

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

**APPLICATION UNDER SECTIONS 35 & 37 OF THE LANDLORD AND TENANT
ACT 1987**

Premises : City Walk Properties, London E2 6DX

Applicants: Bloomfield Ltd

Represented by: Mr T Whelan (Hallmark Property Management Ltd)
Mr J.M.R. Alty FRICS, ACIRB (Kemsley Whiteley & Ferris)

Respondent: Mr C Lewis (Flat 14)

Also in attendance: Miss R Few
Mr H Kettel (Residents Association)
Mr A Wahn

Members of the Leasehold Valuation Tribunal:

MRS B M Hindley LLB

MR W J Reed FRICS

Date of decision: 11 January 2007

1. This is an application, dated 21 April 2005, made under Section 35 and/or Section 37 of the Landlord and Tenant Act 1987 for the variation of all the leases at the subject property.
2. Section 37 provides that an application may be made to a Leasehold Valuation Tribunal for an order varying the leases in such a manner as is specified in the application. The leases must be long leases of flats under which the landlord is the same person, and the grounds on which an application may be made are that the object to be achieved by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect.
3. Section 37 also provides that where the application is in respect of more than eight leases, an application can only be made if it is not opposed, for any reason, by more than 10% of the total number of the parties concerned and at least 75% of the parties consent to it – including the landlord as a party to the application.
4. Under the existing leases the ‘premises’ included the doors and windows and the lessees had covenanted to keep the ‘premises’ in good and substantial repair at all times.
5. The purpose of the application was to transfer the repairing obligations for the balcony doors and windows to the landlord, on the grounds that the flat owners (except at ground floor level) could not conveniently access the windows or window frames from the outside of the building. Further, the proposed amendment would enable the external appearance of the building to be maintained to a satisfactory and homogenous standard.
6. During the course of the hearing it was established that of the 80 flats, 67 of the tenants of the respective flats agreed to the variation proposed by the applicants and 8 disagreed.
7. This meant that, together with the freeholders, 68 parties were in favour of the proposal. This, in turn meant that more than 75% of the parties consented to the application and only 9.88% were opposed. This, Mr Lewis conceded, meant that the applicants had established their case under Section 37(5)(b) of the Act.
8. However, Mr Lewis, who appeared on behalf of himself and his wife only, asked the Tribunal carefully to consider Section 37(3) of the Act which requires it to be established that the object of the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect.
9. Mr Whelan responded that the variation was necessary because, under the leases presently, the repair and maintenance of the windows and balcony doors

were the responsibility of the individual tenants and, therefore, not covered by the service charge provisions under the lease.

10. He explained the aesthetic, health and safety and economic difficulties which resulted from the provision. He emphasised the problems that individual tenants faced in erecting necessary scaffolding to the upper floors in order to carry out maintenance works. With photographs, he described the current poor state of the soft wood windows, installed when the property was built in the early 1990's, which the applicants were now anxious to renew.
11. From the evidence the Tribunal was satisfied that, in order to maintain the external appearance of the building to a reasonable standard, it was necessary to vary all of the leases to the same effect.
12. Accordingly, the Tribunal orders that all 80 leases of the property, the subject of the application, shall be varied in accordance with the draft produced by Fairweather Stephenson and Co, attached to their letter of 14 April 2005 and now attached as Annex 1 to this decision.

Chairman

B. N. Hardy

Date

11/1/07.

ANNEX 1

1. Deletion of the existing clause 1 in the description of the Premises at the First Schedule and insertion in its place:
 - *the plasterwork of the boundary wall of the Premises*
 - *the doors and door frames*
 - *the internal surfaces of*
 - *the windows;*
 - *the window fastenings;*
 - *the window frames;*
 - *the window sills; and*
 - *the internal and external surfaces of the glass fitted in the window frames*
2. Insertion at the fifth schedule of the standard form of lease at the end of clause 1:

the windows, the window fastenings, the window frames, the window sills and the glass fitted in the window frames
5. Except as stated above, the leases remain in full force and effect.

SCHEDULE 1

Flat numbers and flat owners