

HER MAJESTY'S COURTS AND TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL
of the
NORTHERN RENT ASSESSMENT PANELLANDLORD AND TENANT ACT 1987
SECTION 37

PROPERTY: Beechcroft, 6, Stafford Moreton Way
Maghull, Liverpool L31 2PH

Applicants: E. Arden (secretary, Beechcroft Residents' Association)
and others

Respondent: Goldsborough Estates Ltd

The Tribunal: Chairman: John R Rimmer BA, LL.M
Valuer Member Ian James MRICS

Date of Determination: 29th August 2012

Order: The 36 leases of the individual flats within Beechcroft,
Stafford Moreton Way, Maghull shall be varied as
follows

- Clause 1.7 shall contain reference to 37 flats,
not 36
- Clause 1.8 shall be deleted
- Clause 1.14 shall contain reference to 2.71%, not
2.84%
- Clause 7 shall be amended by the deletion "nor
Resident Manager" in line 4, the insertion of a
full stop after the word "necessary" in line 6
and the deletion of the remainder of the sub-
clause
- Clause 8.3 shall be amended by deleting the
words in brackets
- Schedule 3, Paragraph 2 shall be amended by
the deletion of sub-paragraph 2(ii)

1. Application.

This is an application to vary the several leases to various the flats contained within the building known as Beechcroft, Stafford Moreton Way, Maghull in the Borough of Sefton. The catalyst is the decision taken in the recent past to dispense with the services of a resident manger/caretaker for the building: that role carrying with it the right to occupy one of the flats whilst the remainder were let on long leases. A consequence of that arrangement was that whilst there are 37 flats in the building under the terms of the leases relating to them only 36 contribute to the cost of the service charge. There was no contribution made in respect of the caretaker's flat whilst being occupied by a resident caretaker.

2. The Application is therefore essentially a simple one: to vary the lease to remove any obligation to provide a resident caretaker. It is then necessary to vary the relevant terms of the lease relating to the proportion of the service charge attributable to each flat to one 37th of the service charge costs, thereby facilitating the sale by lease of the 37th flat on terms equal to those relating to the other 36 flats.

3. The principle is agreed by all the parties who have attended the relevant discussions between the Residents' Association and the landlord: there being only one leaseholder having failed to respond positively to the proposal according to the papers before the Tribunal.

4. The Committee did not consider the precise nature of the services provided in relation to Beechcroft. This did not form part of the application that was being made. The only determination to be made was in relation to the issue of reference to the resident caretaker and apportionment of the charge between the flats.

5. Inspection

On the morning of 29th August 2012 the Tribunal inspected Beechcroft and with the assistance of the current (non-resident) manager was able to determine that this development was typical of many others constructed towards the end of the last century to provide supported accommodation for those of greater maturity seeking the security and comfort of the facilities usually found in such developments. It is well located for nearby commercial, retail, medical, transport and other civic facilities. It has its own well maintained grounds towards the upkeep of which some residents make their own contribution in a number of individualistic styles. The Tribunal noted particularly that the caretaker's flat was identical in style and size to the others in the development and to that extent a simple equal division of the service costs between the total flats did not present any concerns as to unfairness to any particular leaseholder or group thereof. The flat is so situated that its position within the building is such that, as a very broad generalisation, no undue advantage or disadvantage would attach to that flat over others in relation to services provided if the proposed variation took place

6. The evidence

Both the Residents' Association and Goldsborough Estates Ltd made submissions to the Tribunal in a variety of written forms as to the appropriateness of a variation to each of the existing leases. It is unfortunate that Mrs Arden appeared to find the Tribunal process somewhat stressful and did not feel able to attend either a pre-trial review or a final hearing. The Tribunal was nevertheless extremely grateful for the effort that she had clearly put in to co-ordinating the leaseholders' views upon the application which greatly assisted the tribunal in its determination. There was therefore no hearing and the tribunal reached its decision on the information provided in writing by the parties.

7. The law

Section 37 states:

"Application by majority of parties for variation of leases.

(1) Subject to the following provisions of this section, an application may be made to the court 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—

.....

(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 states:

Orders by the court varying leases.

.....

(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 court with respect to the leases specified in the application, the court may (subject to subsections (6) and (7)) make an order varying each of those leases in such manner as is specified in the order.

.....

(6) The court shall not make an order under this section effecting any variation of a lease if it appears to the court—

(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) The court 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) The court 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 the court makes an order under this section varying a lease the court 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 court considers he is likely to suffer as a result of the variation.”

8. Tribunal's Conclusions and Reasons

S37 Landlord and Tenant Act 1987 allows applications to be made to the Tribunal to vary two or more leases to vary each of those leases, if the landlord is the same in respect of each of them, in any manner specified in the application. Provided that the object to be achieved by the variation cannot satisfactorily be achieved by any means other than the application to vary all the relevant leases (Section 37(3)) Section 37(5) makes provision for the proportion of the total number of leases/leaseholders needed to consent to the variation for it to take effect. For a building with 36 flats that proportion is 75% of leaseholders in favour and no more than 10% against the proposal.

9. The efforts made by the Residents' Association in relation to Beechcroft, as evidenced by the application and supported by details of the relevant meetings of the Association confirm that the appropriate requirements in that respect have been met so far as the relevant proportion of leaseholders in favour of the variation are concerned.

10. In the absence of unanimity the Tribunal is satisfied that the objects to be achieved, the removal of any obligation in respect of the provision of a resident caretaker and amendment of the proportion of total service charge costs attributable to each flat occupied when the caretakers flat is let on the same or similar leasehold basis as those 36 already let, cannot be achieved without this application and without the Tribunal's order in favour of that variation. It is also apparent that there is no leaseholder prejudiced by the application. The Tribunal therefore makes that order in the terms set out at the commencement of this document.

J R RIMMER
Chairman