



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

Case Reference : CHI/40UC/LVT/2020/0001

Property : St Mary`s Court, Silver Street, Bridgwater,
Somerset TA6 3EG

Applicant : St Mary`s Court (Bridgwater) Management
Company Limited

Representative : JB Leitch Real Estate Ltd

Respondent : Victoria Jane Curtis
Karen Maria Lock
John Sidney Kenneth Page

Representative : ---

Type of Application : Application for lease variation – Section 37
Landlord and Tenant Act 1987

Tribunal Member(s) : Judge P J Barber

Date and venue of CMH : ---

Date of Decision : 18 May 2020

DECISION

Decision

- (1) The Tribunal determines that each of the 18 leases referred to and identified in paragraph 4 below, shall be varied in such manner as is specified in the application, namely that clause 1 and clause 8 in each of the 18 leases, shall be varied in the terms as set out within paragraph 8 below.

Reasons

INTRODUCTION

1. The application is dated 13 February 2020, and is for variation of the 18 Leases at Mary`s Court, Silver Street, Bridgwater, Somerset TA6 3EG (“the Premises”), pursuant to the provisions of Section 37 of the Landlord and Tenant Act 1987 (“the 1987 Act”). The Applicant, St Mary`s Court (Bridgwater) Management Company Limited, is the freehold proprietor of the Premises. In broad terms the application is intended to address the position in the leases, in that the Applicant submits that the leases do not define clearly, each of the “Demised Premises” or the Applicant landlord`s retained land.
2. Directions were issued on 5 March 2020 and provided that the matter would be determined on the papers without a hearing, unless a party objected in writing to the Tribunal within 28 days of receipt of the directions. No objections have been received by the Tribunal and accordingly all this matter now falls to be determined on the papers, without an oral hearing.
3. The Applicant has advised that 15 of the 18 leaseholders have agreed the proposed variation, the remaining 3 leaseholders have not consented, but neither have they objected.
4. The 18 Leases are as follows:
 - Flat 1 – Lease dated 23 June 1989 – Title Number ST94791
 - Flat 2 – Lease dated 28 March 1991 – Title Number ST78459
 - Flat 3 – Lease dated 21 October 1988 – Title Number ST222821
 - Flat 4 – Lease dated 19 September 1988 – Title Number ST150827
 - Flat 5 – Lease dated 24 January 1989 – Title Number ST109903
 - Flat 6 – Lease dated 14 September 1990 – Title Number ST73596
 - Flat 7 – Lease dated 1 September 1989 – Title Number ST335331
 - Flat 8 – Lease dated 12 October 1988 – Title Number ST188868
 - Flat 9 – Lease dated 29 May 1992 – Title Number ST90779
 - Flat 10 – Lease dated 18 June 1990 – Title Number ST69933
 - Flat 11 – Lease dated 15 September 1988 – Title Number ST209093
 - Flat 12 – Lease dated 20 September 1988 – Title Number ST187601

Flat 14 – Lease dated 9 June 1989 – Title Number ST259905
Flat 15 – Lease dated 30 September 1992 – Title Number ST93638
Flat 16 – Lease dated 20 December 1991 – Title Number ST86758
Flat 17 – Lease dated 5 February 1992 – Title Number ST89471
Flat 18 – Lease dated 19 September 1988 – Title Number ST157031
Flat 19 – Lease dated 17 March 1992 – Title Number ST92245

THE LAW

4. Section 37 of the 1987 Act provides as follows:-

(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.

WRITTEN REPRESENTATIONS

5. The bundle comprising 490 pages includes copies of the application, a statement of case, directions, a witness statement, various title documents and confirmation as to service.
6. The statement of case indicates that the Premises comprise 18 flats and that the Applicant, being the management company and described in the leases as being “the Company”, had acquired the freehold interest in the Premises in 1993 under Title Number ST977551. The statement further indicates that the flat leases do not define clearly either each of the individual demised premises, or the landlord’s retained land, adding that this is unsatisfactory, given that it is not possible to determine clearly which party is responsible for maintenance of the Premises. The statement indicates that 15 of the 18 lessees have agreed to the variation requested in the application, to permit the Premises to be managed effectively, and confirmed that whilst 3 lessees have not positively consented, they have not objected to the application. The statement provides that no leaseholder will suffer any prejudice as a result of the proposed variation. The statement indicates that all the leases are granted in substantially similar form and are registered at the Land Registry; however, the lease for Flat 4 registered under ST150827 was unavailable for download.
7. The Applicant submits that the existing clause 1 in the leases, which describes “the Demised Premises” includes no express reference to windows, and that clause 8 being the Company’s covenant with leaseholders to repair, refers restrictively only to “the main structure” rather than to “the structure” in broader terms.
8. The Applicant seeks variations of Clauses 1 and 8 in each of the 18 leases, so as to read as follows:-

Clause 1:

“ALL THAT Flat (hereinafter called “the Flat”) and shown for identification purposes only edged blue on the plan annexed hereto and numbered XXX and being on the XXX floor of the building known or intended to be known as St Mary’s Court Silver Street Bridgwater in the County of Somerset (hereinafter called “the Building”) and including one half part in depth of the structure between the floors of the flat and that part of the building below it and of the structures between the ceilings of the Flat and that part of the building above it and subject to Clause 10(i) hereof the internal and external walls between such levels and all window glass exclusively serving the premises...” (‘the Demised Premises’)

Clause 8:

“subject to contribution and payment as hereinbefore provided the Company will maintain and keep in good and substantial repair and condition:-

- (a) The structure of the building including the foundations and roof thereof with its gutters rain water pipes the internal and external parts of all window frames and window bays (but where those*

bays exclusively serve a premises, not the floor or the ceiling of that premises that adjoin those bays and which therefore form part of that premises so demised)

- (b) *All such gas and water pipes drains and electric cables and wires in under and upon the Estate as are enjoyed or used by the Lessee in common with the owners or Lessees of the other Flats*
- (c) *The main entrances passages landings staircases refuses and garden stores forecourt of the building the paths roads and parking areas of the Estate enjoyed or used by the Lessee in common as hereinbefore provided and the boundary walls and fences of the Estate.”*
6. The Applicant states that in connection with the requirements of Section 37(5) of the 1987 Act, the application is not opposed by more than 10% of the total number of parties concerned, and that at least 75% consent to it. For the purposes of Section 37(6), the Applicant states that 22 persons constitute a party concerned, and that there are 19 parties in support of the application, with 3 parties not having responded to it.
 7. The witness statement dated 7 February 2020, contained in the bundle is that of Steven Charles Abel, being the secretary of the Applicant company; the statement broadly confirms that there are 18 flats comprised in the Premises, that each are held under long leases in substantially the same form, and with evidence of consent appended, from 16 of the concerned parties.
 8. The letter from J B Leitch Real Estate at Page 485 of the bundle confirms that notice of the application, a full copy of it and the directions, were served on each of the lessees who had consented to it, namely the lessees of Flat Numbers 1, 2, 5, 6, 7, 9, 10, 11, 12, 14, 15, 16, 17, 18 and 19. In regard to Flat Numbers 3, 4 and 8, similar notice had been given, although no consents had been forthcoming. In the case of Flat 8, the Applicant provided a copy of a letter dated 27 February 2020, from Ash Clifford, acting in the administration of the estate of the deceased registered lessee.

DECISION

7. The Tribunal has taken into account all the case papers in the bundle and notes the witness statement and statement of case. The Tribunal further takes into account the fact that none of the 18 lessees has objected to the application.
8. The Tribunal notes that each of the 18 leases was granted for a term of 999 years from 1 January 1988 and each is, accordingly a long lease within the meaning of Section 59 of the 1987 Act, which expression is referred to in Section 37(2).
9. The Tribunal is further satisfied on the basis of the evidence provided in the bundle, that the object to be achieved by variation, cannot be satisfactorily achieved, unless all the leases are varied to the same effect.

10. The Tribunal is further satisfied that the requirements of Sections 37(5) and 37(6) of the 1987 Act have been complied with.
11. Section 38(3) of the 1987 Act provides that 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. Subsection 38(6) provides broadly, that the tribunal shall not make an order if it appears that the variation would be likely substantially to prejudice any respondent or person who is not a party to the application, and that for any other reason it would not be reasonable in the circumstances for the variation to be effected. No evidence of prejudice in regard to the making of the proposed order, has been adduced; similarly, and in the absence of any objections to the proposed variations, no submissions have been received by the Tribunal suggesting that the variations would be otherwise unreasonable. Subsection 38(7) deals with proposed variations in relation to insurance and is not relevant in the context of this application.
12. Accordingly, the Tribunal is satisfied that the requisite grounds in regard to the proposed variations are satisfied and that it is reasonable to make the order for variation as requested.
13. We made our decision accordingly.

Judge P J Barber (Chairman)

A member of the Tribunal
appointed by the Lord Chancellor

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.