A2218

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/26UG/LVL/2017/0001**
Property	:	Westminster Court, St Albans, Herts AL1 2DU
Applicant	:	Westminster Court (St Albans) Management Ltd & 47 long lessees
Representative	:	Chris Green, solicitor agent instructed by SLC Solicitors
Respondent	:	15 long lessees of Westminster Court
Representative	:	Mr Hall, Ms Humphrys & Ms Woolley
Type of Application	:	for a variation of a lease or leases [LTA 1987, s.37]
Tribunal Members	:	G K Sinclair, J R Morris & R Thomas MRICS
Date and venue of Hearing	:	Tuesday 23rd May 2017 at St Albans Magistrates Ct
Date of Decision	:	26th June 2017

DECISION

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Summary

1. Westminster Court is a development of 62 flats situate to the south of St Albans Cathedral. It was built in the early 1960s as a series of 2-storey terraces, with upper and ground floor flats. The estate has a single vehicular entrance off St Stephen's Hill and extensive areas laid to grass, with some trees and shrubs, plus outdoor drying and bin storage areas connected by long concrete paths along the rear of each terrace.

2. The original leases were all in common form, granting a 125 year term starting on 24th June 1963. However, in about 2002 many of the lessees banded together to form the applicant company, raised the required funds and through it bought the freehold reversion. At that stage the unexpired term was about 85 years. All those who had contributed to the purchase of the freehold reversion then joined in with the company (of which they were all shareholders) in supplemental leases for a term of 999 years from 25th December 2002 at a peppercorn rent. Those who had not joined in did not benefit from this lease extension and reduction in rent. Unless they have individually sought statutory or agreed extensions then the unexpired terms of these leases will by now have reduced to 71 years.

3. Upon considering certain practical estate management issues the company found that the leases either left unhelpful gaps or threw the burden of insuring the flats on the individual lessees rather than the lessor, with no power for the lessor to recover the cost of taking out public liability insurance for the gardens, paths and other common parts. Other problematic management issues were the vague wording of what costs could be recovered by way of service charge, the inability to charge interest on arrears of rent and/or service charges (as a milder incentive than applying for forfeiture), and an obligation to decorate externally rather more frequently than modern paints may require.

4. This application therefore sought to amend certain provisions in clauses 2, 4 and 5 of each lease; the only difference between the extended and unextended leases being one of numbering (as the former had already been amended to include a provision for the transfer of the lessee's share in the company upon assignment of the term).

5. Save for correcting one manifest error in clause 2(ii) by including "the gardens coloured green" in the definition of common parts the tribunal considers that its task is to decide whether to approve the proposed amendments as worded, not to roll up its sleeves and craft a better-worded lease. It regrets the timidity of some of the applicant's proposals, leaving other unsatisfactory aspects of the leases such as the lack of a reserve or sinking fund and provisions for collecting and adjusting service charges untouched, but for the reasons set out below it allows all the amendments sought except that for charging interest from only 7 days after the amount falls due. That barely allows enough time for responding by 1st class post to a demand posted 2nd class. See the Schedule of variations approved.

6. Although the wording of the service charge provisions in the leases may be insufficiently clear to permit recovery of legal and other tribunal costs, for the avoidance of doubt and at the request of the respondents the tribunal makes an

order under section 20C of the Landlord and Tenant Act 1985 to the effect that any such costs shall not be included in the calculation of the service charges due from the named respondents for the next relevant accounting period.

Material statutory provisions

7. Part IV of the Landlord and Tenant Act 1987 enables a tribunal to vary certain lease provisions, with the powers in section 37 being the most extensive but only upon application being made with the consent of a substantial majority of lessees, with minimal opposition, and with the consent of the tribunal. The section reads as follows :

(1) Subject to the following provisions of this section, an application may be made to the appropriate 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 the leases are varied to the same effect.

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

(5) Any such application shall 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.

8. Section 38, which deals with the making of orders varying leases, includes the following potentially relevant provisions. In view of the nature of the variation sought concerning insurance the issues addressed in subsection (7) do not apply.

(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.

...

(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.

...

(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.

9. Section 39 makes further supplementary provisions which are not material to the present application before the tribunal.

Relevant lease provisions

10. The leases in their original form set out in clause 1 the description of the demised premises. In the case of ground floor flats the demise includes the external walls of the flat and the foundations of that part of the building. For upper floor flats the demise includes the entrance lobby, stairs, the upper half of the external walls and the section of roof immediately above. Clause 2 sets out the rights included, 2(ii) listing the rights held in common with the lessor and the other lessees and occupiers. With a view to reducing the length of a proposed new subclause 4(2) it is proposed to vary subclause 2(ii) by referring collectively to the areas listed as the common parts.

11. The bulk of the proposed variations affect clause 4, sets out the lessee's covenants and obligations. There is a proposal briefly and non-controversially to redraft 4(1) and to tidy up 4(2) by splitting the obligation to pay for outgoings into the more usual outgoings payable to local or national authorities or third parties and those payable by way of service charge to the lessor. There is a proposal to delete clause 4(14), which is the lessee's obligation to insure the flat in the joint names of lessor

and lessee, and replace it with a new obligation to pay to the lessor a fair and reasonable proportion of the amount paid by the lessor to insure the estate and common parts.

12. This last point is mirrored by a proposed new clause 5(6) which imposes an obligation upon the lessor to insure the block of which the flat forms part, etc.

13. A further, reasonably noncontroversial variation proposed was to clause 5(1), namely by reducing the frequency of the obligation to decorate externally from once every three years to once every five.

14. The final variation proposed was by adding a new clause, numbered 4(22) in the already extended leases and 4(21) in the few which have not been extended. This would entitle the lessor or to charge interest at a rate of 4% above base rate on any rent or other sum payable under the lease if not paid within seven days

Inspection and hearing

15. The tribunal inspected the Westminster Court estate on the morning of the hearing. Also present where Ms Finlay for the applicant, legal representative Mr Chris Green, and the three named as respondents at the head of this decision.

16. The flats are laid out in linear blocks of 4, 6 or 8, each of brick construction and two storeys high under a pitched, tiled roof. The original wooden windows have been replaced in all but a few flats with double-glazed uPVC units, but the frames of the round windows at first floor level have been left. Recently redecorated externally, the blocks looked in good condition.

17. The estate is accessed from the highway by a single estate road which after a short distance bifurcates to form an extended loop. To the right of the right hand fork is a group of three blocks with communal bin stores and drying areas to the rear on three sides of a communal garden and parking area. At the end of the right fork there are two facing blocks and access via private road in third-party hands to some garage blocks which may be rented separately. Near the beginning of the left hand fork there is access, also via private roadway, to some further garage blocks. Between the two forks is a raised bank covered with grass and a central row of tall trees.

18. Since the leases were originally granted the estate road, with the exception of the two short lengths of concrete roadway leading to the garage blocks, have been adopted by the local Highway authority. Running around the full length of the rear of the blocks, and connecting them to each other and the communal bin stores and drying areas, are a series of narrow concrete paths, parts of which are breaking up and in need of repair. In places these paths could be a trip hazard. The wood panelled fences around the communal bin stores and drying areas looked weathered.

19. At the hearing Mr Green began by explaining the variations sought and why. So far as insurance is concerned the present leases require lessees to insure their particular demised premises. This is to be done in the joint names of lessor and lessee and the lessor, through its managing agent, has to be notified by the lessee

of each renewal so that it can be registered. There is no fixed date on which policies are to be renewed, thus adding to work and possible confusion on the part of the lessor's managing agents. These are flats, not houses. They are built in blocks of four, six or possibly eight. Fire can spread rapidly from one flat to others, and water can leak from an upper flat not just to the one below but possibly to the next one along on the ground floor. The lessor can require lessees to insure with a particular company, but if different types of policy are available then the degree of cover available may vary, depending on where the insurable event occurs.

20. More importantly perhaps is the fact that while lessees are obliged to insure their own premises they do not have to contribute to the cost of insuring the common parts, particularly against third-party liability in respect of trips, falling trees, etc. The leases do not permit the lessor to recover the cost of insuring the common parts.[1] In fact, once the problem of the common parts was identified by the managing agents a *modus vivendi* developed whereby the lessor invited all the lessees to sign up for a block policy covering the entire estate – buildings and common parts. This is apparently market tested annually. Almost all do sign up, with those who do not having to pay for their own insurance while the block policy provides some duplicate cover, as the insurer will not delete specific units from the overall cover or discount the premium proportionately. It is all or nothing. Should a lessee refuse to join in then there is nothing that the lessor can do to compel him or her to pay up. That proportion of the premium is not recoverable as part of the service charge.

21. By the proposed wording of the new clause 4(2)(b) the applicant sought to make clear that management costs are to be recovered as a service charge item under the lease. This was for Mr Hall a contentious issue, as he had previously been engaged in litigation with the lessor and its management company about whether costs were recoverable as a company expense from shareholders or under the lease. He seemed to think that he had won, but in the end he had consented to an order in the Slough County Court requiring him to pay a sum of money and making provision for the future which, he said, the applicant was now seeking to circumvent by bringing this application. It was put to him that there were considerable benefits in being able to bring a complaint to the tribunal rather than court. The costs of managing property had to be paid for and the tribunal was able to deal with a range of disputes concerning management and service charges.

22. The next proposed variation was to enable the applicant or its managing agents to apply a little bit of pressure to get in the money rather than having to threaten forfeiture. It was thought that the ability to charge interest would assist in this respect by providing some gentle encouragement. Although the variation sought would entitle the lessor to charge interest after seven days Mr Green and Ms Finlay were anxious to stress that each case would be considered on its merits before seeking to apply interest.

[1] The tribunal pointed out that the definition of common parts should also include the area coloured green which is referred to in the existing clause 4(2), namely the gardens. These had accidentally been omitted from the list in clause 2 (ii)

23. The final proposal was to reduce the required frequency of external decoration of the blocks. Most of the windows are now PVCu but the fascias, soffits, barge boards and front doors are not. Although work to the upper floors may on the last occasion have been carried out from ladders strict compliance with health and safety guidelines would require such work to be done from scaffolding if access by cherry picker is not available. That drastically increases the cost. Mr Green argued that with modern materials it is not necessary to redecorate every three years and five would suffice. This was a fairly noncontroversial proposal, with those respondents present all agreeing that on the last three or four occasions the work has been carried out at four yearly intervals instead of three. They were all content with this proposal.

24. The three respondents present each addressed the tribunal in turn. Mr Hall's position concerning insurance was that the lease had worked perfectly well in the past, and he was perhaps the last one of the original lessees still there. He blamed the problems on the introduction of local managing agents, of which he thought not a great deal. He regarded them as obstructive, unwilling to provide him with information, etc. and this and the past litigation rather coloured his views. It was explained to him that the suitability of the present managing agents and the reasonableness of their activities were not issues before the present tribunal but they could be raised in a suitable application in future, particularly if he garnered sufficient support to demonstrate that his concerns were widespread.

25. It was put to him that under the current lease the lessor was unable to recover the cost of taking out public liability insurance for the common parts. Even though the estate roads were now adopted by the local authority the common parts still included the grassed areas, flowerbeds, the bank and row of trees as well as the concrete paths and communal bin stores and drying areas.

26. Mr Hall's views concerning the proposal to include management charges as a recoverable service charge cost were again coloured by his experience of previous litigation and his attitude to the present managing agents. Despite the tribunal's best efforts to draw his attention to this gap in the lease and the advantage of being able to bring such disputes to the tribunal rather than the County Court he was steadfast in his belief that "this is covered by leasehold legislation".

27. He also queried the power granted to the lessor by proposed new clause 4(2)(b) v. to include the cost incurred in providing "any other service or amenity that the lessors may in its (sic) reasonable discretion (acting in accordance with the principles of good estate management) provide for the benefit of the lessees and occupiers of the said block of flats." It was put to him by the tribunal that this is a common provision, the aim of which is to prevent the lease and the services provided under it from becoming obsolete, and to ensure that it can adapt to fit then current standards and/or expectations. His attention was also drawn to the fact that the provision is subject to what, to use a currently popular expression, amounts to a "triple lock", namely that :

a. The lessor's discretion to add such service must be exercised reasonably
b. It a must be in accordance with the principles of good estate management, and
c. The new service must provide for the benefit of the lessees and occupiers

of the block of flats.

28. On the question of payment of interest on arrears be observed that in the applicant's witness statement it was said that there had been no history of problems, so why should this aspect of the lease be changed?

29. Ms Humphrys also challenged the charging of interest. She said that invoices were being served only a few days before the payment date, so there is difficulty in being able to query specific items. If the lessor wishes to charge interest then lessees should be informed well in advance. She also challenged the idea that lessees were given information and the opportunity to discuss it well in advance. Any such discussion might take place at the company's AGM, but she was not a shareholder and therefore considered it improper to attend. She had no vote.

30. On the question of block insurance Ms Humphrys admitted that she was in the block insurance group arranged by the managing agent and had persuaded Mr Hall to join. However, she observed that if one has a single insurance policy one can add contents to it and save money. One girl, she said, found that the block policy was more expensive. She also observed that if lessees maintain their own insurance they will look after their property and make sure that there are very few claims. There is no such control with block insurance.

31. Ms Woolley, a lessee of 18 years standing, argued that the estate had generally been run well throughout that time and that the proposed variations were not necessary and would devalue the leases in the eyes of prospective purchasers. So far as any block insurance is concerned it should be apportioned by the number of bedrooms per flat, as the bulk of the insurance payable would be attributable to the buildings rather than the communal areas. With the exception of the external decoration she saw no justification for any of the proposed variations.

Discussion and findings

32. Having read the bundle before it and considered the evidence and oral argument at the hearing the tribunal is satisfied that the lease is defective in certain respects and that the grounds set out in section 37(3) are established. As to the matters set out in section 38(6), the tribunal is satisfied that, save with one exception, the variations sought will not prejudice any person and that they are reasonable.

33. The tribunal does wish to record, however, that given the time, effort and cost involved in assembling sufficient support to make this application it is a pity that the applicant could not have been bolder and sought to clarify not only what costs are recoverable by way of service charge but also to make provision for a reserve or sinking fund for regular but non-annual expenditure, and for calculating the level of any interim service charge and a balancing final payment at the end of the relevant accounting period.

34. The tribunal determines as follows.

35. *Insurance* — The current reliance upon lessees to take out their own insurance is unsatisfactory from an estate management perspective. From the evidence heard it rather appeared that the obligation to insure in joint names was more

honoured in the breach than the observance, and there is no means whereby the lessor can recover a due proportion of the cost of taking out public liability and/or other insurance in respect of the common parts from a truculent lessee. In practice almost all the lessees have participated in the block insurance negotiated by the managing agents, but there is no means of forcing them to do so. A single block policy ensures that the whole estate is covered at the same time and for the same risks, thus drastically reducing the amount of time required by managers in chasing lessees at all times of the year to make sure that their individual insurance policies are up-to-date. It is not appropriate to apportion the cost of insurance by reference to the number of bedrooms – which do not of themselves double or treble the size of a flat. In any case, that is not a variation put before the tribunal for consideration, and with the backing of the required majority of lessees. Variation is therefore granted as sought by deleting clause 4(14) in its entirety and by inserting the proposed new lessee's covenant in clause 4(2)(c) and lessor's covenant to insure in clause 5(6).

36. *Replacement of existing clauses* — Clause 4(1) is deleted and replaced by the draft clause appearing in the bundle. Clause 4(2) is currently a muddle of items that normally appear in separate subclauses, namely obligations to national or local authorities or other third parties on the one part and obligations to pay rent and/or other obligations to the lessor on the other. Matters will be clarified by granting the variation sought, save that in new clause 4(2)(a) the word "of" in the second line, between "imposed" and "charged", shall read "or".

37. *Variation of existing clauses* — Clause 4(2)(b) i. refers to the cost of cleaning, maintaining, decorating and repairing "the said Common Parts". That expression avoids the need to repeat a long list of differently coloured parts on the plan but requires variation to existing clause 2(ii) by adding, at the end of clause, the words "such areas collectively known as the Common Parts". However, during the course of the hearing the tribunal spotted an error, namely the failure to include in the list in clause 2(ii) after the words "the covered ways hatched black" on the fifth line the words "the gardens coloured green" which appear in the soon to be deleted clause 4(2). Those words shall also be added to clause 2(ii) at the point referred to above.

38. Proposed new subclause 4(2)(b) v. allows for the lessor from time to time to add any other service or amenity that it may in its absolute discretion (acting in accordance with principles of good estate management) provide for the benefit of the lessees occupiers of the block of flats. This enables the lease to adapt to standards or expectations current from time to time. For example, subclause ii refers to television aerials. There is no reference to satellite dishes, communal Wi-Fi or whatever new services may come to be expected as standard provision over the course of the next 900+ years. The tribunal regards this as being subject to the "triple lock" of reasonableness, it being in accordance with the principles of good estate management, and it providing for the benefit of lessees and other occupiers of the flats.

39. *Payment of interest* — Having listened to the observations from the respondents about the very little notice given of the service charges demanded and the date for payment specified in the lease the tribunal considers that imposing an obligation

to pay interest after a mere seven days' delay in payment would prejudice the interests of lessees in general. There was some discussion at the hearing about whether the service charge demands were accompanied by the required summary of tenants' rights in respect of service charges, which would make clear that the lessees have a right to bring a challenge to a tribunal, but greater notice should be given so that enquiries can first be made informally. If demands are sent by second class post then it would give lessees very little time in which to respond, even by first class post. Given the age of the leases they do not of course make any provision for service of challenges by email.

40. The proviso for re-entry in clause 7 refers to rent etc. being in arrear for 21 days. One can well understand the lessor company's desire not to be heavy-handed and to have a more subtle tool to employ when approaching the problem of arrears, especially with mainly elderly lessees. In principle, the charging of interest would be perfectly acceptable in this regard, but 7 days is not a reasonable starting point. Might that same period of 21 days not be more appropriate? That is a matter for the company to consider at leisure, given the alleged infrequency of this problem, but the tribunal considers that lessees would be prejudiced by granting the variation as currently drafted. The variation is therefore rejected.

41. *Costs* — While the applicant lessor, supported by the overwhelming majority of the lessees, has been substantially successful the tribunal considers that the respondents had some legitimate points to make. They also raised a number of other points about the management of the estate by a local firm of managing agents which have not been recorded in this decision on the basis that they are irrelevant to this dispute. These allegations may be relevant to a future one, when the managing agents would have the opportunity to defend themselves.

42. Although there appears to be no provision in the current leases which entitles the lessor to include the costs of and occasioned by this application as relevant costs in the calculation of the service charge for this or any future accounting year the tribunal, for the avoidance of doubt, makes an order under section 20C of the Landlord and Tenant Act 1985 preventing the lessor from so doing in respect of any service charges to be incurred by the named respondents.

Dated 26th June 2017

Graham Sinclair

Graham Sinclair
Tribunal Judge

SCHEDULE OF VARIATIONS APPROVED

Although both the original lessor and the current one are corporate entities the lease persists in using the plural "lessors". In this schedule the tribunal shall therefore follow suit, and fluctuations between singular and plural prepositions in the draft variations submitted shall be standardised as plural.

Clause 2(ii) shall be varied as follows :

a. By inserting after the words "the covered ways hatched black" on the fifth line the words "the gardens coloured green"
b. By adding at the end of the clause the words "such areas collectively known as the Common Parts"

Clause 4(1) shall be deleted and replaced by the following clause :

"4(1) To pay the reserved rents on the days and the manner aforesaid free from set off"

Clause 4(2) shall be deleted and replaced by the following clauses :

"4(2)(a) To pay all existing and future rates water rates taxes assessments and outgoings whether Parliamentary local or otherwise now or hereafter imposed or charged upon the demised premises or any part thereof respectively and in the event of the water rate in respect of the demised premises being paid by the lessors to refund the amount thereof to the lessors on demand

"4(2)(b) To pay to the lessors by way of additional rent, free from any right of set-off by the lessee, a sum equal to such part as the lessors' surveyor shall consider fairly attributable to the demised premises of the cost as certified from time to time by the lessors' surveyor (the "Service Charge") by half yearly payments in advance on the twenty-fourth day of June and the twenty-fifth day of December each year such part of

i. Cleaning, maintaining, decorating and repairing the said Common Parts
ii. Maintaining and operating the television aerials and preamplifiers in the said block of flats including the cost of electricity used in connection therewith
iii. Painting from time to time the exterior wood and ironwork of the said block of flats
iv. The costs, fees and disbursements reasonably and properly incurred of managing agents, accountants or other professionals retained by the lessors to act on behalf of the lessors in connection with the said block of flats or the provision of services
v. Any other service or amenity that the lessors may in their absolute discretion (acting in accordance with the principles of good estate

management) provide for the benefit of the lessees and occupiers of the said block of flats

"4(2)(c) To pay a fair and reasonable proportion determined by the lessors of the cost of any premiums that the lessors expend and any fees and other expenses that the lessors reasonably incur, in effecting and maintaining insurance of the said block of flats in accordance with their obligations under clause 5(6) of the lease including any additional premiums that may be demanded by the lessors' insurers as a result of any act or default of the lessee, any under tenant, their workers, contractor or agents or any person at the demised premises with the express or implied authority of any one of them"

Clause 4(14) of the lease shall be deleted

Clause 5(1) shall be varied as follows :

By deletion of the words "once in every three years" and substitution of the words "once in every five years"

Clause 5(6) shall be added as a new clause :

"5(6) To insure the said block of flats of which the demised premises form part and to keep them insured (unless such insurance shall be vitiated by any act of the lessee or the lessee's servants or visitors) in such sum as the lessors shall from time to time be advised by their surveyor as being the full cost of reinstating the said block of flats together with three years' loss of rent under this lease and all professional fees against loss or damage by fire special perils and such other risks as the lessors shall consider necessary and to produce to the lessee on request a copy of the insurance policy and a receipt for payment of the last premium or other evidence as to the terms of the policy and that the same is in force and to cause all monies received by virtue of such insurance to be laid out forthwith in rebuilding and reinstating the said block of flats making up any deficiency out of the lessors' own monies except where such rebuilding or reinstatement shall have been unreasonably delayed due to circumstances beyond the lessors' control provided that if the rebuilding or reinstatement of the said block of flats is prevented or frustrated all such insurance monies received shall be the absolute property of the lessors"