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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
EASTERN PANEL  
LEASEHOLD VALUATION TRIBUNAL**

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**Case No** : CAM/00MC/LVL/2010/0007

**Property** : 65A Albion Terrace, London Road, Reading, Berks  
RG1 5BW

**Applicant** : Albion Place Reading Limited

**Respondent** : Mr & Mrs Jagdish Gordhandhas Morjaria

**Determination** : 10<sup>th</sup> September 2010

**Tribunal** : Mr Stephen Reeder LLB (lawyer chair)  
Mrs Roland Thomas MRICS (valuer member)

**Application** : Application to vary a lease pursuant to section 35 in  
Part IV of the Landlord & Tenant Act 1987

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**DECISION**

1. The application is granted so that Lease Title No. BK 211608 shall be varied as follows -

Clause 1 of the 5<sup>th</sup> Schedule

The lease is varied so that the existing clause 1 of the 5<sup>th</sup> Schedule shall read-

*The amount of the service charge shall be ascertained and certified by a certificate (hereinafter called 'the certificate') signed by the Landlord or its Agent so soon after the end of the Accounting Period (which means the First day of April to the Thirty First day of March in each year) as may be practicable and shall relate to such year in the manner hereinafter mentioned.*

Clause 8(6) of the lease

The lease is varied to insert a new clause 8(6) which shall follow clause 8(5) and shall read-

*That in the event of the rents and other payments hereby covenanted to be paid or any part thereof not having been paid within 14 days of the dates upon which the same fall due the Lessee shall pay interest thereon by way of liquidated damages at the rate of Five per centum above the Base Lending Rate of Lloyds Bank plc for the time being (or if such Base Lending Rate shall no longer be published such other interest rate as shall be reasonably be selected by the Landlord for the purpose of this Clause) from the date upon which such sum or sums become due to the actual payment AND IT IS FURTHER AGREED AND DECLARED that the right of the Landlord hereunder to claim such interest shall be in addition to and not in substitution for all other rights of the Landlord under this Lease*

Part II of the 6<sup>th</sup> Schedule.

The lease is varied so that the existing clause headed Insurance in Part II of the 6<sup>th</sup> Schedule shall read -

*The Landlord will arrange for property insurance and re-charge the premium. The insurance arranged by the landlord will not cover the contents (including decorations) of the demised premises.*

2. The applicant is directed to record the variations granted to Lease Title No. BK 211608 with HM Land Registry within 28 days of receiving this Decision.

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**REASONS**

**The facts & background**

3. Albion Terrace is a Grade II listed terrace of dwelling houses constructed in the 1850's. It was redeveloped in the 1980's to provide 57 flats. It shares communal gardens and car parking with an adjacent development Greys Court which itself comprises 43 flats. Following redevelopment the freehold of Albion Terrace was held by Rodwise Limited and the freehold of Greys Court held by Trencherwood New Homes.
4. In 1987 the applicant company was formed to take the freehold interests and manage the development. The freehold for Albion Terrace was conveyed to the applicant by Rodwise Limited on 18<sup>th</sup> December 2001. The freehold for Greys Court was conveyed to the applicant by Trencherwood New Homes on 16<sup>th</sup> January 2003.

5. Since that time the applicant has been the freehold registered proprietor, landlord and management company of Albion Terrace and Greys Court. The shareholders of the applicant comprise the lessees of Albion Terrace and Greys Court. The managing agent appointed is John Mortimer Property Management. All of the properties in Albion Terrace and Greys Court are demised by long leases in the same form, save for 65A Albion Terrace.
6. This comes about because, in or about 1983, Reading Borough Council conveyed a 125 year lease of 65A to the occupying secure tenants, Mr & Mrs Morjaria, under the 'right to buy' provisions of the Housing Act 1980. The reversionary interest in that lease was later conveyed to the applicant by Reading Borough Council. That lease requires Mr & Mrs Morjaria to pay a service charge for the management and services relating to the building. However, it also requires that the amount of service to be demanded from them shall, as a condition precedent to liability, be ascertained and certified by the chief financial officer of that Council. The respondent cannot satisfy the 'certification' covenant in the lease. The lessee refuses to pay any service charge demand.
7. On 21<sup>st</sup> May 2010 Albion Place Reading Ltd issued this application to vary the lease of 65A, pursuant to section 35 of the Landlord & Tenant Act 1987, so that the service charge covenant is efficacious and so that this flat is liable to pay a reasonable proportion of the relevant costs as a service charge. This application has been served on Mr & Mrs Morjaria at 65A Albion Terrace. They have given no response. This applicant has been served on all of the effected lessees in Albion Terrace and Greys Court. None has made any response. As directed by the Tribunal, the applicant has served this application on 'Mortgage Business plc' who have a mortgage advance secured against 65A Albion Place. They have made made no response.
8. In summary the problem faced by the applicant is that the respondents are not contributing to the relevant costs by service charge whereas all of the other lessees are doing so.

### The Law

9. Section 35(1) of the Landlord & Tenant Act 1987 as amended by the Commonhold & Leasehold Reform Act 2002 provides –

Any party to a long lease of a flat may make an application to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application.

10. Section 35(2)(e) of the 1987 Act provides –

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.....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.

11. Section 35(3A) of the 1987 Act provides –

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.

12. Section 38(1) of the 1987 Act provides –

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.....make an order varying the lease specified in the application in such manner as is specified in the order

13. Section 38(4) of the 1987 Act provides –

The variation specified in an order under subsections (1).....may be either the variation specified in the relevant application under section 35.....or such other variation as the tribunal thinks fit.

14. Section 38(6) of the 1987 Act provides –

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 party 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.

15. Section 38(9) of the 1987 Act provides –

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 document as are specified in the order.

16. Section 38(10) of the 1987 Act provides –

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.

### **The Proposed Variations**

17. The applicant has taken some care to provide draft variations intended to –

- (i) Vary the existing clause 1 of the 5<sup>th</sup> Schedule to the Lease to provide that the service charge shall be ascertained and certified by the landlord or its agent rather than the Chief Financial Officer of Reading Borough Council.
- (ii) Add an additional clause 8(6) into the lease to impose liability for interest on late payment of service charge.
- (iii) Vary the existing insurance clause in Part II of the 6<sup>th</sup> Schedule to provide that the property insurance shall be arranged and recharged by the landlord rather than by Reading Borough Council.

### **Conclusions**

18. The Tribunal is satisfied that the lease presently fails to make satisfactory provision for –

- (i) Certifying and recovering a reasonable proportion of the relevant costs as a service charge payable by the respondents.
- (ii) Charging interest in the event that this service charge is not paid within 14 days of falling due
- (iii) Recovering a reasonable proportion of the costs of arrange buildings insurance as a service charge payable by the respondents.

19. The object to be achieved is to put the respondents on the same footing by the same lease covenants, as all of the other lessees in Albion Terrace. This will ensure that the respondents share the same proportionate service charge liability as all of the other lessees in Albion Terrace. There is no opposition to this application. In any event, the Tribunal is satisfied that the amendments proposed are unlikely to substantially prejudice the respondents, the Mortgage Company plc, Reading Borough Council or indeed any person who is not a party to this application. It is further satisfied that it is reasonable in all of the

circumstances to make the variations in the form proposed by the applicant.

20. No application has been made for compensation in accordance with section 38(10) of the Landlord & Tenant Act 1987 and the Tribunal does not make such an order as it does not consider that anyone is likely to suffer loss or disadvantage as a result of these amendments.

21. The application is granted so that Lease Title No. BK 211608 shall be varied as follows -

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The lease is varied so that the existing clause 1 of the 5<sup>th</sup> Schedule shall read-

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Clause 8(6) of the lease

The lease is varied to insert a new clause 8(6) which shall follow clause 8(5) and shall read-

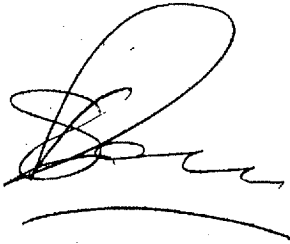
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*The Landlord will arrange for property insurance and re-charge the premium. The insurance arranged by the landlord will not cover the contents (including decorations) of the demised premises.*

22. The applicant is directed to record the lease variations granted with HM Land Registry within 28 days of receiving this Decision.

A handwritten signature in black ink, appearing to be 'S. Reeder', with a horizontal line underneath it.

**Stephen Reeder**  
**Chair**

**10<sup>th</sup> September 2010**