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

Case Reference : CHI/43UM/LSC/2016/0033
CHI/43UM/LVT/2016/0002

Property : Flats 6-24 St Johns Waterside, Copse
Road, Woking, Surrey GU21 8EG

Applicant : FirstPort Property Services Limited

Representative : Azmon Rankohi, Legal Consultant

Respondent : The freeholder and leaseholders of the
Property

Representative : No attendance

Type of Application : Determination of liability to pay and
reasonableness of service charges and
variation of the leases

Tribunal Member(s) : Judge D. R. Whitney
Neil Maloney FRICS

Date of Determination : 19th August 2016

DETERMINATION

Background

1. The Applicant seeks a determination under Section 27A of the Landlord and Tenant Act 1985 as to whether service charges in respect of water charges are payable for the service charge years 2013 to 2016 inclusive. The Applicant also seeks to vary the leases of Flats 6-24 St Johns Waterside Copse Road Woking Surrey GU21 8EG (“the Property”), under Section 35 of the Landlord & Tenant Act 1987 (“the 1987 Act”).
2. The Applicant is the manager appointed under the various leases granted.
3. Various issues arose and the tribunal issued directions dated 15th April 2016 listing the matter for an oral case management hearing and directing the Applicant to serve copies of the Applications on all of the leaseholders and the freeholder.
4. An oral case management hearing was held on 3rd June 2016. Estates & Management on behalf of Proxima GR Properties Limited (the freeholder) wrote to the tribunal supporting the applications. There was no attendance by any of the leaseholders. Further directions were issued including a requirement upon the Applicant to serve copies of the further direction upon the Respondent leaseholders. These directions provided that the matter would be dealt with by way of a paper determination unless any objection was received and also allowed for any Respondent to make representations as to the applications.
5. No request has been made by any party for an oral hearing. Mr Melvyn Fryer, the joint owner of the leasehold interest in Flat 12 at the Property has written in supporting the applications.
6. The Applicant has provided a hearing bundle and references to page numbers within this decision are to pages within that bundle.

DETERMINATION

7. The tribunal notes that this is the third set of applications relating to effectively the same subject matter. The tribunal reminds itself that whilst it is not bound by earlier decisions the tribunal should be slow to interfere with these decisions. Copies of the two earlier determinations (CHI/43UM/LIS/2008/0001 and CHI/43UM/LVT/2012/0009) were available to this tribunal and were found at pages 28 to 63 of the bundle.
8. The tribunal notes that on this occasion (different from the two earlier sets of proceedings) no leaseholders have objected to the applications made.

9. The Property is a block of Flats. It is part of a larger development which also includes 5 freehold houses. By way of service charges the flats pay Block Costs and Development Costs. Water is supplied to the Block (and not the freehold houses) by way of a communal system provided by the Applicant. The applications concern whether or not this cost can be recovered as a service charge item against the flats only or whether the lease can be varied to allow recovery.
10. The Applicants case was set out in their statement of case at pages 24 to 27. Effectively they say that the earlier decisions of the tribunal are wrong. The Applicants suggests that water charges should be recoverable from the Respondent leaseholders as a block cost only and not a development cost. The Applicants say it should not be a development cost, despite this being what the 2012 tribunal determined, as the freehold houses should not have to contribute as they do not benefit from the supply of water. Despite the 2012 decisions declining to vary the lease because in its opinion the cost was recoverable as a Development Cost the Applicant renews its application for a variation.
11. Mr Rankohi, on behalf of the Applicant, has filed a witness statement confirming that effectively as far as he is able all the leases follow the same format as the sample lease at pages 65 to 97. He was unable to obtain copies of the leases for Flats 12, 13 and 23. The lease for Flat 20 was incomplete but appeared to follow the same format.
12. The tribunal notes that no party appears to challenge the amounts of the water charges for the service charge years in question being the years 2013 to 2016. The issue appears to be whether or not these costs are recoverable under the service charge provisions of the lease.
13. The tribunal notes that there have already been two prior determinations in relation to the subject matter of this application.
14. This tribunal accepts the findings and determination made in the determination dated 19 December 2012 (pages 58-63) as to the ability to recover the sums under the current lease. For the avoidance of doubt the tribunal finds that the sums claimed for the service charge years 2013 to 2016 inclusive are reasonable.
15. Turning to the application to vary the lease the relevant law is contained in Section 35 of the Landlord and Tenant Act 1987 and a copy of which is annexed marked "B".
16. The tribunal in considering matters has had regard to the fact that this is the third set of applications relating to the same subject matter. It also had regard to the 2012 decision which itself related to an application to vary the lease. It is clear there is uncertainty over the lease terms and the recoverability of the cost of supply of water which must be an essential service for all of the flats. This tribunal accepts

that the earlier determinations are unsatisfactory as to the managers ability to recover the costs of the supply of water to the flats.

17. In varying the lease the tribunal needs to be satisfied that the lease does not make satisfactory provision. Having regard to Section 35 and particularly Section 35(2)(c), (d) and (e) we are satisfied that the provision of water and associated services is something for which the Respondent as the Manager under the leases ought to be able to recover the reasonable costs of the same. Generally where services are supplied by a manager such as under these leases all the costs of services for which they are liable to provide should be recoverable. Under any of those subsections this cost would in this tribunals determination be something which the tribunal would have jurisdiction to vary the lease to include as a service charge expense.
18. This tribunal finds it is reasonable to expect the manager to be able to recover these costs as a service charge expense. We are satisfied it is appropriate for all parties to have certainty as to the recoverability of these costs to prevent further dispute.
19. In this tribunal's determination it is appropriate to consider varying the lease for certainty.
20. The Applicant has supplied a draft order at pages 117 to 120. A copy is annexed hereto marked "C".
21. The Applicant invites the tribunal to add a clause to Part "B" of the Sixth Schedule allowing specifically the recovery of the water charges.
22. The tribunal is mindful that no leaseholder has objected. It has also considered the tribunals overriding objective and to achieve certainty in this tribunals determination it is appropriate under Section 35(2)(c), (d) and (e) to vary the lease. The tribunal considers that it is just and equitable to backdate this variation until 1st September 2013. The lease is therefore varied in accordance with the Order annexed hereto marked "C" backdated to 1st September 2013.
23. The tribunal has so determined and varies the lease as requested in the form annexed hereto marked C .

Judge D. R. Whitney

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.

FIRST TIER TRIBUNAL (PROPERTY CHAMBER)

CASE REF: CHI/43UM/LSC/2016/0033 & CHI/43UM/LVT/2016/0002

IN THE MATTER OF SECTION 35 OF THE LANDLORD AND TENANT ACT 1987

PREMISES: 6-24 ST JOHN'S WATERSIDE, COPSE ROAD, WOKING, SURREY
GU21 8EG

BETWEEN:

FIRSTPORT PROPERTY SERVICES LIMITED

APPLICANT

and

THE LEASEHOLDERS OF 6 – 24 ST JOHN'S WATERSIDE

RESPONDENTS

ORDER

UPON DETERMINING THAT each of the nineteen apartment leases, together known as 6 - 24 St John's Waterside (the details of which are more particularly set out in the First Schedule hereto) ("Leases" and "Lease" respectively) fails to make satisfactory provision for the recovery of expenditure.

Pursuant to Section 35(2)(c), (d), and/or (e) of the Landlord and Tenant Act 1987 IT IS HEREBY ORDERED that the Leases are varied in the terms set out in the Second Schedule hereto.

IT IS ORDERED that subject only to the variations expressed in this Order all the clauses, covenants, conditions and provisions of each Lease (as varied if applicable) shall continue in full force and effect and the Lease shall henceforth be construed as if such amendments were originally contained herein.

AND IT IS FURTHER ORDERED that the Chief Land Registrar shall make such entries on the registers relating to the titles hereby affected or to open a new title or titles as shall be deemed appropriate for the purpose of recording and giving effect to the terms of this Order.

THE FIRST SCHEDULE

Property	Title Number	Lease Date	Term	Parties
6 St John's Waterside	SY708835	24.12.2001	125 years from 25.03.2011	(1) Barratt Homes Limited (2) Peverel OM Limited (3) Jonathan David Healy & Mata Zandra Dharmi Boodhoo
7 St John's Waterside	SY708971	21.12.2001	125 years from 25.03.2011	(1) Barratt Homes Limited (2) Peverel OM Limited (3) Nicola Ruth Davis
8 St John's Waterside	SY711225	28.03.2002	125 years from 25.03.2011	(1) Barratt Homes Limited (2) Peverel OM Limited (3) Dithoi Cheung & Surching Cheung
9 St John's Waterside	SY712348	10.05.2002	125 years from 25.03.2011	(1) Barratt Homes Limited (2) Peverel OM Limited (3) Mayur Ramesh Tejura & Rebecca Ann Charity Walters
10 St John's Waterside	SY708350	06.12.2001	125 years from 25.03.2011	(1) Barratt Homes Limited (2) Peverel OM Limited (3) Maurice Wynn Baker
11 St John's Waterside	SY708390	30.11.2001	125 years from 25.03.2011	(1) Barratt Homes Limited (2) Peverel OM Limited (3) Gregory Chariton Stephen Singh & Sarah-Jane Styles
12 St John's Waterside	SY707831	20.11.2001	125 years from 25.03.2011	(1) Barratt Homes Limited (2) Peverel OM Limited (3) Dianna Timbrell
13 St John's Waterside	SY710835	28.03.2002	125 years from 25.03.2011	(1) Barratt Homes Limited (2) Peverel OM Limited (3) Kenneth Noel Pile
14 St John's Waterside	SY708970	14.12.2001	125 years from 25.03.2011	(1) Barratt Homes Limited (2) Peverel OM Limited (3) Glen Albert Machattie & Katy Victoria Machattie

15 St John's Waterside	SY708669	29.11.2001	125 years from 25.03.2011	(1) Barratt Homes Limited (2) Peverel OM Limited (3) Adam Gill & Caroline Gill
16 St John's Waterside	SY710834	22.03.2002	125 years from 25.03.2011	(1) Barratt Homes Limited (2) Peverel OM Limited (3) Christopher Wood
17 St John's Waterside	SY709034	21.12.2001	125 years from 25.03.2011	(1) Barratt Homes Limited (2) Peverel OM Limited (3) Graham Spivey & Jayne Canham
18 St John's Waterside	SY712431	28.03.2002	125 years from 25.03.2011	(1) Barratt Homes Limited (2) Peverel OM Limited (3) Masoud Haajizadeh & Foroogh Haajizadeh
19 St John's Waterside	SY708348	29.11.2001	125 years from 25.03.2011	(1) Barratt Homes Limited (2) Peverel OM Limited (3) Barry Michael Losty
20 St John's Waterside	SY708385	05.12.2001	125 years from 25.03.2011	(1) Barratt Homes Limited (2) Peverel OM Limited (3) Aurelia Danuta Appiah & Emmanuel Kwame Appiah
21 St John's Waterside	SY709037	23.01.2002	125 years from 25.03.2011	(1) Barratt Homes Limited (2) Peverel OM Limited (3) Michael David Pattison
22 St John's Waterside	SY710544	30.11.2001	125 years from 25.03.2011	(1) Barratt Homes Limited (2) Peverel OM Limited (3) Matthew John Groome & Nicola Warner
23 St John's Waterside	SY708479	07.12.2001	125 years from 25.03.2011	(1) Barratt Homes Limited (2) Peverel OM Limited (3) Martin David Beardmore & Claire Victoria Beardmore
24 St John's Waterside	SY708349	10.12.2001	125 years from 25.03.2011	(1) Barratt Homes Limited (2) Peverel OM Limited (3) Alexander Fernando

THE SECOND SCHEDULE

VARIATIONS TO LEASES OF FLATS 6 – 24 ST JOHN'S WATERSIDE ("Leases")

1. The following paragraph shall be added to The Sixth Schedule Part B:

"7. The cost of consumption by the occupants of the Demised Premises of the domestic cold water provided to the Demised Premises together with all associated standing and drainage costs".

Dated this day of 2016

