



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

**Case reference** : **LON/00BK/LVT/2023/0004**

**Property** : **43 St Stephen's Gardens  
London  
W2 5NA ( "the Property")**

**Applicant** : **43 St Stephen's Gardens (Bayswater)  
Residents' Association Limited**

**Representative** : **None**

**Respondents** : **Each of the leaseholders as per the  
application**

**Representative** : **None**

**Type of application** : **To vary a lease under s.37 of the  
Landlord & Tenant Act 1987**

**Tribunal members** : **Judge Holdsworth**

**Date and venue of  
Hearing** : **1 May 2024  
Remote**

**Date of Decision** : **16 May 2024**

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**DECISION**

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The Tribunal determines the application to vary the term "Particulars Clause 7" of all 8 leases at the property ( the "**property leases**" ) is approved.

The wording of the approved variation is attached at Appendices A -C. This variation will replace and supersede the existing wording at Particulars Clause 7 of the property leases.

## 1. **Background and Application**

- 1.1 This is an application by the 43 St Stephen's Gardens (Bayswater) Residents' Association Limited ('**the Association**') to vary the leases of all eight flats at 43 St Stephen's Gardens, London W2 5NA ('**the Property**') under s.37 of the Landlord & Tenant Act 1987 ('**the 1987 Act**').
- 1.2 The applicants are both landlord and leaseholders of the dwellings at the property.
- 1.3 Directions were issued by Tribunal dated 20 October 2023. These gave guidance as to the matters to be considered prior to variation of the leases.
- 1.4 The Directions proposed the matter be determined on written submissions and both parties agreed to the procedure. Tribunal subsequently received a bundle and witness statements from the Applicant.
- 1.5 A case management hearing ('CMH') was held on 15 March 2024. This hearing was held to discuss the submission of relevant materials to enable the application to proceed.
- 1.6 Tribunal had advised that, to vary the lease of the Property, it would be necessary for all eight leaseholders to grant consent. Tribunal had concern that written consents from all leaseholders had not been received.
- 1.7 Judge Timothy Powell confirmed in the Order issued following the CMH that all eight leaseholders had written to Tribunal, confirming their consent to the proposed changes to the service charge allocation.
  - 1.7.1 At the CMH it was suggested by the managing agent that a slight amendment to the draft wording of the variation was being considered. By e-mail dated 24 March 2024, the managing agents confirmed no further change to the wording of the clause was now proposed and the amendment was as submitted.
  - 1.7.2 The application was made on the basis of written representations, to which all parties had agreed.

### **The Property**

- 1.8 The Property comprises a period terraced building converted into eight self-contained flats. Tribunal is told that, on conversion of the building to flats, a lift was installed to serve five floors.

### **Current service charge provisions**

- 1.9 The Tribunal is told all leaseholders contribute by way of a service charge to the maintenance and upkeep of the exterior of the building and the

roof. These charges also cover the cost of the buildings' insurance and other expenditure not specific to the internal common parts.

- 1.10 All flats, with the exception of the lower ground floor flat which has its own front entrance in the basement area, contribute to the internal common parts expenditure. The lower ground floor flat has no access to the lift from the common parts.
- 1.11 The Applicant advised there was no specific mention in the lease, or relevant schedules, as to the leaseholders' contribution to the costs of any expenditure relating to a lift.
- 1.12 The Applicant explained that between 1997 and 1999, Deeds of Variation were made with the leaseholders of flats 2, 3, 4, 5, 6, 7 and 8 that modified the lease terms in respect of the common part service charge liability. The Deeds also allocated expenditure on the lift between all leaseholders save for the leaseholder to Flat 1. The Deeds provide for service charges proportions to be calculated in accordance with the rateable value of each individual flat.
- 1.13 A further significant change to the lease wording since inception of the original lease is the inclusion within the demise of flat 1 of the pavement vaults. This enlargement made flat 1 the largest within the Property.

### **Proposed amendments**

- 1.14 The leaseholders had for some time recognised that changes to the property and original lease terms had rendered the service charge proportions unfair and unreasonable.
- 1.15 The leaseholders subsequently held a meeting, in conjunction with the Property managers to discuss these matters and agreed the service charge should be calculated in proportion to the square meterage of each flat. They also agreed that all maintenance costs for the lift to be chargeable to the flats situate above ground floor.

### **The existing lease**

#### **Particulars Clause 7**

- 1.16 The Tribunal was provided with copy leases for flats, 1, 2, 3, 5, 7 and 8. The relevant leases clauses are presented below.
- 1.17 At section 7 of the particulars the lease states:

*"Tenant share of total expenditure*

*"The proportion which the rateable value of the flat at the commencement of the term bears to the aggregate rateable values of the all the flats comprised in the building including the flat."*

### **1.18 Insurance**

Under Clause 2 the lease states “...by way of further or additional rent a fair proportion of the cost in effecting insurance on the building in accordance with the Lessors covenant in Clause 6 hereof”

### **1.19 Service charge**

The service charge liability is at Clause 4(4), this states:

“to pay the Interim Charge and the Service Charge (as those expressions defined in the Fifth Schedule) at the times and in the manner provided in the Fifth Schedule hereto”

### **1.20 Repair and maintenance liability**

The extent of repair and maintenance obligations are at Clause 5(a) which states

“ The Lessors covenant to maintain and keep in good and substantial repair:

- i. The main structure of the building including internal timbers and the exterior walls and foundations and the roof thereof (but without prejudice to the tenants obligations
- ii. All such gas and water mains and pipes drains waste and sewage ducts and electric cables wires and other conducting media as may be by the terms of this lease be enjoyed and used by the Tenant in common with the owners or tenants of the other flats in the building
- iii. The Common Parts
- iv. The boundary walls and fences except where they are the responsibility of the Tenant or any flat owner
- v. The Communal Areas
- vi. All other parts of the Building not included in the foregoing sub paragraphs (i) to (v) and not included in the demise of any other flat or part of the Building”

## **2. The law**

- 2.1 Section 37 of the Landlord and Tenant Act 1987 as amended provides as follows:

### **2.2 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.*

2.3 Section 38 makes provision for the orders that can be made and states, so far as relevant, as follows:

(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) ...

(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 affected.

(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) ..

(c) ..

*(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.*

### **3. Summary of issues**

- 3.1 It is common ground between the parties that the current allocation of service charges at Particulars clause 7 in the lease is defective. The proposed varied wording to remedy the deficiencies is at Appendix A. The amended wording for Particulars clause 7, set out at Appendix A, was confirmed as having been agreed by all consented leaseholders at the CMH held on 15 March 2024.
- 3.2 The Applicants provide gross internal areas (GIAs) for each flat. These are the basis for calculation of service charges under the proposed amendment. The floor areas are agreed by all parties, and listed at the attached Appendix B.
- 3.3 The service charge liabilities and costs are to be divided into three schedules as follows, the:
- exterior maintenance and upkeep of the building;
  - interior upkeep and maintenance excluding the costs of the lift; and
  - the cost of the upkeep and maintenance of the lift
- 3.4 The service charge proportions payable by the individual leaseholders under the proposal will vary by schedule and flat. The agreed service charge proportions by leaseholder are listed at Appendix C

**4. Decision and reasons**

- 4.1 This matter is determined solely on the basis of the written submissions made by the parties. It was not considered proportionate to inspect the Property or take further evidence.
- 4.2 It is agreed by all parties that GIAs for all flats are accurate and the proposed amendment to Particulars clause 7 be included within the property leases. For the avoidance of doubt all 8 leaseholders provide written confirmation of their approval to the variation.
- 4.3 The Tribunal concurs with the Applicant that anomalies in wording of the current lease terms lead to an unfair and disproportionate apportionment of maintenance liability costs. This is a valid ground for the Tribunal to allow a variation of the lease.
- 4.4 The variation to Particulars clause 7 is consented by all parties. The Tribunal identify no prejudice to any party caused by the adoption of the proposed amendment.
- 4.5 The Tribunal determines that a variation to the property leases, limited to the wording of Particulars Cause 7 at Appendix A with an allocation of service charges based upon the GIAs listed at Appendix B and the agreed proportions at Appendix C be approved.

**Name:** Ian B Holdsworth

**Date:** 16 May 2024



## **A p p e n d i x A**

### **Approved amended wording for particulars clause 7 of the lease**

The Tenant's share of the total expenditure shall be the proportion which the square meterage of the flat at the commencement of the term ( GIA) bears to the aggregate square meterage of all the flats at the Property. The agreed GIAs are shown in Appendix B. The proportions payable under the relevant schedules at Appendix C.

## **A p p e n d i x B**

### **Gross internal area measurements for each flat ( square meters)**

Flat 1 (Basement) 99.11

Flat 2 (ground) 66.81

Flat 3 (Balcony) 84.64

Flat 4 (Mezzanine) 45.75

Flat 5 74.41

Flat 6 64.75

Flat 7 64.75

Flat 8 (top) 61.24

## **A p p e n d i x C**

### **Revised service charge proportions payable by the leaseholders**

1. The tenants share of the **exterior maintenance and upkeep of the building (Schedule 1 )** will be 17.65% for flat 1, 11.90% for flat 2, 15.07% for flat 3, 8.15% for flat 4, 13.25% for flat 5, 11.53% for flat 6 and 11.53% for flat 7 and 10.91% for flat 8
2. The tenants share of the **interior upkeep and maintenance excluding the costs of the lift ( Schedule 2 )** shall be £ 14.45% for flat 2 and 18.31% for Flat 3, 9.90% for flat 4, 16.09% for flat 5, 14.00% for flat 6, 14.00% for flat 7 and 13.25% for flat 8
3. The tenants share for the **cost of the upkeep and maintenance of the lift ( Schedule 3 )** shall be shared equally between flats 3,4,5,6,7 & 8 with each flat paying 16.667%
4. The maintenance and upkeep of the exterior, interior and lift will include all costs relevant to the expenditure to renew replace and upgrade as necessary in accordance with any regulations made by the relevant authorities.

### **Summary table of service charge proportions for each flat**

The proposed Service Charge proportions are:

<b>Sch 1 %</b>	<b>Sch 2 %</b>	<b>Sch 3 %</b>	
17.65%			Flat 1 (Basement)
11.90%	14.45%		Flat 2 (ground)
15.07%	18.31% 1	16.667%	Flat 3 (Balcony)
8.15%	9.90%	16.667%	Flat 4 (Mezzanine)
13.25%	16.09%	16.667%	Flat 5
11.53%	14.00%	16.667%	Flat 6
11.53%	14.00%	16.667%	Flat 7
10.91%	13.25%	16.667%	Flat 8 (top)

## **RIGHTS OF APPEAL**

- 1 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.
- 2 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.
- 3 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.
- 4 The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie, 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.



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

**Case reference** : **LON/00BK/LVT/2023/0004**

**Property** : **43 St Stephen's Gardens  
London  
W2 5NA ( "the Property")**

**Applicant** : **43 St Stephen's Gardens  
(Bayswater) Residents' Association  
Limited**

**Representative** : **None**

**Respondent** : **Each of the leaseholders as per the  
application**

**Representative** : **None**

**Type of application** : **For an order varying leases**

**Tribunal** : **Ian B Holdsworth**

**Date of Order** : **16 May 2024**

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**ORDER**

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**UPON** considering the applications made by **43 St Stephen's Gardens (Bayswater) Residents' Association Limited** under s.37 Landlord and Tenant Act 1987

**AND UPON** an Appendix being attached to this Order, which specifies the relevant reversionary title number to the residential leases at **43 St Stephen's**

**Gardens London W2 5NA ( "the Property")** together with each leaseholder's name, flat number and title number

**IT IS ORDERED**, pursuant to section 38, that each of the residential leases in respect of referred to below are amended as follows:

1. The Tenant's share of the total expenditure shall be the proportion which the square meterage of the flat at the commencement of the term, gross internal area( GIA) bears to the aggregate square meterage of all the flats at the Property. The agreed GIAs are shown at 2 below. The proportions of service charge payable for each liability and by leaseholder are at 3 below.

**2. Gross internal area measurements for each flat ( square meterage)**

4.6 Flat 1 (Basement)	99.11
4.7 Flat 2 (ground)	66.81
4.8 Flat 3 (Balcony	84.64
4.9 Flat 4 (Mezzanine)	45.75
4.10 Flat 5	74.41
4.11 Flat 6	64.75
4.12 Flat 7	64.75
4.13 Flat 8 (top)	61.24

**3. Revised service charge proportions payable by the leaseholders**

1. The tenants share of the **exterior maintenance and upkeep of the building** will be 17.65% for flat 1, 11.90% for flat 2, 15.07% for flat 3, 8.15% for flat 4, 13.25% for flat 5, 11.53% for flat 6 and 11.53% for flat 7 and 10.91% for flat 8
2. The tenants share of the **interior upkeep and maintenance excluding the costs of the lift** shall be £ 14.45% for flat 2 and 18.31% for Flat 3, 9.90% for flat 4, 16.09% for flat 5, 14.00% for flat 6, 14.00% for flat 7 and 13.25% for flat 8
3. The tenants share for the cost of the **upkeep and maintenance of the lift** shall be shared equally between flats 3,4,5,6,7 & 8 with each flat paying 16.667%
4. The maintenance and upkeep of the exterior, interior and lift will include all costs relevant to the expenditure to renew replace and upgrade as necessary in accordance with any regulations made by the relevant authorities.

IT IS FURTHER ORDERED that each of the variations referred to above are to take effect and bind each of the parties to the leases with effect from and including **1 September 2024**.

The Tribunal **directs** the solicitor for the Applicants no later than **4 August 2024**:

- (i) file a copy of this Order together with a copy of the Tribunal's decision, at HM Land Registry.
- (ii) confirm to the Tribunal that it has done so.

The Tribunal **directs** HM Land Registry to enter a note in the register of each of the leasehold titles of the residential leases in respect of **43 St Stephen's Gardens London W2 5NA** (as set out in the Appendix) which are varied by this order and in the register of the relevant reversionary freehold title, confirming that the terms of the registered lease has been varied by this Order, dated 8 May 2024 and to file a copy of this Order under each affected title.

**Name:** Tribunal Judge Holdsworth

**Date:** 16 May 2024

## Appendix to Order

Tribunal Case Reference: **LON/00BK/LVT/2023/0004**

Property Address: **43 St Stephen's Gardens London W2 5NA**

Reversionary title number: **NGL784071**

### Leases varied by this Order

Address	Name of Leaseholder(s)	Title Number
Flat 1 32 St Stephens Gardens W2 5NA	Natacha Chossudovsy	NGL673342
Flat 2 43 St Stephens Gardens W2 5NA	Jenny Lo	NGL653376
Flat 3 45 St Stephens Gardens W2 5NA	Beata von Oelreich	NGL639701
Flat 4 45 St Stephens Gardens W2 5NA	Maria Shum	NGL640011
Flat 5 43 St Stephens Gardens W2 5NA	Brigitte Reiffenstuel	NGL653319
Flat 6 43 St Stephens Gardens W2 5NA	Ian McLoughlin	NGL666400
Flat 7 43 St Stephens Gardens W2 5NA	Mark Phillips	NGL 672347
Flat 8 43 St Stephens Gardens W2 5NA	Michael Hoyle	NGL781134