



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

**Case reference** : **CAM/00JA/LVL/2022/0004**

**HMCTS code (paper, video, audio)** : **V: CVPREMOTE**

**Property** : **Cumberland House  
St Mary's Court, Peterborough  
Cambridgeshire PE1 1UN**

**Applicants** : **Cross Keys Homes Limited**

**Representative** : **Capsticks Solicitors LLP**

**Respondents** : **MAA Investments Limited and the  
other leaseholders named in  
Schedule 1 to the attached order**

**Application** : **To vary leases with majority consent -  
s.37 of the Landlord and Tenant Act 1987**

**Tribunal member** : **Judge David Wyatt  
Mr D Barnden MRICS**

**Date** : **12 January 2023**

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**DECISION**

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This has been a remote video hearing. A face-to-face hearing was not held because all issues could be determined in a remote hearing. The documents to which we were referred are those described in paragraphs 10 and 11 below.

**Decision of the tribunal**

1. The tribunal makes the order enclosed with this decision to, subject to satisfaction of the condition specified in the order, vary the Respondents' leases with effect from the date specified in the order.

2. By **20 January 2023** the Applicant must send a copy of this decision with enclosures to the Respondents, by first class post and (where the Applicant has e-mail addresses for the Respondents) by e-mail.

## **Reasons for the decision**

### **Basic details**

1. The Applicant housing association owns the freehold title to land which includes the Property. This is a 12-storey block accommodating 70 flats. 20 of these flats are held by the Respondents on long leases, all for terms of 125 years from commencement dates between 1983 and 2014. The remainder are occupied by social housing tenants renting their flats from the Applicant.
2. The Applicant estimated the building was constructed in the 1960s. It has a communal flue system (described as an “SE duct”) for individual boilers in each flat. The boiler in each flat provides hot water in the usual way but provides space heating through a hot air ducting system. The leaseholders are responsible for maintenance of the boiler and other equipment in their flat and pay for their personal metered gas consumption directly. Through the service charge provisions in their leases, they can be asked to contribute towards any costs relating to the repair of conduits such as the communal flue and gas supply.
3. Paragraph 6 of the Sixth Schedule to the sample lease confirms that the definition of the demised “premises” includes: “... *all additions, alterations and improvements ... and ... all Landlord’s fixtures and fittings ... but not Tenant’s fixtures and fittings.*”
4. The Applicant applied to the tribunal under sections 37 of the Landlord and Tenant Act 1987 (the “**Act**”) to vary the 20 leases, setting out the wording of the proposed variations in their statement of case. Sections 37 and 38 of the Act are attached to this decision. The Applicant confirmed that the leases are in materially identical terms.

### **The proposed amendments**

5. On 13 April 2022, the Applicant had written to each Respondent proposing to remove and seal the existing communal flue, remove the gas supply, remove the existing gas boiler and hot water system in each flat, remove redundant radiators and associated equipment, install a new electric water heater, install modern controllable electric radiators, replace any existing gas cooking appliances with suitable electric appliances together with any associated works required in the kitchen and redecoration of any affected areas.
6. In their letter, the Applicant said this work had already been carried out for the rented flats and the residents had been pleased with the results. They confirmed there would be no charge for the work and asked the Respondents to consent to vary their leases to allow this, setting out the wording of the proposed variations in a schedule to the letter. They explained their reasons

for proposing the change to electric heating installations. In particular, they said the communal flues would need significant maintenance in future. They said it had become difficult to repair or replace the existing boilers (because individual gas boilers connecting to common internal flues were no longer in common use). The construction of the external walls meant that it was not feasible to install individual flues from flats for modern individual boilers.

### **Procedural history**

7. On 8 June 2022, the Applicant made their application to the tribunal. They said they had met the threshold consent conditions for applications under s.37 of the Act. They said the object of the proposed variations could not be achieved unless all the leases are varied to the same effect because otherwise there would be two different systems in the Property, including gas flues and conduits used only by a small number of flats but requiring maintenance.
8. On 17 August 2022, the judge gave case management directions. These noted that the Applicant intended their proposed lease amendments to allow them to carry out the proposed removal and installation works and maintain/repair (where the costs of such maintenance and repair would form part of the service charge once the installation had taken place). They also suggested that the Applicant check all requisite consents had been secured before the application was made, giving examples of potential queries. The directions warned that the tribunal could not advise the parties and it appeared the question for the tribunal would be whether to make all the variations sought or refuse all of them, since in these proceedings the tribunal would not have jurisdiction to change the substantive wording of any of the proposed variations.
9. The Applicant was directed to obtain up to date official copy Land Registry entries for the titles to the leases send the application documents and directions to the leaseholders and all mortgagees, notifying the mortgagees that if they wished to be joined as a party to these proceedings they must write to the tribunal by 23 September 2022. The Applicant confirmed it had complied with these directions. The tribunal did not receive any request to be joined to the proceedings.
10. The Applicant had been directed to produce their further case documents by 2 September 2022 and the Respondents were directed to produce their case documents in response by 21 September 2022 (including, if they opposed the application, a statement of case and copies of any other documents relied upon). On 14 October 2022, the tribunal received an electronic hearing bundle (168 pages) and draft order from the Applicant, who confirmed there had been no response from leaseholders to the application and asked whether the matter could be considered for determination on the papers.
11. On 28 October 2022, the judge gave further directions, requiring the Applicant to deal with specific points and send copies of the further directions to the Respondents. The directions encouraged the Respondents to take independent legal advice about the proposed amendments to ensure they had given informed consent to the proposed amendments. The deadline for any

case documents from Respondents was extended to 25 November 2022. Pursuant to these further directions, the Applicant produced a supplemental bundle of further documents (50 pages). This confirmed the first witness statement of Stuart Fort had been sent to the Respondents on 12 September 2022 and the further directions had been copied to the Respondents on 3 November 2022.

12. At the hearing on 15 December 2022, the Applicant was represented by Ms Brooke Lyne of counsel and Mr Fort (the Applicant's director of asset, housing needs and estate management) gave evidence. The application was not opposed. None of the Respondents sent any documents to the tribunal or attended the hearing.

### **Consents (s.37(5))**

13. By section 37(5) of the Act, in these circumstances, this type of application can only be made if it is not opposed by more than 10% of the total number of "parties concerned" (defined in s.37(6)) and at least 75% of the parties concerned consent to it.
14. There are 21 "parties concerned": the Respondent leaseholders of the 20 leases and the Applicant landlord. We agreed with the Applicant that it had met the threshold consent conditions in s.37(5) if the application had not been opposed by the leaseholders of more than two flats and at least 15 of the leaseholders (who with the Applicant landlord would be 16 of the "parties concerned") had consented to it before the application was made.
15. We are satisfied that the application was not opposed by more than two of the leaseholders. The leaseholder of flat 35 had opposed the proposal, saying in her response to the Applicant's letter of 13 April 2022 that she had already paid to change to an electrical system in her flat and wanted the cost to be reimbursed by the Applicant before she would give consent. The leaseholder of flat 94 had also responded to say they did not consent, but gave no reasons.
16. At the hearing, given the absence of any dispute about this, we confirmed we were satisfied by the material in the original and supplemental bundle that the leaseholders of 13 flats (Nos. 13, 51, 53, 54, 56, 63, 71, 73, 83, 84, 95, 113 and 114) had consented before the application was made. In two of these cases, one of two joint leaseholders had signed to say they consented and the other had mistakenly signed the alternative form provided by the Applicant to say they did not, but they had all obviously intended to sign to consent. Following the further directions from the tribunal, that had been confirmed in further communications between the relevant leaseholders and the Applicant.
17. Ms Lyne rightly accepted that the Applicant could not show the tenant of flat 14 had consented before the application was made. An e-mail in respect of flat 14 saying "*Please go ahead*" in response to a chasing e-mail referring to the proposed lease changes and asking for agreement to the works was from Abbas Walji, when the leasehold title was in the name of Mrs Shirin Walji. The Applicant produced a copy death certificate for Mrs Walji and a copy of her will leaving the lease to such of Abbas Walji and/or Murtaza Walji who

shall survive her. It appears another member of the family was the executor, but we accept the Applicant's evidence that in the days before the hearing it had been informed that the other beneficiary, Murtaza Walji, also consented. While this is not enough to count as one of the pre-application consents, the consent from the beneficiaries is obviously relevant to the considerations later in this decision.

18. Similarly, we accept the Applicant's evidence that, while the leaseholder of flat 72 (Jubilee Buildings (Peterborough) Limited) had not consented before the application was made, Mr Briggs, one of the directors, had called the Applicant on 9 November 2022 and said he consented to the variations and works, having already had the gas supply to flat 72 removed. He had been asked to confirm this in writing and had not done so, but we are satisfied that this leaseholder now consents.
19. The pre-application response from the leaseholder of flat 23 said: "*In principal I am Ok to accept it, however property is in process of sale so I have to share this with the buyer solicitor team first.*" The Applicant said the leaseholder was still seeking to sell the lease but the previous sale referred to was not going ahead and all information would be provided to any prospective buyer's solicitors. On balance, and since this was undisputed, we are satisfied that this was sufficient. The response from this leaseholder was subject only to a sale which is not proceeding and they have done nothing in these proceedings to indicate that they had not intended to give consent.
20. Even if we are wrong about that, we are satisfied that the leaseholders of flats 86 and 112 had consented before the application was made, giving the Applicant the essential 15 pre-application consents from leaseholders:
  - a. one of the joint leaseholders of flat 86 had signed to consent before the application was made. The supplemental bundle includes a consent dated 5 November 2022 signed by both leaseholders. In the absence of any dispute about this, we accept Ms Lyne's submission that the pre-application consent was probably given on behalf of both joint owners and the post-application document simply confirms this.
  - b. as to flat 112, the pre-application response from the leaseholder approved the "*electric heating system*". Again, in the absence of any dispute about this, we accept Ms Lyne's submission that this was giving consent to the proposed lease variations. The Applicant's letter in April 2022 was clear about the proposed lease variations it was asking leaseholders to agree. Despite all the correspondence since then about these proceedings, there had been no suggestion that the leaseholder had not intended to consent to the lease variations.
21. Accordingly, before the application was made the Applicant had secured consent from at least 16 of the parties concerned (including the Applicant itself) and not more than two of the parties concerned opposed, satisfying the condition in section 37(5).

## **Object to be achieved**

22. The Upper Tribunal confirmed in Shellpoint Trustees Ltd v Barnett [2012] UKUT 375 (LC) that section 37 of the Act is not intended to allow rewriting of leases merely because that is the will of the majority and it may seem sensible. The Applicant needs to show that the leases do not already have sufficient or satisfactory provisions, identifying the object to be achieved by the variations. Further, by section 37(3), the grounds on which an application may be made under section 37 are that the object to be achieved by the variations cannot be satisfactorily achieved unless all the leases are varied to the same effect.
23. We are satisfied that the current lease provisions are no longer sufficient or satisfactory because they provide for maintenance of what is now an obsolete flue and individual boiler system, which will in this building become prohibitively expensive and/or impossible to maintain as time passes. We accept Mr Fort's unchallenged evidence that it is likely to cost over £70,000 to replace each of the six existing flue ducts, which would otherwise need to be replaced because they are in poor condition, plus annual inspection charges, and leaseholders would be liable to contribute towards these costs through the service charge. Similarly, we accept his evidence that this would not solve the problem because the current market does not readily provide individual boilers and flues suitable for the external wall system at this building.
24. Ms Lyne said the object of the variations was to accommodate removal of the gas supply and conduits, decommissioning of the flue, installation of the new electrical system and service charges for future maintenance and use of the new system. We are satisfied that this object is appropriate and cannot be satisfactorily achieved unless all the leases are varied to the same effect. It only works if the flue can be decommissioned entirely. Similarly, if the landlord is responsible for maintenance of communal gas supply conduits used only by two (or a small number of) flats, that is likely to involve disproportionate costs. Again, none of this was disputed.

## **Whether to make an order**

25. Under section 38 of the Act, since we are satisfied that the qualifying conditions in section 37 are satisfied, we "*may*" make an order varying the specified leases unless section 38(6) applies. Section 38(6) provides that a tribunal shall not make an order effecting any variation of a lease if it appears to the tribunal that: (a) the variation "*would be likely substantially to prejudice any respondent ... or any person who is not a party to the application*" and that compensation would not be an adequate remedy; or (b) that: "*for any other reason it would not be reasonable in the circumstances for the variation to be effected.*" Section 38(10) gives power to provide for a party to pay compensation in respect of any loss or disadvantage the tribunal considers is likely to be suffered as a result of the variation.
26. Our first concern had been whether (aside from the basic question of qualifying pre-application consents) leaseholders had given sufficiently informed consent to the variations, since the drafting of long leases and communal heating systems can cause difficult problems. However, we were

informed that the proposed variations had been drafted by a transactional commercial property solicitor at Capsticks. The new right which would be created by paragraph 2(ii) of Part 3 of the First Schedule, in particular, appears wide, but we recognise that flexibility is needed depending on the different installations in the flats. The Applicant confirmed the provision for replacement of conduits, fittings and appliances is limited by the concluding words of the new right, to be read in the context of this specific project of converting from gas to electricity-powered heating, hot water and appliances.

27. We had also been reassured that the new system would simply rely on electrical cabling through the building, rather than communal hot water or air conduits in the common parts or any communal heating source, so appears to be accommodated by the wording of the proposed variations. The Applicant considers that repairing obligations will then follow the current pattern, with leaseholders responsible for maintenance of the new installations in the flat (with 10-year warranties from the contractors for the boiler and radiators) and any maintenance of the electrical supply arrangements in the communal areas being a service charge expense.
28. Further, the Respondents had repeatedly been encouraged to take their own independent legal advice and had said nothing to question the proposed wording. The original letter of 13 April 2022 said that the leaseholders should read the proposed variations carefully and might wish to take independent legal advice as to the legal effect of these proposed changes. The letter of 25 August 2022 from the Applicant's solicitors, sending copies of the application documents to each Respondent, referred again to independent legal advice and the Leasehold Advisory Service. As noted above, the tribunal had also encouraged the Respondents to take independent legal advice. In their letter of 3 November 2022 sending the further directions to the Respondents, the Applicant's representatives had recommended again that the Respondents take their own independent legal advice in relation to the application and the proposed lease variations.
29. Our second concern was that the Respondents should have reasonable certainty that the works would be carried out and completed within a reasonable time. Our third concern was that there should be reassurance that the costs of the works, the costs of these proceedings and the costs of applications to the Land Registry to register any variation order would be borne by the Applicant and not recovered from the Respondents through the service charge or otherwise. Looking at the relevant correspondence, that is in substance the deal proposed to Respondents when they were asked to consent to the proposed lease variations. Ms Lyne took instructions from Mr Fort, who helpfully confirmed that the Applicant would be willing to give an undertaking about these matters (in the terms set out in the condition to the order enclosed with this decision) if we made an order conditional on such undertaking being provided.
30. We asked about energy efficiency and whether an electrical system might involve higher running costs. The EPC calculations produced by the Applicant suggested that the current and proposed systems are both in Band C, but the new system would be rated slightly less efficient (73 compared to 74) than the

current system. Mr Fort explained that the Applicant had considered other systems but it would be too costly and complex to replace the existing communal system with a new communal system with a communal boiler and (again) both individual gas boilers and air heat pumps would be difficult to fit to the external walls of this building, even apart from the expense of the latter. He confirmed the electric radiators will each have smart timers so they can be set to work individually as needed. He also told us that each leaseholder would have their own consumption meters and would be offered a range of options in this respect to help with energy efficiency and other environmental matters.

31. The Applicant had said the proposed works should take 2-3 days per flat and they would work with leaseholders to minimise inconvenience. They confirmed it would not be necessary for leaseholders to be decanted (move out temporarily to allow the works to be carried out). Mr Fort said many had been asking when the works would begin. We accept his evidence that the amendments and proposed works are likely to reduce future service charge liabilities, even looking at the potential costs of the shared flue in isolation. This is likely to substantially outweigh the potential increase in energy costs.
32. In the circumstances, we have decided to make the variations sought by the Applicant, subject to the condition we have described. We are satisfied that we should not order compensation to be paid to any person. The Applicant would carry out the proposed works and has obtained and would register the variations at its own expense. None of the Respondents have asked in these proceedings for compensation. The leaseholder of flat 35 has been unfortunate if they had already converted from gas to electric heating and hot water at their own expense before the Applicant made its proposals. However, they and the other Respondents have said nothing in these proceedings, let alone anything to indicate that the variations are likely to cause any loss or disadvantage for which they should be compensated.

**Judge David Wyatt**

**12 January 2023**

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.



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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## ANNEX

### **Sections 37 & 38 of the Landlord and Tenant Act 1987**

#### **37.— Application by majority of parties for variation of leases.**

(1) Subject to the following provisions of this section, an application may be made to the appropriate tribunal in respect of two or more leases for an order varying each of those leases in such manner as is specified in the application.

(2) Those leases must be long leases of flats under which the landlord is the same person, but they need not be leases of flats which are in the same building, nor leases which are drafted in identical terms.

(3) The grounds on which an application may be made under this section are that the object to be achieved by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect.

(4) An application under this section in respect of any leases may be made by the landlord or any of the tenants under the leases.

(5) Any such application shall only be made if—

(a) in a case where the application is in respect of less than nine leases, all, or all but one, of the parties concerned consent to it; or

(b) in a case where the application is in respect of more than eight leases, it is not opposed for any reason by more than 10 per cent. of the total number of the parties concerned and at least 75 per cent. of that number consent to it.

(6) For the purposes of subsection (5)—

(a) in the case of each lease in respect of which the application is made, the tenant under the lease shall constitute one of the parties concerned (so that in determining the total number of the parties concerned a person who is the tenant under a number of such leases shall be regarded as constituting a corresponding number of the parties concerned); and

(b) the landlord shall also constitute one of the parties concerned.

#### **38.— Orders varying leases.**

(1) If, on an application under section 35, the grounds on which the application was made are established to the satisfaction of the tribunal, the tribunal may (subject to subsections (6) and (7)) make an order varying the lease specified in the application in such manner as is specified in the order.

(2) If—

(a) an application under section 36 was made in connection with that application, and

(b) the grounds set out in subsection (3) of that section are established to the satisfaction of the tribunal with respect to the leases specified in the application under section 36,

the tribunal may (subject to subsections (6) and (7)) also make an order varying each of those leases in such manner as is specified in the order.

(3) If, on an application under section 37, the grounds set out in subsection (3) of that section are established to the satisfaction of the tribunal with respect to the leases specified in the application, the tribunal may (subject to subsections (6) and (7)) make an order varying each of those leases in such manner as is specified in the order.

(4) The variation specified in an order under subsection (1) or (2) may be either the variation specified in the relevant application under section 35 or 36 or such other variation as the tribunal thinks fit.

(5) If the grounds referred to in subsection (2) or (3) (as the case may be) are established to the satisfaction of the tribunal with respect to some but not all of the leases specified in the application, the power to make an order under that subsection shall extend to those leases only.

(6) A tribunal shall not make an order under this section effecting any variation of a lease if it appears to the tribunal —

- (a) that the variation would be likely substantially to prejudice—
  - (i) any respondent to the application, or
  - (ii) any person who is not a party to the application,and that an award under subsection (10) would not afford him adequate compensation, or
- (b) that for any other reason it would not be reasonable in the circumstances for the variation to be effected.

(7) A tribunal shall not, on an application relating to the provision to be made by a lease with respect to insurance, make an order under this section effecting any variation of the lease—

- (a) which terminates any existing right of the landlord under its terms to nominate an insurer for insurance purposes; or
- (b) which requires the landlord to nominate a number of insurers from which the tenant would be entitled to select an insurer for those purposes; or
- (c) which, in a case where the lease requires the tenant to effect insurance with a specified insurer, requires the tenant to effect insurance otherwise than with another specified insurer.

(8) A tribunal may, instead of making an order varying a lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified; and accordingly any reference in this Part (however expressed) to an order which effects any variation of a lease or to any variation effected by an order shall include a reference to an order which directs the parties to a lease to effect a variation of it or (as the case may be) a reference to any variation effected in pursuance of such an order.

(9) A tribunal may by order direct that a memorandum of any variation of a lease effected by an order under this section shall be endorsed on such documents as are specified in the order.

(10) Where a tribunal makes an order under this section 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.

**IN THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)**

**IN THE MATTER OF PART IV OF THE LANDLORD AND TENANT ACT  
1987**

**IN THE MATTER OF CUMBERLAND HOUSE, ST MARY'S COURT,  
PETERBOROUGH**

**BETWEEN:**

**CROSS KEYS HOMES LIMITED**

**Applicant**

**- and -**

**MAA INVESTMENTS LIMITED AND THE OTHER LEASEHOLDERS  
NAMED IN SCHEDULE 1 TO THIS ORDER**

**Respondents**

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**ORDER**

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UPON the application by the Applicant under section 37 of the Landlord and Tenant Act 1987 and for the reasons described in the accompanying decision notice

AND UPON CONDITION THAT by 31 January 2023 the Applicant delivers to the tribunal a copy of an undertaking:

- (a) to use their best endeavours to carry out and complete the works described in the Applicant's letter of 13 April 2022 by 30 September 2023; and
- (b) that the Applicant's costs of those works, these lease variation proceedings and the applications to the Land Registry to register this order will not be charged to the leaseholders, whether through the service charge or otherwise.

IT IS ORDERED that with effect from the date the above condition is satisfied:

1. The leases set out in Schedule 1 to this order are amended as set out in Schedule 2 to this order.
2. The Applicant shall make an application to HM Land Registry against the freehold title and the titles set out in Schedule 1 to this order to register the variations granted by the tribunal at paragraph 1 of this order.

**Judge David Wyatt**

**12 January 2023**

**SCHEDULE 1 - RESPONDENTS**

<b>Respondent</b>	<b>Leaseholder of flat</b>	<b>Leasehold title number</b>
MAA Investments Limited	13	CB97630
Shirin Walji	14	CB355024
Ernesta Mauricaite	23	CB444537
Aminabai Moledina	35	CB269008
John Richard Wilson & Christine Patricia Mary Wilson	51	CB268287
Njole Kleismantiene & Ramunas Kleismantas	53	CB140024
Carola Kuen	54	CB241604
John Colin Bleazard	56	CB105975
Doreen Elizabeth Welch	63	CB106307
Sukaina Zulfikarali Manji	71	CB346924
Jubilee Buildings (Peterborough) Limited	72	CB142485
Ali Alistair Shoarian-Satari	73	CB78405
Sheal Aranyi	83	CB99015
Vika Jablonskyte	84	CB388271
Russell Laxton & Christine Ann Laxton	86	CB61410
Hussain Habib Walji	94	CB269301
Jeffrey Bernard Harris & Dalia Harris	95	CB53900
Neil Andrew Mather	112	CB147011
Mr Ryan James Alexander Cook	113	CB92424
Ali Alistair Shoarian-Satari	114	CB278275

## SCHEDULE 2 - VARIATIONS

a. First Schedule Part II (easements and rights granted)

Paragraph 1 of Part II of the First Schedule is amended by inserting between: “*of free and uninterrupted passage of water soil electricity telephone and other services*” and: “*through the conduits now laid or within a period of Eighty years from the date hereof to be laid in under or upon the Building so far as are necessary for the enjoyment of the premises*” the words: “*(to the extent they are available and without prejudice to the Landlord rights to disconnect the supply of gas and to remove and/or decommission any conduits for the supply of gas to the Building)*”.

b. First Schedule Part III (easements and rights excepted and reserved)

Part III of the First Schedule is amended by inserting between the existing paragraphs 2 and 3 the following words:

*“2 (i) the right to disconnect the supply of gas to the Building and to remove or decommission any conduits pertaining to the supply of gas to the Building*

*2 (ii) a right of entry for the Landlord, its agents, its workmen and those authorised by it upon the premises with or without tools, machinery or plant, to enter into any premises within the Building on reasonable prior written notice (except in the case of an emergency) and at reasonable times of the day to carry out such works and do such acts as the Landlord reasonably considers necessary for the purposes of removing the supply of gas to the building and/or the removal of and/or decommissioning of any conduits pertaining to the supply of gas to the Building and/or replace and/or installing any conduits fixtures or fittings or appliances within the Building and/or premises to provide an alternative electrical supply”.*

c. Fourth Schedule (landlord’s covenants)

Paragraph 4.2 of the Fourth Schedule is amended by inserting after: “*The Council hereby covenants with the lessee that (subject to the Lessee in common with the owners of the adjoining or other parts of the Building entitled to use the same paying a fair proportion according to user of the cost of compliance with this covenant) the Council and its successors in title will henceforth maintain and repair and replace and reinstate as necessary the conduits serving the premises and the said other parts of the Building*” the words: “*Provided that this covenant does not extend to the gas supply and any flue within the Building*”.

d. Fifth Schedule (expenses ... in respect of which the Lessee is to pay a service charge)

The Fifth Schedule is amended by inserting the following words:

*“Provided always that the costs of the Landlord in exercising its rights pursuant to paragraph 2(i) or 2(ii) of Part III of the First Schedule shall not form part of the Outgoings and Expenditure to form part of the service charge payable by the lessee but without prejudice to any ongoing maintenance repair consumption and any*

*other costs expenses of any such items installed by the Landlord and/or their ongoing use and supply of power which serve the premises and/or the Building which shall form part of the Outgoings and Expenses which the Lessee is required to pay as part of the service charge.”*