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

Case Reference : **MAN/30UH/LVL/2014/0002**

Property : **28/29 Low Mill Caton Lancaster LA2 9HY**

Applicants : **Vernon Williams and Mrs Maureen Williams**

Representative : **None**

Respondent : **Finchfive Low Mill (Caton) Limited**

Representative : **None**

Type of Application : **Application to vary a lease under Part IV of the Landlord and Tenant Act 1987 ("the Act")**

Tribunal Members : **Judge G. C. Freeman
Mr J Faulkner FRICS (Expert Valuer Member)**

Date and Venue of Hearing : **4 December 2014
Lancaster Magistrates Court, 1
George Street, Lancaster LA2 9HY**

Date of Decision : **4 December 2014**

DECISION

DECISION

The Application is dismissed

Background

1. By their application dated 17th July 2014, the Applicants, Mr and Mrs Williams, applied to the First-tier Tribunal (Property Chamber)(Residential Property) (“the Ft-T”) for an order seeking the variation of two leases of the Property stating that it is to be treated as one property paying one appropriate “Total Service Charge” (“TSC”) as had been the practice for more than eleven years prior to the application. Mr and Mrs Williams applied for the service charge to be “capped” and as a maximum should not exceed the premium applied to date relative to any other flat.
2. Mr and Mrs Williams hold the Property for the residue of the term of 999 years from 1st January 1992 (“the Term”) created by two underleases, (“the Leases”) the first dated 31st October 1995 and made between Finchfive Limited of the first part the Respondent of the second part and Roman Andrew Sitek of the third part and the second dated 27th February 1996 and made between Finchfive Limited of the first part the Respondent of the second part and David Hugh Langdon and Patricia Langdon of the third part.
3. The Property originally comprised two contiguous self-contained flats within the development of Low Mill, each flat being comprised in one Lease. On acquiring the Leases, with the consent of the Respondent, Mr and Mrs Williams amalgamated the two flats into one.
4. Each Lease reserves a peppercorn ground rent. Each provides for a service charge to be payable in respect of the common parts of the development and the building of which the Property forms part (“the Estate”) and the cost of insurance and imposes rules and regulations to be observed by the owner of the Property. In return the Respondent is to provide the services of maintenance of the common grounds and common parts, including the structural parts of the building, and insurance. The freehold reversion to all leases on the Estate is now vested in the Respondent.
5. The Estate consists of a former cotton mill and associated buildings situated in the village of Caton on the outskirts of Lancaster. It borders the River Lune which was used as a source of water power when the mill was in use. A millstream still runs beside the Estate, from an adjacent reservoir, providing a pleasant water feature. Unfortunately the location of the Estate gives rise to the risk of flooding and when re-development took place, a bund was created along the boundary, with a pumping station to prevent flooding. The service charge covers the repair and maintenance of the bund and pump amongst other matters.

6. The former mill has been tastefully converted into self-contained flats, using some of the original mill machinery. Some flats have access to an internal common entrance hall and landing and some have direct external access. Lifts give access to the upper floors. For the purposes of this decision it matters not that the Property is accessed from the outside or from within the common entrance hall and landing.
7. The Estate also includes some terraced cottages which also contribute to the cost of the upkeep of the external common parts. One of these cottages has been the subject of a transfer under the Leasehold Reform Act 1967. The form of the transfer of that cottage was subject to an application under the 1967 Act before the Leasehold Valuation Tribunal (as it then was) (“the LVT”). The order made by the Tribunal was dated 4th April 2012 under reference **MAN/30UH/OAF/2011/0022** (“the 2012 Decision”).
8. Following the 2012 Decision the Respondent applied for leave to appeal to the Lands Tribunal (as it then was) (“the LT”). A copy of the outcome of that application is annexed to this decision because of its relevance to this application. The appeal was not pursued further.
9. To complete the picture, the Respondent has made separate applications to vary all the leases of the Flats within the Estate, including the Leases owned by Mr and Mrs Williams, under section 35 of the Landlord and Tenant Act 1987 (“the 1987 Act”). One reason for the applications is that the total of the proportions of service charge allocated to the properties within the Estate exceeds 100%. In their application, Mr and Mrs Williams state: *“We are not opposed in principle to the Lease Revisions proposed by the Finchfive Board in their application MAN/30UH/LVT/2013/004, covering all the flats at Low Mill.”*

Directions and Hearing

10. The Tribunal issued Directions on 28th August 2014. These included directions as to the amalgamation of the application with the application noted in paragraph 9 above, the requirement to correct defects in the application as stated therein, to notify all other flat owners of the application and to provide a draft of the proposed variations sought to the Leases.
11. A hearing was held at Lancaster Magistrates Court on 4th December 2014. Mr Williams represented himself and his wife. The Respondent was represented by Directors of the Company.
12. Mr Williams agreed that he had not complied with the directions issued by the Tribunal. He stated that some years ago, following the amalgamation of the Property he had agreed with the then directors of the Respondent that he need only pay one service charge for both Leases. He was unable to produce any written proof of this agreement.

The Law

13. The Law is set out in Appendix 2

Decision and Reasons

14. The Tribunal dismissed the Application at the hearing and announced that its reasons for dismissal would be given at a later date. Those reasons are as follows:
 - 14.1 Failure to correct defects in the application as outlined in the Directions issued by the Tribunal on 28th August 2014.
 - 14.2 As has been seen above at paragraph 7, the proportion of service charge payable by the various properties at Low Mill have been the subject of previous applications, including an application for leave to appeal to the Lands Tribunal. It will be seen from the LT's decision on the grant of leave, that permission to appeal the LVT's decision on the apportionment of service charge payable by the cottages was refused, thus confirming the LVT's view that the service charge relating to the external common parts should be divided equally by the number of leases of properties within the Estate. To decide otherwise in this case would result in there being a shortfall in service charge payable to the Respondent, thus resulting in the very outcome which the Respondent is seeking to eliminate in the remaining applications before the Tribunal.
 - 14.3 In the Tribunal's opinion, such amendment as proposed by Mr and Mrs Williams would not cure the defect envisaged by sub-sections 35(2) and (4) of the 1987 Act.

Appendix 1

Lands Tribunal decision on permission to appeal

UPPER TRIBUNAL (LANDS CHAMBER)



LRA/119/2012

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

APPLICATION

under section 175(2) of the Commonhold and Leasehold Reform Act 2002 for

PERMISSION TO APPEAL

against the decision of a Leasehold Valuation Tribunal

Applicant: Finchfive Low Mill (Caton) Limited

Property: 28 Low Mill, Caton, Lancashire LA2 9HY

Decision of the Leasehold Valuation Tribunal for the Northern Rent Assessment Panel dated 4 April 2012

Permission to appeal is GRANTED and the following observations are made:

There is a realistic prospect of success on the ground that the applicant may have been substantially prejudiced by the failure of the LVT to put to the applicant for its observations the additional words in clause 12.6.1.1 in the draft transfer.

Permission is limited to this ground. Permission is refused on the ground that contends that the Estate Charge should be 1/44 of the costs rather than 1/45. There is no realistic prospect of success on this ground since such a proportion would only be appropriate if the leases of all the other units in the development were to be varied so as to provide for it to apply in relation to each of them.

The appeal will be dealt with by way of review and is suitable for disposal on written representations. It may be, however, that the parties will be able to agree the wording of clause 12.6.1.1, thus enabling the appeal to be withdrawn.

Dated 23 October 2012

George Bartlett QC, President

Appendix 2

The Law

Landlord and Tenant Act 1987 – Section 35

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 court 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) Rules of court 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.