



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : CHI/00HA/LVT/2019/0002

**Property** : 1-20 St Peter's Place, Lower Bristol Road,  
Bath BA2 3EP

**Applicant** : St Peter's Place Management Company  
Limited

**Representative** : Andrea Robinson

**Respondents** : 1) The Lessees  
2) Aviva Investors Ground Rent  
Holdco Ltd & Aviva Investors  
Ground Rent GP Ltd (The  
Freeholder)

**Representative** :

**Type of Application** : S 35 Landlord & Tenant Act 1987 - to vary  
leases

**Tribunal Member(s)** : Mr D Banfield FRICS

**Date of Decision** : 15 August 2019

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DECISION

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## **ORDER**

1. The leases of 1-20 St Peter's Place, Lower Bristol Road, Bath BA2 3EP ("the Property") shall be varied in the form set out in the Schedule annexed hereto.
2. The Applicant shall be responsible for making applications to the Land Registry to have noted against the freehold title and the leasehold titles of the Property the aforesaid variations.
3. The reasons for the Tribunal's decision to make the order as requested by the Applicant are as follows.

## **REASONS**

4. The Applicant is the Residents' Management Company of the 1-20 St Peter's Place a former historic church now converted into a block of 20 residential flats. Six of the flats are designated affordable housing as stipulated by the local authority. The remaining 14 flats are standard market units.
5. The leases are tripartite between the freeholder (Aviva), the RMC and the individual lessees. The RMC have maintenance responsibilities under the leases the cost of which is recovered from the lessees by way of service charge. The RMC contract a managing agent to carry out the management functions.
6. The service charge apportionments are at Clause 1.5 in all of the leases and are expressed as a percentage of the freeholder and RMC's costs of providing services for the block.
7. The total of service charge percentages has recently been discovered to total less than 100% being a shortfall of 3.465%. The managing agent has been collecting service charges using its own rationale but the Applicant now wishes to regularise the position by adjusting the percentages in the leases.
8. The current and proposed service charge percentages are at page 37 of the bundle and are attached to this decision as Appendix 1.
9. In calculating the proposed service charge percentages, the Applicant has maintained the existing proportionate differences between the service charge percentages contained in each lease.
10. In response to the Applicant's consultation with the lessees, 13 agreed to the proposals, 1 objected and 6 failed to respond.

11. The objection dated 7 April 2019 was on the grounds “No explanation of how this has happened”
12. The Tribunal made Directions on 12 June 2019 subsequently revised on 18 June 2019 which required the Applicant to serve the Application and the Tribunal’s Directions on each of the Lessees. Any Respondent who wished to object was required to serve by 17 July 2019 a statement in reply stating whether they agreed or objected and whether they wished to claim for compensation under Section 38(10) of the 1987 Act.
13. The only objection in response to the Tribunal’s directions was received out of time and permission was not granted for its inclusion.

**The evidence**

14. The Applicant’s Statement of Case states *“When examined collectively, the leases contain a number of inconsistencies in the method of calculation of the service charge apportionments and the assignment of ground rents. There is no apportionment rationale identified, simply a percentage figure. It appears that a standard “floor area”-based rationale was tailored to make allowance for the affordable housing units, but was flawed in its execution.”* Legal advice obtained states *“any proposed variations must be reasonable and fair to all leaseholders, and that the Tribunal will seek to remain as faithful to the original contracted terms as possible.”*

**The relevant law**

15. The application for variation is made under section 35 of the Act. This provides that: -
  - “(1) Any party to a long lease of a flat may make an application to the First-tier Tribunal for an order varying the lease in such manner as is specified in the application.
  - (2) The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely –
 

.....

    - (f) the computation of service charge payable under the lease”.

“(4) For the purposes of subsection (2) (f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if-

  - (a) It provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord and
  - (b) Other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and
  - (c) The aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a)

and (b) would either exceed or be less than the whole of any such expenditure.”

## **Discussion and decision**

16. It is clear that the requirement of subparagraph (4) (c) is met in that the proportions in the existing leases do not add up to 100%. The next matter to consider is how the leases should be varied.
17. Whilst it is understood that until 1 January 2019 the managing agents had been applying their own rationale in determining the lessees' contributions the lessees' obligation is to pay the percentage share referred to in their respective leases. The total of those existing percentages falls short of 100% by 3.465% and it is how that shortfall should be allocated that the Tribunal must determine.
18. The objection received was on the grounds that no explanation had been given. However, in a two-page letter dated 25 March 2019 the Applicant provides the explanation referred to at paragraph 14 above.
19. The Applicants have proposed that the increase should be proportionate to the existing percentage share and have applied the following formula;
  - *Original apportionment x 100 ÷ 96.535 = new apportionment*
20. The Applicant accepts that there are inconsistencies in the method of calculation of the existing percentages and seeks a fair solution to correcting the shortfall of 3.465% between the 20 leases. Whilst there may be alternative methods of achieving 100% recovery the Tribunal is satisfied that the Applicant's proposals are fair and reasonable.
21. In summary, therefore: -
  - (a) The Tribunal is satisfied that the applicant is entitled to apply to vary the Court leases under section 35(1) of the Act
  - (b) That the Applicant has made out a ground for exercising the Tribunal's discretion to vary the court leases
  - (c) That the Tribunal should exercise its discretion
  - (d) The variations ordered should be as proposed by the Applicant in its application and as appears in the schedule appended hereto
  - (e) That there are no special reasons as to why the variations should not be made.

Appendix 1

Flat number	Current service charge %	Proposed service charge %
1	5.86	6.07
2	5.10	5.28
4	4.59	4.75
7	5.86	6.07
8	3.65	3.78
9	3.65	3.78
10	4.57	4.73
12	3.86	4.00
13	5.86	6.07
14	4.33	4.49
17	3.86	4.00
19	6.56	6.80
20	5.86	6.07
18	9.20	9.53
3	4.30	4.45
5	3.65	3.78
6	3.90	4.04
11	3.65	3.78
15	4.58	4.74
16	3.65	3.78
Freeholder	n/a	n/a