



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

Case reference : **LON/00BK/LVT/2024/0600**

Property : **Flats 1-18, 89 Portland Street, London W1 W7LX**

Applicant : **Portland Apartments Limited**

Representative : **Shoosmiths**

Respondent : **The Warden and College of the Souls of the All Faithful People Deceased in the University of Oxford**

Representative :

Type of application : **To vary two or more leases by a majority**

Tribunal member(s) : **Judge Shepherd**

Date of Reviewed Decision : **19th February 2025**

Reviewed DETERMINATION

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1. This is an application to vary the leases of the leaseholders of Flats 1-18 89 Portland Street, London W 1 W7LX. The Application is made by the ~~Freeholders~~

Head Lessees who are Portland Apartment Limited. The Respondent is the ~~head-lessee~~ Freeholder, The Warden and College of the Souls of the All Faithful deceased in the University of Oxford.

2. The Applicant wants to vary the lease in order to allow leaseholders to carry out alterations and additions to their premises with consent from their landlord. Clause 4.4 of the current lease prohibits alterations and additions. This prohibition is not qualified. The proposed clause allows alterations or additions providing consent is given by the landlord. There are other contingent variations to the lease that are necessary including a variation to clause 4.6 to include the cost of consent. The full list of variations proposed will be annexed to the final order.
3. The variation of leases is dealt with by the Landlord and Tenancy Act 1987 (The Act):

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.....

(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.

(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.

Determination

4. I consider that the proposed variation meets the criteria in the Act and the lease variation is allowed. In particular I make the following findings:
 - a) The object of the variation cannot be achieved by any other means that varying the leases.
 - b) The proposed variations are patently within the contemplation of s.37 and 38 of the Act.
 - c) There is a sufficient majority of leaseholders in favour of the variation.
 - d) Compensation is not payable.
5. The Applicant will need to file the following documents so that the variation order can be made:
 - a) A list which specifies the relevant reversionary title number to the residential leases at Flats 1-18, 89 Portland Street, London W1 W7LX together with each leaseholder's name, flat number and title number.
 - b) A separate list of the variations sought.

6. These documents must be filed by 4 pm on 3rd February 2025 and thereafter the order will be finalised.

Judge Shepherd

27th January 2025

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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).

27th January 2025



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Respondent : **The Warden and College of the Souls of
the All Faithful People Deceased in the
University of Oxford**

Representative :

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

**Tribunal
member(s)** : **Judge Shepherd**

Date of Order : **19th February 2025**

ORDER

UPON considering the application made by the Applicant 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 **Flats 1-18, 89
Portland Street, London W1 W7LX** 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 **Flats 1-18, 89 Portland Street, London W1 W7LX**

referred to below are amended in accordance with the Appendix 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 19th February 2025.

The Tribunal **directs** the solicitor for the Applicants no later than **26th February 2025**:

(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 **Flats 1-18, 89 Portland Street, London W1 W7LX** (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 19th February 2025 and to file a copy of this Order under each affected title.

Name: **Judge Shepherd.....**

Date: **19th February 2025.....**

APPENDIX

Variations to the Lease

Description	Clause
Deletion of existing clauses	Clause 7 of Schedule 3 of the Lease shall be deleted.
Replacement of existing clauses	<p>Clauses numbered 4.4, 4.6 and clause 11 of Schedule 5 of the Lease shall be deleted and replaced by the following clauses:</p> <p><u>Clause 4.4</u></p> <p>“Not to make any alteration or addition to the Demised Premises without the consent of the Landlord and Management Company, such consent not to be unreasonably withheld or delayed”.</p> <p><u>Clause 4.6</u></p> <p>“To pay all costs charges and expenses (including solicitors’ costs and surveyors’ fees) incurred by the Lessor and/or by the Management Company in relation to or in conjunction with:</p> <ul style="list-style-type: none">a. any application for consent required by the Lease or otherwise by law.b. the preparation and service of a Notice under either section 146 or section 147 of the Law of Property Act 1925 or otherwise in connection with the potential or actual forfeiture of the Lease, and whether or not forfeiture is avoided, whether by relief granted by the Court or otherwise.c. the preparation and service of a Schedule of Dilapidations whether prior to or at the expiry or sooner determination of the term hereby granted.” <p><u>Clause 11 of Schedule 5</u></p> <p>“Not without the previous consent of the Lessor and Management Company (such consent not to be unreasonably withheld) to alter or permit or suffer to be altered any electric wiring gas or water supply system but replacement and repair of those items solely serving the Demised Premises shall not require consent”.</p>