FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BG/LVL/2024/0601**
Property	**:**	**Lockesfield Place, Westferry Road, London, E14 3AH, E14 3AJ and E14 3AN**
Applicant	**:**	**Lockesfield Management Company Limited**
Representative	**:**	**Dr Ana Mata**
Respondents	**:**	**The leasehold and freehold owners of all 91 properties at 1-84 Lockesfield Place and 453A-459 Westferry Road**
Representatives	**:**	**In person**
Type of application	**:**	**Variation of a lease by a party to the lease**
Tribunal members	**:**	**Judge N Hawkes** **Mr J Naylor FRICS FIRPM**
Venue and date of hearing	**:**	**3 and 4 November 2025 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**1 December 2025**

ORDER

IT IS ORDERED THAT:

1. The leases of the 42 unenfranchised properties at 1-84 Lockesfield Place and 453A-459 Westferry Road which are the subject of these Tribunal proceedings (that is, all leases of unenfranchised properties as at 4 November 2025) are varied as follows:

The definition of “the Service Charge” at Paragraph 1. (b) of Part 1 of The Schedule to the Lease is deleted and replaced by the following definition:

"1.(b) “the Service Charge means:

(i) One ninety first (1/91) part of the Total Expenditure as defined in paragraph 1 (c) below; and

(ii) Such proportion of the expenditure incurred by the Company in any accounting period in carrying out its obligations under paragraphs 2; 3; 4; 10; 12 and 15 of Part II of the Schedule to this Lease, calculated in accordance with the following formula:

1/X

Where ‘X’ is equal to the number of houses, maisonettes and flats that the Company is still obliged to undertake the obligations contained in paragraphs 2; 3; 4; 10; 12 and 15 of Part II of the Schedule to this Lease following the enfranchisement of properties on the Estate.”

Paragraph 1 (c) (i) of Part I of the Schedule to the Lease is deleted and replaced with the following paragraph:

“(i) in carrying out its obligations in paragraphs 5; 6; 7; 8; 9; 11; 13; 14 and 16 of Part II of the Schedule to this Lease”

2. This variation shall take effect from 1 November 2019.

3. The Applicant shall ensure that this order is registered at HM Land Registry, together with a copy of the Tribunal’s written decision.

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Tribunal members	**:**	**Judge N Hawkes** **Mr J Naylor FRICS FIRPM**
Venue and date of hearing	**:**	**3 and 4 November 2025 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**13 November 2025**

DECISION

The application

1. This is an application made against the leasehold and freehold owners of all 91 properties at 1-84 Lockesfield Place and 453A-459 Westferry Road

("the Estate"). The Applicant seeks the variation of 42 leases of properties on the Estate which have not been enfranchised.

2. The application is made under section 35(2)(f) of the Landlord and Tenant Act 1987 ("the 1987 Act") on the grounds that the leases of those properties fail to make satisfactory provision in relation to the computation of a service charge payable under the lease.

3. By paragraph 1(b) of Part 1 of the Schedule to the leases: *"'the Service Charge' means one ninety first (1/91) part of the total expenditure as defined in paragraph 1(c) below".* The relevant heads of expenditure are set out at paragraph 1(c).

4. The variation proposed is as follows:

"1.(b) "the Service Charge means:

(i) One ninety first (1/91) part of the Total Expenditure as defined in paragraph 1 (c) below; and

(ii) Such proportion of the expenditure incurred by the Company in any accounting period in carrying out its obligations under paragraphs 2; 3; 4; 10; 12 and 15 of Part II of the Schedule to this Lease, calculated in accordance with the following formula:

1/X

Where 'X' is equal to the number of houses, maisonettes and flats that the Company is still obliged to undertake the obligations contained in paragraphs 2; 3; 4; 10; 12 and 15 of Part II of the Schedule to this Lease following the enfranchisement of properties on the Estate."

Paragraph 1 (c) (i) of Part I of the Schedule to the Lease shall be deleted and replaced with the following paragraph:

"(i) in carrying out its obligations in paragraphs 5; 6; 7; 8; 9; 11; 13; 14 and 16 of Part II of the Schedule to this Lease"

5. Accordingly, the Applicant's proposal is that in relation to some of the service charge costs the relevant lessees will continue to pay 1/91, and in respect of other heads of expenditure they will pay 1/X, in accordance with the above formula.

6. The application was originally listed for a final hearing on 2 June 2025. The hearing of 2 June 2025 was attended by Dr Mata on behalf of the Applicant company and by Respondents with a legal interest in 26, 28, 42, 51, 56, 59, 63, 65, 69, 72, 73, 77, 80 and 81 Lockesfield Place and 455A Westferry Road. The Applicant had instructed solicitors to prepare a

proposed deed of variation but none of the parties was legally represented at the hearing

7. Prior to the hearing of 2 June 2025, the owners of various properties on the Estate applied for orders joining them as parties to these proceedings. As they were already Respondents, it was not necessary to make any such orders.

8. Mr Patel, who is the owner of 26, 51, 59, 65, 73 and 81 Lockesfield Place, and Mr Hollingworth who is a co-owner of 47 Lockesfield Place, had applied to rely upon written legal submissions dated 28 May 2025 prepared on their behalf by Mr Piers Harrison of Counsel. Mr Harrison was not instructed to attend the hearing.

9. It became apparent, during the course of the hearing on 2 June 2025, that the Respondents had not received any service charge accounts since 2019. The service charge accounts, and the payment history are potentially relevant to the issue of whether, if the Tribunal were to make an order varying the leases or requiring the leases to be varied, any such order should have retrospective effect.

10. Having carefully considered the overriding objective pursuant to rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules"), the Tribunal determined that it would be fair and just to grant Mr Patel and Mr Hollingworth permission to rely upon the written submissions dated 28 May 2025, which were served out of time, on the basis that the other parties would be given additional time in which to respond. All parties were agreed that the Tribunal should carry out an inspection. The Tribunal was willing to accede to this request and there was insufficient time available for both the inspection and the hearing so the hearing would have had to be adjourned in any event.

11. At the hearing of 2 June 2025, the Tribunal noted that all parties may wish to consider the possibility of obtaining independent legal advice and representation, if this was an option which was open to them. However, they were not obliged to do so. The Tribunal also stressed that the Tribunal is unable to provide any party with legal advice and that there are many areas of dispute and/or concern, for example, concerning the management of the Estate, which are outside the scope of these proceedings.

The hearing and inspection

12. The Tribunal inspected the Estate on the morning of 3 November 2025, starting at approximately 10.15 am. The inspection was attended by Dr Mata on behalf of the Applicant, by certain of the Respondents, and by Mr Iain Edwards of the Managing Agents who manage the Estate.

13. The Estate comprises a low-rise mixed development believed to have been constructed in the early 1980s, which includes two and three storey houses, purpose-built flats, a bungalow, at least one maisonette, an underground car park, garages, store areas and communal gardens.

14. The Tribunal carried out an external inspection of the whole of the Estate and also inspected the interior of the underground car park and storage areas, a sample garage, sample communal areas of blocks of flats, and the interior and garden of a three-bedroom house.

15. The hearing took place on 3 and 4 November 2025 at 10 Alfred Place, London, WC1E 7LR starting on the afternoon of 3 November 2025, following the inspection.

16. On 3 November 2025, the hearing was attended by Dr Ana Mata, on behalf of the Applicant, by Mr Hollingworth (representing himself and Elisabeth Hollingworth), Mr Vincent Chong, Ms Shirley Chong, Ms Susanne Pedersen, Ms M Cortes, Ms Alice Coton, Ms M Morrissey, Ms Moira Lewis and by Mr Iain Edwards of the Managing Agents. On 4 November 2025, the hearing was additionally attended by Mr Matthaiou, Mr Allison and Mr Sengupta.

17. At the commencement of the hearing, the Tribunal noted that the written submissions on behalf of Mr Patel and Mr Hollingworth dated 28 May 2025 had been discussed at the last hearing and stated that it was otherwise for the parties present the entirety of their cases orally. This was so that everyone would know exactly what the other party's case was and how it was being presented, and so that any party with an alternative viewpoint would have the opportunity to make oral representations to the Tribunal in response to each point which was being raised. In *Arrowdell Limited v Coniston Court (North) Hove Limited* LRA/72/2005, it was held at [23] that the Tribunal *"must not reach a conclusion on the basis of evidence that has not been exposed to the parties for comment."*

18. The Tribunal has considered all the submissions that were made, and all of the evidence that was referred to during the course of the hearing. However, to keep this decision to a proportionate length, the Tribunal will only refer below to those matters which it is necessary to set out in order to understand the reasons for the Tribunal's decision.

19. At the commencement of the hearing, the Tribunal raised the issue that Shirley and Vincent Chong were seeking to rely upon legal authorities which appeared to have no relevance to these proceedings, and which did not support the propositions in respect of which they had been cited. Mr Hollingsworth stated that he had obtained independent legal advice to the effect that the case law relied upon was not relevant and that statutory provisions had been cited which did not exist.

20. Ms Chong confirmed that an internet search had been undertaken as part of her preparation for the hearing which could well have included in the use of generative artificial intelligence, and she accepted the Tribunal's preliminary view that these legal authorities were not applicable. For these reasons, the legal authorities were disregarded. However, the Tribunal accepts that Ms Chong was doing her best as a self-representing litigant who was unaware of the risks of "AI hallucinations" and makes no criticism of her.

21. The application, as originally drafted, concerned the leases of 47 unenfranchised properties on the Estate. Having considered the overriding objective pursuant to rule 3 of the 2013 Rules, the Tribunal allowed an application on the part of the Applicant to reduce the number to 42, on the grounds that there are currently 42 leases of unenfranchised properties on the Estate. The application has always concerned the leases of the unenfranchised properties on the Estate and this amendment does no more than ensure that the number is accurate as at the date of the hearing. No party is likely to be prejudiced as a result of this amendment.

22. On 3 November 2025, Dr Mata informed the Tribunal that she had taken independent legal advice and was satisfied that, if the Tribunal granted the Applicant's application, there would no shortfall because she would be able to recover any additional sums required from the owners of other properties.

23. On 4 November 2025, Dr Mata at times appeared to make submissions which were not consistent with the Applicant's application. She then sought to amend the application when the hearing was almost at an end in a way that was not entirely clear, but which would have affected parties who were not present. On 5 August 2025, Dr Mata had filed a six-page application in which she sought to amend the original application. Her oral application was, to some extent, based upon this written application.

24. In response to the application dated 5 August 2025, Judge Martynski issued an order, paragraph 3 of which provides that *"No order is made on the Applicant's application dated 5 August 2025 to vary the initial application"*.

25. In the reasons for the order, it is stated:

> *"As to the Applicant's application to vary the scope of the case, I am not sure that I understand that application. Most, if not all of what the Applicant is asking the tribunal to consider would in any event be considered by the tribunal. This is a very complex situation and the powers of the tribunal are relatively wide. The tribunal will adopt a flexible approach where possible, and will consider all possible outcomes."*

26. Judge Martynski had expressly made no order varying the scope of the Applicant's application and it would not have been fair and just to make any such order at the hearing Such an order could have potentially prejudiced parties who were not present and those parties who were present agreed that they would have insufficient time to prepare their response to a revised version of the application. Mr Hollingworth and Mr Patel had already paid for legal advice in respect of the application as originally drafted. Further, if the Applicant had wished to challenge the order of Judge Martynski, in which no order varying the initial application was made, the appropriate course would have been to apply for permission to appeal that order.

27. In the absence of an amendment altering the scope of the application, the Tribunal can only potentially adopt a flexible approach in considering issues which fall within the scope of the application as originally drafted (five issues are listed at page 9 of the application form) and which are within the Tribunal's jurisdiction under section 35 of the 1987 Act.

28. After all other parties had completed their submissions, Dr Mata asked whether the Tribunal could adjourn the proceedings to another date to enable her to obtain legal advice. The Tribunal was of the view that it would not be fair and just to adjourn the final hearing to another date at such a late stage, particularly when the Tribunal had reminded the parties that they might wish to obtain independent legal advice on 2 June 2025. The other parties had clearly put considerable time and effort into preparing for and attending the inspection and hearing.

29. Dr Mata then indicated that she wished to reconsider whether or not to proceed with the part of the application in which it is proposed that the variation to the leases will have retrospective effect. She asked for an adjournment to enable her to take legal advice from the Applicant's solicitors by telephone. The Tribunal granted Dr Mata an adjournment from around 12.30 pm until 2 pm for this purpose.

30. After this adjournment, Dr Mata stated that she had taken legal advice and that the Applicant wished to proceed with the entirety of the application as drafted.

The Tribunal's determinations

31. At paragraphs 1 and 2 of the issues listed at page 9 of the Applicant's application, the Applicant seeks the variation of the leases of the unenfranchised properties. The terms of the proposed variation were drafted by the Applicant's solicitors and are as set out above.

32. Section 35 of the 1987 Act includes provision that:

(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—

…

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

…

(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.

33. The Tribunal has been informed that when enfranchisements have taken place and leases have remained extant, the Applicant remains a party to the leases, as the management company, with the same rights and obligations as before.

34. It appears that the Applicant has relied upon positive covenants in the transfers to recover service charges and no reason has been put forward as to why the Applicant might not switch to using the lease covenants instead in respect of any years where it has not already elected to recover maintenance expenditure under the freehold covenants in the TP1.

35. However, the Tribunal has also been informed that not all leases remain extant and that at least two have merged with the freehold. This was not disputed orally at the hearing. Any representations as to whether or not an application could potentially be made to the Count Court to reverse the merger of leases with the freehold is outside the scope of the

Tribunal's jurisdiction under section 35 of the 1987 Act and the Tribunal must consider the situation as it is at the date of the hearing.

36. In respect of paragraphs 5 (repair of service media), 6 (cultivation of play areas and gardens), 7 (keeping lighting in repair), 8 (repair of boundary features), 9 (payment of outgoings), 11 (provision of lighting), 13 (tree maintenance), 14 (security arrangements) and 16 (third party insurance) of Part II of the Schedule to the leases of unenfranchised properties, it is proposed by the Applicant that the proportion payable remains 1/91.

37. Presumably, the Applicant intends to rely upon recovery under the freehold covenants in the freehold transfers in respect of those matters insofar as they concern properties with merged leases and so sees no need to recover a greater share from the remaining lessees. As stated above, this is a matter in respect of which Dr Mata informed the Tribunal that she had taken independent legal advice.

38. In respect of paragraphs 2 (decoration of exterior), 3 (insurance), 4 (repair of buildings), 10 (water rates), 12 (window cleaning) and 15 (employment of staff) of Part II of the Schedule to the leases of unenfranchised properties the proportion sought in the variation is:

"1/X

Where 'X' is equal to the number of houses, maisonettes and flats that the Company is still obliged to undertake the obligations contained in paragraphs 2; 3; 4; 10; 12 and 15 of Part II of the Schedule to this Lease following the enfranchisement of properties on the Estate."

39. The Applicant will not need to recover sums in relation to these costs from the owners of properties for which it is no longer obliged to undertake the relevant obligations and for which it therefore no longer provides the relevant service.

40. The issues raised orally by the Respondents at the hearing primarily related to (i) concerns that the variations sought might not be limited to variations of the leases of unenfranchised properties; and (ii) concerns that the proposed variations would lead to significant unfairness with, for example, the lessees of the unenfranchised properties paying the entirety of the cost of services which benefit the whole estate.

41. The variations sought in the Applicant's application are limited to variations of the leases of the unenfranchised properties and the Tribunal is not satisfied, on the basis of the wording of the proposed variation and the evidence which was referred to at the hearing, that the feared significant unfairness is likely to result.

42. The existence of at least two merged leases means that the statutory test at section 35(2)(f) of the 1987 Act is met because the criteria at section 35(4) of the 1987 Act are satisfied:

(a) each lease provides for any such charge to be a proportion of expenditure incurred; 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) are less than the whole of any such expenditure, because, at best, recovery can only be made of 89/91 of the expenditure.

43. If the grounds are satisfied the Tribunal may "make an order varying the lease specified in the application in such manner as is specified in the order" (see section 38(1) of the 1987 Act). Any variation effected by an order is binding on the parties (and others including predecessors in title) (see section 39(1) of the 1987 Act). A notice may be filed at the Land Registry in relation to the variation order (Land Registration Rules 2003 r.80(d)). The Tribunal is satisfied, in all the circumstances, that this is an appropriate case in which to make such an order.

44. The Tribunal also has power "instead of making an order varying a lease . . . [to] make an order directing the parties to the lease to vary it in such manner as is so specified". However, as submitted by Mr Harrison, this would be considerably more costly and no party contended for this alternative at the hearing.

45. Mr Harrison also suggested that the wording of the variation ought to be amended so that X is equal to the number of units in relation to which the Applicant remains the freeholder. He states that this would avoid issues arising in relation to whether the Company could be said to still be liable to undertake obligations, such as the insurance of enfranchised properties, which in fact it does not undertake and which neither it nor the owners of enfranchised wish it to undertake in relation the extant leases of enfranchised properties.

46. It is not clear to the Tribunal on the basis of the evidence that was referred to at the hearing whether or not there are obligations which the Company is liable to undertake and does or should continue to undertake in respect of the enfranchised properties in respect of any of the matters listed in paragraphs 2; 3; 4; 10; 12 and 15 of Part II of the Schedule to the

Lease. Accordingly, the variation made by the Tribunal is in the terms sought by the Applicant.

47. At paragraph 3 the issues listed at page 9 of the Applicant's application, a retrospective variation is sought.

48. In *Brickfield Properties,* the Upper Tribunal stated:

"...Certain of the variations contemplated under section 35(2) are variations which it would not be helpful or effective to back date – the purpose is to deal with the future, such as to make satisfactory provision regarding the repair or maintenance of certain property. However as regards paragraph (f) of section 35(2), if a landlord is entitled from a certain date to recover less than (or perhaps more than) 100% of the expenses of providing the services etc, then this inappropriate level of recovery is the defect. The purpose of the statute is to cure the defect. There is nothing in the statute to indicate an intention to leave the defect in place for an indeterminate period until the date of an application to the LVT or perhaps until the date of the decision of the LVT – i.e. there is nothing in the statute indicating an intention only to cure the defect prospectively from one of these later dates rather than to deal with the defect from the time that it arises." [26]

"...the LVT had jurisdiction to order that the variation sought by the appellant (i.e. varying the proportions to be contributed by each lessee towards the service charge cost) should take effect from 10 November 2006, which is the date as from which the total of the contribution proportions became less than 100%." [31]

"A question arises as to whether an order making a variation which is backdated to the Transfer Date is an order which should not be made having regard to section 38(6) on the basis that (a) the variation would be likely substantially to prejudice the lessees and that an award of compensation under section 38(10) would not afford them adequate compensation, or (b) that for any other reason it would not be reasonable in the circumstances for the variation to be effected. In my view it is clear point (b) does not apply. As regards point (a) it is true that the lessees will, by virtue of the variation, be in a worse position than they would be if for the remainder of their leases they each continued only to be responsible to contribute the original proportion of the costs of the services etc, such that the appellant or its successors had itself to fund out of its own monies the shortfall (here 14.45%). However in my judgment the substantial prejudice contemplated in section 38(6) cannot include the removal of an unintended and undeserved windfall flowing from the inability (because of an enfranchisement of one of the blocks) to recover 100% of the cost of the services etc to the remaining blocks. Similarly the loss to the lessees of this unintended windfall cannot in my view constitute the type of "loss

or disadvantage" which is contemplated in section 38(10) and in respect of which compensation should be paid – or if it does fall within such "loss or disadvantage" the Tribunal should not think fit to order compensation in respect of this loss of the windfall. Were it otherwise the power to vary the lease so as to deal with the defect contemplated in section 35(4) would be of little or no value, because the party applying for the variation (which could be the landlord, but also be the tenants in a case where a landlord was entitled to more than 100% of the costs of the services etc) could only obtain the necessary amendment, so as to bring the recovery to 100% of the relevant costs, on payment of a sum by way of compensation which would in effect wipe out the benefit of curing the defect." [34]

49. It was not in dispute at the hearing that the first merger occurred in November 2019. Accordingly, this is when the total of the contribution proportions became less than 100% and is the date from which the Tribunal's order should take effect, unless there is no need for the variation to be retrospective because all relevant services charges have been agreed and paid to date. No party contended that all relevant services charges have been agreed and paid to date and the variation shall take effect from 1 November 2019 because it is unclear on which date in November 2019 the first merger occurred.

50. The Respondents assert that the Estate has not been properly managed and that substantial sums appear to have gone missing. Some of the Respondents reserve the right to take points relating to election, recoverability under the lease, the implication of terms, and under the general law including, but not limited to the Landlord and Tenant Act 1985 and the Limitation Act 1980. These matters are outside the scope of the Tribunal's jurisdiction in this application under section 35 of the 1987 Act.

51. As regards paragraphs 4 and 5 of the issues listed at page 9 of the Applicant's application, the order made by the Tribunal eliminates the need for multiple deeds of variation at an estimated cost of £600 plus VAT per lease. Further, a determination as to the payability and/or reasonableness of any costs which the Applicant contends are recoverable as a service charge or as an administration charge is not within the Tribunal's jurisdiction under section 35 of the 1987 Act and the Tribunal has no jurisdiction to grant declaratory relief.

Name: Judge N Hawkes **Date:** 1 December 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).