



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

Case Reference : **LON/00BH/LRM/2019/0011**

Property : **1-24 Bridge Court, Lea Bridge Road,
London E10 7JS**

Applicant : **Triplerose Ltd**

Representative : **Scott Cohen solicitors**

Respondents : **Various leaseholders, as per the
application and the Tribunal's direction
dated 23rd April 2020**

Type of Application : **Variation of lease**

Tribunal : **Judge Nicol
Mr T Sennett FCIEH**

Date of Decision : **18th November 2020**

DECISION

The Tribunal orders that:

1. The leases of the flats 1-24 Bridge Court, Lea Bridge Road, London E10 7JS shall be varied by the addition of a new clause 2(2)(c):

For the duration of any period in which the Right to Manage is being exercised in respect of the block containing flats 25-48 Bridge Court, 340-354 Lea Bridge Road, London, the proportion stated in Clause 2(2)(a) hereof to be varied to read "1/24".
2. This variation shall be executed by means of the deed of variation submitted by the Applicant to the Tribunal in draft form, save that the Schedule shall only contain this one variation.

Relevant legislation is set out in an Appendix to this decision.

The Tribunal's reasons

1. Bridge Court is a development consisting of two blocks, each containing 24 flats. On 25th September 2018 the Tribunal decided that Bridge Court South RTM Co Ltd was entitled to exercise the right to manage one of those blocks, known as Bridge Court South, containing flats 25-48 (ref: LON/00BH/LRM/2018/0019) and they exercised that right with effect from 30th April 2019. Further, on 31st October 2019 the Tribunal decided that the Applicant had to pay a proportion of the accrued uncommitted service charges which they held to the RTM Company (ref: LON/00BH/LCP/2019/0008).
2. On 13th December 2019 the Tribunal received an application for the leases of flats 1-24 in the remaining block to be varied in the following respects:
 - (a) Clause 2(2)(b) be varied to allow the landlord discretion to alter the dates of the service charge year.
 - (b) Clause 2(2)(c) be added to allow the landlord discretion to set the apportionment of the service charges.
 - (c) Clause 2(2)(a)(xi) be added to allow the recovery of the landlord's costs in Tribunal proceedings.
3. The Applicant asserted that these variations were necessary for Bridge Court North because the current arrangements are unsatisfactory within the meaning of section 35 of the Landlord and Tenant Act 1987 ("the Act") now that Bridge Court South is separately managed under the right to manage.
4. The hearing of the application was conducted by remote video conferencing on 9th November 2020. The attendees were:
 - Mr Justin Bates, counsel for the Applicant
 - Mr Yaron Hazan, from the managing agents, Y&Y – he observed but did not participate
 - Ms Amanda Gourlay, counsel for all but 5 of the lessees
 - Mr Ben Edwards, lessee of Flat 30 – in the event, he had nothing to say beyond counsel's submissions
 - Ms Holly Bowles, chair of the Bridge Court Residents' Association – Ms Bowles's connection was such that she could only observe, not participate, but she was content for the Tribunal to take into account the submissions in her letter dated 8th November 2020.
5. The Tribunal worked from a number of documents, mostly in PDF format, particularly a bundle in 5 parts, labelled A-E, prepared on behalf of the Applicant. Both counsel provided skeleton arguments.

Apportionment

6. At the moment, the leases in the North block fix the apportionment of the service charges at either one forty-eighth or one twenty-eighth for each flat. The $\frac{1}{48}$ th apportionment was based on the fact that the Building which benefited from the service charges was defined as both blocks with their total of 48 flats. No-one was able to explain where $\frac{1}{28}$ th came from, the best guess being that it is a mistake and should also read $\frac{1}{48}$ th. It is understood that the Applicant has applied the $\frac{1}{48}$ th apportionment to all lessees in practice, without any objection.
7. Prior to the hearing, the parties had reached a measure of agreement in the relation to the second proposed amendment. Instead of the Applicant being given discretion to set the apportionment of service charges, the Respondents proposed a fixed amount of $\frac{1}{24}$ th, although they were also concerned that this should only apply so long as the South block continued to be subject to the right to manage. The Applicant accepted this suggestion and proposed the following wording for the new clause 2(2)(c):

For the duration of any period in which the Right to Manage is being exercised in respect of the block containing flats 25-48 Bridge Court, 340-354 Lea Bridge Road, London, the proportion stated in Clause 2(2)(a) hereof to be varied to read “ $\frac{1}{24}$ ”.
8. The current apportionment of the service charges for each flat in the North block is clearly unsatisfactory, particularly in the light of the fact that the Applicant no longer manages the South block and is no longer spending any money maintaining or managing it. The proposed new clause meets both parties’ respective concerns and, in the Tribunal’s opinion, is a sensible solution.
9. In her letter, Ms Bowles argues that there should be separate provision for service charges arising from the maintenance of areas shared between the two blocks. However, apart from the fact that inadequate notice was given of this proposal, it does not make sense. At present, the Applicant can only recover service charges from the lessees in the North block. If they were to recover only $\frac{1}{48}$ th of their expenditure on the shared areas, they would be out of pocket. I assume Ms Bowles was thinking that the lessees of the South block would contribute the rest but there is, as yet, no enforceable agreement to that effect.

Service charge year

10. Clause 2(2)(a) of the lease provides that the lessee shall contribute to the lessor $\frac{1}{28}$ th of a list of service costs. Clause 2(2)(b) currently reads:

The amount of such contribution shall be ascertained and certified by the Lessor’s Managing Agents ... once a year in respect of the year to the 24th day of June preceding the date of the certificate as soon as practicable at any time after the 24th day of June in each year commencing on the 24th day of June One Thousand Nine Hundred and Eighty-Six. The Lessee shall on the execution hereof pay the sum of TWO HUNDRED POUNDS

(£200.00) on account for the contribution for the year ending the 24th June One Thousand Nine Hundred and Eighty-Eight and thereafter shall on the 25th day of December and the 24th day of June in each year pay a sum equal to one-half of the amount payable by the Lessee for the preceding year under provisions of this Clause on account of such contribution and shall on demand pay the balance (if any) ascertained and certified as aforesaid

11. The Applicant submits that there are two problems with this clause. Firstly, the lessees of the South block exercised their right to manage with effect from 30th April 2019, a date which falls within one service charge year. This necessitates splitting the service charge year into two unequal parts, with different expenditures apportioned between different lessees for each part.
12. Instead, the Applicant wants to truncate the preceding year and then run the accounts from and to dates of its choosing, in this case starting from the date of the split.
13. The splitting and re-apportioning of expenditure and service charges has already been done in order to calculate the proportion of the accrued uncommitted service charges which the Applicant had to hand over to the RTM Company. What is left is just a matter of the presentation of the accounts. It is notable that the Applicant must have carried out a similar exercise previously because the service charge accounts for at least the last 3 years have been calculated on a calendar year basis – the change from the June-June basis would also have involved splitting and re-apportionment.
14. The Tribunal fails to see why one of the two options is better than the other. They are as satisfactory as each other. The current arrangements are clear and workable, if not ideal (see *Triplerose Ltd v Stride* [2019] UKUT 99 (LC); [2020] L&TR 27; *LB Camden v Morath* [2019] UKUT 193 (LC); [2020] L&TR 4). Therefore, the fact that the right to manage began during a service charge year is not a sufficient basis for varying clause 2(2)(b).
15. Mr Bates asserted in paragraph 4 of his skeleton argument that the other problem is that the “on account” service charges, paid in advance of the actual expenditure, are calculated by reference to what was spent in the previous year. In fact, clause 2(2)(b) of the lease states that they are calculated by reference to the amount payable by the lessee. The amount of the “on account” payment is not calculated by applying the relevant apportionment to the total expenditure but just by seeing how much the lessee was due to pay for the preceding year.
16. As far as the Tribunal can see, there is no problem. The service charges of a lessee in the North block are calculated by reference to 1/48th of the actual expenditure on both blocks for periods prior to the exercise of the right to manage and 1/24th of around half that expenditure, for just one block, for periods thereafter. Whether “on account” payments are

calculated by reference to one or the other will not produce significantly different amounts. There is nothing unsatisfactory in this arrangement. Therefore, again, there is no sufficient basis for varying clause 2(2)(b).

Costs

17. The Applicant submits that, since the need to vary the leases of the lessees in the North block arose through no fault of their own, in the interests of good management the lessees should bear the cost of making this application. The application and the Applicant's draft deed of variation gave the impression that they wished to achieve this by varying the lease to include a clause specifically permitting the recovery of litigation costs through the service charge. However, Mr Bates conceded that such a change did not satisfy the criteria under section 35 of the Act. Instead, he argued that, under section 38, the Tribunal had the power to provide for the payment of costs by the Respondents.
18. The Tribunal can see how there might be circumstances where, in order to ensure any variation is executed, it would be appropriate to make provision as to who is to bear the costs. The comments of HHJ Jarman QC at paragraph 11 of his judgment in *Baystone Investments Ltd v Perkins* [2010] UKUT 70 (LC) support this.
19. However, the Tribunal cannot see that this is one of those cases. The lessees are equally not at fault. The Applicant has additionally sought a variation which was unjustified. The one variation which they have persuaded the Tribunal to make was ultimately agreed between the parties – if the Applicant had sought to reach agreement earlier, as it should, the costs may have been significantly lower. The Tribunal cannot see any basis within section 38 for ordering the lessees to pay the costs of the current proceedings.
20. The Respondents had suggested that there is a power under clause 2(2)(a)(x) for the Applicant to recover such costs through the service charge but Ms Gourlay did not maintain this. The Applicant would have been happy for this submission to be correct but did not believe it was. The Tribunal agrees that this particular sub-clause does not extend to such costs.

Conclusion

21. The Tribunal has decided that the leases of the flats in the North block should be varied in one way, by the addition of the new clause 2(2)(c) set out in paragraph 7 above. The Applicant provided a draft deed of variation which is in satisfactory form and may be used to execute this variation, save that the Schedule must include only this one variation.
22. There is an extant application to vary leases in relation to car parking (Tribunal ref: LON/00BH/LVL/2019/0005). Ms Bowles suggested that this be determined at the same time as the current application. However, again there was insufficient notice. Moreover, the issues are distinct and

the parties are not identical so it would likely be better for each application to be determined separately.

Name: NK Nicol

Date: 18th November 2020

Appendix of relevant legislation

Landlord and Tenant Act 1987

S35 Application by party to lease for variation of lease.

- (1) Any party to a long lease of a flat may make an application to the appropriate tribunal 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—
 - (a) the repair or maintenance of—
 - (i) the flat in question, or
 - (ii) the building containing the flat, or
 - (iii) any land or building which is let to the tenant under the lease or in respect of which rights are conferred on him under it;
 - (b) the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);
 - (c) the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation;
 - (d) the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, and whether they are services provided for the benefit of those occupiers or services provided for the benefit of the occupiers of a number of flats including that flat);
 - (e) the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party;
 - (f) the computation of a service charge payable under the lease;
 - (g) such other matters as may be prescribed by regulations made by the Secretary of State.
- (3) For the purposes of subsection (2)(c) and (d) the factors for determining, in relation to the occupiers of a flat, what is a reasonable standard of accommodation may include—
 - (a) factors relating to the safety and security of the flat and its occupiers and of any common parts of the building containing the flat; and
 - (b) other factors relating to the condition of any such common parts.
- (3A) For the purposes of subsection (2)(e) the factors for determining, in relation to a service charge payable under a lease, whether the lease makes satisfactory provision include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.

- (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.
- (5) Procedure regulations under Schedule 12 to the Commonhold and Leasehold Reform Act 2002 shall make provision—
- (a) for requiring notice of any application under this Part to be served by the person making the application, and by any respondent to the application, on any person who the applicant, or (as the case may be) the respondent, knows or has reason to believe is likely to be affected by any variation specified in the application, and
 - (b) for enabling persons served with any such notice to be joined as parties to the proceedings.
- (6) For the purposes of this Part a long lease shall not be regarded as a long lease of a flat if—
- (a) the demised premises consist of or include three or more flats contained in the same building; or
 - (b) the lease constitutes a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.
- (8) In this section "service charge" has the meaning given by section 18(1) of the 1985 Act.

S38 Orders varying leases

- (1) If, on an application under section 35, the grounds on which the application was made are established to the satisfaction of the tribunal, the tribunal may (subject to subsections (6) and (7)) make an order varying the lease specified in the application in such manner as is specified in the order.
- (2) If—
- (a) an application under section 36 was made in connection with that application, and
 - (b) the grounds set out in subsection (3) of that section are established to the satisfaction of the tribunal with respect to the leases specified in the application under section 36, the tribunal may (subject to subsections (6) and (7)) also make an order varying each of those leases in such manner as is specified in the order.
- (3) If, on an application under section 37, the grounds set out in subsection (3) of that section are established to the satisfaction of the tribunal with respect to the leases specified in the application, the tribunal may (subject to subsections (6) and (7)) make an order varying each of those leases in such manner as is specified in the order.

- (4) The variation specified in an order under subsection (1) or (2) may be either the variation specified in the relevant application under section 35 or 36 or such other variation as the tribunal thinks fit.
- (5) If the grounds referred to in subsection (2) or (3) (as the case may be) are established to the satisfaction of the tribunal with respect to some but not all of the leases specified in the application, the power to make an order under that subsection shall extend to those leases only.
- (6) A tribunal shall not make an order under this section effecting any variation of a lease if it appears to the tribunal —
 - (a) that the variation would be likely substantially to prejudice—
 - (i) any respondent to the application, or
 - (ii) any person who is not a party to the application,and that an award under subsection (10) would not afford him adequate compensation, or
 - (b) that for any other reason it would not be reasonable in the circumstances for the variation to be effected.
- (7) A tribunal shall not, on an application relating to the provision to be made by a lease with respect to insurance, make an order under this section effecting any variation of the lease—
 - (a) which terminates any existing right of the landlord under its terms to nominate an insurer for insurance purposes; or
 - (b) which requires the landlord to nominate a number of insurers from which the tenant would be entitled to select an insurer for those purposes; or
 - (c) which, in a case where the lease requires the tenant to effect insurance with a specified insurer, requires the tenant to effect insurance otherwise than with another specified insurer.
- (8) A tribunal may, instead of making an order varying a lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified; and accordingly any reference in this Part (however expressed) to an order which effects any variation of a lease or to any variation effected by an order shall include a reference to an order which directs the parties to a lease to effect a variation of it or (as the case may be) a reference to any variation effected in pursuance of such an order.
- (9) A tribunal may by order direct that a memorandum of any variation of a lease effected by an order under this section shall be endorsed on such documents as are specified in the order.
- (10) Where a tribunal makes an order under this section varying a lease the tribunal may, if it thinks fit, make an order providing for any party to the lease to pay, to any other party to the lease or to any other person, compensation in respect of any loss or disadvantage that the tribunal considers he is likely to suffer as a result of the variation.