



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/38UE/LVL/2017/0004

Property : Grovelands,
Saville Way,
Wantage,
OX12 0PT

Applicant : Midcounties Co-operative Ltd.

Respondents : The leaseholders set out in the Schedule
attached to the application

Date of Application : 23rd October 2017

Type of Application : Application to vary leases (Part IV
Landlord and Tenant Act 1987 as
Amended ("the 1987 Act"))

The Tribunal : Bruce Edgington (lawyer chair)
David Brown FRICS

DECISION

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1. The Application to vary the long leases for the residential parts of the property is refused

Reasons

Introduction

2. This is an unusual application in the sense that the Tribunal would normally be enthusiastic about the freeholder's application. The intention is to allow the freeholder to create a reserve fund to enable future substantial service charges to be collected over a period of time. In other words, substantial repairs such as replacing a roof or external decorations, for example, can be planned and paid for over a period of time to avoid the long leaseholders having to pay large amounts on short notice.
3. The variation sought is an addition to the Sixth Schedule to the leases saying

“Reserve Fund

6. *Such sums as the Landlord may reasonably consider to prudent (sic) to be paid into a reserve fund for such items which are required to be dealt with at periodic rather than annual intervals according to the principles of good estate management”.*

4. The difficulty is that the legal provisions enabling this Tribunal to vary leases are limited and clear. They are set out below.
5. The Tribunal issued a directions order on the 15th November 2017 timetabling this case to a final conclusion. The Tribunal agreed to the Applicant’s suggestion that this case could be dealt with as a paper determination and would be dealt with on that basis on or after 2nd February 2018. It was also made clear that a hearing would be arranged if any party asked for it. None has. The Respondent leaseholders were ordered to file any written representations on or before 22nd December 2017. None have been received.

The Inspection

6. In view of the nature of the variation sought, no inspection of the property was thought necessary and none was requested.

The Leases

7. The building is clearly a mixture of residential and commercial properties and the bundle includes a copy of the lease of flat 1 as a sample of all the residential leases from which the Tribunal assumes that they are all in the same terms save for premium, demise and possibly ground rent. The service charge provisions are in clause 7 and the Sixth Schedule which lists out those matters recoverable as part of the service charge.
8. As soon as practicable after the 25th December in each year the landlord’s surveyor must certify what has been spent on service charges for that year and what is anticipated for the coming year. The latter is then payable by the leaseholder and at the end of each year there is a consolidation i.e. payment of any under estimate or a credit for any over estimate.
9. The last item in the Sixth Schedule says that the landlord can recover:-

“Anticipated expenditure

5. *Such provision (if any) for anticipated expenditure in respect of any of the Services or the above mentioned matters as the Landlord shall in its absolute discretion consider appropriate”.*

The Law

10. Section 35 of the 1987 Act permits any party to a long lease of a flat to apply to this Tribunal for an order varying such lease if it *“fails to make satisfactory provision with regard to one or more of the following matters”*. There then follows a list of matters such as repair or maintenance of the building, insurance, repair or maintenance of ‘installations’ or services and the ability to recover all the service charges from the tenants. This would clearly cover the creation of a reserve fund if there was no such provision in the lease.

11. Section 37 of the 1987 Act says that a Tribunal has the power to vary a number of leases in a building where, in the case of less than 9 leases, all or all but one of the parties consent or, in the case of more than 8 leases, at least 75% agree and not more than 10% oppose.

Discussion

12. The lease produced in this case does provide for a reserve fund in accordance with paragraph 5 of the Sixth Schedule as stated above. The words 'reserve fund' are not mentioned specifically but section 42 of the 1987 Act makes it clear that all moneys collected in advance of service charges being incurred must be held on trust which means that the interests of the leaseholders are protected in law.
13. This is not an application made with the express consent of the relevant proportion of the long leaseholders. There is mention of there being a meeting on the 23rd November 2017 and a copy of the minutes of that meeting is provided. It seems that 14 'residents' attended. The Applicant's evidence is that the leaseholders present supported the application. However, the minutes do not say that and indeed there is a comment that paperwork for matters to be discussed should have been provided in advance.
14. Therefore, as the application itself says, the only ground for this application is under section 35 and that means that in order to grant the variation, the Tribunal must find that there is a failure to make provision for a sinking fund. In the Tribunal's view, the provision in clause 5 of the Sixth Schedule is specific provision for a sinking fund which means that there is no failure to make such provision.

Conclusions

15. The Tribunal regrets that it cannot approve this variation and the application must therefore be refused.



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Bruce Edgington
Regional Judge
2nd February 2018

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.