FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BJ/LVT/2025/0004**
Property	:	**St Johns Hill, London SW11 1SB**
Applicant	:	**Lumiere Freehold Limited**
Representative	:	**Georgia Bell, Assistant Solicitor, Property Management Legal Services Limited**
Respondents	:	**Leaseholders as per the application**
Representative	:	**N/A**
Type of application	:	**To vary two or more leases by a majority**
Tribunal member	:	**Judge Tagliavini**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**13 January 2026**

DECISION

The tribunal's decision

(1) The tribunal varies the lease in accordance with the Order attached to this Decision.

The application

1. The applicant seeks to vary 61 residential leases under section 37 of the Landlord and Tenant Act 1987 ("the 1987 Act") by the addition of a provision for the collection of a reserve fund.

2. The tribunal is required to determine the following issues:

- What is the object to be achieved by the proposed variation? Can the object be achieved satisfactorily without all the leases being varied to the same effect?
- Is the proposed variation within the contemplation of sections 37 and 38 of the 1987 Act?
- Is there a sufficient majority for an application under section 37 of the 1987 Act?
- If it does make an order varying the leases, should the tribunal order any person to pay compensation to any other person (see section 38(10) of the 1987 Act).
- The date from which the proposed variations are to take effect

The background

3. The subject property is a mixed use development known as Lumiere Apartments and comprises 61 residential flats over seven floors. In addition there are commercial units and a former Granada cinema. The applicant is the freehold owner of the subject property known as 58 St Johns Hill, London SW11 1SB having acquired its interest on or around 30th November 2018, following 47 lessees coming together to purchase the freehold.

4. Of the 61 respondents, 46 leaseholders have returned their agreement to vary the lease. The applicant received one objections from the leaseholder 2 flats but received no other objections or comments from the respondents to the proposed variation.

The applicant's case

4. In written submissions, the applicant asserted the threshold set down by the 1987 Act is met, in that more than 75% of the parties' consent to the application and only one leaseholder (of 2 properties) object to the variation. In written submissions the applicant asserted that:

> *The variation sought by the Applicant will allow a reserve fund to be collected via the service charge mechanism. Service charge expenditure, especially for the likes of roof repairs, are difficult to forecast with any certainty and this can result in unwelcome peaks and troughs in the service charges. A reserve fund is a useful mechanism for avoiding large fluctuations in the service charge. As per the RICS Service Charge Residential Management Code (3rd edition) ("the RICS Code of Practice"), the intention of a reserve fund is to spread the costs of 'use and occupation' as evenly as possible throughout the life of the lease to prevent penalising leaseholders who happen to be in occupation at a particular moment when a major expenditure occurs. The RICS Code of Practice also states it considered good practice to hold reserve funds where the leases permit and that were the leases do not permit the collection of a reserve fund [and] you should consider recommending that consideration be given to discussing the benefits of a variation to allow for a reserve fund to be set up.*
>
> *A reserve fund with a healthy balance will allow the cost of major works to be spread over a period of time and avoid unexpected high service charge demands. This is beneficial to the leaseholders as well as to landlord. By allowing a reserve fund to be collected, this will enable successful and efficient management of the development.*

5. The applicant seeks to make the following variation with retrospective effect from 25 March 2010 or alternatively the 30th November 2018, being the date of the acquisition of its interest:

> The following shall be added to the Lease as a new clause 3(H)(v):
>
> *(v) Such sum as the Lessor shall determine as desirable to be set aside in any year towards a reserve fund to make provision for expected or unexpected future expenditure which the Lessor has responsibility*

6. In response to this application only one of the leaseholders has indicated in writing their objection to the proposed variation. The leaseholder Henley Homes RF 2 Limited of flats 104 and 301 provided written objections to the variation sought on the following grounds:

2.The Leaseholder opposes the application to vary the leases. While the Leaseholder acknowledges that reserve funds can have the benefits outlined at paragraphs 7-8 of the Applicant's preliminary submissions, its view is that, as currently drafted, the proposed variation could lead to the already significant service charge payable becoming generally unmanageable and/or unaffordable . This is for the following reasons:

2.1 The proposed variation does not place a reasonable annual cap on contributions to the reserve fund. It is noted that section 19 of the Landlord and Tenant Act 1985 provides that costs will be taken into account in determining the amount of a service charge payable for a period only to the extent that they are reasonably incurred. However, it is established in case-law that, in determining the reasonableness of costs pursuant to section 19, the means of leaseholders are not determinative. It is therefore possible for costs to both be (a) reasonable for the purpose of section 19 and (b) unaffordable for leaseholders. Given this, the Leaseholder is concerned that the variation as drafted (with the lack of a reasonable annual cap) opens it up to a potentially unmanageable service charge liability.

2.2 It is noted that the proposed deed of variation provides, at clause 2, that the variation will have effect from the date of the deed of variation. However, it has been suggested in correspondence from the Applicant dated 14 October 2025 that the intention is for the variation to have retrospective effect from 25 March 2010. If this is indeed what is proposed, it is submitted by the Leaseholder that this would significantly increase the potential for the proposed variation to lead to service charge liabilities becoming unmanageable as leaseholders could (under the terms of the variation) face liability for over 15 years of back-dated reserve fund contributions from day one.

The Leaseholder's concerns as set out above have not been assuaged by the Applicant (as part of this process) failing to (a) provide any detailed information as to the level of contributions to the reserve fund that it envisages seeking and (b) advise whether there is currently any major expenditure required that it envisages meeting through a newly set up reserve fund. 3 For the reasons set out at paragraph 2 of this statement, it submitted by the Leaseholder that the proposed variation would be likely to be substantially prejudicial to leaseholders or, at the very least, it would not be reasonable in the circumstances for the variation to be effected.

7. In Reply to these objections the applicant asserted:

…it would be unusual for any service charge clause in a lease, including those relating to reserve fund, to have a "reasonable annual cap," or in fact any form of annual cap. The protection for leaseholder is in section 19 of the Landlord and Tenant Act 1989 ("the 1985 Act"). Varying the lease so as to allow the Applicant to collect a reserve fund does not interfere with those section 19 rights; the section 19 rights are preserved. Henley Homes acknowledges, service charges must be reasonable in accordance with section 19 of the 1985 Act.

The apparent overriding concern of Henley Homes is unaffordability. Whether collected in one lump sum, or collected over time, the costs are the costs. There is no link between reserve funds and affordability from the point of view of the actual costs.

Conversely to Henley Homes' arguments, the collection of a reserve fund arguably makes the costs of a large project of works more affordable for leaseholders, given the general approach to reserve funds is to collect contributions over a period of time rather than sending a single larger large invoice.

…

Henley Homes suggest that if the variation were to have retrospective effect, it would enable the Applicant to retroactively demand reserve fund contributions from leaseholders for the past 15 years. It is not the Applicant's intention to retrospectively demand service charge contributions. In any event, the Applicant would not be able to do so as section 20B of the 1985 Act bars the Applicant from doing so.

For transparency, the Applicant's request for the variation to have retrospective effect is because leaseholders have already been voluntarily contributing to the reserve fund the Applicant wants to avoid a situation where the leaseholders seek a refund of this contribution as this will likely cause huge cash flow issues at the development. All lessees at Lumiere Apartments, including Henley Homes, have been contributing towards the reserve fund, as such the Applicant would not need to retrospectively demand reserve fund contributions.

If the Tribunal is reluctant to give the variation retrospective effect dating back to 25th March 2010, the Applicant instead invites the Tribunal to order the variation have retrospective effect as from 30th November 2018, this being the date the Applicant took assignment of the freehold interest. Between 2010 and 30th November 2018 there was a third-party landlord. On

30th November 2019, the Applicant acquired the freehold interest from Henley Homes Southwest LLP.

Henley Homes allege the Applicant has not provided detailed information as to the level of contribution to the reserve fund it envisages seeking. As is common, the reserve fund contributions are likely to fluctuate dependant on planned future expenditure. Henley Homes requested advice as to whether there is currently any major expenditure required that it envisages meeting through the reserve fund. Henley Homes will perhaps know better than most the fire safety issues at Lumiere Apartments as they are linked to the original landlord (and developer). The Applicant will need to undertake works to resolve compartmentation issues within the building. At this stage, the Applicant cannot confirm the estimated costs of these works as further surveys are required before contractors can accurately quote for the works, but it is anticipated it is in the region of £2.5-3 million.

… the Applicant does not agree that the variations would prejudice the leaseholders in any way, nor that it would be unreasonable in the circumstances for the variations to be effected. For the reasons outlined in the Applicant's application, permitting the collection of a reserve fund will facilitate the effective and efficient management of the development, while also preventing significant fluctuations in service charges. The Applicant also reminds parties that it is a stated in the RICS Service Charge Residential Management Code (3rd edition) that it is good practice to hold reserve funds and that were the leases do not permit the collection of a reserve fund, a landlord should consider recommending that consideration be given to discussing the benefits of a variation to allow for a reserve fund to be set up.

The hearing

8. Neither party requested an oral hearing and the tribunal determined the application on the documents in the 147 page digital bundle provided by the applicant.

The tribunal's decisions and reasons

9. In reaching its decision the tribunal had regard to the relevant sections of the Landlord and Tenant Act 1987 which state:

Sections 37 & 38 of the Landlord and Tenant Act 1987

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.

(4) The variation specified in an order under subsection (1) or (2) may be either the variation specified in the relevant application under section 35 or 36 or such other variation as the tribunal thinks fit.

(5) If the grounds referred to in subsection (2) or (3) (as the case may be) are established to the satisfaction of the tribunal with respect to some but not all of the leases specified in the application, the power to make an order under that subsection shall extend to those leases only.

(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 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 that variation.

10. The tribunal answers the questions raised in this application as follows:

(i) **What is the object to be achieved by the proposed variation? Can the object be achieved satisfactorily without all the leases being varied to the same effect?**

The tribunal is satisfied that the object of the proposed variation is to assist in the provision of the expected level of management and maintenance of the subject property in accordance with current RICS requirements.

(ii) **Can the object be achieved satisfactorily without all the leases being varied to the same effect?**

The tribunal is satisfied the variation to all leases is required, in order to ensure uniformity and fairness to all leaseholders in respect of the service charges each is required to pay under the terms of their lease(s). To require only some leaseholders to contribute to a reserve fund is perverse and unreasonable.

(iii) **Is the proposed variation within the contemplation of sections 37 and 38 of the 1987 Act and is there a sufficient majority for an application under section 37 of the 1987 Act?**

The tribunal is satisfied that the proposed variation is within the contemplation of the 1987 Act and finds it is more likely than not to be of benefit to all leaseholders in the better management and maintenance of the subject property in accordance with the *RICS Service Charge Residential Management Code (3rd edition)*. The tribunal finds the objecting leaseholder is not unduly prejudiced by the variation as the applicant is not seeking to make demands of reserve funds for any past period(s). The tribunal is satisfied all leaseholders have statutory protection in determining what is 'reasonable' in the event of any disagreement as to the quantum of reserve fund payable by each leaseholder.

Further the tribunal is satisfied the required majority have actively and expressly to the lease variation proposed by the applicant.

(iv) **If it does make an order varying the leases, should the tribunal order any person to pay compensation to any person (see section 38(10) of the 1987 Act).**

The tribunal is not satisfied that any person is required to pay any other person any compensation in respect of the proposed variation and finds that none has been requested by any leaseholder.

(v) **The date from which the proposed variations are to take effect**

The tribunal is not persuaded that the initial date prosed by the applicant from which the variation is to have retrospective effect is a reasonable date in view of the antiquity of that date and the limited, if any, practical purpose it provides. However, the tribunal accepts the alternative date provided by the applicant of **30 November 2018** as being a suitable date from which the proposed variation is to have retrospective effect.

11. Therefore, the tribunal makes the Order attached to this Decision.

Name: Judge Tagliavini **Date:** 13 January 2026

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).