

12103



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

Case Reference : **MAN/00DA/LVT/2016/0001**

Property : **Masham Court, Shaw Lane, Far Headingley
Leeds, LS6 4DT**

Applicant : **Masham Court Limited
Represented by Bury and Walkers**

Respondent : **Mr Monkhouse, Mr and Mrs Peck, Mr Peel,
Mr Miles, Mrs Khunkamchoo, Mr Rushton,
Mr and Mrs Casey, Mr Godin**

**Type of
Application** : **s37(1) Landlord and Tenant Act 1987**

Tribunal Members : **Mr John Murray LLB
Ms Aisling Ramshaw**

Date of Decision : **23 November 2016**

REASONS FOR DECISION

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DECISION

The Tribunal determines that the Leases described in Schedule 1 to this decision shall be varied in accordance with the order in Schedule 2 to this decision.

INTRODUCTION

1. An application was made by Masham Court Limited, freehold owner of the Property at Masham Court.
2. The Property at Masham Court comprises two blocks of flats, together with a number of dispersed garages. 12 of the garages are on a separate plot of land situated next to a large retaining wall. The Applicant states that these garages have not been used for a number of years, and that the wall is in a state of disrepair. The estimated cost of repair of the wall would be £70,000, the costs of which would fall to be met by the lessees as part of their service charge, at a cost of some £2000 per lessee.
3. The Applicant sought permission of the Tribunal to vary the leases to relinquish rights of way and rights of parking over part of the property comprising the garages and an access road from Moor Road, and forecourt and the retaining wall to enable disposal of part of the property to a developer. This would remove the need to meet the costs of repair of the wall and the proceeds of sale would be due to the lessees, who are all shareholders of the Applicant company.

THE PROCEEDINGS

4. Directions were made on 5 July 2016 by a procedural judge. The Applicant was directed to submit 3 copies to the Tribunal with a copy to each Respondent of their original lease with the proposed arrangements marked in a distinctive fashion together with any further details regarding the application by 26 July 2016. This would be regarded as the Applicant's case.
5. Each Respondent was invited to send a statement in response within 21 day of receipt of the Applicant's case. No statements were filed by any of the Respondents.
6. A Tribunal was appointed and an external inspection of the Property took place on 23 November 2016 at 10.00 am. The 12 garages were seen to be very dilapidated; they clearly had not been used for some time. The forecourt and access road were overgrown and covered with moss. The boundary wall was leaning and appeared unstable.

7. The substantive hearing of the application was on 23 November 2016 at 11.30am. At the substantive hearing, the Applicant Company was represented by Mr Archer of Bury and Walkers, Mr Peter Barker from Due North Property Management, and Matt Lee, maintenance contractor for Due North and Christine Williamson of Due North.

THE APPLICATION

8. The Property is subject to 36 leases which were granted for a term of 999 years on 27 April 1982 by the Applicant's predecessor in title, Masham Court Housing Society Limited.
9. The Tribunal was provided with a number of copy leases and informed by the Applicant that all were in identical terms.
10. The Applicant wished to vary the terms of the leases as follows:
11. The provisions of Clause 2(a) of the Recitals should be deleted and replaced by the following as a new Clause 2(a) of the Lease:
12. "The Buildings" means the said block of flats and together also (where the context so admits) with the forecourts, paths, driveways, parking spaces and grounds from time to time appurtenant to the said flats and which are comprised within the area shown edged in red on plan C annexed hereto and known as and referred to in this Lease as Masham Court but for the purposes of paragraphs 1, 2 3(b) 4, 5 and inclusive of the Second Schedule of the Lease, the definition of "The Buildings" shall exclude all that are shown shaded blue on plan C".
13. That Plan C is hereby inserted into the Lease.
14. The existing provisions of Paragraph 3 of the Second Schedule shall be deleted and replaced by the following as a new Paragraph 3.
15. "3(a) A right of subjacent and lateral support of the Flat and to shelter and protection from those parts of the Building not hereby demised and from the site thereof, and

(b) together with all other rights and easements and quasi easements and quasi rights enjoyed by the Premises at the date hereof over under or in respect of any part of the Buildings including rights for the Lessee with servants workmen and others at all reasonable times on giving reasonable notice (except in emergency) of access to and entry upon adjoining or adjacent flats or parking space in the part of the Buildings in which the Flat is situated for the purpose of performing any obligations of the Lessee under the covenants on the part of the Lessee contained in this lease (where such access and entry shall be necessary for the performance of

such obligation) the Lessee or other person or persons exercising such rights doing thereby as little damage as possible to the adjoining or adjacent flat or flats or other the part of parts of the Buildings so entered upon and forthwith making good full compensation for any damage done”.

16. At line 2 of Paragraph 6 of the Second Schedule the words “...being the Buildings...” shall be inserted after the words “... Masham Court...”

THE LEGISLATION

17. The relevant legislation is contained in s37 and s 38 Landlord and Tenant Act 1987 which read as follows:

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.

38 Orders by the court varying leases.

...

(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 court with respect to the leases specified in the application, the court 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 court 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 court 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) The court shall not make an order under this section effecting any variation of a lease if it appears to the court—

(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) The court 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) The court 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)The court 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 the court makes an order under this section varying a lease the court 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 court considers he is likely to suffer as a result of the variation.

THE EVIDENCE AND SUBMISSIONS

- 18.** The Applicant filed and served a statement by Colin Vickers, a leaseholder and shareholder in the Applicant who had proposals to develop the land. The Applicant also produced at the hearing a statement by the manager Peter Barker, advising the garages had not been used for some six years. The garages were not let with the leases, but let for a nominal £10 per month rent to any lessee that wanted them, by the Freeholder. Despite the rent being low, they had three garages vacant as demand was low. Street parking was generally available.
- 19.** The cost of rectification of the wall and demolition of the garages would be in the region of £105,000 plus VAT and resurfacing would cost in the region of £18,500 plus VAT. The garages were of little use to the lessee.
- 20.** Mr Archer produced to the Tribunal 27 participation agreements from leaseholders which they had signed following a letter from Bury and Walkers dated 25 February 2015 setting out the purpose of the application. These accorded with the list of participants filed with the Tribunal.
- 21.** Mr Barker stated that since the application was made there had been no sales, so the list of participants remained accurate.

22. The Tribunal was told that the Applicant company was created some years ago. Originally the Freehold had been owned by Masham Court Housing Society Limited, a co-ownership model Housing Society funded by the Housing Corporation. Since inception however, all the tenants of the Society had exercised the Right to Buy, the Housing Corporation loan had been sold off, and the freehold interest transferred to the Applicant company, in which all the lessees were given a share.
23. Mr Archer confirmed that all the lenders have been notified. All lenders had either not responded, or had not objected. The only objector was Mortgage Express, the mortgagee for Flat 4. They had not however applied to become a party, and on the day of the hearing had contacted the Tribunal to confirm their agreement to a draft order that they had prepared. Mr Archer confirmed that he would be amenable on behalf of the Applicant to the Tribunal making such an Order.

THE DETERMINATION

24. The Tribunal was satisfied that the criteria set out in s37 of the 1987 Act were met, and that the requisite number of lessees (27 of 36, being exactly 75%) sought the variation.
25. There was no reason for any compensation to be payable; parties would be adequately compensated by the loss by benefitting from their share in the purchase price for the land being paid to the Applicant company, in which they were all shareholders, and avoiding the cost of repairs to the wall which they would be liable to pay by way of the service charge.
26. The Tribunal did not consider any third party would be prejudiced; the Applicant had consulted with all mortgagees with an interest, and the only objector had chosen not to become a party to the proceedings, and subsequently indicated that they would consent to an order being made in terms which were acceptable to the Tribunal.
27. The Tribunal determined that an order should be made, in the terms accepted by Mr Archer on behalf of the Applicant, with one slight amendment for grammatical reasons. The proposed clause 3b) is amended to read

“... together with all other rights and easements and quasi easements and quasi rights enjoyed by the Premises ...”
28. The Order is attached as Schedule 2.

Schedule 1

Schedule of Leases

Masham Court, Shaw Lane, Far Headingley, Leeds

Flat No	Date of Lease	Term	Parties	Title Number
1	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Shahrokh Esfahani and Julie Ann Esfahani (2)	WYK255755
2	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Richard George Fordham King (2)	WYK255754
3	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Kathleen Berry (2)	WYK263782
4	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Stuart Dobson and Steven Cain (2)	WYK255753
5	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Dennis Beech and Brian Thomas Rutter (2)	WYK255752
6	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Khorshid Eshghpour (2)	WYK255759
7	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Elaine Philpot (2)	WYK255758
8	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Marjorie Graydon (2)	WYK255757
9	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Susan Gilbert (2)	WYK255756
10	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Roderick Anthony McGregor Ivall and Maria Teresa Haline Ivall	WYK255762
11	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Adrienne Bates (2)	WYK255744
12	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Andrew David Mitchell and Wendy Mitchell (2)	WYK255745

13	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Yvonne Smith (2)	WYK255746
14	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Alison Mary Richards (2)	WYK255747
15	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Iraj Davanipour (2)	WYK255751
16	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Khosrow Bakhtari and Benoush Bakhtari (2)	WYK255761
17	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Hilda May Bullock (2)	WYK255750
18	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) John Walter Spencer (2)	WYK255743
19	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Carrie Holles (2)	WYK255738
20	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Richard Andrew Shepherd (2)	WYK255739
21	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Martin Clive Llewellyn and Harriet Beth Llewellyn (2)	WYK255740
22	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Peter Michael Brown (2)	WYK255748
23	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Alireza Motevalli and Soheyla Marzay Motevalli (2)	WYK255749
24	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Dianne Smithson (2)	WYK255741
25	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Kemal Efe (2)	WYK255742
26	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Elliott Waldenburg (2)	WYK255734

27	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Margaret Elizabeth Carey (2)	WYK255735
28	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Christopher John Wray (2)	WYK255736
29	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Christopher Paul Baker and Linda Marie Baker (2)	WYK255737
30	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Valerie Anne Lawson (2)	WYK2557332
31	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Skipton Building Society (2)	WYK393391
32	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Colin Ian Fox (2)	WYK255760
33	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Bahram Robati (2)	WYK255729
34	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Jean Catherine Stockbridge (2)	WYK255728
35	27 th April 1982	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Michael Gates and Susan Lesley Gates (2)	WYK255730
36	27 th April 1980	999 years from 27 th April 1982	Masham Court Housing Society Limited (1) Kenneth Robert Mackley (2)	WYK255733

Schedule 2: Order



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

Case Reference : **MAN/00DA/LVT/2016/0001**

Property : **Masham Court Shaw Lane Far Headingley
Leeds LS6 4DT**

Applicant : **Masham Court Limited
Represented by Bury and Walkers**

Respondent : **Mr Monkhouse, Mr and Mrs Peck, Mr Peel,
Mr Miles, Mrs Khunkamchoo, Mr Rushton,
Mr and Mrs Casey, Mr Godin**

**Type of
Application** : **s37(1) Landlord and Tenant Act 1987**

Tribunal Members : **Mr John Murray LLB
Ms Aisling Ramshaw**

Date of Decision : **23 November 2016**

ORDER

IT IS ORDERED that

1 The Leases of each of the Flats which are the subject of this Application shall be varied pursuant to Section 37 of the Landlord & Tenant Act 1987 as follows:-

- (i) The existing provisions of Clause 2(a) of the Recitals to the Leases shall be deleted and shall be replaced by the following as a new Clause 2(a) of the Recitals:

“The Buildings” means the said block of flats and together also (where the context so admits) with the forecourts, paths, driveways, parking spaces and grounds from time to time appurtenant to the said flats and which are comprised within the area shown edged in red on plan C annexed hereto and known as and referred to in this Lease as Masham Court but for the purposes of paragraphs 1, 2, 3(b), 4, 5 and 6 inclusive of the Second Schedule of the Lease, the definition of “The Buildings” shall exclude all that area shown shaded in blue on plan C”

- (ii) Plan C attached is hereby inserted into each of the Leases.
- (iii) The existing provisions of Paragraph 3 of the Second Schedule to each of the Leases shall be deleted and replaced by the following as a new Paragraph 3:

“ 3(a) A right of subjacent and lateral support of the Flat and to shelter and protection from those parts of the Buildings not hereby demised and from the site thereof and,

b) together with all other rights and easements and quasi easements and quasi rights enjoyed by the Premises at the date hereof over under or in respect of any part of the Buildings including rights for the Lessee with servants workmen and others at all reasonable times on giving reasonable notice (except in emergency) of access to and entry upon adjoining or adjacent flats or parking space in the part of the Buildings in which the Flat is situated for the purpose of performing any obligation of the Lessee under the covenants on the part of the Lessee contained in this Lease (where such access and entry shall be necessary for the performance of such obligation) the Lessee or other person or persons exercising such rights doing thereby as little damage as possible to the adjoining or

adjacent flat or flats or other the part or parts of the Buildings so entered upon and forthwith making good full compensation for any damage done”

- (iii) At line 2 of Paragraph 6 of the Second Schedule to each of the Leases
the words “ ..., being the Buildings...” shall be inserted after the words “ ... Masham Court...”

2 As required by paragraph 7 of Schedule 2 of the Land Registration Act 2002 and Rule 80 of the Land Registration Rules 2003 an application shall be made to H M Land Registry for entry of a notice of the variation of the Leases affected by this Order both in relation to the leasehold title for each of the Leases and the freehold title of the Applicant and such application shall be made within 28 days of the making of this Order.

3 This Order is not intended to effect a surrender and re-grant of any of the Leases.