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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 38 OF THE LANDLORD AND TENANT  
ACT 1987**

**Case Reference LON/00AW/LVL/2013/0005**

**Premises: FLATS 1-10, 21-30A and 31-50B Iverna Gardens London W8  
6TN ("the Flats")**

**Applicants: IVERNA GARDENS RESIDENTS ASSOCIATION LTD**

**Respondent: THE LESSEES OF THE FLATS LISTED HERTO**

**Dates of paper hearing: 7<sup>th</sup> May 2013**

**Leasehold Valuation Tribunal:**

**Mrs T Rabin  
Mr H Geddes**

**Date of paper determination: 7<sup>th</sup> May 2013**

**FLATS 1-10, 21-30A and 31-50B Iverna Gardens London W8 6TN (“the Flats”)**

**FACTS**

1. The Tribunal was dealing with an application made by Iverna Gardens Residents Association Ltd (“the Applicant”) for an order under Part IV of the Landlord and Tenant Act 1987 (“the Act”) for a variation of the leases of the Flats. The Applicant is the landlord under the various leases of the Flats and the Respondents are the long leaseholders of the Flats whose names appear in the schedule annexed hereto.
2. There are 43 Flats and these are located in three blocks of flats comprising 1-10, 21-30a and 31-50B our blocks of Flats known as 17-34 Carlton Mansions Iverna Gardens London W8 6TN (“the Blocks”). The Blocks were part of four buildings owned by the same freeholder. The freehold interest in one of the buildings comprising Flats 11-21 was sold.
3. The Tribunal was dealing with this application on documents only by agreement between the parties and the Tribunal. A hearing bundle was produced by the Applicants, which the Tribunal considered before making its decision.
4. The Flats have a communal central heating system that has become outdated. The Applicants state that it is more cost effective and will cause fewer disturbances to replace the existing communal system with individual heating and hot water systems for each flat.
5. The applicants instructed consultants to prepare comparative costings. A summary of their findings was presented at the AGM on 11<sup>th</sup> July 2011 and subsequently copies were sent to all the Respondents. The consultants recommended renewal of the system due to the age of the communal pipes, poor condition of the plant and equipment and cost of operation and maintenance.
6. The consultants assessed two viable options, namely an independent system of heating and hot water in each flat and, alternatively, a new communal system. The Applicant was advised by the consultants that the cost of a new communal system would be considerable more than independent systems, which could be funded from existing cash flows without the need for an increase in service charges. The overall cost to the individual long leaseholders would be less were individual systems to be included.
7. The Respondents were advised that implementation of the individual systems can be undertaken at any time between now and 2016 to suit the individual long leaseholders. A cost analysis was attached to the

report circulated to the Respondents. A copy of this application was sent to each of the Respondents by the Applicant's legal advisers.

8. The Applicants seek an order whereby the obligation to maintain a communal system and provide hot water and central heating is removed as well as any obligation to insure. The relevant sections of the leases are the Second Schedule paragraph 3 and the Sixth Schedule paragraphs 12 and 14
9. More than 86% of the interested parties (including the Applicants) are in favour of the variation and only one of the Respondents' has objected and gave no reason for her objection.

## **THE LAW**

10. The statutory provisions dealing with variations of leases are contained in Part IV of the Act as amended by the Commonhold and Leasehold Reform Act 2002 ("the "2002 Act"). The relevant extract is 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.

## **DECISION**

11. The Tribunal considers that the Applicants undertook a responsible investigation into the alternative options of replacing the existing

communal system or providing for individual systems to be installed in each flat. The proposal is reasonable and cost effective.

12. The Tribunal is satisfied that it is appropriate to vary all the leases of the Flats. The Respondents (with the exception of one who has not expressed her reason for objecting) consent to the application and the provisions of Section 37 (5)(b) of the Act are therefore met.
13. There is no evidence that the order is likely to substantially prejudice any of the Respondents or any other person and there is no reason to conclude that it is not reasonable for the variation to be effected
14. Although there were no submissions with the regard to compensation under Section 38(10) of the Act, the Tribunal considers that the Respondents will not suffer a loss or disadvantage by the variation and in fact will benefit from the savings to the service charges. The Tribunal will make no order for compensation under Section 38(10) of the Act.
15. The Tribunal is empowered to make an order varying the Lease if the grounds upon which the application was made are established to the satisfaction of the Tribunal and the Tribunal is satisfied that the variation would be appropriate. A copy of the Order under Section 38 of the Act is attached as well as a copy of the amended Deed of Variation.

CHAIRMAN



Mrs T I Rabin

**THE LEASEHOLD VALUATION TRIBUNAL**

**CASE No.: LON/OOAW/LVL/2013/0005**

**IN THE MATTER OF AN APPLICATION UNDER SECTION 37 OF THE  
LANDLORD AND TENANT ACT 1987**

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**ORDER**

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**UPON** the application of **Iverna Gardens Residents Association Ltd** (“**the Applicant**”) under Section 35 of the Landlord and Tenant Act 1987 (“**the 1987 Act**”) for the variation of the long leases demising Flats 1-10, 21-30A and 31-50B Iverna Gardens London W1 8TN (“**the Flats**”)

**AND UPON** considering representations on behalf of the Applicant

**IT IS ORDERED THAT**

That with effect from the 28 September 2016 the following variations shall be made to each of the 43 Leases set out in paragraph 9 of the Lease Variation Details contained in the Application Form herein:-

- (a) Paragraph 3 of the Second Schedule shall be deleted and replaced with the following:-

“The free and uninterrupted passage and running of water and soil gas and electricity and other services from and to the demised premises through the sewers drains watercourses cables pipes and other service media which may at any time during the period of 80 years from the commencement of the term be in under or passing through the Building or the Estate or any part or parts thereof.”

- (b) Paragraph 12 of the Sixth Schedule shall be deleted and replaced with the following:-

“The Lessors will install as considered proper and will maintain and repair where such exist and renew when necessary any cold water tanks which serve the Building or any building on the Estate as a whole and will maintain where existing the supply of such service.”

- (c) Paragraph 14 of the Sixth Schedule shall be deleted and replaced with the following:-

"The Lessors will maintain insurance against risks of breakdown of the lifts and breakdown explosion or bursting of the water pipes and third party claims in respect of the lifts and lift equipment and mechanism and pipes in such amounts and on such terms as the Lessors shall from time to time think fit."



CHAIRMAN  
MRS T I RABIN