



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

Case Reference : **MAN/00EW/LVT/2013/0003**

Property : **Various at Round Hill Meadow, Great Boughton, Chester, CH3 5XS**

Applicant : **Goldsborough Estates Limited**

Respondent : **Various leaseholders (Annex 1)**

Type of Application : **Landord & Tenant Act 1987 – Section 37(1)**

Tribunal : **Mrs E Thornton-Firkin
Mr L Bennett**

Date of Decision : **3 September 2013**

DECISION

DECISION

The leases of 20-68 Cedar Court and 21,23,25,26,27,28,30 and 32 Round Hill Meadow may be varied in accordance with annex 2 of this decision

Background

1. This is an application under section 37 of the Landlord and Tenant Act 1987 (the Act) for orders to vary the 57 leases of the subject properties. The Respondents are the respective tenants. The Application originally included 10 freehold bungalows which, in their covenants, have an obligation to pay a similar service charge to the lessees in the development. The Applicant removed the freehold properties from the application when it was pointed out that section 37 only applies to long leases.
2. All the leases contain provisions which oblige the Applicant to provide a resident manager service, the cost of which can be recovered from the Respondents under the service charge. The application is to amend the leases to remove the obligation that the manager is resident and to reduce the percentage that both the lessees and freeholders pay by including the resident manager's accommodation in future contributions.
3. Round Hill Meadow is a development for those over the age of 60. It comprises one building of 33 one bedroom and 14 two bedroom flats; 8 maisonettes in two buildings; 10 bungalows. The bungalows are in separate freehold ownership but are subject to the same service charge as the remainder of the development. The freeholder of the flats owns the house, 24 Round Hill Meadow, attached to the block of leasehold flats which was previously occupied by the resident estate manager.
4. A case management conference was held on 24 July 2013 at Cedar Court with 28 service charge payers present. The freeholders of the bungalows were invited to attend. It was explained to those present that the law relating to the variation of leases applied only to the leasehold properties. However, Goldsborough Estates were proposing a deed of variation to the freehold titles which would lower the percentage paid by the freeholders as a service rent charge. The present freehold retirement care covenants provide for a mobile manager, not a resident manager, and this would not be varied.
5. Since September 2009 the development has been served by a non resident manager. The residents were consulted and by a poll in May of this year there was a sufficient majority of the leaseholders (over 75%) with one vote against for the Applicant to apply to the Tribunal to vary the lease.
6. The Tribunal issued directions to which one of the Respondents, Dr Bull, the executor of the lessee of Flat 22, Cedar Court, responded asking the Tribunal to take into account the effect on the resale of the flat with the resident manager removed.
7. The proposal is to remove the obligation on the landlord to provide a resident manager service. The Tribunal has copies of the two types of lease for one and two bedroom flats and the terms of the proposed amendments. The two leases vary in two places, the first at 1:6 of the definitions, where the one bedroom lease refers to the landlord's land at "Cedar Court, Boughton Heath,

Chester” and the two bedroom flat lease refers to “Penrhyn Hall Farm, Penrhyn Bay, Gwynedd” which the Tribunal is not asked to vary. Secondly at 1:7 the one bedroom flat lease refers to 68 Flats and the two bedroom flat lease to 48 flats. 68 is the total of the 57 flats, the resident manager’s house and the 10 bungalows. This is the number included in the application for variation.

8. The proposed variation also reduces the percentage of the service charge payable for each dwelling and the Applicant produced a schedule showing the percentage which each property, including 24 Round Hill Meadow, would pay (totaling 100%) if the leases were varied. (Annex 3)

The Law

9. The grounds upon which such an application may be made to vary a lease are set out in Section 37. The Tribunal needs to be satisfied that:

- a. the leases are 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 be drafted in identical terms (s.37(2)); and
- b. the variation can only be achieved if all the leases are varied (s.37(3)); and
- c. the Applicant has garnered sufficient support to enable the application to proceed (s.37(5)); and
- d. the variation is not likely to substantially prejudice any Respondent or any person who is not a party to the application and that compensation would not compensate them (s.38(6)(a)); and
- e. the variation would be reasonable in the circumstances (s.38(6)(b)).

The Decision

10. As a hearing was not requested, the application stands to be determined on the papers without an inspection or hearing.

11. The Tribunal finds that Section 37 of the Act is satisfied:

- a. the leases are long leases of flats under which the Applicant is the landlord. The terms of each of the leases are in identical terms with the exception of those noted above, and
- b. the proposed variation can only be achieved if all the leases are varied. It would not be practical to provide a resident manager for some but not all of the leasehold properties, and
- c. the Applicant has garnered sufficient support to enable the application to proceed. There are 57 leases and the application is not opposed by more than

10 % of the total number of the parties concerned and at least 75 % of the leaseholders consent to it, and

d. there is unlikely to be an effect on the value of each leasehold property by the removal of the resident warden from the lease. The situation has continued since 2009 and there are other factors to control the ability of the executors to sell including, as Dr Bull wrote, the stagnation of the property market and the increased supply of retirement flats in the Chester area. In fact the variation of the lease may bring certainty to a purchaser concerning the services provided. The Tribunal also considered what could happen if the leases were varied and the freehold covenants were not varied. The freehold properties are only provided with a “mobile manager”. The freehold covenants do not include a resident manager and the Applicant proposes to vary them to reduce the percentage payable. If a freeholder chooses not to vary their covenants and reduce their percentage, then the service charge collected will be more than 100%. It is not likely to substantially prejudice any Respondent or any person who is not a party to the application and the Tribunal finds that compensation would not be appropriate, and

e. the Tribunal considers the variation would be reasonable in the circumstances.

Order

12. The application is allowed in the terms set out in the application. The Applicant shall cause a note of the variation to be entered on each of the leaseholders' title.

RESPONDENTS at ROUNDHILL MEADOW

NAME (leaseholders)	ADDRESS OF PROPERTY
Mrs M Thompson	20 Cedar Court
Exors of Mrs E Davies	21 Cedar Court
Exors of Mrs B V Bull	22 Cedar Court
Mrs B J Cummings	23 Cedar Court
Mrs J Swallow	24 Cedar Court
Mrs R M Goodwin	25 Cedar Court
Mrs B Mellors	26 Cedar Court
Mrs Lloyd	27 Cedar Court
Mrs Pimley	28 Cedar Court
Mr & Mrs A Boylan	29 Cedar Court
Mrs H Y Leeson	30 Cedar Court
Mrs E Collins	31 Cedar Court
Mrs C Williams	32 Cedar Court
Mrs C R McGarva	33 Cedar Court
Partnership	34 Cedar Court
Mrs A Jowett	35 Cedar Court
Mr & Mrs A Craig	36 Cedar Court
Mrs A Weatherhead	37 Cedar Court
Mrs B Oxley	38 Cedar Court
Mrs L Cadwallader	39 Cedar Court
Ms C M Howell	40 Cedar Court
Mrs V Dennis	41 Cedar Court
Mrs N Owens	42 Cedar Court
Mrs E Woodcock	43 Cedar Court
Mrs V Welch	44 Cedar Court
Mr & Mrs P Scott	45 Cedar Court
Mrs L H Cadman	46 Cedar Court
Mrs C Gilbert	47 Cedar Court
Mrs E Richards	48 Cedar Court
Mrs J E Holland	49 Cedar Court
Exors of Mrs J M F Wilkinson	50 Cedar Court
Miss D Downward	51 Cedar Court
Mrs A C Heggie	52 Cedar Court
Mrs M Peers	53 Cedar Court

Annex 1

Mrs N Fletcher	54 Cedar Court
Mrs H Sprague	55 Cedar Court
Mrs M G Gelling	56 Cedar Court
Mrs B Lynch	57 Cedar Court
Mrs S Stoddard	58 Cedar Court
Mrs I Benson	59 Cedar Court
Exors of Mrs D McWilliams	60 Cedar Court
Mr & Mrs I Dawson	61 Cedar Court
Exors of Mrs L Ivimey	62 Cedar Court
Exors of Mrs J M Grant	63 Cedar Court
Mrs F Donovan	64 Cedar Court
Mrs M B Tatler	65 Cedar Court
Mrs P Wilding-Bebington	66 Cedar Court
Mrs Clark	67 Cedar Court
Exors of Mrs M Grieve	68 Cedar Court
Mr T Macglashan	21 Round Hill Meadow
Mrs M A Berry	23 Round Hill Meadow
Mrs J Edwards	25 Round Hill Meadow
Exors of Mrs J Drewery	26 Round Hill Meadow
Mr E Taylor	27 Round Hill Meadow
Mr R Allcock	28 Round Hill Meadow
Mrs D Montgomery	30 Round Hill Meadow
Mrs E Traske	32 Round Hill Meadow

Cedar Court Roundhill Meadows

Application for variation of leases

Location	Existing Wording of Lease	Proposed Amendment	Note
1. DEFINITIONS			
	1.7 "The Development" means the Development consisting of 68 Flats laundry guest room lounge and reading room Resident Manager's Flat car parking spaces and gardens exclusively for occupation and use by persons of the specified age	1.7 "The Development" means the Development consisting of 68 Flats laundry guest room lounge and reading room car parking spaces and gardens exclusively for occupation and use by persons of the specified age	
	1.8 "The Resident Manager's Flat" means the flat being part of the Development and provided for the occupation of a Resident Manager	Delete	
	1.9	1.8	Clause renumbered
	1.10	1.9	Clause renumbered
	1.11	1.10	Clause renumbered
	1.12	1.11	Clause renumbered
	1.13	1.12	Clause renumbered
1 Beds	1.14 "The Appropriate Percentage" means (1.46%)	1.13 "The Appropriate Percentage" means (1.437887)	Clause renumbered
2 Beds	1.14 "The Appropriate Percentage" means (1.60%)	1.13 "The Appropriate Percentage" means (1.578187)	Clause renumbered
	1.15	1.14	Clause renumbered
	1.16	1.15	Clause renumbered
5. LANDLORD AND MANAGEMENT COMPANY'S COVENANTS			
	(c) Maintain an alarm system connected to the Flat for the purpose of dealing with emergency calls and employ a Resident Manager for general supervision of the Estate and at all times whilst on duty for answering emergency calls of the Tenant	(c) Maintain an alarm system connected to the Flat for the purpose of dealing with emergency calls and employ a Manager for general supervision of the Estate and at all times whilst on duty for answering emergency calls of the Tenant	
7. AGREEMENT BY TENANT IN CASE OF SPECIAL MEDICAL ATTENTION			
	Whilst the Management Company agrees in accordance with Clause 5 (c) to employ a Resident Manager for general supervision of the Estate and for answering emergency calls of the Tenant neither the Landlord nor the the Management Company nor the Resident Manager can accept responsibility for medical care or other care of the Tenant and the Tenant agrees that he will at his own expense make his own arrangements for all such attention and care as may be	Whilst the Management Company agrees in accordance with Clause 5 (c) to employ a Manager for general supervision of the Estate and for answering emergency calls of the Tenant neither the Landlord nor the the Management Company nor the Manager can accept responsibility for medical care or other care of the Tenant and the Tenant agrees that he will at his own expense make his own arrangements for all such attention and care as may be	

necessary and the Tenant acknowledges that there may be times during the term of this Lease when the Resident Manager is not on the Estate.

necessary and the Tenant acknowledges that there may be times during the term of this Lease when the Manager is not on the Estate.

8. PROVISOS FOR RE-ENTRY INSURANCE FOR ALTERNATIVE ACCOMMODATION LETTING OF THE ESTATE

8.3 The Landlord intends to let the other Flats in the Estate (except the Resident Manager's Flat) to Approved Occupiers or Beneficial Owners upon terms substantially in the same form as those contained in this Lease

8.3 The Landlord intends to let the other Flats in the Estate to Approved Occupiers or Beneficial Owners upon terms substantially in the same form as those contained in this Lease

THE THIRD SCHEDULE

2 (ii) The provision maintenance and repair of the Resident Manager's Flat (including any rates or taxes or energy costs or telephone charges payable or consumed in respect thereof)

Delete

- (iii)
- (iv)
- (v)
- (vi)

- (ii)
- (iii)
- (iv)
- (v)

- Clause renumbered
- Clause renumbered
- Clause renumbered
- Clause renumbered

Schedule of proposed %age apportionments

Description	Tenure	Existing %age	Proposed %age
20 Cedar Court	Leasehold	1.4634	1.43789
21 Cedar Court	Leasehold	1.4634	1.43789
22 Cedar Court	Leasehold	1.4634	1.43789
23 Cedar Court	Leasehold	1.4634	1.43789
24 Cedar Court	Leasehold	1.6037	1.57819
25 Cedar Court	Leasehold	1.6037	1.57819
26 Cedar Court	Leasehold	1.4634	1.43789
27 Cedar Court	Leasehold	1.4634	1.43789
28 Cedar Court	Leasehold	1.6037	1.57819
29 Cedar Court	Leasehold	1.4634	1.43789
30 Cedar Court	Leasehold	1.4634	1.43789
31 Cedar Court	Leasehold	1.4634	1.43789
32 Cedar Court	Leasehold	1.6037	1.57819
33 Cedar Court	Leasehold	1.6037	1.57819
34 Cedar Court	Leasehold	1.4634	1.43789
35 Cedar Court	Leasehold	1.4634	1.43789
36 Cedar Court	Leasehold	1.4634	1.43789
37 Cedar Court	Leasehold	1.4634	1.43789
38 Cedar Court	Leasehold	1.4634	1.43789
39 Cedar Court	Leasehold	1.4634	1.43789
40 Cedar Court	Leasehold	1.4634	1.43789
41 Cedar Court	Leasehold	1.6037	1.57819
42 Cedar Court	Leasehold	1.6037	1.57819
43 Cedar Court	Leasehold	1.4634	1.43789
44 Cedar Court	Leasehold	1.4634	1.43789
45 Cedar Court	Leasehold	1.6037	1.57819
46 Cedar Court	Leasehold	1.4634	1.43789
47 Cedar Court	Leasehold	1.4634	1.43789
48 Cedar Court	Leasehold	1.4634	1.43789
49 Cedar Court	Leasehold	1.6037	1.57819
50 Cedar Court	Leasehold	1.6037	1.57819
51 Cedar Court	Leasehold	1.4634	1.43789
52 Cedar Court	Leasehold	1.4634	1.43789
53 Cedar Court	Leasehold	1.4634	1.43789
54 Cedar Court	Leasehold	1.4634	1.43789
55 Cedar Court	Leasehold	1.4634	1.43789
56 Cedar Court	Leasehold	1.4634	1.43789
57 Cedar Court	Leasehold	1.4634	1.43789
58 Cedar Court	Leasehold	1.6037	1.57819

59 Cedar Court	Leasehold	1.6037	1.57819
60 Cedar Court	Leasehold	1.4634	1.43789
61 Cedar Court	Leasehold	1.4634	1.43789
62 Cedar Court	Leasehold	1.4634	1.43789
63 Cedar Court	Leasehold	1.4634	1.43789
64 Cedar Court	Leasehold	1.6037	1.57819
65 Cedar Court	Leasehold	1.6037	1.57819
66 Cedar Court	Leasehold	1.4634	1.43789
67 Cedar Court	Leasehold	1.4634	1.43789
68 Cedar Court	Leasehold	1.4634	1.43789
21 Roundhill Meadows	Leasehold	1.4634	1.43789
23 Roundhill Meadows	Leasehold	1.4634	1.43789
24 Roundhill Meadows	Freehold		1.70934
25 Roundhill Meadows	Leasehold	1.4634	1.43789
26 Roundhill Meadows	Leasehold	1.4634	1.43789
27 Roundhill Meadows	Leasehold	1.4634	1.43789
28 Roundhill Meadows	Leasehold	1.4634	1.43789
29 Roundhill Meadows	Freehold	1.4634	1.43789
30 Roundhill Meadows	Leasehold	1.4634	1.43789
31 Roundhill Meadows	Freehold	1.4634	1.43789
32 Roundhill Meadows	Leasehold	1.4634	1.43789
33 Roundhill Meadows	Freehold	1.4634	1.43789
35 Roundhill Meadows	Freehold	1.4634	1.43789
37 Roundhill Meadows	Freehold	1.4634	1.43789
39 Roundhill Meadows	Freehold	1.4634	1.43789
41 Roundhill Meadows	Freehold	1.4634	1.43789
43 Roundhill Meadows	Freehold	1.4634	1.43789
45 Roundhill Meadows	Freehold	1.4634	1.43789
47 Roundhill Meadows	Freehold	1.4634	1.43789
	TOTAL	100.012	100.012

First-tier Tribunal, Property Chamber Residential Property

GUIDANCE ON APPEAL

- 1) An appeal to the Upper Tribunal against a decision of a First-tier Tribunal (Property Chamber) can be pursued only if **permission to appeal** has been given. Permission must initially be sought from the First-tier Tribunal. If you are refused permission to appeal by the First-tier Tribunal then you may go on to ask for permission from the Upper Tribunal (Lands Chamber).
- 2) An application to the First-Tier Tribunal for permission to appeal must be made **so that it is received by the Tribunal within 28 days after the date on which the Tribunal sends its reasons for the decision.**
- 3) If made after the 28 days, the application for permission may include a request for an extension of time with the reason why it was not made within time. Unless the application is made in time or within granted extended time, the tribunal must reject the application and refuse permission.
- 4) You must apply for the permission **in writing**, and you must:
 - identify the case by giving the address of the property concerned and the Tribunal's reference number;
 - give the name and address of the applicant and any representative;
 - give the name and address of every respondent and any representative
 - identify the decision or the part of the decision that you want to appeal;
 - state the grounds of appeal and state the result that you are seeking;
 - sign and date the application
 - send a copy of the application to the other party/parties and in the application record that this has been done

The tribunal may give permission on limited grounds.

- 5) When the tribunal receives the application for permission, the tribunal will first consider whether to review the decision. In doing so, it will take into account the overriding objective of dealing with cases fairly and justly; but it cannot not review the decision unless it is satisfied that a ground of appeal is likely to be successful.
- 6) On a review the tribunal can
 - correct accidental errors in the decision or in a record of the decision;
 - amend the reasons given for the decision;
 - set aside and re-decide the decision or refer the matter to the Upper Tribunal;
 - decide to take no action in relation to the decision.

If it decides not to review the decision or, upon review, to take no action, the tribunal will then decide whether to give permission to appeal.

- 7) The Tribunal will give the parties written notification of its decision. **If permission to appeal to the Upper Tribunal (Lands Chamber) is granted**, the applicant's notice of intention to appeal must be sent to the registrar of the Upper Tribunal (Lands Chamber) so that it is received by the registrar within **28 days** of the date on which notice of the grant of permission was sent to the parties.
- 8) **If the application to the Property Chamber for permission to appeal is refused**, an application for permission to appeal may be made to the Upper Tribunal. An application to the Upper Tribunal (Lands Chamber) for permission must be made within **14 days** of the date on which you were sent the refusal of permission by the First-tier Tribunal.
- 9) The tribunal can **suspend the effect of its own decision**. If you want to apply for a stay of the implementation of the whole or part of a decision pending the outcome of an appeal, you must make the application for the stay at the same time as applying for permission to appeal and must include reasons for the stay. You must give notice of the application to stay to the other parties.

These notes are for guidance only. Full details of the relevant procedural provisions are mainly in:

- the Tribunals, Courts and Enforcement Act 2007;
- the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013;
- The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010.

You can get these from the Property Chamber or Lands Chamber web pages or from the Government's official website for legislation or you can buy them from HMSO.

The Upper Tribunal (Lands Chamber) may be contacted at:

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