



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

Case reference : **CHI/29UN/LVT/2023/0010**

Property : **Northumberland Court,
2 Northumberland Avenue,
Kent CT9 3BS**

Applicants : **Northumberland Court Residents
(Cliftonville) Limited (1)
Nathan Coldwell (2)
Ruth Smythe (3)
Charles Gould (4)**

Representative : **Nathan Coldwell**

Respondents : **The Leaseholders as per the attached
schedule**

Representative : **Ms Kirsty McChesney, Mr Philip Porter,
Mr Paul Kelleher and Mr Julian Smith
appeared in person for themselves. The
other respondents did not appear and
were not represented.**

Type of application : **Application for an Order under sections
35 and 37 of the Landlord and Tenant Act
1987 (“the 1987 Act”)**

Tribunal members : **Mr Charles Norman FRICS
Valuer Chairman
Regional Judge Whitney**

Date of Hearing : **18 June 2024**

Venue : **The Tribunal Hearing Centre, Ashford
Kent**

Date of decision : **17 August 2024**

DECISION

Decision

- (1) The Tribunal directs that the leases be varied in accordance with the Order appended.**

Reasons

Background

1. The applicants seek an Order under sections 35 and 37 of the Landlord and Tenant Act 1987 to vary 42 long leases in Northumberland Court, Northumberland Avenue, Cliftonville Kent CT9 3BS. The variation sought is to (i) permit a reserve fund to be maintained and (ii) to amend insurance covenants.
2. The property was constructed as a hotel in 1935 and later converted to flats. The building has suffered from long-standing structural disrepair and management problems. These have led to previous applications to the Tribunal, most recently in connection with the appointment of a manager under section 24 of the Act (CHI/29UN/LAM/2019/0008 and CHI/29UN/LVM/2021/0005/0007).
3. In its decision of 29 August 2019 (CHI/29UN/LIS/2018/0058) (which concerned service charges) the Tribunal stated:
 14. The Tribunal in its decision recorded that the building required substantial investment to prevent further deterioration to the fabric of the building, caused by its construction and exposed position overlooking the Thames Estuary and North Sea. The Tribunal described that the directors of the Residents' Company had over the years since 1988 commissioned ten reports on the condition of the property which had highlighted priority works to be carried out, but the directors had not acted on those reports. The Tribunal highlighted that budgets had been prepared during those years but there had been ongoing arrears which meant there was not the funding for the intended works. The difficulties over funding had been compounded because the terms of the underleases did not allow the Residents' Company to maintain reserves.

4. Previous applications include another lease variation which was granted on 26 March 2014. That related to service charge contribution percentages.

Ownership Structure

5. The freehold of the Property is owned by Northumberland Court (2008) Limited which is registered at HM Land Registry under title number K21230. Northumberland Court Residents (Cliftonville) Limited (“The Residents’ Company”), holds a headlease of the property for a term of 999 years from 25 December 1950. The Residents’ Company granted underleases for terms of 999 years less one day from 25 December 1950 to the owners of the flats¹. Pursuant to those leases, the Residents’ Company is obliged to insure the property, to keep the property in a good state of repair and decoration, to keep the hall, stairs, landings and passages properly carpeted and cleaned and to keep the lifts in good order. The leaseholders are required to contribute to the costs of the Residents’ Company by way of a service charge.

The applicant’s case

6. The applicant’s case may be summarised as follows. The terms of the leases are very dated. The applicant relied on section 35 of the act and submitted that the leases failed to make satisfactory provision with respect to:
 - (i) the repair and maintenance of the building containing the flats and the communal areas outside the building, pursuant to s.35(2)(a);
 - (ii) the insurance of the building containing the flat or of any such land or building, pursuant to s.35(2)(b);
 - (iii) the provision or maintenance of services which are reasonably necessary to ensure that occupiers of the flats enjoy a reasonable standard of accommodation, pursuant to s.35(2)(d); and
 - (iv) the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party, pursuant to s.35(2)(e).
7. The decision of the Tribunal to appoint a manager demonstrated the serious problems with regard to repair maintenance and insurance and recovery of expenditure by the applicant. The need for a reserve fund was specifically referred to referred to by the Tribunal.
8. The insurance provision required modernisation. It was not realistic for the applicant to insure the building in the names of the applicant and each of the respondents. Ordinarily the interest of the leaseholders

¹ The underlease for Flat 12 is for 99 years less one day from 31 May 1961

would be expected to be noted on the policy. Further, insurance against fire and aircraft alone is insufficient.

9. In relation to section 37, the object to be achieved was the imposition on the lessor of an obligation to create a reserve fund to ease the financial burden of leaseholders, improve the service charge arrears position and enable the applicant to carry out work that is needed. The Residents' Company has no assets or income apart from the headlease and service charges it collects.
10. Both the proposed imposition of a reserve fund provision into the leases and the insurance amendment required that all leases in the block were similarly varied.
11. Following internal consultations by the Residents' Company, both proposals passed the voting threshold set out at section 37 of the Act. The establishment of the sinking fund and varying the insurance provisions were supported by 81% and opposed by 5%.
12. The applicants' responses to the respondent's submissions and witness statements were as follows. None of the responses have substance in relation to the variation sought. Ms McChesney has withdrawn her vote in support of the proposal for unrelated reasons. No other new votes were cast, amended or withdrawn. Even after the vote withdrawal by Ms McChesney, voting proportions were 79% in favour and 7% against. Therefore, the outcome was unaltered. Mr Kelleher raised unrelated concerns. Mr Smith only requested that the eventual Tribunal decision provides clarity in relation to the sinking fund established by the previous Tribunal appointed manager.

The Law

13. Relevant legislation is appended in the legal annex.

The Variation Sought

14. The applicants submitted a draft Order which annexed the proposed variation [35-40]². Mr Coldwell confirmed that this had been drafted by Brethertons solicitors, although they are not on the record in relation to this application. The draft variation is considered below.

The respondent's cases

15. Ms McChesney provided a statement of case verified by a statement of truth, which the Tribunal therefore treated as a witness statement. Insofar as relevant to the current proceedings this may be summarised as follows. Ms McChesney withdrew her support for the application as

² Square brackets denote bundle page numbers

the applicant had failed to provide final service charge accounts as promised. There were also complaints about the performance of the Tribunal appointed manager and service charges. The service charges Ms McChesney had received were now £5,000 per annum as compared to the £1,265 per annum that she was told about when she bought her flat in 2014. Consequently she felt vulnerable and at risk of losing her home. Ms McChesney was also concerned about the ongoing state of disrepair at the property. This was illustrated by photographs showing water ingress to her flat which had a detrimental impact on her health. Ms McChesney contended that the application should be put on hold until issues relating to the former Tribunal appointed manager had been addressed.

16. Mr Porter had made written submissions which may be summarised as follows. He made reference to advice received in 2009 from Hardmans solicitors who advised that the terms of the subleases were defective. He complained about the behaviour of the previous Tribunal appointed manager and made reference to the requirements for books of account to be compiled under the lease. He also complained that incorrect information was given in relation to SDLT payable for lease extensions.
17. Mr Kelleher had submitted an email to the applicants. In summary his concern was that the accounts were outstanding. He also complained about the former Tribunal appointed manager.
18. Mr Smith had submitted an email to the Tribunal. Mr Smith's case was that the Tribunal should give absolute certainty on the treatment of the sinking fund following the end of the FTT manager's appointment of 15 September 2023 and the date on which the proposed lease amendments take effect.

Findings

19. The Tribunal identified errors in the paragraphic and schedule references in the proposed variation and drew this to the attention of the parties. However this did not affect the substance of the application.
20. The Tribunal found that the voting evidence proved that the relevant thresholds under section 37 had been reached in the case of affirmative votes (75%) and that dissenting votes were below the alternative threshold (10%)³. Although the application was made both under section 35 (insurance) and 37 (reserve fund) of the Act, the Tribunal notes that both proposed variations were subject to the voting regime under section 37. The applicants also submitted that the insurance variation would need to apply to all lessees. Therefore, the Tribunal treats the insurance variation as being made under both sections 35 and 37 and the reserve fund under section 37.

³ In relation to a matter raised in the hearing as to whether the freeholder should also have a vote, section 60(1) of the Act defines "landlord" as immediate landlord, which would exclude the freeholder.

21. The Tribunal found that none of the objectors raised an ‘in principle’ objection in connection with the substance of this application. They raised other important matters but ones that are not before the Tribunal.
22. In the decision to appoint a Manager, the Tribunal did not find that the repairing covenants themselves were defective. It did however find that the absence of a reserve fund was a serious impediment to effective management. The Tribunal finds that the absence of a reserve fund does not amount to a defect within the meaning section 35(2)(a). However, in view of the history of the property and all the circumstances of the case the Tribunal found that there was a compelling case for the creation of a reserve fund, that section 37 was satisfied and that it should make an order under section 38(4). It finds that the variation would only be effective if all leases were similarly varied.
23. The Tribunal finds that the insurance clauses are defective under section 35(2)(b), that section 37 as also satisfied and that an order should be made under section 38(4). It finds that the variation would only be effective if all leases were similarly varied.
24. At the hearing, the Tribunal indicated that it was minded to grant the application, but to make modifications to the wording of the proposed variation, in accordance with section 38(4) of the Act. The Tribunal therefore provided a draft of its modified variation to the parties for comment over the lunch adjournment. No substantive comments were received.
25. The Tribunal therefore makes the Order in the form attached.

Mr Charles Norman FRICS

17 August 2024

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).

Schedule of Respondents

Flat number	Names
1	Ms Yana Harlock-Ryan
2	Lynne & Phillip Porter
3	Kirsty McChesney
4	Theresa Joyce
5	Geoff Ali & Terry Ali
6	Edna Gould (deceased) & Charlie Gould
7	Betty Day
8	Graham Kinnear
9	Courtney Smith & Alison Smith
10	Russell Pritchard
11	Bronia Kita
12	Rosemary Pretty
14	Michael Dallat
15	Grace Whiteley
16	Judi and Jacob Keene
17	N & E Coldwell
18	Aleea Yarsien
19	Ruth & Gilbert Smyth

20	Jim & Anna Dobbe
21	Paul Kelleher
22	Leanne Spencer & Antonia Bannasch
23	Anne-Marie Goldhawk
24	Ian Cook
25	Charlotte Ashworth
26	Grant Rigby
27	Ben Abbot
28	Hazel Drummond
29	Elyse Trickett
30	Jane Bonotto Campbell
31	C.Smith, S.Day & C.Day
32	Gerry Allen
33	G Neal
34	Elizabeth Coad
35	S. Finan
36	Sophie Broadwell
37	Leigh Roberts
A	Edna Gould (deceased) & Charlie Gould
B	Roy Lambert

C	Maryanna Forde
D	S & T Marasli
NCR	N.Coldwell, C.Gould & R.Smyth
Penthouse 1	Zoe & Julian Smith
Penthouse 2	Georgina & Lucan Fleet

Case Number:

FIRST TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

IN THE MATTER OF

Northumberland Court, Northumberland Avenue, Margate CT9 3BS

BETWEEN:

NORTHUMBERLAND COURT (CLIFTONVILLE) LIMITED

Applicant

And

VARIOUS LEASEHOLDERS OF FLATS AT NORTHUMBERLAND COURT

Respondents

ORDER

UPON DETERMINING THAT each of the 42 leases of flats (“the Flats”) situated at Northumberland Court, Northumberland Avenue, Margate CT9 3BS (the details of which are more particularly set out in the First Schedule hereto) (“the Leases”) fails to make satisfactory provision with respect to insurance of the building and further that it is necessary for effective management of the building to raise and maintain a reserve fund

AND UPON DETERMINING THAT the objects to be achieved cannot be satisfactorily achieved unless all of the leases are varied to the same effect

AND UPON NOTING THAT the variations sought by the Applicant (as modified by the Tribunal) and set out in the Second Schedule hereto are 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

Pursuant to Section 38(4) of the Landlord and Tenant Act 1987 **IT IS HEREBY ORDERED** that the Leases are varied in the terms set out in the Second Schedule hereto (and such variations shall apply equally to the provisions of any previous leases, which have been incorporated into existing leases following an extension of the term of such leases, or otherwise).

IT IS FURTHER ORDERED that subject only to the variations expressed in this Order all the clauses, covenants, conditions and provisions of each Lease (as varied if applicable) shall continue in full force and effect and the Lease shall henceforth be construed as if such amendments were originally contained herein.

AND IT IS FURTHER ORDERED that the Chief Land Registrar shall make such entries on the registers relating to the titles hereby affected or to open a new title or titles as shall be deemed appropriate for the purpose of recording and giving effect to the terms of this Order.

THE FIRST SCHEDULE

(Schedule of Leases at Northumberland Court)

Number On Title Register¹	Flat Number	Property description	Date of Lease	Duration	Lessee's title
38	1	Ground Floor Flat 1	29-Apr-2003	999 years (less 1 day)	K855688
11	2	Ground Floor Flat 2	03-Dec-1999	999 years (less 1 day)	K814928
12	3	Ground Floor Flat 3	03-Dec-1999	999 years (less 1 day)	K814931
13	4	Ground Floor Flat 4	03-Dec-1999	999 years (less 1 day)	K814932
14	5	Ground Floor Flat 5	03-Dec-1999	999 years (less 1 day)	K814933
40	6	Ground Floor Flat 6	30-Jan-2004	999 years (less 1 day)	K866649
32	7	Ground Floor Flat 7	20-Aug-2001	999 years (less 1 day)	K839042
15	8	Ground Floor Flat 8	03-Dec-1999	999 years (less 1 day)	K814935
16	9	First Floor Flat 9	03-Dec-1999	999 years (less 1 day)	K814936
35	10	First Floor Flat 10	30-Aug-2002	999 years (less 1 day)	K845219
49	11	First Floor Flat 11	27-Jan-2014	999 years (less 1 day)	K977762
10	12	First Floor Flat 12	07-Sep-1965	99 years (less 1 day)	K253473
17	14	First Floor Flat 14	03-Dec-1999	999 years (less 1 day)	K314937
33	15	First Floor Flat 15	25-Mar-2002	999 years (less 1 day)	K840888
31	16	First Floor Flat 16	20-Jun-2001	999 years (less 1 day)	K827785
18	17	First Floor Flat 17	03-Dec-1999	999 years (less 1 day)	K814938
19	18	First Floor Flat 18	03-Dec-2019	999 years (less 1 day)	K814939
51	19	Flat 19 (Second Floor)	06-Feb-2014	999 years (less 1 day)	TT22306
48	20	Second Floor Flat 20	07-Jul-2008	999 years (less 1 day)	K942834
52	21	Second Floor Flat 21	15-Jan-2008	988 years (less 1 day)	TT35764
20	22	Second Floor Flat 22	03-Dec-1999	999 years (less 1 day)	K814940
39	23	Second Floor Flat 23	07-Jun-2003	999 years (less 1 day)	K857416

¹ Annex 1 of the Statement of Case

Number On Title Register¹	Flat Number	Property description	Date of Lease	Duration	Lessee's title
34	24	Second Floor Flat 24	31-Jul-2002	999 years (less 1 day)	K844010
21	25	Second Floor Flat 25	03-Dec-1999	999 years (less 1 day)	K814941
46	26	Second Floor Flat 26	26-Jul-2006	999 years (less 1 day)	K907596
29	27	Second Floor Flat 27	11-Dec-2000	999 years (less 1 day)	K821952
22	28	Third Floor Flat 28	03-Dec-1999	999 years (less 1 day)	K814942
30	29	Third Floor Flat 29	22-Feb-2001	999 years (less 1 day)	K823938
37	30	Third Floor Flat 30	25-Sep-2002	999 years (less 1 day)	K847416
36	31	Third Floor Flat 31	25-Sep-2002	999 years (less 1 day)	K847414
23	32	Third Floor Flat 32	Date shown on deed incomplete	999 years (less 1 day)	K814945
50	33	Third Floor Flat 33	27-Jan-2014	988 years plus 207 days From 31.5.1961 to 23.12.2949	TT21857
24	34	Third Floor Flat 34	03-Dec-1999	999 years (less 1 day)	K814947
25	35	Fourth Floor Flat 35	03-Dec-1999	999 years (less 1 day)	K814948
47	36	36 Northumberland Court (Fourth Floor Flat)	14-May-2007	999 years (less 1 day)	K922010
26	37	Fourth Floor Flat 37	03-Dec-1999	999 years (less 1 day)	K814949
41	A	Ground Floor Flat A	24-Aug-2004	999 years (less 1 day)	K875517
42	B	Ground Floor Flat B	24-Aug-2004	999 years (less 1 day)	K875518
43	C	Basement and Ground Floor Flat C	24-Aug-2004	999 years (less 1 day)	K875519
44	D	Basement Flat D	24-Aug-2004	999 years (less 1 day)	K875520
27	PH1	Fourth Floor Penthouse 1	03-Dec-1999	999 years (less 1 day)	K814951
28	PH2	Fourth Floor Penthouse 2	03-Dec-1999	999 years (less 1 day)	K814952

THE SECOND SCHEDULE

(Variations to Leases of Flats at Northumberland Court)

(1) Paragraph 11(2) of the Seventh Schedule (as varied by the Tribunal's Order of 26th March 2014) shall be varied by the addition of the words '**and the creation and maintenance of any reserve fund in order to provide for any future expenditure**' immediately before the words '(and any excess or deficiency of payments previously made by the Lessee under Clause 19 and 20 of the Sixth Schedule hereto being taken into account)'.

(2) The following new Paragraph 7A to the Seventh Schedule shall be inserted after Paragraph 7:

Paragraph 7A **"The Lessor shall establish and maintain a reserve fund to provide for any future expenditure."**

(2A) Add to Seventh Schedule Paragraph 9:

After "charges and expenses" at line 2 add **"(including for the avoidance doubt sums in respect of the reserve fund)"**

(3) Paragraph 2 of the Seventh Schedule shall be deleted and replaced with the following:

"2. "Insured Risks" means fire, explosion, lightning, earthquake, storm, flood, bursting and overflowing of water tanks, apparatus or pipes, escape of water or oil . impact by aircraft and articles dropped from them, impact by vehicles, riot, civil commotion, malicious damage, theft or attempted theft, falling trees and branches and aerials, subsidence, heave, landslip, collision, accidental damage to underground services, employee liability, public liability to anyone else and any other risks which the Landlord reasonably decides to insure against from time to time and Insured Risk means any one of the Insured Risks

The Lessor shall place and maintain insurance of the Property, together with the Reserved Property, and any Buildings on the Property against loss or damage caused by any of the Insured Risks in accordance with Paragraph 2 of the Seventh Schedule with reputable insurers, on fair and reasonable terms that represent value for money, complying with the recommendations and requirements of the insurers of the Property; for an amount not less than the full reinstatement cost and other liability insurance in accordance with market terms subject to:

(a) any exclusions, limitations, conditions or excesses that may be imposed by the Landlord's insurer; and

(b) insurance being available on reasonable terms in the London insurance market,

and the Lessor shall make all payments necessary for those purposes within seven days after the same become payable and shall produce to the Lessee on demand the policies of such insurance and the receipt for every such payment.”

Dated this 17th day of August 2024

Mr Charles Norman FRICS

Legal Annex

Landlord and Tenant Act 1987 (1987 c 31)

Applications relating to flats

35 Application by party to lease for variation of lease

(1) Any party to a long lease of a flat may make an application to [the appropriate 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—

(a) the repair or maintenance of—

(i) the flat in question, or

(ii) the building containing the flat, or

(iii) any land or building which is let to the tenant under the lease or in respect of which rights are conferred on him under it;

[(b) the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);]

(c) the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation;

(d) the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, and whether they are services provided for the benefit of those occupiers or services provided for the benefit of the occupiers of a number of flats including that flat);

(e) the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party;

(f) the computation of a service charge payable under the lease;

[(g) such other matters as may be prescribed by regulations made by the Secretary of State].

(3) For the purposes of subsection (2)(c) and (d) the factors for determining, in relation to the occupiers of a flat, what is a reasonable standard of accommodation may include—

(a) factors relating to the safety and security of the flat and its occupiers and of any common parts of the building containing the flat; and

(b) other factors relating to the condition of any such common parts.

[(3A) For the purposes of subsection (2)(e) the factors for determining, in relation to a service charge payable under a lease, whether the lease makes satisfactory provision include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.]

(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.

(5) [Procedure regulations under Schedule 12 to the Commonhold and Leasehold Reform Act 2002] [and Tribunal Procedure Rules] shall make provision—

(a) for requiring notice of any application under this Part to be served by the person making the application, and by any respondent to the application, on any person who the applicant, or (as the case may be) the respondent, knows or has reason to believe is likely to be affected by any variation specified in the application, and

(b) for enabling persons served with any such notice to be joined as parties to the proceedings.

[(6) For the purposes of this Part a long lease shall not be regarded as a long lease of a flat if—

(a) the demised premises consist of or include three or more flats contained in the same building; or

(b) the lease constitutes a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.]

(8) In this section “service charge” has the meaning given by section 18(1) of the 1985 Act.

[(9) For the purposes of this section and sections 36 to 39, “appropriate tribunal” means—

(a) if one or more of the long leases concerned relates to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) if one or more of the long leases concerned relates to property in Wales, a leasehold valuation tribunal.]

36 Application by respondent for variation of other leases

(1) Where an application (“the original application”) is made under section 35 by any party to a lease, any other party to the lease may make an application to the [tribunal] asking it, in the event of its deciding to make an order effecting any variation of the lease in pursuance of the original application, to make an order which effects a corresponding variation of each of such one or more other leases as are specified in the application.

(2) Any lease so specified—

(a) must be a long lease of a flat under which the landlord is the same person as the landlord under the lease specified in the original application; but

(b) need not be a lease of a flat which is in the same building as the flat let under that lease, nor a lease drafted in terms identical to those of that lease.

(3) The grounds on which an application may be made under this section are—

(a) that each of the leases specified in the application fails to make satisfactory provision with respect to the matter or matters specified in the original application; and

(b) that, if any variation is effected in pursuance of the original application, it would be in the interests of the person making the application under this section, or in the interests of the other persons who are parties to the leases specified in that application, to have all of the leases in question (that is to say, the ones specified in that application together with the one specified in the original application) varied to the same effect.

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.

Orders varying leases

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 subsection (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 subsection (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.

39 Effect of orders varying leases: applications by third parties

(1) Any variation effected by an order under section 38 shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title of those parties), whether or not they were parties to the proceedings in which the order was made or were served with a notice by virtue of section 35(5).

(2) Without prejudice to the generality of subsection (1), any variation effected by any such order shall be binding on any surety who has guaranteed the performance of any obligation varied by the order; and the surety shall accordingly be taken to have guaranteed the performance of that obligation as so varied.

(3) Where any such order has been made and a person was, by virtue of section 35(5), required to be served with a notice relating to the proceedings in which it was made, but he was not so served, he may—

(a) bring an action for damages for breach of statutory duty against the person by whom any such notice was so required to be served in respect of that person's failure to serve it;

(b) apply to [the appropriate tribunal] for the cancellation or modification of the variation in question.

(4) [A tribunal] may, on an application under subsection (3)(b) with respect to any variation of a lease—

(a) by order cancel that variation or modify it in such manner as is specified in the order, or

(b) make such an order as is mentioned in section 38(10) in favour of the person making the application,
as it thinks fit.

(5) Where a variation is cancelled or modified under paragraph (a) of subsection (4)—

(a) the cancellation or modification shall take effect as from the date of the making of the order under that paragraph or as from such later date as may be specified in the order, and

(b) the [tribunal] may by order direct that a memorandum of the

cancellation or modification shall be endorsed on such documents as are specified in the order;

and, in a case where a variation is so modified, subsections (1) and (2) above shall, as from the date when the modification takes effect, apply to the variation as modified.