



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

**Case reference** : **LON/00AW/LVT/2024/0001**

**Property** : **12A Penzance Place, London W11 4PA**

**Applicant** : **12A Penzance Place Limited**

**Representative** : **Stark Uberoi**

**Respondents** : **Elana Shalneva , Caroline Andre  
Logsdail, Paul Leese, Deborah Jayne  
Burgess, Peter Jones, Ann Jones,  
Angharad Jones and Tomos Jones,  
Adrian Ginsberg**

**Representative** : **Hamlins solicitors for Ms Shalneva**

**Type of application** : **To vary two or more leases by a majority  
under section 37 Landlord and tenant  
Act 1987**

**Tribunal members** : **Judge Pittaway  
Mr O Dowty MRICS.**

**Date of Hearing** : **2 July 2024**

**Date of decision** : **25 September 2024**

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**DECISION**

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## **Decisions of the Tribunal**

1. The Tribunal grants the application for the variation of leases at the property under sections 35, 37 and 38 of the Landlord and Tenant Act 1987, (“**the Act**”).
2. The Tribunal makes an order varying each of the leases at 12A Penzance Place, London W11 4PA (the ‘**Property**’) in the terms of the Order attached to this decision.
3. The covenants conditions and remaining provisions contained in each Respondent’s lease shall continue in full force and effect except as varied by this order.
4. The Tribunal does not award any compensation to any party to the application.
5. The reasons for the decision are set out below.
6. The relevant legislation is set out in an appendix to this decision.
7. Within 21 days of this decision the applicant shall provide the Tribunal a schedule setting out all the e mail addresses it may have for the respondents. Where it does not have an e mail address it shall provide the Tribunal with stamped addressed envelopes addressed to each leaseholder, to enable the Tribunal to serve a copy of this decision on them (as is required following the Upper Tribunal decision in *Hyslop v 38/41 CHG Residents Co Ltd* [2017] UKUT 0398 (LC)).
8. **Background**
9. The applicant seeks to vary six leases under section 37 of the Landlord and Tenant Act 1987 ("the **1987 Act**").
10. The variation sought relates to the variation of the absolute prohibition against underletting in clause 2.15 of the leases so that underletting is permitted in prescribed circumstances.
11. The Tribunal issued Directions on 5 March 2024 in which it directed that the applicant sends the Directions to every leaseholder by 19 March 2024 and confirm to the Tribunal that it had done so. The applicant confirmed that it had done so.
12. The Directions also contemplated that within two weeks of the Directions the applicant should give notice to any other persons not named as parties (which could include mortgage lenders) that it knew were likely to be affected by any variation of the leases so that they might, if they wished apply to be joined as a party to the application.

13. The Directions provided that any respondent wishing to submit comments/representations to the tribunal should send these to the applicant and if they wished to take part in the proceedings they should request a copy of the bundle.
14. Applicant was directed by 21 May 2024 to send to any respondent who had requested a bundle and to the tribunal a bundle.
15. The Directions stated that the application would be dealt with at a hearing.
16. At the hearing it became clear that the applicant had not notified any other person, other than the leaseholders, of the application. Mr Fain, the applicant's counsel, confirmed that through an oversight the applicant had not given notice to the mortgage lender of the 999 year lease of Flat 2, More 2 Life Ltd, of the application, as required by paragraph (2) of the amended Directions of 5 March 2024.
17. The Tribunal therefore directed that by 9 July 2024 the applicant give notice to More 2 Life Ltd of the application and that the hearing had taken place on 2 July 2024. The applicant was directed to inform More 2 Life Ltd that it has the right to apply to the Tribunal to be joined as a party to the application and it was given until 23 July to do so.
18. On 22 July 2024 More 2 Life Limited responded that they were considering the matter, but the Tribunal has received no application from More 2 Life Ltd to be joined as a party to the application.
19. At the hearing the applicant was also given the opportunity of reconsidering the wording of clause 2.15(J) of the amended Clause 2.15
20. The applicant confirmed to the tribunal on 6 August that they did not wish to amend the wording of clause 2.15.

### **The hearing**

21. The hearing took place on 2 July 2024 attended by Mr Fain of counsel, Mr Petrikos of Stark Uberoi, Ms Aujla of Hammonds, Mr P Jones and Ms Burgess.
22. The applicant was represented at the hearing by Mr Fain of counsel. The only respondent opposing the application is Ms Shalneva, the tenant of Flat 3. Ms Shalneva did not attend the hearing and was not represented. Ms Aujla, of Hammonds her solicitors, attended the hearing, but stated that her attendance was as an observer only, and she did not participate in the hearing.
23. There were before the Tribunal a bundle of 441 pages, a skeleton argument from Mr Fain of 5 pages, and the authorities to which he referred, namely

*Shellpoint Trustees Ltd v Barnett* [2012] UKUT 375 (LC)  
*Duval v 11-13 Randolph Crescent Ltd* [2020] UKSC 18 (**'Duval'**)

24. The Tribunal heard (limited) oral evidence from Mr Jones and submissions from Mr Fain.

### **The Issues**

25. In the Directions the Tribunal identified the following issues to be determined:

- What is the object to be achieved by the proposed variation? Can the object be achieved satisfactorily without all the leases being varied to the same effect?
- Is the proposed variation within the contemplation of sections 37 and 38 of the 1987 Act?
- Is there a sufficient majority for an application under section 37 of the 1987 Act?
- If it does make an order varying the leases, should the tribunal order any person to pay compensation to any other person (see section 38(10) of the 1987 Act).

### **The Applicant's case**

26. The applicant is the freehold owner of 12A Penzance Place. The building is a period end of terrace conversion containing six flats, each held on a 999 year lease. It is the 999 year leases of the each of the flats that the applicant is seeking to vary.

27. During the hearing the Tribunal was referred to the 999 year lease of Flat 1 and Mr Fain confirmed that all six leases contain materially the same terms. That is the lease that the Tribunal has reviewed. In the interests of proportionality the Tribunal has not reviewed all six leases.

28. The respondents are the leaseholders of the 999 year leases of the six flats. Of the respondents only Ms Shalneva does not consent to the application. Mr Fain put her position as being that the current position should be maintained whereby there is an absolute prohibition on sublettings, which can only be waived if all leaseholders agree.

29. The 999 year lease of Flat 3 is a concurrent lease. Ms Shalneva is the registered proprietor of the 999 year lease of Flat 3 and is also the registered proprietor of an occupational lease of that flat. The applicant was not seeking to vary the occupational lease of Flat 3, only the 999 year lease. It is not able to do so as under section 37(2) an application can only be made in relation to leases where the landlord is the same person. The applicant is not the landlord of the occupational lease of Flat 3, Ms Shalneva is.

30. The applicant seeks to vary clause 2.15 of the leases as set out in its application.
31. Mr Fain submitted that the object of the variations is to permit subletting without the consent of all the other leaseholders, in prescribed circumstances. Mr Fain referred the Tribunal to flats having been sublet in the past, and to correspondence in the bundle that evidenced that the ability of one tenant to veto subletting has led to disputes in the past, with the ability to veto subletting being used for ulterior motives.
32. The correspondence in the bundle indicates that Ms Shalneva would be prepared to agree to subletting on her terms.
33. Mr Fain submitted that the object, of permitting certain sublettings, cannot be satisfactorily achieved without varying the leases. He referred the Tribunal to the decision in *Duval*, and in particular Paragraph 55 of *Duval*, where it was held that where there is an absolute covenant in a lease a tenant is entitled, upon provision of security, to require the landlord to enforce it as an absolute covenant. The landlord cannot unilaterally vary or modify an absolute covenant or authorise what would otherwise be a breach of it.
34. Mr Fain submitted that the proposed variations did not prejudice any of the respondents. He referred the tribunal to a letter from James Rangeley MRICS which indicates that in his opinion the relaxation of the subletting restriction would enhance the value of the flats. Mr Fain submitted that in the circumstances there is likely to be no loss or disadvantage to any of the respondents and that there is therefore no basis for the tribunal to order compensation under section 38(10) of the 1987 Act.

### **Reasons for the tribunal decision**

35. On the evidence before it the tribunal finds that the proposed variation falls within the contemplation of section 37 of the 1987 Act. The proposed variation is to all the 999 year leases at the property, it varies more than two leases, the leases are long leases of flats under which the landlord is the same person, the application is made by the landlord under the 999 year leases; and a sufficient majority of the leaseholders (five out of six) consent to the variation.
36. The tribunal finds, having regard to the decision in *Duval*, that the object can only be satisfactorily achieved if all the leases are varied to the same effect.
37. The tribunal finds that no prejudice within the meaning of section 38(6) of the 1987 Act will be suffered by any respondent, nor any other person, as a result of the variation.
38. Section 38(10) provides a wide discretion to the Tribunal to award compensation to parties to an application. No respondent has made any

representations in the proceedings claiming loss or disadvantage, nor provided any evidence of the same. The tribunal therefore accepts the applicant's submission that no respondent will suffer a material loss or disadvantage and the Tribunal therefore does not award any compensation to any party to the application.

**Name:** Judge Pittaway **Date:** 25 September 2024

### **Rights of appeal**

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## APPENDIX

### 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 for an application 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.





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

**Case reference** : **LON/00AW/LVT/2024/0001**

**Property** : **12A Penzance Place London W11 4PA**

**Applicant** : **12A Penzance Place Limited**

**Representative** : **Starck Uberoi Solicitors Limited**

**Respondents** : **Elana Shalneva (1)  
Caroline Andre Logsdail (2)  
Paul Lease (3)  
Deborah Jayne Burgess (4)  
Peter Jones, Ann Jones, Angharad  
Jones, Tomos Jones (5)  
Adrian Ginsberg (6)**

**Representative** : **Hamlins LLP for Elana Shalneva**

**Type of application** : **For an order varying leases pursuant to  
section 37 Landlord and Tenant Act  
1987**

**Tribunal members** : **Judge Pittaway  
Mr O Dowty MRICS**

**Date of Order** : **25 September 2024**

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**ORDER**

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**UPON** considering the applications made by 12A Penzance Place Limited under s.37 Landlord and Tenant Act 1987

**AND UPON** Appendix 1 being attached to this Order, which specifies the relevant reversionary title number to the relevant residential leases at 12A

Penzance Place London W11 4PA together with each leaseholder's name, flat number and title number

**IT IS ORDERED**, pursuant to section 38, that each of the relevant residential leases in respect of 12A Penzance Place London W11 4PA referred to below is amended as set out in Appendix 2 to this Order.

**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 **23 October 2024**.

The Tribunal **DIRECTS** the solicitor for the Applicant no later than **20 November 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 12A Penzance Place London W11 4PA (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 25 September 2024 and to file a copy of this Order under each affected title.

**Name: Judge Pittaway**

**Date: 25 September 2024**

## Appendix 1 to Order

Tribunal Case Reference: **LON/00AW/LVT/2024/0001**  
Property Address: **12A Penzance Place London W11 4PA**  
Reversionary title number: **295958**

### Leases varied by this Order

Address	Name of Leaseholder(s)	Title Number
Flat 1 (ground floor)	Caroline Andre Logsdail	BGL97435
Flat 2 (ground floor and basement)	Paul Leese	BGL97436
Flat 3 (first floor)	Elana Shalneva	BGL97729
Flat 4 (first floor)	Deborah Jayne Burgess	BGL97437
Flat 5 (second floor)	Peter John Watkin Jones and Ann Mona Jones, Angharad Watcyn Jones and Tomos Watcyn Jones	BGL97438
Flat 6 (second floor)	Adrian Michael Ginsberg	BGL97439

## Appendix 2 to Order

### Variation

The deletion of clause 2.15 of each lease and its substitution with the following:

“2.15 Not to sublet or part with possession (save by way of assignment of the whole for which consent has been given under clause 2.17 hereof) of the whole or any part of the Demised Premises nor to hold or occupy the Demised Premises or any part thereof whatsoever as trustee or agent or otherwise for the benefit of any other person PROVIDED ALWAYS that the Tenant may mortgage or charge this Lease and that no permission shall be required to do so and FURTHER PROVIDED that subject to having occupied the flat for a continuous period of no less than 12 months from the date their ownership began the Tenant may with the consent of the Landlord grant an underlease of the whole of the Demised Premises subject to the following conditions:

- A) the proposed underlease is approved by the Landlord, and is to be for a term of not less than 6 months and not exceeding 12 months and is to be an assured shorthold tenancy agreement or any other tenancy agreement whereby the under tenant does not obtain security of tenure on expiry or earlier termination of the term
- B) If the term is sought to be extended subject to these conditions, then further consent, of the Landlord to any extended term must be obtained
- C) the underlease shall contain covenants substantially the same as those contained in the regulations in the lease hereto;
- D) the underlease shall provide that the undertenant must not do, or omit to do, anything that would or might cause the Tenant to be in breach of the Tenant Covenants or the regulations in the First Schedule
- E) the underlease shall provide that the under tenant must comply with the terms of the regulations of the Landlord referred to in clause 2.21 of the Lease (and any amendments thereto)
- F) the Landlord shall be provided with full details of the terms of the proposed under lease, the proposed occupiers, and two references for each such occupier (one of character and one financial ability) to be to the satisfaction of the Landlord in its sole discretion
- G) the Landlord shall be provided with evidence to its satisfaction that the proposed under tenants are not in receipt of benefits from DSS
- H) the Landlord shall be entitled to give notice to the Tenant to bring the under tenancy to an end for any breach of this clause or of the underlease, and the Tenant shall be required to action that notice forthwith

- I) the Tenant shall be responsible for all costs incurred by the Landlord in considering any application for consent to underlet or for any steps taken by it pursuant to this clause.
  
- J) Any application for Landlord consent under this clause shall be decided by the tenants on the basis of a majority and for the purposes of this provision, each flat shall be allowed one vote.