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

Case Reference : **BIR/17UJ/LVT/2017/0002**

Property : **Hardwick House, Heath Road, Holmewood,
Chesterfield S42 5PL**

Applicant : **Hardwick House RTM Company Ltd**

Representative : **Clear Building Management Ltd**

Respondents : **As set out in the Schedule to this Decision**

Type of Application : **Variation of Lease – Section 35
Landlord and Tenant Act 1987**

Members of Tribunal : **Judge D Jackson
N Walsh FRICS**

Date of Decision : **8th November 2017**

DECISION

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Background

1. Hardwick House is a purpose built development of 11 Apartments
2. The freeholders are Robert Merriman and Claire Louise Merriman whose freehold title is registered at HM Land Registry under Title No. DY329252. The right to manage under Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 has been acquired by the Applicant RTM company
3. On 8th September 2017 the Tribunal received an Application for the variation of the leases under Part IV of the 1987 Act made by the RTM company (which is a party to the leases by virtue of paragraph 10 of Schedule 7 to the 2002 Act). The RTM company seeks a variation under section 35 of the 1987 Act of the "Service Charge Proportions" in the Leases of all 11 Apartments.
4. On 23rd October 2017 the Tribunal issued Directions to all the Respondents listed in the Schedule to this Decision. None of the Respondents have notified the Tribunal in writing of any objections to the application.
5. The Tribunal has determined this application without a hearing under Rule 31 of the Tribunal Procedure Rules.

Deliberation

6. For the purposes of this application Apartments 3-8 share an internal common entrance and stairwell. Apartments 1, 2, 9 and 10 have their own separate self-contained entrance and do not have access to the internal common parts of the block. Apartment 11 is a self-contained apartment adjoining the block.
7. The Leases of all 11 Apartments are in common form. Clause 1.1 "Definitions and Interpretation" defines "Service Charge Proportions" as:

"One eleventh of the total costs relating to the Estate, one tenth of the total costs relating to external parts of the Block and one tenth the total costs relating to the internal parts of the Block."
8. The variation sought in relation to the total costs relating to the Estate is simply to change the fractional amount $1/11^{\text{th}}$ to its decimal equivalent of 9.1%. Accordingly there is no variation sought in relation to Estate costs. However, in the absence of any objections, the Tribunal is prepared to incorporate the change sought by the RTM company within its Order.
9. In relation to the total costs relating to the external parts and the internal parts of the Block under the current Leases each Apartment pays $1/10^{\text{th}}$. It therefore follows that the Leases fail to make satisfactory provision for the computation of service charges payable under the Leases (section 35(2)(f)) as the aggregate of the amounts payable by reference to the "Service Charge Proportions" amount to $11/10^{\text{ths}}$ and therefore exceeds the whole of the expenditure (section 35 (4)(c)).
10. In relation to the total costs of the external parts of the Block we therefore vary the Leases of all Apartments. We determine the "Service Charge Proportion" of all of the Apartments in relation to external parts shall be varied to $1/11^{\text{th}}$ or 9.1%.
11. The RTM Company seeks a variation of the total costs of internal parts to the effect that only those Apartments (3-8) that share and use the internal common entrance and stairwell contribute to those costs. We find that the current "Service Charge Proportions" fail to make adequate provision for the recovery by the RTM company of expenditure of the total costs relating to the internal parts of the Block for the benefit of Apartments 3-8 (section 35(2)(e)).

12. Accordingly we vary the Leases of Apartments 3-8 whereby they are to be solely responsible for the total costs relating to the internal parts.
13. We therefore determine that the "Service Charge Proportion" for the total costs relating to internal parts in the Leases each of Apartments 3-8 shall be varied to 1/6th or 16.67%.

Decision

14. Pursuant to sub-sections 35(1) and (4) of the 1987 Act we make an Order varying the Leases of Apartments 1-11 in the terms specified in the application.
15. For the avoidance of doubt in each of the Leases of Apartments 1-11 Part 1 – Definitions and Interpretation, clause 1.1 "Service Charge Proportions" shall be varied as follows :

Apartments 1, 2, 9, 10 and 11

"9.1% of the total costs relating to the Estate, 9.1% of the total costs relating to external parts of the Block and 0% the total costs relating to the internal parts of the Block."

Apartments 3, 4, 5, 6, 7, and 8

"9.1% of the total costs relating to the Estate, 9.1% of the total costs relating to external parts of the Block and 16.67% the total costs relating to the internal parts of the Block."

D Jackson
Judge of the First-tier Tribunal

Any party may appeal this decision to the Upper Tribunal (Lands Chamber) but must first apply to the First-tier Tribunal for permission. Any application for permission must be in writing, stating grounds relied upon, and be received by the First-tier Tribunal no later than 28 days after the Tribunal sends this written Decision to the party seeking permission.

Schedule

Robert Merriman and Claire Louise Merriman (freeholders)

Apartments

- 1 Matthew Williams
- 2 Sanjay Sharma
- 3 John Eales
- 4 Mr and Mrs Barber
- 5 Mr and Mrs Barber
- 6 Dr Rajael Somaskanthan
- 7 Kalbir Sanger
- 8 Tasneen Chandia
- 9 John Baxter
- 10 Sukhdev Dhiman
- 11 Sosel Somaskanthan