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HM Courts & Tribunals Service

Residential Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION FOR VARIATION OF LEASES UNDER SECTION 37 OF THE LANDLORD AND TENANT ACT 1987

Case Reference:	LON/00AJ/LVL/2012/0016
Premises:	Barchester Close, 36 Uxbridge Road, London W7 3XA
Applicant:	Catalyst Housing Limited
Representative:	Prince Evans Solicitors LLP
Respondent(s):	Leaseholders of flats 1-26
Representative:	None
Date of hearing:	7.01.13
Leasehold Valuation Tribunal:	L Rahman (Barrister) H C Bowers BSc (Econ) MRICS MSc
Date of decision:	7.01.13

The application

1. The Applicant seeks a determination pursuant to s.37 of the Landlord and Tenant Act 1987 ("the 1987 Act") for variation of leases of all 26 flats within the property. It stated in the application that 21 of the 26 leaseholders had consented to the proposed variations and that therefore (including the Applicant itself) at least 75% of the parties consent to the proposed variations.

2. The proposed variations are set out in detail in a draft Order attached to the application. The proposed variations relate to making "improvements" to Barchester Close as well as putting the obligation of maintaining repairing redecorating renewing and improving the moveable parts of the windows upon the Respondents.

The Background

3. The Application is dated 18.7.12. The Applicant confirmed it was happy for the application to be dealt with on paper if the Tribunal thought it appropriate. There was a Pre Trial Review on 30.7.12. The Tribunal considered that if none of the Respondents requested an oral hearing then it would be appropriate for the application to be dealt with in this manner (without a hearing). None of the parties requested an oral hearing so the matter was listed to be dealt with on paper.

4. At the Pre Trial Review the Tribunal noted the copy consents from the leaseholders referred to their agreement to *"the Lease being amended to allow for improvements to the Barchester Close, ie, double glazing"*. The Tribunal noted the wording was not particularly clear and it appeared to indicate that the purpose of the proposed variation was solely, or at least primarily, to allow for the recovery of the cost of installing double glazing. However, the proposed variations themselves seemed to go much further than this. The Tribunal directed the Applicant supplement its statement of case to support the proposition that the variations sought were fully consistent with the consents obtained from the leaseholders.

5. Pursuant to the Tribunals Direction, it appears the Applicant wrote to the Respondents on 22.8.12. A copy of one of the letters is on page 56 of the Applicants bundle. The letter states, amongst other things, "*...Our client is requesting that the lease is amended to cover improvements that are carried to the parts which our client is responsible, such as double-glazing. The purpose of the amendment is to enable our client to carry out works to the parts and areas of the building that are our clients responsibility to the appropriate standard including the Decent Homes Standard without having to obtain specific approval or amendments to the lease on each occasion...*". It goes on to state *"The only current works intended are the installation of double-glazing, hence the referral within the application to the double-glazing. Any proposed future works (including double-glazing) which cost more than £250 per leasehold unit will be subject to the statutory consultation procedures and notices and may still be challenged by leaseholders as to the reasonableness of the works to be carried out..."* The letter ends by stating *"...if any leaseholder does wish to raise any objections or comments with regard to the application, then in accordance with the directions, they should be received by us by 17 September 2012"*.

6. The matter was listed for a paper hearing on 24.10.12. The Tribunal noted the signed consent letters were not clear as to the potential consequences of the variation, as it did not clearly state that the Applicant may improve other things

in addition to the double-glazing. The Tribunal also noted the consent letters did not refer to the proposed variation whereby the Respondents would be required to maintain repair redecorate renew and improve the moveable parts of the windows. The Tribunal also noted the letter dated 22.8.12 did not clearly explain the proposed variation concerning the "improvements" and the potential consequences and made no reference to the proposed variation in the lease concerning the "moveable parts of the windows". The Tribunal were not satisfied that 75% of the Respondents consented to the actual variation.

7. The matter was adjourned and further directions were issued for the Applicant to provide clear evidence that at least 75% of the Respondents (including the Applicant itself) consented to the actual variation. The Applicant was to clearly draw attention to the points noted by the Tribunal concerning the actual variations and the wider implications. Given the way in which the matter had progressed, the Applicant was also to get positive consents from the Respondents and not merely rely upon an assumption that the Respondents did not object to the variations. The Applicant was to provide any further evidence by 21.11.12. The matter had been relisted for another paper hearing on 28.11.12.

8. In a letter dated 6.11.12 the Applicants representatives stated they needed further time to respond to the Tribunals directions dated 24.10.12. They stated the relevant fee earner dealing with the matter had been on leave until 5.11.12. The Housing Officer had been away on Jury Service until 5.11.12. They wanted to provide a response by 14.12.12. The Tribunal considered the application and agreed to the Applicants request. The paper hearing date for 28.11.12 had to be vacated. The matter was relisted for 7.01.13.

9. In a letter dated 14.12.12, received by the Tribunal on 17.12.12, the Applicants representatives stated the vast majority of the consent forms had been received however at least 3 consent forms, which they anticipated receiving, had not yet reached the Applicants offices. They requested the time for filing the additional documents be extended to the end of the month but in view of the Christmas and New Year break, the time be extended to 8.01.13, to accommodate for people being away for the Christmas period and many people being away until 7.01.13 and for any delays within the postal system.

10. The Applicants representatives were notified on 20.12.12 that their application for an extension was refused. The Tribunal noted the case was adjourned on 24th October 2012 for the Applicant to provide the appropriate consent letters by 21st November 2012. The Applicant requested an extension of time to provide the consent letters by 14th December 2012. The application was granted, resulting in the paper hearing date for 28 November 2012 to be vacated. The case had been re-listed for a paper hearing on 7th January 2013. The Applicant stated the majority of the consent letters had been received by the Applicant. The Applicant anticipated receiving the remaining 3 consent letters but had not yet received them at the office. The Tribunal found the Applicant had been given an adequate opportunity to provide the consent letters to the Tribunal. Even with the Christmas period, the Tribunal found

there was still adequate time for the consent letters to be provided to the Tribunal **before** 7th January 2013. In the circumstances, the Tribunal did not find it reasonable to grant the extension requested. It was clearly stated the Tribunal would proceed with the matter on 7th January 2013. The Applicant had to ensure the relevant evidence was received by the Tribunal **before 7th January 2013**.

11. The Tribunal dealt with the case at 10am on 7.01.13. The Tribunal did not receive any further evidence or correspondence from the Applicant or its representative at the time the case was determined by the Tribunal.

The Tribunal's decision

12. The evidence before the Tribunal is that flats 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 19, 21, 22, 23, 24, and 26, all "agree to the lease being amended to allow for improvements to the Barchester Close, ie, double-glazing".

13. The consent letters from flats 3, 16, and 20 were unclear in that they were conditional. Flat 3 gave consent depending on the cost. Flat 16 gave consent "provided I see the proposed amended text to be inserted into the lease". Flat 20 stated they would like to know the actual cost before fully making up their mind. There is no evidence before the Tribunal to show if their concerns had been addressed and whether they unconditionally agreed to the proposed variation.

14. The Tribunal have not seen any response from flats 1, 2, 15, 18, and 25.

15. The 18 unconditional consents only equate to 69% of the leaseholders.

16. Even if the Tribunal were to accept the 3 conditional consents (meaning 21 of the 26 flats had consented thereby satisfying the relevant 75%), the Tribunal find the actual consents are unsatisfactory as the consent letters gave the impression that the variation was only in relation to improvements to the double-glazing windows. The consent letters were not clear as to the potential consequences of the variation, as they did not clearly state that the Applicant may improve other things in addition to the double-glazing. The Tribunal find the letter dated 22.8.12 did not clearly explain the wider implications of the proposed variation either.

17. In any event, neither the signed consent letters or the letter dated 22.8.12 made any reference to the proposed variation in the lease concerning the "moveable parts of the windows".

18. Based upon the evidence before the Tribunal, on balance, the Tribunal is not satisfied the leaseholders have consented to the actual proposed variations.

19. The Applicant has failed to satisfy the Tribunal that at least 75% of the leaseholders consent to the actual proposed variation. Accordingly, the application is refused.

Application under s.20C and refund of fees

20. The Applicant did not make an application for a refund of any application fees paid by the Applicant (under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003). Accordingly, no order is made.

21. The Respondents have not applied for an order under section 20C of the 1985. Accordingly, no order is made.

Chairman: 

Date:7.01.13