

**LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL**

BIR/00FN/LVT/2004/0001

*DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 35 OF THE LANDLORD AND TENANT ACT 1987*

Applicant: Ashcorn Estates Ltd (landlord)

Respondents: Mr M Roberts and others (leaseholders)

Subject properties: 25A-37B and 59A-65B
Nevanthon Road
Leicester LE3 6DR

Applications to LVT: 12 August 2004

Hearing: 26 November 2004

Appearances:

For the applicant: Mr S Boon (legal advisor)
Mr J Tuttiett (director of Ashcorn Estates Ltd)

For the respondents: Ms D Lees (leaseholder of 65A)
Mr N Taylor (leaseholder of 63B)

Members of the Tribunal: Professor N P Gravells MA
Mr D B Power FRICS
Miss B Granger

Date of determination: **28 JAN 2005**

Introduction

- 1 This is a decision on an application under section 35 of the Landlord and Tenant Act 1987 ("the 1987 Act") made to the Leasehold Valuation Tribunal by Ashcorn Estates Ltd for an order for the variation of the leases of the subject properties (25A-37B ("block 1") and 59A-65B ("block 2") Nevanthon Road, Leicester LE3 6DR).
- 2 The subject properties are flats located on the first and second floors of two blocks. (The ground floor of block 1 comprises retail units; the ground floor of block 2 comprises further residential units.)
- 3 Ashcorn Estates Ltd is the lessee of the reversion of the subject properties, holding under a lease for a term of 999 years from 5 January 1996.
- 4 The respondents are the leaseholders of the subject properties, holding under underleases for a term of 99 years less three days from 25 March 1967 ("the subject leases").
- 5 In an application dated 12 August 2004 the applicant sought an order for the variation of the subject leases on the ground that, as originally drafted, they fail to make satisfactory provision with respect to the matters set out in paragraphs (a) to (f) of section 35(2) of the 1987 Act; and the applicant submitted a draft of the variations sought.
- 6 The draft variations were copied to the leaseholders for comment; and, in the light of the responses, a Pre-Trial Review was held on 15 October 2004 in order to clarify the concerns and potential objections raised by some of the leaseholders. During the course of the Pre-Trial Review, it became apparent that the respondents present acknowledged that the proposed variations of their leases would introduce more effective and efficient arrangements for the management of the subject properties. However, notwithstanding the constructive discussion at the Pre-Trial Review, which clarified many of the concerns of the leaseholders, the Tribunal determined that the application should proceed to a hearing.
- 7 The members of the Tribunal inspected the exterior of the subject properties on 26 November 2004.
- 8 The subsequent hearing was attended by Mr S Boon (of Eyre & Johnson) and Mr J Tuttiett, representing the applicant; and by Ms D Lees and Mr N Taylor, two of the leaseholders.
- 9 In addition to the oral submissions made at the hearing, the Tribunal had received written representations from a number of the leaseholders, including some who did not attend the hearing (or the Pre-Trial Review).
- 10 At the conclusion of the hearing all the parties present had reached a consensus as to the proposed substantive variations. The applicant redrafted the proposed variations to reflect that consensus; but, in the interests of definitional clarity, the applicant submitted separate sets of variations for (the flats in) each of the two blocks. The new drafts were copied to all the relevant leaseholders for comment. Three of the leaseholders, who had not attended the Pre-Trial Review or the hearing, indicated that they did not agree to the proposed variations. However, the Tribunal was satisfied that the objections raised by those three leaseholders had already been addressed in the course of the hearing.

Determination of the Tribunal

- 11 The Tribunal finds that the subject leases as originally drafted do not make satisfactory provision for the management of the subject properties as particularised in paragraphs (a) to (f) of section 35(2) of the 1987 Act. Most significantly, the leases do not provide for any modern property management regime under which the landlord covenants to repair and maintain the structure of the blocks and the common parts in return for the payment of service charges by the leaseholders. Rather the leases contain covenants by the leaseholders to contribute to the costs of repair and maintenance; but they do not impose an obligation on anyone to carry out the work. Although some of the leaseholders in block 1 had formed a tenants' association with a view to assuming responsibility for some aspects of repair and maintenance, the Tribunal finds (and the matter was not seriously disputed) that the association has failed to effect an adequate level of repair and maintenance. In addition, the lease makes no provision for the insurance of the main structure of the blocks and the common parts.
- 12 The Tribunal finds that the proposed variations of the leases are intended to introduce more effective and efficient arrangements for the management of the subject properties and the common parts. Under those arrangements, the landlord would assume responsibility for the insurance of the blocks and for the maintenance of the exterior and main structure of the blocks and the common parts; and in return the leaseholders would pay a service charge.
- 13 The Tribunal acknowledges that the leases as varied would not effect an ideal solution. In particular, the leaseholders have some concern that they could be required to pay the costs of works benefiting the ground floor units to which the leaseholders of the ground floor units have no obligation to contribute. The Tribunal finds that that is an issue over which neither the applicant nor the respondents (nor the Tribunal) have any control because the applicant has no legal interest in the ground floor units. However, the Tribunal is of the view that that potential concern applies equally to the leases as originally drafted and the Tribunal is satisfied that the proposed variations of the leases would not put the leaseholders in any worse position than they are in under the current terms of the leases.
- 14 Bearing in mind the stated purpose of the proposed variations, the Tribunal is satisfied that those proposed variations as contained in the final draft submitted by the applicant and annexed to this decision are consistent with the achievement of the stated purpose. In summary, the leases as varied would introduce a modern service charge regime, which would be subject to the statutory controls and regulation in the Landlord and Tenant Act 1985. That regulation includes the overriding requirement that the landlord must not incur costs unless it is reasonable to do so; the requirement that the landlord must consult the leaseholders before undertaking major works or entering into long term contracts; and the requirement that the landlord must keep proper accounts and permit the leaseholders to inspect relevant documents.
- 15 The Tribunal therefore orders that the subject leases be varied as specified in the relevant annex to this decision with effect from the date of this decision.

Signed 
(Professor Nigel P Gravells (Chairman))

Dated 28 JAN 2005