may in its absolute discretion establish a reserve fund as reasonable provision for the costs expenses and outgoings referred to in sub paragraph 4 (i) to (xi) above.*

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[Chairman]

[ ] 2013