



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/26UC/LVT/2018/0003

Properties : 83-143 Burns Drive,
Hemel Hempstead,
Herts. HP2 7NW

Applicant : Burns Drive Management Ltd.

Respondents : Barrie Stewart Norwood & Elaine Ann
Norwood

Date of Application : 19th June 2018

Type of Application : Application to vary leases (Part IV
Landlord and Tenant Act 1987 as
Amended (“the 1987 Act”))

The Tribunal : Bruce Edgington (lawyer chair)
David Brown FRICS

DECISION

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1. The Application to vary the long leases for the properties in the form as set out in the bundle submitted to this Tribunal for the purpose of this decision on the back and front of page 48 with the plans on the back and front of page 47 succeeds subject to (a) to the title numbers to the relevant demised premises being inserted into the Schedule and (b) to any reasonable requisitions of the Land Registry upon registration.

Reasons

Introduction

2. This application relates to 30 flats in a purpose built building, the freehold Title of which is owned by the Applicant. The long leasehold titles are owned by individuals including the Respondents in respect of flat 95. The freehold owner and each of the leasehold owners has a right of way over estate roads identified in the titles as green and purple land owned by Rodwell Property Ltd (“Rodwell”), but no parking rights, save for any that have been negotiated individually. Rodwell also owns land adjoining the green land and garages built thereon.

3. The end result of this is that there has, so it is said, been antagonism. The Applicant therefore decided to negotiate an agreement with Rodwell. Such negotiations have been successful and a provisional agreement has been reached whereby (a) the rights of way over the green land are extinguished and (b) the title to the purple land is transferred to the Applicant subject to the payment of a purchase price and the retention of certain rights in favour of Rodwell.
4. The Tribunal has seen all the necessary draft documents and has been given evidence that the long leasehold owners of all the other flats have agreed to a deed of variation in the same basic form as set out in the decision above. The benefit to the long leaseholders is that they are able to acquire from the Applicant rights to park on the purple land for a price which includes the cost of buying the land, the cost of marking out the parking spaces and the various professional costs involved. There will be 65 parking spaces to cover the property and another block namely 9-89 Burns Drive.
5. All the other long leaseholders have signed deeds of variation in the same basic form as set out in the decision above and, if they have said they want a parking space, they have paid the price. Agreement was reached with the solicitors acting for the Respondents in November 2017 but they have refused to sign the deed of variation. The Tribunal has seen an exchange of e-mails between the solicitors acting for the parties.
6. On the 7th November 2017, Mr. Graham Wright of Wright and Co. on behalf of the Respondents set out terms i.e. (1) a refund of £710.28, (2) confirmation that the Respondents are full members of the Applicant (3) confirmation that they will not be liable for interest or capital payments on any loan taken out by the Applicant and (4) payment of costs, subsequently quantified as £750 plus VAT and disbursements of £20. He then said "*Unless the above is agreed our client is not prepared to sign the Deed of Variation*".
7. An e-mail of the 14th November from Graham White & Co. acting for the Applicant says that points (1), (2) and (4) are agreed. As far as (3) is concerned it simply says that the loan taken out has been repaid in full.
8. The Tribunal has seen a typed document headed "Respondents' statement of case in reply" in the bundle which is unsigned. The Applicant's solicitors say that they never received a signed document. However, they have filed a reply to it which answers the questions raised. The reason the Respondents give for not signing the Draft Deed is that they had understood that the parking space would be transferred as soon as the price was paid and the release signed.

The Inspection

9. In view of the nature of the variation sought, no inspection of the property was thought necessary and none was requested.

The Law

10. Section 37 of the 1987 Act permits any party to a long lease of a flat to apply to

this Tribunal for an order varying such lease if "*the object to be achieved by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect*". The Tribunal has the power to vary a number of leases in a building where, in the case of more than 8 leases, at least 75% agree and not more than 10% oppose.

11. In this case, the evidence filed on behalf of the Applicant, as accepted by the Tribunal, is that all other long leaseholders have signed deeds of variation and have paid over monies to purchase parking spaces as required. The only matter holding up the completion of the whole transaction is the failure of the Respondents to sign their Deed of Variation.

Compensation

12. In their unsigned statement of case, the Respondents say that if the Tribunal agrees to make the order requested, then it should be conditional on the whole transaction proceeding to completion and that they should have an award of compensation pursuant to section 38(10) of the 1987 Act. This is a discretionary award that can be made if the Tribunal considers that there has been any loss or disadvantage as a result of the variation.
13. No sum is put forward and the only description of the loss is "*...the adverse affect that the lack of a parking space will have on the value of their property*".
14. As far as these two matters are concerned, the Tribunal cannot make an order requiring companies such as Rodwell who are not parties to these proceedings, complete a transaction. As far as compensation is concerned, the Tribunal simply does not understand the claim. The present situation is that the Respondents have no right to park on the land over which they have a right of way and they have not said that the right of way over the green land gives them any particular benefit. It does not lead anywhere in particular and does not affect any right to get to and from a public highway. The transaction proposed by the Applicant will give them the opportunity to acquire one or more parking spaces which, it is said, are in short supply.

Conclusions

15. The Tribunal agrees that the conditions set out in section 37 of the 1987 Act are all met and the variations are therefore put into effect subject to the conditions mentioned in the decision.
16. In its main statement of case, the Applicant says "*The Tribunal is asked to consider whether (the mortgagees of the long leaseholders) should be served with notice of the application in light of the current absence of any rules made pursuant to s. 35(5) Landlord & Tenant Act 1987*".
17. As far as that is concerned, the Tribunal does not consider that it should involve itself in this sort of issue. The Land Registry will no doubt have a view and it would certainly be appropriate for each mortgagor to notify their own mortgagee. The question really is whether the variation is likely to reduce the value of the security in each case. In the particular circumstances set out by the Applicant, it

does not seem to the Tribunal that there is actually likely to be any such reduction. Those who acquire parking rights are likely to have an increase in value.

18. As far as the applications for a condition and compensation made by the Respondents are concerned, the Tribunal cannot see that these are appropriate or reasonable.



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Bruce Edgington
Regional Judge
4th September 2018

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.