FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BJ/LVL/2024/0604**
Property	**:**	**Viridian Apartments, 75 Battersea Park Road, London SW8 4DG**
Applicant	**:**	**Notting Hill Home Ownership Ltd**
Representative	**:**	**Mr Stephen Evans, counsel**
Respondents	**:**	**The sub-leaseholders of Viridian Apartments**
Representative	**:**	**(1) Mr Sam Madge-Wyld for the sub leaseholders in application *LON/00BJ/LSC/2024/0256*** **(2) The other sub-leaseholders – in person**
Type of application	**:**	**For the variation of sub- leases made pursuant to section 35(2) (e) and (f) of the Landlord and Tenant Act 1987**
Tribunal members	**:**	**Judge Tagliavini** **Mr D Jagger MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing **Date of decision**	**:**	**21 – 23 May 2025** **7 July 2025**

DECISION

Decisions of the tribunal

(1) The tribunal refuses the application to vary the respondents' sub-leases.

The application

1. This is an application made pursuant to section 35(2) (e) and (f) of the Landlord and Tenant Act 1987 seeking to vary the sub-leases held by the respondents.

2. The subject property at is a purpose-built block of flats known as Block V1 which forms part of large Building containing Blocks V1 to V8 located on the Development known as **Viridian Apartments, 75 Battersea Park Road, London SW8 4DG.** The applicant, Notting Hill Home Ownership Ltd ("NHHO"), the tenant under a headlease dated 27 April 2007, and the landlord of the Respondents under shared ownership subleases of various dates.

The background

3. This application was made without prejudice to the application brought under *LON/00BJ/LSC/2024/0256*. That application concerned the payability and reasonableness of services charges under the terms of the sub-leases pursuant to s.27A of the Landlord and Tenant Act 1985 to Notting Hill Home ownership Ltd ('NHHO').

The issues - *LON/00BJ/LSC/2024/0256*

4. The main issue in *LON/00BJ/LSC/2024/0256* was whether NHHO's sub-leases with the sub-leaseholders of Viridian Apartments permit it to recover sums as service charges which it has paid as tenant to its superior landlord in respect of the 'Maintained Property.' This was primarily a matter of construction of the various leases for the tribunal. The applicant argued that it can, on the proper construction of the sub-leases recover such charge. However, if contrary to these assertions it was determined by the tribunal, that the applicant may not, as a matter of construction, recover such sums, NHHO sought a variation of the subleases pursuant to s.35(2)(e) and (f) of the Landlord and Tenant Act 1987.

The hearing

5. This application seeking a variation of the sub-leases was held by the same tribunal immediately after *LON/00BJ/LSC/2024/0256*. However, in this application only the sub-leaseholders who were parties to *LON/00BJ/LSC/2024/0256* were represented by Mr Sam Madge-Wyld, of counsel with the other leaseholders who had objected to the application, either appearing in person and/or had sent in written objections.* The applicant was represented by Mr Stephen Evans of counsel who had also represented in *LON/00BJ/LSC/2024/0256* in which NHHO had been named as the first respondent. For this application the tribunal was provided with a digital bundle of 279 pages as well as the skeleton arguments of both counsel.

**The leaseholders of flats 200, 201, 214 and 216 are NOT respondents to this lease variation application,*

The applicant's (NHHO) case

6. Mr Evans submitted in his skeleton argument that:

> *If the Tribunal is against NHHO on its contention in case LON/00BJ/LSC/2024/0256, NHHO contends that, as a minimum, there should be such variation as is required to enable to recover its costs in relation to the "Maintained Property" (which is only part of the Development). This includes:*
>
> - *amending "Estate" in the sublease to mean "All the land and building registered under title number TGL248073" (i.e. the Development under the Headlease);*
> - *amending "Property" throughout the sublease to mean "All such land and such if the building as is registered under the Title Number" (i.e. TGL300662);*
> - *amending "Common Parts" to mean "Common Parts of the Building and of the Estate".*

7. The applicant contended the tribunal has the power to effect the variation (and from the commencement of the subleases) pursuant to s.35 of the Landlord and Tenant Act 1987. The section provides (so far as is material:

> *(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)...

(c)...

(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)..

(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."

(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.

8. Mr Evans submitted it was a matter for the tribunal to determine whether the sub-leases fail to make satisfactory provision for any of the statutory matters. Mr Evans accepted that a lease does not fail to make satisfactory provision simply because it could have been better or more explicitly drafted. The fact that the proposed variations are common or standard does not make the original terms unsatisfactory: see *Triplerose v Stride* [2019] UKUT 99 (LC). However, in this case the variations sought do not seek to correct standard or minor matters.

9. Mr Evans submitted that the subleases fail to make satisfactory provision for "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": s.35(2)(e). Consequently, it would be grossly unfair to NHHO to have to absorb costs, particularly as a registered charity and provider of social housing, Further, the sub-leaseholders, having paid the charges historically, would gain the benefit of a windfall.

10. In his skeleton argument Mr Evans also submitted that:

It is also possible to see NHHO's case as a case concerning failure to make adequate provision for computation of service charges: s.35(2)(f).

The subsection can only be invoked in 1 of 2 situations:

the first is where the aggregate of service charges payable in respect of a block of flats amounts to more than 100% of expenditure, thus giving the lessor a surplus over monies expended.

The second situation is where the aggregate is less than 100%, thus risking the proper maintenance of the block: Morgan v Fletcher [2009] UKUT 186 (LC*).*

That second situation is arguably present in the instant case. The aggregate of the sums payable by NHHO's sublessees does not come to 100% of the amounts it must pay under the headlease. If the sub-leaseholders are right, NHHO cannot recover all it has to pay. In Lardy v Gytenbeek [2011] UKUT 347 (LC) the President of the Upper Tribunal remarked that in circumstances where a landlord was only entitled to be reimbursed for 5/6 of expenditure, an application under subsection (f) would be the appropriate course of action so as to make each of the tenants liable for 1/5 of the entire expenditure.

The second question

Common to all variation applications is that a Tribunal should not make a variation which substantially prejudices a lessee and an award of compensation under s38(10) would not afford adequate compensation: see s.38(6). 24. However, compensation is not necessarily payable even where the lessee may, as a consequence of the amendment, have to pay a higher percentage of the service cost than before: see Parkinson v Keaney Construction Limited [2015] UKUT 607 (LC).

Similarly, in Toynbee Partnership Housing Association v Leaseholders of 1-32 Backchurch Lane (LON/00BGT/LVL/2007/0001) the FTT decided that no compensation should be paid since 'all tenants enjoy[ed] the benefit of lower service charges for the last 11 years or more.'

11. Mr Evans also submitted that:

In this case, the lessees have historically paid the amounts demanded, and what is sought is a backdated variation; it is not a case of the sublessees losing the benefit of historically lower charges.

There is no substantial prejudice in asking a leaseholder to pay service charges for parts of an estate other than the maintained estate.

Indeed, if the subleases are regularised, there will be an enhanced capital value of their flats in a building where there is now to be a lease structure in place which provides fully and fairly and unequivocally for the recovery of service charges.

Backdating

In Brickfield Properties Ltd v Botten [2013] UKUT 133 (LC), *the Upper Tribunal confirmed that a variation of a lease may be backdated to the date when the defect in the lease arose. 29. It is submitted that there is no obvious reason why the Tribunal would not order backdating in this case to the date of of each sublease.*

The respondents' case

12. The tribunal had regard to the written objections of the leaseholders of the following flats who either stated simply they objected to a variation of their lease or in some instances, made more detailed objections.

Flat 187	Flat 196	Flat 189	Flat 216	Flat 207
Flat 209	Flat 197	Flat 215	Flat 185	Flat 181
Flat 193	Flat 205	Flat 213	Flat 184	Flat 195
Flat 214	Flat 202	Flat 192	Flat 199	Flat 217
Flat 203	Flat 206	Flat 186	Flat 186	Flat 194
Flat 188	Flat 28	Flat 190	Flat 218	Flat 211
Flat 210	Flat 208			

13. In their written objection, the leaseholders of Flat 196 stated:

In our opinion, it is quite clear that the terms of the original lease originally did intend us not to be charged for services for which we do not benefit. For example, when we first moved in, there was no charge for Concierge services as we were not entitled to it but, after a couple of years, Notting Hill introduced both concierge service and also an extra charge for it. We bought the property based on the Sublease's contract and would not have done so if it had been written to state that we would have to pay

for services we don't receive in parts of Viridian Apartments to which we have no access. In addition to this, our block is separate from the rest of Viridian, we access it from a different street and we have a different postcode to the areas that Notting Hill wants us to pay for.

14. The leaseholder of Flat 216 stated:

> *The fact that NHHO deem the lease is defective is their own internal issue. They have bought the block around 15 years ago. As a large housing association they have internal resources and access to external solicitors who, following good practice, should have checked the lease is correct as part of the purchase together with relevant plans and back to back with head-lease and sub-lease(s), and would have had plenty of time to do so prior to sale completion. If the lease(s) has not been checked at that point in time, that is their own problem and negligence.*
>
> *To add to this, the building has not been designed nor operates as a single estate. For example, there is no direct access from V1 block to the rest of the Estate, which prevents V1 residents accessing communal areas (e.g. courtyard, the Concierge, rooftop terraces), enjoyed by the residents from rest of the building. The ground floor entrance overlooking the courtyard is blocked and inaccessible from the courtyard side. From the V1 side it is labelled as a fire egress but cannot be opened whatsoever. This is further supported by planning application documents that shows that from the outset it has always been intended that V1 is separate from rest of the Estate. The practice within residential development industry and affordable housing sector is to ALWAYS separate affordable block(s) from private blocks and to limit access for affordable housing to shared amenities and thus to charge affordable housing residents service charge costs relevant only to their own block. I am writing that as an industry professional who has worked both in private and affordable housing sector, for some leading housing providers in the UK.*

15. Mr Madge-Wyld told the tribunal that the leaseholders who he represented objected to the application to vary the sub-leases, on the grounds that it was unclear what variation the applicant was seeking as a draft of the proposed variation had not been provided. This situation was wholly unsatisfactory as:

> *'The tribunal is required to determine not just whether there are grounds for making the order but also whether it is reasonable to make the order.'*

16. Therefore, Mr Madge-Wyld submitted the application should be dismissed on that basis alone. *

**A draft of the variations sought was subsequently provided by the applicant at the hearing.*

17. Mr Madge-Wyld also submitted in his skeleton argument and at the hearing that:

> *Whether the lease fails to make satisfactory provision with respect to one of the matters in s.35(2) is the "gateway or threshold question" for the Tribunal to determine first.*
>
> *Whether a lease fails to make "satisfactory provision" is for the Tribunal to judge having regard to all the circumstances of the case: 56 Westbourne Terrace RTM Co Ltd v Polturak* [2025] UKUT 88 (LC), at [60] citing *Gianfrancesco v Haughton.*

18. Mr Madge-Wyld submitted that there is nothing unsatisfactory in a lease by reason of the landlord's inability to recover all of its expenditure on management, if (i) that is reflected in the different contractual bargains entered into and has not produced any practical problems; (ii) the scheme is not seriously defective and has no bearing on the upkeep and fitness for habitation and (iii) the flats in Block V1; NHHO has other sources of funds which it can use to meets it contractual obligations and (iv) Block V1 remains in reasonable condition. In *Camden LBC v Morath* [2019] UKUT 193 (LC) it was held that a lease that prevented a local authority landlord from recovering the expenditure it incurred on the common parts of an estate was not unsatisfactory.

19. Mr Madge-Wyld submitted that the 'gateways' relied upon by the applicant under 35 (2) (e) or (f) were not satisfied as the other leaseholders (non- residents of the social-housing blocks) are required to contribute to the Development/Estate charges under the terms of their leases. Therefore, the leases cannot be considered to be defective because the tenants' proportions are defined as being *'such reasonable and appropriate proportions as the Landlord shall determine'* and will amount to 100%.

20. Further, it is for NHHO to satisfy the tribunal that it has incurred or to expenditure on services for the benefit of the sub-leaseholders that it is not able to recover under the sub-leases. Simply because NHHO cannot recover all expenditure it pays to the Viridian Management Company Ltd is not sufficient to meet the jurisdictional gateway and the variation of the sub-leases.

21. It was further submitted that there would be prejudice caused to the sub-leaseholders were the leases to be varied for which they could not be adequately compensated. The sub-leaseholders would be required to pay for services they did not receive or enjoy thereby impacting on the value of their flats and a prospective diminution in value which requires expert valuation evidence to determine before a variation can properly be made.

22. Mr Madge-Wyld also submitted that the tribunal must consider the reasonableness of making the variation sought. In this instance it was not reasonable ot make an order as it would not reflect the original bargain intended by the parties.

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23. In this application the tribunal determined that on the construction of the terms of the sub-leases, the sub-leaseholders were not required to contribute to the service charges in respect of the Development which NHHO had contracted to pay to the head leaseholder Viridian Management Company Ltd as 'the Maintenance Expenses.'

The tribunal's decision .

24. The tribunal determines NHHO has failed to establish that the 'gateways' have been reached and the tribunal is not required to consider the variations of the sub-leases under either s.35(2)(e) or (f) as relied upon by the applicant.

Reasons for the tribunal's decision

25. The tribunal had regard to the relevant parts of section 35(2) on which the applicant relied and which states:

> *(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—*
>
> *(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.*

26. The tribunal prefers the arguments and submissions of the respondents and finds that the sub-leases do not fail to make satisfactory provision for the recovery or computation of the service charges payable by the sub-lessees to their landlord. Clause 7(5) of the sub-leases state:

> *The relevant expenditure to be included in the Service Provision shall comprise all expenditure reasonably incurred by the Landlord in connection with the repair management maintenance and provision of services for the Building [i.e. the Block of flats erected on the Estate and known as Block V1 and shall include (without prejudice to the generality of the foregoing):-*
>
> *(a) the costs of and incidental to the performance of the Landlord's covenants contained in Clause 5(2), 5(3)and 5(4)…*

27. Clauses 5(2), 5(3) and 5(4) of the sub-leases concern the landlord's covenants to insure, repair and maintain the Building (Block V1) and keep the common parts of the Building clean and lighted.

28. The tribunal finds the sub-leases make satisfactory provision for the services the respondent sub-leaseholders are required to contribute and pay to the applicant i.e. the services and expenses that benefit Block V1 and which the sub-leaseholders enjoy and/or have access to.

29. The tribunal adopts Mr Madge-Wyld's submissions and finds there is nothing inherently unsatisfactory in the sub-leases simply because NHHO contracted to contribute to sums incurred for which it received no benefit; does not adversely impact on the applicant's obligations to repair and maintain the property i.e. Block V1; has maintained Block V1 in a reasonable condition; and has other sources of funds by which it can meet its obligations no evidence having been presented of financial difficulties together with the fact these contributions for the 'Maintenance Expenses' had not been demanded from thee applicants until about 2014.

30. The tribunal finds that the fact that NHHO may have entered into a poor bargain with its landlord does not mean the 'gateway' has been reached, *Camden LBC v Morath* [2019] UKUT 193 (LC) and that the sub-leases should be varied.

31. Therefore, the application to vary the sub-leases is refused.

Name: Judge Tagliiavini **Date:** 7 July 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 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).