



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

Case Reference : HAV/00HH/LVT/2025/0001

Property : Flats 1 – 34, Seaway Court, Seaway Lane,
Torquay, Devon TQ2 6RJ.

Applicant : Paul Moore (Director) Seaway Court (Torquay)
Ltd and leaseholder of 16 Seaway Court,
Seaway Lane, Torquay, Devon TQ2 6RJ.

Respondent : Seaway Court (Torquay) Ltd (freeholder) 16
Seaway Court, Seaway Lane, Torquay, Devon
TQ2 6RJ.

Representative : Paul Moore (Director) Seaway Court (Torquay)
Ltd C/O Crown Property Management of 135
Reddenhill Road, Torquay, Devon TQ1 3NT.

Type of Application : Variation of leases; Section 37 of the Landlord
and Tenant Act 1987 (the Act).

Tribunal Member : Deputy Regional Judge Skinner

Date of Directions : 25 September 2025.

DECISION

DECISION

- a. The Tribunal finds that under Section 37(3) Landlord and Tenant Act 1987 that the proposed objective of the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect.
- b. The Tribunal also finds that under Section 37(5) Landlord and Tenant Act 1987 the application is in respect of more than 8 leases and that the application is not opposed by more than 10% of the lessees and that at least 75% of the lessees consent to the variation.
- c. The Leases of Flats 1 to 34 Seaway Court, Seaway Lane, Torquay TQ2 6RJ are to be varied as follows:

The Fourth Schedule of Clause 3 of the Lease which currently reads

“3. The costs of management of the Estate”

Be varied to read as follows:

“3. The costs of management of the Estate to include as an indication but not by way of limitation : decoration, cleaning, renewals, maintenance, repair, refurbishment, renovation, grounds maintenance, security, fire prevention, legal or regulatory compliance, utilities, equipment, professional fees, managing agent fees, insurance, taxes, administration of the Company and, improvements but that any improvements could only be undertaken after a vote by all the leaseholders which recorded a majority in favour of the proposed expenditure.”

- d. The above variation is to take effect from the date of this Decision.
- e. Pursuant to section 38(9) of the Act the freeholder shall apply to the Land Registry to endorse this variation against all titles affected by the same for the purpose of recording and giving effect to the terms of this Order.
- f. A copy of this decision is to be served upon all the Leaseholders and where appropriate the mortgage companies identified in the Application.

REASONS

Background

1. The freehold of the Property is owned by Seaway Court Management (Torquay) Ltd, a company owned and controlled by the 34 leaseholders of the 34 flats which comprise the Property. The Applicant is a director of the freeholder and a leaseholder, and the application refers to the Respondent as the freeholder. The Applicant has been authorised by the freeholder to make the application. The Applicant identified the 34 leaseholders and persons affected within the application.
2. The Applicant seeks to vary the 34 existing leases to ensure that service charges incurred for the management, maintenance and improvement of the Estate (as defined in the example lease) would be recoverable.
3. On 10th August 2025 the Tribunal gave directions. Those directions noted that the application included evidence that the leaseholder of number 4 opposed the application and that there had been no response from the leaseholders of numbers 7 and 27 to the proposed variation. The Applicant confirmed the leaseholder of 27 is deceased and that flats 8 and 13 were “for sale”. The Tribunal noted that the copy specimen lease of Flat 3 was incomplete, no plan was attached and the fourth Schedule was missing. The Tribunal gave direction over the proposed wording of the variation, commenting on the original proposed variation and whether the variation proposed would have the desired affect. Those directions stated that the application was likely to be suitable for a determination on the papers without an oral hearing unless a party objected to the Tribunal in writing
4. On 16 August 2025 the Applicant responded to the Tribunals Directions, providing the information requested and provided a bundle of documents to enable the Tribunal to determine the application. The Applicant also confirmed reference to a “head lease” within the application was incorrect and no head lease existed and therefore the application to vary only related to the 34 existing leases identified within the application.
5. On 18th August 2025, the Tribunal received confirmation from the Applicant that the Directions Order and further and better information had been sent to the Respondent and all the leaseholders. The Applicant also confirmed that the Respondent and leaseholders had been advised of their right to apply to be joined as parties to the proceedings.
6. On 22nd September 2025 the Tribunal gave further directions confirming that no party had notified the Tribunal that it objects to the application being determined without a hearing. Upon review of the hearing bundle the Tribunal considered whether it had sufficient information to make its decision without an oral hearing and decided that it did. There were no disputes as to the facts of the case that required oral evidence and the matter was suitable for a determination on the papers.

7. Therefore, in accordance with Rule 31(3) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the Tribunal is satisfied the matter can be determined on the papers without a hearing.

The variation of the Lease sought.

8. The Applicant originally sort to vary the leases by adding wording to the existing provision at The Fourth Schedule of Clause 3 of the Lease which reads

“3. The costs of management of the Estate”

The proposed variation and additional wording to read:

“3. The costs of management of the Estate to include but not exhaustive : decoration, cleaning, renewals, maintenance, repair, refurbishment, renovation, grounds maintenance, security, fire prevention, legal or regulatory compliance, utilities, equipment, professional fees, managing agent fees, insurance, taxes, administration of the Company and, where in a vote of all members of the Company the majority of those members vote in favour, improvements.”

9. The Tribunal in its Directions of 10th August 2025 observed that the wording of the proposed variation to the leases intended to amend the definition of management works in the lease in a way which is indicative but not by way of limitation and not “exhaustive” as stated in the application.
10. Similarly, the Tribunal observed that the Applicant’s intention was to amend the leases to permit the service charges to fund improvements but that those improvements could only be undertaken after a vote by all the leaseholders which recorded a majority in favour of the proposed expenditure.
11. On 16 August 2025 the Applicant responded to the Tribunals Directions, providing the further and better information and proposed a new draft of the variation sort, which reads as follows:

“3. The costs of management of the Estate to include as an indication but not by way of limitation : decoration, cleaning, renewals, maintenance, repair, refurbishment, renovation, grounds maintenance, security, fire prevention, legal or regulatory compliance, utilities, equipment, professional fees, managing agent fees, insurance, taxes, administration of the Company and, improvements but that any improvements could only be undertaken after a vote by all the leaseholders which recorded a majority in favour of the proposed expenditure.”

12. On 18th August 2025, the Tribunal received confirmation from the Applicant that the new proposed draft, along with the Directions Order of 10th August 2025 and the further and better information had been sent to the Respondent and all the leaseholders. The Applicant also confirmed that the Respondent and leaseholders had been advised of their right to apply to be joined as parties to the proceedings.

The Law – Section 37 and Section 38 Landlord and Tenant Act 1987

13. Section 37 Landlord and Tenant Act 1987 reads as follows:

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.

Section 38 provides that:

(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 subsection (6) and (7) make an order varying each of the leases in such manner as its 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 any variation would be likely to 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.

Application

14. The Tribunal has reviewed the bundle supplied by the Applicant and considered carefully all the documentation that has been provided. The Tribunal notes that the Applicant identified the 34 leaseholders and persons affected by the application and submitted a list with the application, which records that copies of the application had been served on them. That evidence included information that the leaseholder of number 4 opposes the application and the that the leaseholders of numbers 7 and 27 had not replied. The Applicant further confirmed that the leaseholder of 27 is deceased. The Applicant advised that flats 8 and 13 were for sale.
15. The freehold belongs to a company, Seaway Court (Torquay) Ltd. Each of the leasehold flats is said to be a member of this company.
16. The Tribunal accepts the Applicants evidence that where there are more than eight leases, this Application is not opposed by more than 10% of the affected leaseholders and the Tribunal finds that more than 75% of the affected leaseholders consent to the Application. This finding is based on the evidence supplied by the Applicant of the completed forms returned by those affected leaseholders which show the one objection amounts to 2.86% of the affected leaseholders and those leaseholders consenting to the variation amount to 82.86% (29 in total). The Tribunal therefore finds on the evidence provided that the Application meets with the criteria set out in s37(5)(b).
17. The Tribunal notes and carefully considered that the Applicant has received one objection. The objection was received from Flat 4. The form returned by Flat 4, indicates an objection to the proposed variation however no details are set out as to the basis for the objection, what prejudice the leaseholder may suffer as a result of the variation nor does the objection set out any alternative wording or alternative variation that could be considered.
18. The Tribunal notes that the parties have all been consulted extensively around the proposed variation, with full details being sent to each affected leaseholder in March 2025, including submitting a form to

indicate if they consent or object to the proposed application to vary the lease.

19. The affected leaseholders have been served with the Application and invited to be joined as an interested party to the Application if they so wished. No such applications to be joined as an interested party have been made to the Tribunal. The Tribunal has not received any correspondence or further information around the reasons for the objection to the variation raised by Flat 4. The Tribunal also notes that 29 of the affected leaseholders consent to the variation.
20. In light of the above, whilst noting the objection raised by Flat 4, the Tribunal finds that there is no evidence to show any prejudice to Flat 4 by the proposed variation for the purposes of s38.
21. The Applicant has obtained legal advice from Brady Solicitors around the way the current lease term may be interpreted by a Court or Tribunal. This advice indicates that a Tribunal may apply a narrow interpretation of the existing wording, restricting the scope of the current lease to routine management tasks or charges and may not cover substantial works or improvement works. The Tribunal accepts that is a possible interpretation of such a clause, particularly in connection with works of improvement.
22. In considering the Application further, the Tribunal notes that Section 20 Landlord and Tenant Act 1985 gave leaseholders rights to be consulted over proposed qualifying works and service charges that might follow and an ability to challenge those charges where it was felt appropriate. The Landlord and Tenant Act 1985 is clear that qualifying costs under Section 20 do not include improvements. The Applicant submits that by varying the lease, the Applicant can proceed to consider and implement improvement works if a majority of leaseholders agree to those improvements. The Tribunal finds that the object to conduct improvement works with certainty over how such works will be agreed and charged back under the lease cannot satisfactorily be achieved without varying all the leases.
23. The Tribunal finds that by varying the leases as per the Application, it will give greater certainty to the leaseholders and the Applicant going forward. The Tribunal accepts the evidence from the Applicant that the current drafting of the lease under the Fourth Schedule Clause 3 “costs of management” does leave an element of uncertainty over what charges are caught, and perhaps more importantly what charges are therefore not caught, by the existing lease term. The Tribunal therefore finds that the object to be achieved by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect as per s37(3).
24. The Tribunal therefore finds the Application made out and the leases should be varied as per the revised draft variation submitted by the Applicant on 16 August 2025. A copy of this decision will be sent directly

to Flat 4 in light of the objection raised and to Flats 7 and 27 given no response has been received from those Flats.

RIGHTS OF APPEAL

25. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk
26. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
27. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
28. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.