



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

Case reference : **BIR/31UD/LVL/2025/0001**

Subject properties : **Flats 1-12
Shrubbery Court
Northampton Road
Market Harborough
Northamptonshire
LE16 9HU**

Applicant : **Symington Management Limited**

Representative : **Realty Law Ltd**

Respondents : **Leaseholders of the subject properties**

Type of application : **Application under section 35 of the
Landlord and Tenant Act 1987 for the
variation of the leases of the subject
properties**

Tribunal member : **Deputy Regional Judge Gravells**

Date of Order : **30 December 2025**

Date of Issue : **12 January 2026**

ORDER

Background

- 1 This is the Decision of the Tribunal on the Applicant's application dated 23 July 2025 for the variation of the leases of the subject properties pursuant to section 35 of the Landlord and Tenant Act 1987 ('the 1987 Act').
- 2 The subject properties are the twelve flats in Shrubbery Court, a block of flats forming part of a development owned by Wallace Estates Limited. The Applicant is the manager of the subject properties and a party to the leases; the Respondents are the leaseholders of the subject properties.
- 3 The relevant provisions of the Respondents' leases are in identical terms. The Sixth Schedule divides the service charge costs (referred to as 'maintenance expenses') into two Parts: Part A relates to Communal Area and Facilities Costs and the proportion of those costs payable by each of the Respondents is 2.6316 per cent; Part B relates to the Block Costs (the costs incurred by the Applicant in providing services to Shrubbery Court) and the current proportion of those costs payable by each of the Respondents is either 9.0901 per cent (flats 1, 3, 4, 5, 6, 7 and 9) or 9.0909 per cent (flats 2, 8, 10, 11 and 12).
- 4 The total of the proportions payable in respect of Part B Block Costs, which the Applicant is therefore contractually entitled to recover from the Respondents, is 109.9 per cent of the costs.
- 5 The Applicant sought the variation of the leases in the form of a reduction in the proportions of Part B Block Costs payable by each of the Respondents to 8.333 per cent so that the recovery of those costs by the Applicant is limited to 100 per cent of those costs.
- 6 The Applicant argued that variation sought was necessary to ensure fairness to the Respondents and proper management of the subject properties.
- 7 On 27 October 2025 the Tribunal issued Directions.
- 8 The Applicant was directed to copy to the Respondents (i) the application together with an explanation of the purpose of the application and the reasons for the proposed variation and (ii) the Tribunal's Directions.
- 9 The Respondents were directed to complete and return the reply form attached to the Directions, indicating whether they consented to the application (ie agreed to the proposed variation of the leases) or whether they opposed the application (in whole or in part) and the reasons for any opposition. The Directions stated that, if a Respondent failed to return the form, the Tribunal would assume that that Respondent did not oppose the application for variation.
- 10 Two reply forms were completed and returned. Patricia and Nicholas Turnbull (the leaseholders of flat 2) and Anthony Barber (the leaseholder of flat 3) indicated that they supported the proposed variation of the leases.

Discussion and Decision

- 11 Section 35 of the 1987 Act provides (so far as relevant) –
 - (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.

12 Section 38 of the 1987 Act provides (so far as relevant) –

(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 subsections (6) and (7)) make an order varying the lease specified in the application 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.

13 Those provisions were considered recently by the Upper Tribunal (Lands Chamber) in *56 Westbourne Terrace RTM Company Limited v Polturak and others* [2025] UKUT 0088 (LC). The Deputy Chamber President stated (at paragraphs [24]–[37]) –

[24] Section 35(1) is introductory and explains who may make an application for an order under it, namely, any party to a long lease of a flat. A tribunal determining an application under section 35 should satisfy itself first that the applicant is entitled to make the application. A ‘long lease’ is defined by section 59(3) and includes any lease for a term certain exceeding 21 years. ...

[25] Section 35(2) then identifies the grounds on which an application may be made. No order varying a lease may be made unless one of them is made out.

[26] Each ground requires that the lease ‘fails to make satisfactory provision with respect to’ one of the matters listed in subsections (2)(a) to 2(f) Whether the lease fails to make satisfactory provision with respect to one of those matters is therefore the gateway or threshold question which the tribunal should address next.

[27] The six matters are, in broad terms: (a) repair, (b) insurance, (c) installations, (d) services, (e) recovery of expenditure, and (f) computation of service charges. ...

[28] Subsections (3), (3A) and (4) supplement four of the six matters in subsection (2). ...

[33] Once a tribunal has satisfied itself that the applicant is party to a long lease of a flat, and that one of the grounds in subsection (2) is made out, it is next necessary for it to consider section 38(6) and (7). By section 38(1) the discretion to make an order varying a lease is expressly made subject to those provisions. Subsection (7) is engaged only where the application relates to insurance, but subsection (6) is of general application. It requires the FTT to consider two additional questions.

[34] The first question is in two parts, arising from subsections (6)(a) and (10), namely: first, whether the variation which the tribunal is considering would be likely substantially to prejudice any respondent to the application or any other person who is not a party to the application, both of whom I will call C; and, secondly, if so, whether C would be afforded 'adequate compensation' by an order providing for any party to the lease to pay compensation to C in respect of any loss or disadvantage that the tribunal considers C is likely to suffer as a result of the variation. It follows that substantial prejudice alone is not a bar to the making of a variation order; the FTT is prevented from making an order only if substantial prejudice could not be compensated adequately by a payment of money.

[35] The final question arises from subsection (6)(b), and is whether, for any other reason, it would not be reasonable in the circumstances for the variation to be effected.

[36] If the answer to either of these questions is affirmative the tribunal must not make an order under section 35.

[37] If the qualifying conditions in subsection (1) are satisfied, and one or more of the threshold grounds in subsection (2) have been found to exist, the decision whether to order a variation is a discretionary one. The discretion is removed if substantial prejudice would be caused by the variation and it could not adequately be compensated by money, or if there is any other reason why making the variation would not be reasonable. If the application survives those hurdles the discretion is available to be exercised, but it is hard to see what would remain to be considered by a tribunal in those circumstances. If no other reason is found why it would not be reasonable for the variation to be effected, the obvious conclusion is that the variation should be effected.

- 14 Applying that approach to the present case, the Tribunal determines as follows.
- 15 The Respondents' leases are 'long leases', each being granted for a term of 150 years from 1 January 2006.
- 16 The Applicant is named as a party to each of the leases.
- 17 Each of the leases fails to make satisfactory provision with respect to the computation of a service charge payable under the lease (section 35(2)(f)) as it satisfies the three conditions in section 35(4)(a)-(c).
- 18 In the present case the discretion of the Tribunal under section 38(1) to make an order varying the Respondents' leases is subject to section 38(6) only.
- 19 Section 38(6)(a) precludes a variation order where it appears to the Tribunal (1) 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 (2) that an award under section 38(10) would not afford

adequate compensation. The Tribunal finds that the proposed variation would not prejudice the Respondents, who would be required to pay a *lesser* percentage of the Part B Block Costs. Nor is there any evidence that the proposed variation would prejudice the freeholder of the subject properties or any other person. In the absence of any (substantial) prejudice, the adequacy of compensation is not relevant.

- 20 Section 38(6)(b) precludes a variation order where it appears to the Tribunal that for any other reason it would not be reasonable in the circumstances to order the proposed variation. In the view of the Tribunal there is no such reason.
- 21 Although the Tribunal still retains a discretion whether to order variation, as the Deputy Chamber President commented in *56 Westbourne Terrace RTM Company Limited v Polturak and others* (at paragraph [37]), the obvious conclusion (from the findings in paragraphs 15-20 above) is that the proposed variation should be ordered.

Order

- 22 The Tribunal therefore orders that in the Particulars section of each of the Respondent leaseholders' leases the Part B Proportion be varied to 8.3333 per cent.

Appeal

- 23 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 24 The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- 25 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(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- 26 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

30 December 2025

Professor Nigel Gravells
Deputy Regional Judge