

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0073/02/14

In the Matter of Highfield Court, Foxwood Close, Bassaleg, Newport, Gwent

And in the matter of an application under S37 of the Landlord and Tenant Act 1987

APPLICANT Highfield Court Management Co Ltd

RESPONDENTS The Lessees of Highfield Court, Bassaleg

TRIBUNAL David Evans LLB LLM
Roger Baynham FRICS

DECISION

UPON HEARING Mr D R Howells and Mr P Kenward on behalf of the Applicant and Mrs D Griffin-Duce on behalf of Mrs V Duce (No 1 Highfield Court)

AND UPON READING the letter from Mrs Poole (No 5 Highfield Court) received by the Tribunal on the 5th March 2014 and the letter dated the 15th March 2014 and e-mail of the 20th March 2014 from the Applicant

The Application is REFUSED and the Tribunal does not make an order varying the Respondent's leases.

REASONS

1 Highfield Court (the Property) comprises a block of 16 apartments at Foxwood Close, Bassaleg. The Property is owned and managed by the Applicant, a company the shares of which are owned by the 16 lessees. The leases of the apartments are in common form and are for terms of 99 years from the 24th June 1985 at a ground rent. The covenants in the leases do not prevent the lessees from underletting the apartments nor is permission of the lessor required to do so except during the last seven years of the term.

2 At the Annual General Meetings of the Applicant, residents had expressed their views that consideration should be given to varying the terms of the leases of all 16 apartments in order to prevent subletting as there had been instances where the behaviour of subtenants with assured shorthold tenancies had caused concern.

3 Believing that it had the support of 15 out of the 16 lessees, on the 11th November 2013 the Applicant made an application to this Tribunal to vary the leases. The sole objector was Mrs Poole (No 5) whose apartment was sublet, although it was acknowledged by the Applicant that the subtenant was not a problem. Mrs Poole was in the process of selling her apartment.

4 During the course of these proceedings, Mrs Poole withdrew her objection. Directions were given on the 21st February 2014 requiring any respondent lessee wishing to object to the proposed variation to set out the nature of the objection and his/her reasons for objecting by the 26th February 2014. The application was opposed by Mrs Duce (No 1) and Mrs Williams (No 7), both

of whom had originally supported the proposed variation. Mrs Williams later withdrew her objection. By a letter received by the Tribunal on the 5th March 2014, Mrs Poole (No 5) reinstated her objection. This was, as the Applicant pointed out, after the date prescribed in the directions. It also appears that contrary to the directions Mrs Poole had not provided a copy of her objection to the Applicant, nor did she respond to the Tribunal's request to confirm that she had provided the Applicant with a copy. However, it is clear from what the Applicant's representatives told the Tribunal that Mr Howells had spoken to Mrs Poole and the Applicant was aware of the nature of the objection.

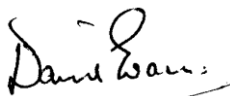
5 Section 37 of the Landlord and Tenant Act 1987 (the Act) provides that application can be made to a leasehold valuation tribunal in respect of two or more leases for an order varying each of those leases in such manner as specified in the application. The grounds for doing so are (according to subsection (3)) that the object to be achieved cannot be achieved without varying all the leases. However, such an order can only be made if, in a case where the application is in respect of more than 8 leases (as here), it is not opposed by more than 10% of the total number of parties concerned (subsection (5)(b)). The Applicant counts as one of the parties and so with 16 lessees, two lessees objecting would necessarily mean that the application must fail.

6 Whilst the Applicant was aware that Mrs Poole objected, it did not know whether the Tribunal would admit the objection because it was notified out of time. If it was admitted, the application could not succeed.

7 Under section 38(10) of the Act where a tribunal makes an order varying a lease, the tribunal may, if it thinks fit, make an order providing for any party to pay compensation to any other party in respect of any loss or disadvantage the tribunal considers that the other party is likely to suffer. The Directions required any Respondent who wished the Tribunal to consider this as an issue to notify the Tribunal and the Applicant by the 26th February 2014. No notifications had been received. However, the Applicant did not know whether the Tribunal would be prepared to consider such an issue even though the date stated in the Directions had passed. The Applicant would not be in a position to pay compensation.

8 In view of the uncertainty, the Applicant had taken the decision that it would not proceed with the application. Mrs Griffin-Duce outlined her mother's reasons for objecting to the application, but in view of the Applicant's stated intention, there is no need for us to detail them here. The application is therefore refused and we do not make the order for variation of the Respondent's leases.

DATED the 27th day of March 2014



CADEIRYDD/CHAIRMAN