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**HM COURTS & TRIBUNALS SERVICE  
LEASEHOLD VALUATION TRIBUNAL**

**Property** : Various Properties, Dale Way, Crewe Cheshire  
CW1 3GW

**Applicants** : Haigh and Haigh Property Developments  
(Crewe) Limited

**Respondents** : see attached schedule

**Case number** : MAN/00EQ/LVL/2012/0001

**Date of Application** : 11 June 2012

**Type of Application** : s35 Landlord and Tenant Act 1987

**The Tribunal** : Mr. J. N. Murray  
Mr. M. C. W. Bennett

**Date of Decision** : 23 October 2012

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**ORDER**

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**BACKGROUND**

1. The Applicant asks the Tribunal to vary the lease terms for an estate of 68 flats at Dale Way, Crewe CW1 3GW pursuant to s35 Landlord and Tenant Act 1987.
2. A list of the Respondent's to this application are appended to this order.
3. The Application was made on 11 June 2012.

4. Copies of the Directions were issued to the Parties by the Tribunal Service on the 9 July 2012.
5. No representations were submitted by any of the 68 Respondents.
6. The Applicants submitted a bundle containing full details of the claim, comprising a statement of case, specimen leases, the Land Registry copy of the freehold title and plan, and a precedent decision of the Leasehold Valuation Tribunal dealing with a similar case.
7. They also provided copies of letters sent to all 68 Respondent Lessees in August 2011, February 2012 and March 2012 explaining the reason for the application and the process it would follow.

## **THE APPLICATION**

8. The Applicant by the Freehold Estate Owner and Landlord of 68 leases of purpose built flats at the following addresses all situate at Dale Way, Crewe CW1 3GW.

- (a) 1- 6 Crossing House
- (b) 1- 21 Points House
- (c) 1- 29 Junction House
- (d) 1-15 Carriage House

9. By their application and in supporting documentation the Applicant explained that when the Estate was originally planned it was intended there should be a total of 147 flats. The first phase, of 68 flats was developed and completed; the second phase was not begun, and the land upon which the flats were to be built was sold to a third party.
10. The leases were drafted in anticipation of the Estate being comprised of 147 flats. By the Fifth Schedule of the Lease each Tenant agrees to pay to the Landlord a contribution of  $1/147^{\text{th}}$  of the total Estate costs of the Landlord in carrying out it's obligations under the Lease.
11. The provision as drafted will therefore result in the Applicant receiving less than 50% of the cost of carrying out the services they are obliged to provide under the terms of the lease and consequently they rely on the provisions of s35 Landlord and Tenant Act 1987 to ask the Tribunal to use its powers to vary the lease.
12. The Tribunal and all of the Respondents were provided with a sample lease for one of the Properties on the Estate.

## **THE DETERMINATION**

13. At the request of the Applicant the determination was made without a hearing.

## **THE LAW**

14. s35(1) Landlord and Tenant Act 1987 ("the Act") makes provision for an application by a party to a lease to vary that lease..

(1) Any party to a long lease of a flat may make an application to the court 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.

## **DECISION**

15. The Tribunal was satisfied that the grounds for the application under s35(1) of the Act were made out by law in that the lease clearly failed to make satisfactory provision to enable the Applicant to recover the full costs of providing the services it is obliged to deliver under the terms of the Leases – the situation envisaged in s35(4) of the Act. This would be unsustainable and in due course make the Estate unmanageable.

16. The Tribunal finds it entirely appropriate to use the power in this case to provide the remedy available under s35(1) and makes an order varying the 68 leases set out in the First Schedule to this order in the manner specified in the application in accordance with the wording in the Second Schedule to this order.

**J N Murray**  
**Chairman,**  
**23 October 2012**

**First Schedule**

**(insert the list of addresses and Respondents)**

**Second Schedule**

**In the Fifth Schedule part 2 paragraph 1 “the Appropriate Proportion”**

**The Tenants will**

- 1. Pay to the Landlord in respect of each financial year of the Landlord the sum of an equal part share of: (“the Appropriate Proportion”)**

## Schedule of Respondents

Name	Property Address	Name	Property Address
Sima Anwar	1 Crossing House	Valerie Raeside	4 Junction House
Mohammed Anwar	2 Crossing House	Sandra Beech	5 Junction House
David & Alma Haigh	3 & 4 Crossing House	Joanne Tudor	6 Junction House
Riaz Anwar	5 Crossing House	Amy Blackburn	7 Junction House
Mohammed Anwar & Lisa Taylor	6 Crossing House	Samantha Lloyd	8 Junction House
Matthew Perry & Victoria O'Brien	1 Points House	Christopher Marritt & Lesley Dye	9 Junction House
Jonathan Walsh	2 Points House	Heather Watson	10 Junction House
Craig Roberts & Hannah Murphy	3 Points House	Nihal Topiwalla	11 Junction House
Mark Tinsley & Sarah Blood	4 Points House	Ryan Smith	12 Junction House
Kevin Lloyd	5 Points House	Clare Houston	14 Junction House
Stephen Redmond	6 Points House	Scott & Tracy Pembroke	15 & 16 Junction House
Paul Pole	7 Points House	Mark Casey	17 Junction House
Gareth Hassall	8 Points House	Colin & Penelope Hollingshead	18 Junction House
Amanda Watson	9 Points House	Gareth & William Evans	19 Junction House
Charlotte Humphries	10 Points House	Ryan Taylor & Amie Adams	20 Junction House
James Savage & Lynda Alcock	11 Points House	Christine Hanslip	21 Junction House
Craig & Ross Willington	12 Points House	Benjamin Ratcliffe	22 Junction House
Daniel & Rebecca Warburton	14 Points House	William Faun	23 Junction House
Robert & Simon Brassington	15 Points House	Thomas Davies	24 Junction House
Nicholas & Linda James	16 Points House	Michael Kapp	25 Junction House
Geoff Wilson	17 Points House	Richard & Emma Gates	26 Junction House
Richard Minh Mac & Yee Fon Mac	18 Points House	Andrew Middleton & Susannah Sturge	27 Junction House
Adam Prance	19 Points House	Ian Gough	28 Junction House
Jane Morris	20 Points House	David Needham	29 Junction House
Sara Watson	21 Points House	Nikolay Nikolov	1 Carriage House
Guy Gower	1 Junction House	Roslyn Gilmour	2 Carriage House
Kelvin Dodd	2 Junction House	Muhammad & Dr Amina Khalid	3 Carriage House
Dominic Marshall & Danielle Bettley	3 Junction House	Paul Kelly & Davinda Kaur	4 Carriage House

<b>Name</b>	<b>Property Address</b>	<b>Name</b>	<b>Property Address</b>
Sami Simi	5 Carriage House		
Tracy Pembroke & Christine Hanslip	6 Carriage House		
Nigel & Carole Maidment	7 & 10 Carriage House		
Charles & Jenny McGregor	8 Carriage House		
Malcolm Famham	9 Carriage House		
Stephen Atkins	11 Carriage House		
Martin Dolphin	12 Carriage House		
James & Jennifer Potter	14 Carriage House		
Ann Fulker	15 Carriage House		