

10664



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

Case Reference : CHI/00ML/LVT/2014/0010

Property : Kingsmere, London Road, Brighton,
BN16UW

Applicant : Anstone Properties Limited

Representative : Howlett Clarke Solicitors LLP

Respondents : The lessees: see attached list

Representative :

Type of Application : Landlord & Tenant Act 1987 - to vary two
or more leases by a majority

Tribunal Member(s) : Mr D Banfield FRICS

Date of Decision : 5 February 2015

DECISION

Determination

- 1. The Tribunal determines pursuant to section 37 of the Landlord and Tenant Act 1987 that each and every lease of flats at the development known as Kingsmere, London Road, Brighton, BN1 6UW be varied in the terms set out in the Schedule of Variations annexed hereto.**
- 2. It is further ordered that subject only to the variations set out in the Schedule hereto all the clauses, covenants, conditions and provisions of each lease shall continue in full force and effect and shall henceforth be construed as if such amendments were originally contained therein.**
- 3. It is further ordered that the Chief Land Registrar shall make such entries on the registers of 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.**

Background

4. The Applicant is the freeholder of a development of 120 flats 119 of which are let on long leases and one of which is reserved for the use of a caretaker. The Applicant now seeks to vary the 119 leases under Section 37 of the Landlord & Tenant Act 1987 ("the 1987 Act").
5. The variations sought are to remove the requirement to provide the services of a caretaker and to maintain a flat for their use. The landlord believes this cannot be achieved without varying all of the leases.
6. The application is made under section 37 of the 1987 Act so that at least 75% of the parties to the application must consent to the variation.
7. Directions were made dated 23 October 2014 a copy of which the Applicant has confirmed was sent to each of the Respondents.
8. The directions stated that unless any party objected in writing the matter would be determined on the papers. No such objection has been received and the matter will be so determined.
9. Paragraph 8 of the directions required any Respondent who wished to submit any comments/representations to the Tribunal should send them to the Applicant before 16 December 2014. The Applicant confirms that no representations have been received.

Evidence

10. In accordance with directions a bundle of documents has been provided to the Tribunal which include copy consent forms from 96 of the 119

leaseholders and a copy of an objection on unstated grounds. It is understood that there has also been an objection received by telephone.

11. In a statement dated 16 January 2015 the Applicant sets out the requirements of the Act which are said to be satisfied by the consent of 80.83% of the lessees and with only 1.66% objectors.
12. The register of title has also been provided giving confirmation that with the exception of the caretakers flat (No83) all flats are let on long leases.
13. A copy of a lease of Flat 80 has been provided and it is assumed that all other leases are in essentially similar form.
14. The variations required are set out in a schedule at pages 32&33 of the bundle and relate solely to the removal of the requirement to provide a caretaker and reserve a flat for their use.

The proposed variations – the Tribunal’s decision:

15. Section 37 of the Act states:

(1) Subject to the following provisions of this section, an application may be made to [a leasehold valuation tribunal] in respect of two or more leases for an order varying each of those leases in such manner as is specified in the application.

(2) Those leases must be long leases of flats under which the landlord is the same person, but they need not be leases of flats, which are in the same building, nor leases, which are drafted, in identical terms.

(3) The grounds on which an application may be made under this section are that the object to be achieved by the variation cannot be satisfactorily achieved unless all leases are varied to the same effect.

(4) An application under this section in respect of any leases may be made by the landlord of any of the tenants under the leases.

(5) Any such application may only be made if-

(a) in a case where the application is in respect of less than nine leases, all or all but one, of the parties concerned consent to it; or

(b) in a case where the application is in respect of more than eight leases, it is not opposed for any reason by more than 10 per cent of the total number of the parties

concerned and at least 75 per cent of that number consent to it.

(6) For the purposes of subsection (5)-

(a) in the case of each lease in respect of which the application is made, the tenant under the lease shall constitute one of the parties concerned (so that in determining the total number of the parties concerned a person who is the tenant under a number of such leases shall be regarded as constituting a corresponding number of the parties concerned); and

(b) the landlord shall also constitute one of the parties concerned.

Section 38 provides that:

(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 subsection (6) and (7) make an order varying each of the leases in such manner as its specified in the order.

Section 38 provides;

*(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 any variation would be likely to 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

16. The Tribunal is satisfied that the requisite percentage of parties, (including the landlord), consenting to the agreed lease variation has been met. Further, the Tribunal is also satisfied that not more than 10 per cent of the total parties concerned disagree with the proposals and that the statutory criteria have therefore been met.

17. The Tribunal is satisfied that the Applicant's object in seeking the lease variation cannot be met unless all subject leases are varied to the same effect and that none of the reasons for not granting an order as set out in section 38 applies.

18. The Tribunal therefore makes an order varying the lease in the terms of the Order attached.
19. No application for compensation has been made under section 38 of the Act and no order for compensation is therefore made.

D Banfield FRICS

5 February 2015

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. 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.
2. 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.
3. 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

SCHEDULE OF VARIATIONS

| | |
|--|---|
| Recital (4) | Delete “(other than Flat Number 83 which is to be occupied by a resident caretaker as hereinafter mentioned and is hereinafter called “the caretaker’s flat”)” |
| Recital (5) | Delete “(including the caretaker’s flat)” |
| Clause 5(iv) | Delete “(other than the caretaker’s flat)” |
| Clause 5(v) | Delete “(other than the caretaker’s flat)” |
| Clause 5(viii) | Delete “including the caretaker’s flat” |
| Clause 6(v) (a) | Delete “engage and employ a resident caretaker and” |
| Clause 6(v) (b) | Delete the whole sub-clause. |
| Clause 6(vi) | Delete “(and the caretaker’s flat)” |
| Clause 7(ii) | Delete “the caretaker or” Delete “the caretaker or” |
| First Schedule First Part Para 7 | Delete “to enable the caretaker to carry out his refuse disposal duties as mentioned in regulation No.12” |
| First Schedule First Part Para 22 | Delete the whole sub-paragraph. |