First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**CAM/22UJ/LVT/2019/0001**
Properties	**:**	**19-54 Aylets Field, Southern Way, Harlow, CM18 7LW**
Applicant	**:**	**Moat Homes Ltd.**
Respondents	**:**	**the long leaseholders of the 36 long leases set out in the Application**
Date of Application	**:**	**16th December 2018**
Type of Application	**:**	**Application to vary leases (Part IV Landlord and Tenant Act 1987 as Amended ("the 1987 Act"))**
The Tribunal	**:**	**Judge Reeder Judge Edgington**

DECISION

---

1. **The application to vary the leases as set out in the draft variation wording on page 351 of the documents bundle provided for the Tribunal is granted subject to any reasonable and necessary requisitions by the Land Registry.**

2. **The variations deal with:**

   a. **The definition of 'the Building' in respect of 19-30 Aylets Field, 31-32 Aylets Field and 33-50 Aylets Field.**

   b. **The definition of 'service charge specified proportion of service provision' as set out on page 351 in respect of the flats set out thereon.**

3. **No compensation orders are made**

Reasons

Introduction

4. This is the second application to vary all the leases for the flats of these residential properties. The first application was dealt with by the same Tribunal members at a hearing on the 7th November 2017 and the case reference was CAM/22UJ/LVT/2017/0001 ("the first decision"). That decision set out the nature of the application, its history and the reasons for refusing the variations sought. The decision acknowledged that section 35 of the 1987 Act should be used to vary the subject leases but in a different way. That indication seems to have been followed.

5. The first decision should be read as part of this decision because the background, summary of the leases, and statements of law will not be repeated in this decision. The only significant factual matter which was determined in the first decision is the status of flats 31 and 32. The evidence given to the Tribunal in 2017 was that these two 'flats' were in fact maisonettes with their own entrances and no common parts , which are only divided vertically from another part of the building and not horizontally.

6. In this new application compelling evidence has been given that in fact these flats 31 and 32 are in one building but separated horizontally from each other and with separate entrances which are not within the common parts of any other building. They therefore come within the definition of 'flats' within the 1987 Act and the Tribunal has jurisdiction to effect variations to the leases of those properties.

7. The variations now proposed take account of the fact that the common entrances etc. of the buildings are not used by the owners of flats 31 and 32 and their service charge proportions have been adjusted accordingly.

8. A directions order was issued on the 11th January 2019 timetabling the case to a final determination. It indicated that the case could be determined on a consideration of the papers and any written submissions and that the Tribunal intended to do so on or after the 8th March 2019 unless anyone asked for an oral hearing. The owner of flat 47, Holly Ryder, asked for an oral hearing purportedly on behalf of the owners of flats 32, 42, 45, 47 and 52.

9. A hearing was set up for the 26th March 2019. However, the Tribunal received subsequent written confirmation that all those flat owners did not now want an oral hearing and were content for the case to be deal with on a consideration of the papers and written submissions. No-one now contests the variations but some are now seeking compensation. This will be dealt with below. The Tribunal agreed to deal with the case on the papers as soon as bundles were delivered and this has now happened.

The Inspection

10. The members of the Tribunal decided that, for the same reasons as set out in the first decision, no inspection of the properties was necessary and none was requested.

Discussion

11. As has been said, the Tribunal, in the first decision, determined that section 35 of the 1987 Act applied and said that the leases should be varied. That indication has been accepted and none of the leaseholders now oppose the variations. Paragraph 33 of the the first decision recorded that "*the leaseholders would be well advised to agree terms and to all contribute to the cost of* ***a solicitor*** *to represent them*" and that the Applicant should pay those costs (our emphasis). The Tribunal has noted from correspondence that some leaseholders have instructed their own solicitors to represent them and have attempted to recover all the costs by claiming that this is what the first decision said. One of those solicitors has even been involved in such correspondence. This is a misreading of the first decision. The Tribunal did not say that the Applicant should pay for each individual leaseholder's solicitor.

Conclusions

12. The application to vary the leases is granted.

Compensation

13. By a letter to the Tribunal dated 27th February 2019, Holly Ryder of flat 47 claims compensation pursuant to subsection 38(10) of the 1987 Act which provides that "*where a tribunal makes an order under* (section 35) *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*". Ms. Ryder has set out her grounds and requests in that letter and she appears to be claiming a figure within the range of £1,400-£2,100 which she says is a 'drop in the ocean' to Moat Homes Ltd.

14. Mr. Bailey from flat 42 and Ms. Rance from flat 45 have also asked for compensation but they have not specified their grounds or the amount they ask for.

15. The history of this case, as acknowledged by Ms. Ryder is that the Applicant realised from at least 2006, when she purchased her flat, that the service charge provisions in the leases did not allow them to recover 100% of the service charges to maintain the properties and the estate. They therefore sought payment on a voluntary basis from the leaseholders.

16. It seems that many leaseholders acknowledged the error in the leases and paid

the shares now sought. Ms. Ryder says "*I could afford the amount being charged at the time (which I now know was an equal split between all the flat owner), due to the fact there was two wages coming in and paid what was asked until 2015*" (sic). It was at that time that she challenged the amount being paid and the Applicant acknowledged the problem and refunded her.

17. She then says that she appreciates that she is "*very lucky to have saved so much money*" and that "*I have been paying this reduced amount since 2015 and that is the only reason I can afford to live in my property and it is what I budget for each month*". She then sets out her own financial position and the fact that she is having medical problems which may cause her to have to meet the cost of expensive drugs if the local authority won't meet that cost.

18. It seems clear that Ms. Ryder does have financial problems which she did not have between 2006, when she bought her flat, and 2015. The inference to be drawn is that during that period (a) she knew that her lease had been incorrectly drawn (b) she knew she was paying service charges at the rate which will apply after the variation takes effect and (c) she knew or ought to have known that in due course the lease would be varied and that she would have to pay sufficient service charges to cover the cost of maintaining the building and the estate.

19. Mr Ryder's argument that the Applicant can afford to pay compensation and her personal situation do not persuade the Tribunal that it is reasonable to order compensation to be paid, let along single out 3 leaseholders as requested. Mr Rance and Ms Bailey have not provided any submissions of use on the issue. The Tribunal therefore concludes that it does not think it fit to make a compensation order. If the problem had not been spotted by anyone so that the variation was completely unexpected, the decision may have been different.

20. Putting this into context, Ms. Ryder claims that the new figure for service charges will be in the order of £840 per year which is not unusual for a flat in a block such as this.

Judge Reeder
21st March 2019

ANNEX - RIGHTS OF APPEAL

a. 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.

b. 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.

c. 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.

d. 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.