



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

Case Reference

**MAN/36UD/LVT/2024/0002
MAN/36UD/LVL/2025/0002
MAN/36UD/LVL/2025/0003**

Property

**Flats 1-21 Park Court, 46 North Park
Road, Harrogate, North Yorkshire
HG1 5AD**

Applicant

See Annex A

Representatives

Mr Jeff Walker

Respondents

See Annex A

Representatives

**Applicants-Mr R. Walker
Long Term Reversions Ltd-Rob
Chapman**

**Type of
Application**

**Application to vary leases pursuant
sections 35 & 37 of the Landlord &
Tenant Act 1987**

**Tribunal
Members**

**Tribunal Judge J. E. Oliver
Tribunal Member J. A. Jacobs**

**Date of
Determination**

22nd October 2025

Date of Reasons

23rd January 2026

REASONS FOR DECISION

Decision

1. The Tribunal makes an order as contained in Annex B to this decision.

Background

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2. On 4th May 2024 Mr J Walker of Flat 15, Park Court, Harrogate, filed an application with the Tribunal for the variation of leases at Park Court, Harrogate (“the Property”). On 7th March 2025, following a case management hearing, directions were given for the application to be re-submitted clarifying whether the application was to be made under section 35 or section 37 of the Landlord & Tenant Act 1987 (“the 1987 Act”) and for all those wanting a variation of their leases to be made parties to the proceedings.
3. On 16th June Mr Walker made an application to join eighteen additional applicants to his application (“the Applicants”) and on 18th June filed a revised section 37 application. This application contained three proposed variations to the lease as follows:
 - a. Schedule 4 Part II of the lease provides for Flats 9, 16 & 20 to contribute to the maintenance costs for Blocks A, B & C. A variation is sought to provide for those flats to contribute towards the costs of the block where they are situated to mirror the terms of the other leases of the flats at the Property.
 - b. A variation to the same Schedule for the leases of Flats 2 & 3 to change the block to which those lessees should contribute to Block B and to Block C respectively.
 - c. A variation of the leases to change the contribution each leaseholder should pay to the maintenance of the car park.
4. Mr Anderson and Mrs Bowden, being the lessees of Flats 2 and 17 respectively, objected to the proposals and filed their own applications pursuant to section 35 of the 1987 Act. The Respondent freeholder, Long Term Reversions Ltd did not object to the proposed variations proposed by Mr Walker.

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5. Mr Anderson's application, pursuant to section 35 of the 1987 Act, sought a variation to Schedule 4 Part II of his lease such that he is liable for the expenses relating to Block C, rather than Block B, as proposed in the application made by Mr Walker and others. The lease currently provides for service charge payments to be made for Block A. An alteration to the allocation of those service charges is also sought.

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6. Mrs Bowden made an application, pursuant to Section 35 of the 1987 Act, for variations to her lease as follows:

- a. To change "the Car Parking Due Proportion" from 2/35ths to 1/35th on the basis only one of the spaces is suitable for use by a standard size car. The second space is impacted by a pillar making it difficult to use without guidance. If that is not acceptable then the lease be amended to provide for parking of either a car, a motorbike or bicycle in the designated space.
- b. To change "the Common Internal Parts Due Proportion" from 18.97% to 14.29%.
- c. To change "the Service Due Proportion" from 7.17% to 4.76 %.
- d. To change the provisions of the lease to limit or cap the annual service charge increases.

7. Directions were issued on 2nd July 2025 by Judge Goodall providing for Long Term Reversions (Torquay) Ltd be designated as First Respondent to Mr Walker's application and for Mr Anderson and Mrs Bowden to be made Second and Third Respondents.

8. The Tribunal did not inspect the Property but was advised it comprises 3 blocks with a total number of 21 flats. Each of the blocks has its own entrance and lift. Block A contains 7 flats, Block B 6 flats and Block C 8 flats. All the flats, save two, have access via the entrance in their respective block and this is then the block to which the service charges are payable. However, there is an anomaly with Flats 2 and 3. In the case of Flat 2, its entrance is Block C but its lease provides for the service charge payments to be made for Block B and responsibility for the lifts and common areas in Block A. Similarly, the entrance for Flat 3 is Block C but the service charges are charged and paid for Block B.

9. The application was listed for a hearing on 22nd October 2025. At the hearing the Applicants were represented by Mr Walker. The First Respondent was represented by Mr Rob Chapman. The Second and Third Respondent attended in person. The managing agents, Inspired Property Ltd, also attended, represented by Andrea Barnard.

The Law

10. Section 35 of the 1987 provides that either party to a long lease may apply for its variation if it fails to make satisfactory provision for the repair, maintenance of the flat or land or building let to the tenant in which rights are conferred to them under it. There are also provisions for a variation relating to insurance, maintenance of installations, the recovery of expenditure and the computation of the service charges.
11. A party to a lease may also apply for its variation under section 37 of the 1987 Act, but, here, the application must relate to 2 or more leases that do not have to be drafted in the same terms but must be long leases and have the same landlord.
12. The grounds on which such an application may be made are that the object to be gained by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect. Section 37(5) provides that where an application is made in respect of more than eight leases (as here), it must not be opposed by more than 10% of the total numbers of parties concerned and at least 75% of that number consent to it. In calculating this, Section 37(6) provides the tenant under the lease shall be one of the parties concerned as will the landlord.
13. Section 38 provides that where the grounds of the application are established the Tribunal may make an order varying each of the leases concerned in such manner as is specified in the order.
14. Whilst the Tribunal can vary the leases section 38(6) sets out when it cannot do so. Section 38(6)(a) provides this is where any variation may substantially prejudice any respondent to the application, or any person who is not a party to the application and that any compensatory award made under section 36(10) would be inadequate. Section 38(6)(b) provides there should be no variation where it would not be reasonable in the circumstances for the variation to be effected.
15. Section 38(10) further provides that the Tribunal may, where it thinks fit, make an order for any party to the lease to pay to any other party to the lease or to any other party, compensation in respect of any loss or disadvantage that the Tribunal considers will be suffered by reason of the variation.

The Hearing/Submissions

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16. Mr Walker confirmed he was representing all the leaseholders of the Property in the application, save for those for No 2, and No 17 who opposed it and Flats 12 and 15 who had not responded to Mr Walker and their position was not known.
17. He confirmed that whilst the application was opposed by Mr Anderson and Mrs Bowden, it was supported by the Respondent freeholder and this was confirmed by Rob Chapman at the hearing.
18. He confirmed his reasons for the application are as follows:

(a) Schedule 4 Part II of the lease for Flat 9, which provides for the liability for the service charge and which specifies the block to which any service charges should be made, does not identify which block in the lease. The relevant clause is as follows:

- “1. The expense of maintaining repairing cleaning decorating treating polishing and lighting the entrance hall landings and staircases of Block[A][B][C] of the building used in common by two or more residents to such a standard as the Landlord may from time to time consider reasonably adequate.*
- 2. The cost of maintaining repairing and renewing and replacing servicing overhauling and keeping in good serviceable order and condition the lifts door entry and system and all other fixture and fittings being replaceable tools appliances and materials equipment and other fittings which the Landlords may deem reasonably desirable or necessary for the maintenance appearance upkeep or cleanliness of Common Internal Parts of Block [A][B][C] or any part thereof.*
- 3. The cost of any maintenance contract insurance s and other expenses relating to the lift.*
- 4. The expenses of installing maintaining repairing and renewing fire alarms and/or burglar alarms and any ancillary apparatus fire prevention and fire-fighting and any other equipment in Block[A][B][C].*

The lease for Flat 9 requires amendment to provide for the contributions to be made for Block C. This application is not opposed by the Respondents.

(b) The same alterations to Schedule 4 Part II are sought by the leaseholders of Flats 16 & 20 where the block to which the service charge contributions are to be made are also not specified. Here, the amendments sought are to specify the contributions are to be made to Block A and Block C respectively. Again, these applications are not opposed by the Respondents.

(c) The Applicants propose the same alteration to the Leases of Flats 2 and 3. The Lease for Flat 2 states the service charge contributions are to be made to Block A and an amendment is sought for this to be changed to Block B. Flat 2 has no access to Block A. The Lease for Flat 3 specifies the contributions are to be made to Block A and it is proposed this be changed to Block C. Mr & Mrs Anderson oppose this application and have made their own application. The lessee of Flat 3, Mrs Thompson supports the application.

(d) The leases for the maintenance of the car park are inconsistent. There are 35 car parking spaces; most of the flats have one space but some have 2 spaces. The charges vary between a proportion of 1/35th and a flat rate of £60. The effect of this is that the management company collects 110.896% of the costs. There are 2 visitors' spaces and the remaining 33 spaces are allocated to the leaseholders. It is proposed the leases are all varied to provide of the costs be charged at 1/35th for each space, this then including the maintenance of the visitor spaces. The Respondents confirmed they do not oppose this variation.

19. In support of the application, Mr Walker advises the amendments sought in respect of Flats 2 & 3 arise due to their position within the Property, in that their footprints are over 2 blocks. Both have access via Block C but Flat 2 pays a proportion of the service charge contribution to both Blocks A & B and Flat 3 pays to Blocks A and C. These charges are made irrespective of the provisions within the leases.

20. A table was produced to show the proposed variations to the leases would, in respect of the service charge contributions, reflect how the charges have been made by the management company since 2020. The variations would confirm the current position. The only anomaly is that for Flat 16 where the lease stipulates a contribution of 17.55% whilst the charge made is 13.74%. No explanation was readily available for this variance.

21. Upon the issue of compensation available to the Tribunal, Mr Walker suggested that since the service charges had been paid since 2020 in accordance with the proposed variations, there would be no substantial prejudice to the leaseholders in accordance with section 38(6), nor section 38(10) of the 1987 Act.

22. Mr Anderson confirmed his objection to the application, insofar as it relates to Flat 2, but has no objection to the proposed alteration to the car park charges to 1/35th for one space.
23. His application is made to counter the application made for his lease to be amended such that he pays a contribution via Block B. He believes he should pay via Block C, being the logical conclusion given the entrance to his flat is via that block and the majority of the footprint is also substantially within Block C. All the other flats are allocated the costs associated with the entrance from where they gain access. The only exceptions are Flats 2 & 3. His lease refers to Flat 2 being in Block B on the title page, but in Schedule 4 Part II the service charge payments are to be made for Block A. He seeks both to be varied to reference Block C.
24. Mr Anderson submits the application made by the majority of the leaseholders and supported by the Respondent has been done to reflect how the charges have been made by the management company. Those charges have not been made in accordance with the leases. For example, his maintenance charges are being made for Block B whilst his lease specifies Block A. Further, it is his belief the proposed amendments are based on a misunderstanding by the management company of the division of flats between the blocks and that the change will result in there being 7 flats in each block. This is not the case. There are 7 flats in Block A, 6 in Block B and 8 in Block C.
25. His proposal is that the total area of the buildings forming the Property should be divided into 3 blocks, the area of each block being determined by the flats accessed by the entrance to that block. This would give an area of 38.35% of the total area to Block A, 20.98% to Block B and 40.66% to Block C. *“The maintenance for the common areas and lifts would then be subdivided based on the area of each apartment relative to the area of each block.”* Flat 2 would then be responsible for 9.05% the maintenance of the common areas and lifts of Block C. By way of comparison, Mr Anderson compared Flat 2 with Flat 1, a flat of a similar size. Flat 1 would pay 9.77% of 38.35% and Flat 2 would pay 9.05% of 40.66%.
26. If Flat 2 was put into Block C then the contribution to the lift maintenance would be approximately 9%. If it went to Block B, as proposed, then the responsibility for lift costs would be 14.5%. Consequently, the proposal to move Flat 2 from Block A to Block B would substantially prejudice Mr and Mrs Anderson and warrant compensation.

27. Mrs Bowden seeks a variation to the lease of Flat 17, which is in Block A, upon the basis that the effect of uncapped service charges, since her purchase in 2010, have made the service charge contribution not only unaffordable but has made the flat unsaleable. Further, her financial position has been made worse by the lack of proper maintenance that has resulted in the lifts in all blocks not working. This has impacted upon her attempts to sell the flat and has rendered it virtually unsaleable.
28. She advises her lease provides for her to pay 18.97% of the Common Internal Parts Proportion in Block A and 7.17% for the Service Due Proportion which is for the external areas of the Property. There is then 2/35th for 2 car parking spaces. At the time of her purchase the freeholder agreed to make a contribution to the service charge budget, stated to be £55,000, with an intimation this would continue in certain circumstances. This contribution has not continued beyond the first year.
29. Since 2010, Mrs Bowden states the level of services provided by different managing agents has had an adverse effect upon the Property, but more so with the current management company, Inspired Property Ltd. An example is that items of maintenance are not carried out, for example none of the lifts in the 3 blocks are now in use and the intercom system is unreliable. The managing agents do not provide accounts as stipulated within the lease and the service charges increase on an annual basis. All these issues have prevented the flat securing a buyer since 2021.
30. The amendments proposed are the changes to the car parking spaces, as referred to above, to reflect that one of those spaces is difficult to use due to the position of a pillar in or near the space and a reduction of the contribution from 2/35ths to 1/35 would be reasonable. Provision should also be made to allow the spaces to be used by both motorbikes and bicycles.
31. A further amendment is to reduce the Common Internal Parts Due Proportion from 18.97% to 14.28% upon the basis that although Flat 17 is the second largest flat in the Property, it does not use any more of the communal parts than any other. It is suggested the floor area of each flat is irrelevant to the liability for the contribution to the common parts. Whilst the proposal would affect the contributions of the other properties, her flat has been subsidising the others since her ownership began in 2010.
32. Mrs Bowden also seeks a revision to Clause 2.2 of the Lease which provides for the service charge expenses, both for the individual blocks and common external areas, to be estimated by the managing agents and for the lessees then to pay half yearly based upon those estimates. The proposed amendment provides for contributions to be based upon independently audited accounts.

33. An amendment is sought to the reference to “Managing Agents” within the recitals to the lease, in that they should be subject to a periodic review by the leaseholders. This would allow the leaseholders to act where there is a poor performance, rather than seek redress through legal channels.
34. Clause 2.2 provides for the service charges to be estimated by the Managing Agents and for the leaseholders then to pay those by two equal instalments in each year. The proposal is for the lease to be amended to provide for the service charges to be based upon the actual expenditure in the previous year accompanied by audited accounts, the budget and projected expenditure and for those to then be approved by the leaseholders. This is before payments are then made by two equal instalments.
35. Mrs Bowden proposes that Clause 2.3 of the lease is amended to further reflect that payment of the service charges is subject to verification by independent auditors.

Decision

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36. The Tribunal notes that for an application to succeed under section 37(5) of 1987 Act, where an application is made in respect of more than eight leases (as here), it must not be opposed by more than 10% of the total numbers of parties concerned and at least 75% of that number consent to it. In calculating this, Section 37(6) provides the tenant under the lease shall be one of the parties concerned as will the landlord. This requirement is satisfied.
37. When making an order pursuant to section 37 of the 1987 Act, section 37(3) provides that no order can be made “*unless all the leases are varied to the same effect*”. Here, the application to vary the method by which the costs relating to the car parking spaces fulfils this requirement given the effect of the variation will be to ensure all the leases are the same.
38. The Tribunal therefore grants the application to vary all the leases to provide for each leaseholder to pay a contribution of 1/35th for each car parking space. If the flat has two spaces then a charge of 2/35th will apply. This replaces a flat charge in some leases and will achieve 100% of the costs, as opposed to the current overcharge of 110.896%. It is noted this application is supported by all the participating leaseholders. When making this order the Tribunal has considered section 38(6) and whether it will cause substantial prejudice to the Respondents or other lessees who are not a party to the proceedings. It notes the Respondents support the application and the leaseholders of Flats 12 & 15 had not notified the Tribunal or other leaseholders of any objections. The Tribunal does not find there to be any prejudice.

39. The application to vary the leases for Flats 9,16 & 20, in effect to rectify an error in drafting such that the lease will then specify the Block to which the service charge is paid, cannot succeed since it does not comply with the requirements of section 37(3). The proposed variations do not require all the leases to be "*varied to the same effect*". It will only affect the leases relating to those 3 flats.

40. The Tribunal notes this application is not opposed by any other leaseholders and its purpose is to amend the relevant leases to reflect the current position. The Tribunal has determined that this part of the application could be treated as a separate application to the remaining application made by the relevant leaseholders pursuant to section 35. This to prevent this aspect of the application failing upon a procedural error when applying the overriding objective to include flexibility within proceedings. In dealing with the matter in this way it further avoids costs and expenses to the parties.

41. Whilst it may be appropriate at this point to assign these flats to specific blocks, this change doesn't solve the core issue, that if any service charges in this development are charged purely on the basis of which block the flats are in, that results in a fundamental unfairness, leading to similar flats in different blocks paying vastly different charges. In order for the charges to be shared fairly, it would be preferable in the long term to change all the leases so that each flat contributes to the whole of the charges relative to its floor area, as a proportion of the whole development. It is again noted that this is supported by all the leaseholders, save those of Flats 12 & 15 and also including the Respondents to this application.

42. The Tribunal has considered whether such an order will cause substantial prejudice, as provided for by section 36(6), and determines it does not. The amendment to the leases effectively confirms the status quo relating to the payment of the service charges by the lessees of those flats.

43. The application made to vary the leases of Flats 2 & 3, pursuant to section 37, is refused for the same reasons as given for Flats 9, 16 & 20 in that the proposed variation to those leases does not result in all the leases for the Property being varied on the same terms.

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44. The application Mr Anderson to vary the lease for Flat 2 to change the block to which it contributes to the service charges is also refused.

45. The current system for the calculation of service charges is neither accurate nor particularly fair. Mr Anderson has confirmed in his statement to the Tribunal that his application has been made in response to the s.37 application

proposing his flat be moved to Block B. This has now been refused but if this application was granted, as asked, the effect would be to alter the number of flats in Block A to 6 and increase those in Block C to 9 and thus affect their respective costs. This would then give rise to whether compensation should be paid in accordance with section 38(10).

46. At the hearing, the Tribunal raised the possibility of a review of the calculation of the service charge. A more equitable solution would be to charge all the services across the entire development, each flat paying a contribution relative to the total floor areas of the individual flats. This would negate the need for flats to be assigned to an individual block for the payment of service charges and would provide a more equitable distribution of the costs. This is not a large development and such a change is not likely to prejudice any of the leaseholders financially.
47. The Tribunal notes the service charge is currently not calculated in accordance with the provisions of the leases but to base charges solely on which block an apartment is located in would mean that almost identical flats would pay widely differing service charges, depending on the block in which they were situated. This is particularly the case because the smallest flats are all in Block B, the block with the lowest number of flats. The small flats in Block B would therefore pay disproportionate amounts of service charge relative to the smaller flats in Block C (there are no flats of similar size in Block A). The flats in Block A and C, which contain the largest flats and have greater numbers of flats than Block B, would benefit disproportionately.
48. The Tribunal acknowledges this application proposes an amendment to the calculation of the service charge as referred to in paragraph 25 above. However, this would require an amendment to all the leases within the Property to give effect to those changes. An application made pursuant to section 35, as this is, does not provide the Tribunal with the jurisdiction to alter the remaining leases. Section 35 only allows for a variation of the lease to which the application relates.

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49. The application by Mrs Bowden, pursuant to section 35 of the 1987 Act, is refused. The basis of the application is one of hardship, in that costs relating to the flat have risen to have become burdensome and much removed from those payable at the outset of the lease. Further, there was some contribution from the freeholder in 2010 which Mrs Bowden thought might continue but did not. It is alleged the flat is now unsaleable due to the high service charges and the potential liability for lift repairs. Whilst the Tribunal have some sympathy with the position Mrs Bowden now finds herself, her personal circumstances are not the basis for a variation to the lease as provided for by section 35 of the 1987

Act. There are only limited circumstances when a lease may be varied. When Mrs Bowden entered into her lease its terms were clear; her subsequent difficulties are not a reason for that lease to be changed. If her application was granted it would impact upon the contributions to be made by the other leaseholders and there is no justification within the application for this. The Tribunal cannot vary the remaining leases in the Property under the present application for the same reasons given relating to Mr Walker's application.

50. Mrs Bowden's lease provides for her to pay a contribution of 2/35th of the maintenance costs of the car park. She agrees with the variation of the lease to provide that each leaseholder pay 1/35th of the maintenance costs for each car parking space but requests her lease be varied to reflect that one of the spaces is not easily accessible. Her contribution should therefore be 1/35th. The Tribunal does not accept the reason given justifies a variation to the lease. When Mrs Bowden purchased the flat in 2010, the location, size and accessibility of the car parking space was known. The lease was entered into with that knowledge. It is not a reason for it now to be changed.
51. The same principle applies to the variation to reduce the contribution to the Common Internal Parts Due Proportion form that stipulated in the lease of 18.97% to 14.28%. This was the proportion to which Mrs Bowden agreed when entering into the lease and if it were to be reduced, as asked, this would place a burden upon the other leaseholders.
52. Mrs Bowden also seeks to widen the uses for the car park, such as to allow motorbikes and bicycles. There is no indication whether this is supported or opposed by the other leaseholders. However, in considering the provisions of section 35, a lease may be varied if it fails to make satisfactory provision for any services. Here, the lease does make satisfactory provision for car parking. The lack of provision for motorbikes or bicycles is not, of itself, unsatisfactory.
53. Mrs Bowden' application includes amendments relating to the management of the flat. Her complaints relate to the failure of the managing agents to deal adequately with repairs and general maintenance. This includes the failure of the intercom system and the fact that the lift in all the blocks are now not working. This is not a reason to vary the lease; the lease makes satisfactory provision for the maintenance of the common parts. Mrs Bowden did acknowledge at the hearing that an application was ongoing for the appointment of a new manager.
54. Similarly, Mrs Bowden sought more stringent terms regarding the estimation of service charges and that the managing agents should be subject to closer scrutiny by the leaseholders. Again, the Tribunal did not consider the requirements of section 35 were fulfilled. The lease makes adequate provision for the service charge, providing for an estimation then payable half yearly. This estimation can then be remedied by the provision of accounts and subsequent adjustments. The failure by the managing agent to provide such

accounts is an issue in the management of the property and it does not follow that it renders the provisions of the lease, in themselves, unsatisfactory.

Rights of appeal

1. 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.
2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission to appeal must be made to the First-tier Tribunal at the regional office which has been dealing with the case.
3. The application for permission to appeal must be arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
4. If the application is not made within the 28 day time limit, such applications 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.
5. 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 rounds of appeal and state the result the party making the application is seeking.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

ANNEX A

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Applicants

1. Mr J Walker and Mrs R Walker -Flat 15
2. Mr J Barker-Flat 1
3. Mrs J Thompson -Flat 3
4. Mr A Forbes and Mrs J Forbes-Flat 4
5. Mr P Ash and Mrs A Ash-Flat 5
6. Mr A Johnson-Flat 6
7. Mr R Hamilton-Flat 7
8. Mr G Potts-Flat 8
9. Mr C Yates-Flat 9
10. Ms M Townrow-Flat 10
11. Mr F Bingham-Flat 11
12. Ms E Wigfield-Flat 12
13. Mrs J Hobson-Flat 13
14. Mr J Parkin and Mrs C Parkin -Flat 14
15. Mr G Beckwith-Flat 16
16. Ms C Holstein-Flat 18
17. Mr N Hind-Flat 19
18. Mr B Reid -Flat 20
19. Ms D Bernard and Mr P Barnard-Flat 21

Respondents

Long Term Reversions (Torquay) Ltd (1)
Mrs Pamela Bowden (2)
Mr David Anderson (3)

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Applicant – Mrs Pamela Bowden
Respondent- Long Term Reversions (Torquay) Ltd

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Applicant – Mr David Anderson
Respondent – Long Term Reversions (Torquay) Ltd

ANNEX B

ORDER

UPON the application by the Applicant pursuant to section 37 of the Landlord & Tenant Act 1987

AND UPON the applications by the Second and Third Respondents pursuant to section 35 of the Landlord & Tenant Act 1987

IT IS ORDERED that:

1. The application made by the Applicant for the leases to be amended to change the Car Park proportion to 1/35th for each car parking space is granted and the leases set out in Schedule 1 to this order are amended as set out in Schedule 2 of this order.
2. The application made by the Applicant to amend the leases of Flats 9, 16 & 20 pursuant to section 37 of the 1987 Act is amended to a separate application made pursuant to section 35 of the 1987 Act and is granted as set out in Schedule 2 of this order,
3. The Applicant shall make an application to HM Land Registry against the freehold title and the titles set out in Schedule 1 to this order to register the variations granted by the Tribunal as contained in paragraphs 1 & 2 of this order.
4. The applications made by the Second and Third Respondents pursuant to section 35 of the Landlord & Tenant Act 1987 are refused.

SCHEDULE 1

Flat Number	Leaseholder	Date of lease and parties	Title Number
1	J. Barker	1.6.2010; Mirabeau Ltd and Comino Ltd (1) John Barker (2)	NYK 379797
2	D. & T. Anderson	16.6.2010; Mirabeau Ltd and Comino Ltd (1) Bernice Francis Webber(2)	NYK 379127
3	I Thompson	11.6.2010: Mirabeau Ltd and Comino Ltd (1) Andrew Richard(2)	NYK 379689
4	A. & J. Forbes	30.12.2009; Mirabeau Ltd and Comino Ltd (1) Joan Forbes (2)	NYK 375344
5	P. & A. Ash	24.3.2010; Mirabeau Ltd and Comino Ltd (1) James Robert (2)	NYK 377274

6	A. Johnson	26.1.2010; Mirabeau Ltd and Comino Ltd (1) Andrew Johnson (2)	NYK 376130
7	R. Hamilton	20.9.2009	NYK 374046
8	G. Potts	27.11.2009; Mirabeau Ltd and Comino Ltd (1) Geraldine Potts (2)	NYK 374487
9	C A Yates	14.5.2010; Mirabeau Ltd and Comino Ltd (1) Eric James Eades (2)	NYK 378423
10	R. Townrow	15.10.2009;	NYK 373315
11	F. P. Bingham	25.1.2010; Mirabeau Ltd and Comino Ltd (1) Edward(2)	NYK 375537
12	E. Wigfield	2.11.2009;	NYK 373689
13	J. Hobson	21.1.2010; Mirabeau Ltd and Comino Ltd (1) Louise(2)	NYK 375920
14	J. & C. Parkin	19.2.2010; Mirabeau Ltd and Comino Ltd (1) William (2)	NYK 376808
15	J. & R. Walker	18.5.2010; Mirabeau Ltd and Comino Ltd (1)Christopher (2)	NYK 378519
16	G. J. Beckwith	5.5.2010; Mirabeau Ltd and Comino Ltd (1)Gary James Beckwith (2)	NYK 378573
17	P. J. Bowden	14.5.2010; Mirabeau Ltd and Comino Ltd (1)Pamela Jeanette Bowden (2)	NYK 378376
18	C. Holstein	18.11.2009; Mirabeau Ltd and Comino Ltd (1)Andrew (2)	NYK 373883
19	N. & L. Hind	25.9.2009; Mirabeau Ltd and Comino Ltd (1) Lucy Hinds (2)	NYK 373177
20	B. Reid	7.5.2010; Mirabeau Ltd and Comino Ltd (1) Paul IanWinstanley (2)	NYK 378426
21	D. & P. Barnard	14.5.2010; Mirabeau Ltd and Comino Ltd (1) Alastair Stewart (2)	NYK 378539

SCHEDULE 2

1. The recitals for each of the leases under which the properties are held, as referred to in Schedule 1, are to be amended such that the definition of the "Car Parking Due Proportion" at page 4 will be 1/35th.
2. The lease for Flat 9, as referred to in Schedule 1, is to be amended in Schedule 4 Part II as follows:
 1. The expense of maintaining repairing decorating treating polishing and lighting the entrance hall landings and staircases of Block C of the building used in common by two or more residents to such a standard as the Landlord may from time to time consider reasonably adequate
 2. The cost of maintaining repairing and renewing replacing servicing overhauling and keeping in good serviceable order and condition the lifts door entry system and all other fixtures and fittings being replaceable tools appliances materials equipment and other things which the Landlord may deem reasonably desirable or necessary for the maintenance appearance upkeep or cleanliness of the Common Internal Parts of Block C or any part thereof
 3. The cost of any maintenance contract insurances and other expenses relating to the lift
 4. The expense of installing maintaining repairing and renewing fire alarms and any ancillary apparatus fire prevention and fire-fighting equipment and other apparatus in Block C
3. The lease for Flat 16, as referred to in Schedule 1, is to be amended in Schedule 4 Part II as follows:
 1. The expense of maintaining repairing decorating treating polishing and lighting the entrance hall landings and staircases of Block A of the building used in common by two or more residents to such a standard as the Landlord may from time to time consider reasonably adequate
 2. The cost of maintaining repairing and renewing replacing servicing overhauling and keeping in good serviceable order and condition the lifts door entry system and all other fixtures and fittings being replaceable tools appliances materials equipment and other things which the Landlord may deem reasonably desirable or necessary for the maintenance appearance upkeep or cleanliness of the Common Internal Parts of Block A or any part thereof

3. The cost of any maintenance contract insurances and other expenses relating to the lift
4. The expense of installing maintaining repairing and renewing fire alarms and any ancillary apparatus fire prevention and fire-fighting equipment and other apparatus in Block A

4. The lease for Flat 20, as referred to in Schedule 1, is to be amended in Schedule 4 Part II as follows:

1. The expense of maintaining repairing decorating treating polishing and lighting the entrance hall landings and staircases of Block C of the building used in common by two or more residents to such a standard as the Landlord may from time to time consider reasonably adequate
2. The cost of maintaining repairing and renewing replacing servicing overhauling and keeping in good serviceable order and condition the lifts door entry system and all other fixtures and fittings being replaceable tools appliances materials equipment and other things which the Landlord may deem reasonably desirable or necessary for the maintenance appearance upkeep or cleanliness of the Common Internal Parts of Block C or any part thereof
3. The cost of any maintenance contract insurances and other expenses relating to the lift
4. The expense of installing maintaining repairing and renewing fire alarms and any ancillary apparatus fire prevention and fire-fighting equipment and other apparatus in Block C



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

Case Reference

**MAN/36UD/LVT/2024/0002
MAN/36UD/LVL/2025/0002
MAN/36UD/LVL/2025/0003**

Property

**Flats 1-21 Park Court, 46 North Park
Road, Harrogate, North Yorkshire
HG1 5AD**

Applicant

See Annex A

Representatives

Mr Jeff Walker

Respondents

See Annex A

Representatives

**Applicants-Mr R. Walker
Long Term Reversions Ltd-Rob
Chapman**

**Type of
Application**

**Application to vary leases pursuant
sections 35 & 37 of the Landlord &
Tenant Act 1987**

**Tribunal
Members**

**Tribunal Judge J. E. Oliver
Tribunal Member J. A. Jacobs**

**Date of
Determination**

22nd October 2025

Date of Reasons

23rd January 2026

REASONS FOR DECISION

Decision

1. The Tribunal makes an order as contained in Annex B to this decision.

Background

MAN/36UD/LVT/2024/0002

2. On 4th May 2024 Mr J Walker of Flat 15, Park Court, Harrogate, filed an application with the Tribunal for the variation of leases at Park Court, Harrogate (“the Property”). On 7th March 2025, following a case management hearing, directions were given for the application to be re-submitted clarifying whether the application was to be made under section 35 or section 37 of the Landlord & Tenant Act 1987 (“the 1987 Act”) and for all those wanting a variation of their leases to be made parties to the proceedings.
3. On 16th June Mr Walker made an application to join eighteen additional applicants to his application (“the Applicants”) and on 18th June filed a revised section 37 application. This application contained three proposed variations to the lease as follows:
 - a. Schedule 4 Part II of the lease provides for Flats 9, 16 & 20 to contribute to the maintenance costs for Blocks A, B & C. A variation is sought to provide for those flats to contribute towards the costs of the block where they are situated to mirror the terms of the other leases of the flats at the Property.
 - b. A variation to the same Schedule for the leases of Flats 2 & 3 to change the block to which those lessees should contribute to Block B and to Block C respectively.
 - c. A variation of the leases to change the contribution each leaseholder should pay to the maintenance of the car park.
4. Mr Anderson and Mrs Bowden, being the lessees of Flats 2 and 17 respectively, objected to the proposals and filed their own applications pursuant to section 35 of the 1987 Act. The Respondent freeholder, Long Term Reversions Ltd did not object to the proposed variations proposed by Mr Walker.

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5. Mr Anderson's application, pursuant to section 35 of the 1987 Act, sought a variation to Schedule 4 Part II of his lease such that he is liable for the expenses relating to Block C, rather than Block B, as proposed in the application made by Mr Walker and others. The lease currently provides for service charge payments to be made for Block A. An alteration to the allocation of those service charges is also sought.

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6. Mrs Bowden made an application, pursuant to Section 35 of the 1987 Act, for variations to her lease as follows:

- a. To change "the Car Parking Due Proportion" from 2/35ths to 1/35th on the basis only one of the spaces is suitable for use by a standard size car. The second space is impacted by a pillar making it difficult to use without guidance. If that is not acceptable then the lease be amended to provide for parking of either a car, a motorbike or bicycle in the designated space.
- b. To change "the Common Internal Parts Due Proportion" from 18.97% to 14.29%.
- c. To change "the Service Due Proportion" from 7.17% to 4.76 %.
- d. To change the provisions of the lease to limit or cap the annual service charge increases.

7. Directions were issued on 2nd July 2025 by Judge Goodall providing for Long Term Reversions (Torquay) Ltd be designated as First Respondent to Mr Walker's application and for Mr Anderson and Mrs Bowden to be made Second and Third Respondents.

8. The Tribunal did not inspect the Property but was advised it comprises 3 blocks with a total number of 21 flats. Each of the blocks has its own entrance and lift. Block A contains 7 flats, Block B 6 flats and Block C 8 flats. All the flats, save two, have access via the entrance in their respective block and this is then the block to which the service charges are payable. However, there is an anomaly with Flats 2 and 3. In the case of Flat 2, its entrance is Block C but its lease provides for the service charge payments to be made for Block B and responsibility for the lifts and common areas in Block A. Similarly, the entrance for Flat 3 is Block C but the service charges are charged and paid for Block B.

9. The application was listed for a hearing on 22nd October 2025. At the hearing the Applicants were represented by Mr Walker. The First Respondent was represented by Mr Rob Chapman. The Second and Third Respondent attended in person. The managing agents, Inspired Property Ltd, also attended, represented by Andrea Barnard.

The Law

10. Section 35 of the 1987 provides that either party to a long lease may apply for its variation if it fails to make satisfactory provision for the repair, maintenance of the flat or land or building let to the tenant in which rights are conferred to them under it. There are also provisions for a variation relating to insurance, maintenance of installations, the recovery of expenditure and the computation of the service charges.
11. A party to a lease may also apply for its variation under section 37 of the 1987 Act, but, here, the application must relate to 2 or more leases that do not have to be drafted in the same terms but must be long leases and have the same landlord.
12. The grounds on which such an application may be made are that the object to be gained by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect. Section 37(5) provides that where an application is made in respect of more than eight leases (as here), it must not be opposed by more than 10% of the total numbers of parties concerned and at least 75% of that number consent to it. In calculating this, Section 37(6) provides the tenant under the lease shall be one of the parties concerned as will the landlord.
13. Section 38 provides that where the grounds of the application are established the Tribunal may make an order varying each of the leases concerned in such manner as is specified in the order.
14. Whilst the Tribunal can vary the leases section 38(6) sets out when it cannot do so. Section 38(6)(a) provides this is where any variation may substantially prejudice any respondent to the application, or any person who is not a party to the application and that any compensatory award made under section 36(10) would be inadequate. Section 38(6)(b) provides there should be no variation where it would not be reasonable in the circumstances for the variation to be effected.
15. Section 38(10) further provides that the Tribunal may, where it thinks fit, make an order for any party to the lease to pay to any other party to the lease or to any other party, compensation in respect of any loss or disadvantage that the Tribunal considers will be suffered by reason of the variation.

The Hearing/Submissions

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16. Mr Walker confirmed he was representing all the leaseholders of the Property in the application, save for those for No 2, and No 17 who opposed it and Flats 12 and 15 who had not responded to Mr Walker and their position was not known.
17. He confirmed that whilst the application was opposed by Mr Anderson and Mrs Bowden, it was supported by the Respondent freeholder and this was confirmed by Rob Chapman at the hearing.
18. He confirmed his reasons for the application are as follows:

(a) Schedule 4 Part II of the lease for Flat 9, which provides for the liability for the service charge and which specifies the block to which any service charges should be made, does not identify which block in the lease. The relevant clause is as follows:

- “1. The expense of maintaining repairing cleaning decorating treating polishing and lighting the entrance hall landings and staircases of Block[A][B][C] of the building used in common by two or more residents to such a standard as the Landlord may from time to time consider reasonably adequate.*
- 2. The cost of maintaining repairing and renewing and replacing servicing overhauling and keeping in good serviceable order and condition the lifts door entry and system and all other fixture and fittings being replaceable tools appliances and materials equipment and other fittings which the Landlords may deem reasonably desirable or necessary for the maintenance appearance upkeep or cleanliness of Common Internal Parts of Block [A][B][C] or any part thereof.*
- 3. The cost of any maintenance contract insurance s and other expenses relating to the lift.*
- 4. The expenses of installing maintaining repairing and renewing fire alarms and/or burglar alarms and any ancillary apparatus fire prevention and fire-fighting and any other equipment in Block[A][B][C].*

The lease for Flat 9 requires amendment to provide for the contributions to be made for Block C. This application is not opposed by the Respondents.

(b) The same alterations to Schedule 4 Part II are sought by the leaseholders of Flats 16 & 20 where the block to which the service charge contributions are to be made are also not specified. Here, the amendments sought are to specify the contributions are to be made to Block A and Block C respectively. Again, these applications are not opposed by the Respondents.

(c) The Applicants propose the same alteration to the Leases of Flats 2 and 3. The Lease for Flat 2 states the service charge contributions are to be made to Block A and an amendment is sought for this to be changed to Block B. Flat 2 has no access to Block A. The Lease for Flat 3 specifies the contributions are to be made to Block A and it is proposed this be changed to Block C. Mr & Mrs Anderson oppose this application and have made their own application. The lessee of Flat 3, Mrs Thompson supports the application.

(d) The leases for the maintenance of the car park are inconsistent. There are 35 car parking spaces; most of the flats have one space but some have 2 spaces. The charges vary between a proportion of 1/35th and a flat rate of £60. The effect of this is that the management company collects 110.896% of the costs. There are 2 visitors' spaces and the remaining 33 spaces are allocated to the leaseholders. It is proposed the leases are all varied to provide of the costs be charged at 1/35th for each space, this then including the maintenance of the visitor spaces. The Respondents confirmed they do not oppose this variation.

19. In support of the application, Mr Walker advises the amendments sought in respect of Flats 2 & 3 arise due to their position within the Property, in that their footprints are over 2 blocks. Both have access via Block C but Flat 2 pays a proportion of the service charge contribution to both Blocks A & B and Flat 3 pays to Blocks A and C. These charges are made irrespective of the provisions within the leases.

20. A table was produced to show the proposed variations to the leases would, in respect of the service charge contributions, reflect how the charges have been made by the management company since 2020. The variations would confirm the current position. The only anomaly is that for Flat 16 where the lease stipulates a contribution of 17.55% whilst the charge made is 13.74%. No explanation was readily available for this variance.

21. Upon the issue of compensation available to the Tribunal, Mr Walker suggested that since the service charges had been paid since 2020 in accordance with the proposed variations, there would be no substantial prejudice to the leaseholders in accordance with section 38(6), nor section 38(10) of the 1987 Act.

22. Mr Anderson confirmed his objection to the application, insofar as it relates to Flat 2, but has no objection to the proposed alteration to the car park charges to 1/35th for one space.
23. His application is made to counter the application made for his lease to be amended such that he pays a contribution via Block B. He believes he should pay via Block C, being the logical conclusion given the entrance to his flat is via that block and the majority of the footprint is also substantially within Block C. All the other flats are allocated the costs associated with the entrance from where they gain access. The only exceptions are Flats 2 & 3. His lease refers to Flat 2 being in Block B on the title page, but in Schedule 4 Part II the service charge payments are to be made for Block A. He seeks both to be varied to reference Block C.
24. Mr Anderson submits the application made by the majority of the leaseholders and supported by the Respondent has been done to reflect how the charges have been made by the management company. Those charges have not been made in accordance with the leases. For example, his maintenance charges are being made for Block B whilst his lease specifies Block A. Further, it is his belief the proposed amendments are based on a misunderstanding by the management company of the division of flats between the blocks and that the change will result in there being 7 flats in each block. This is not the case. There are 7 flats in Block A, 6 in Block B and 8 in Block C.
25. His proposal is that the total area of the buildings forming the Property should be divided into 3 blocks, the area of each block being determined by the flats accessed by the entrance to that block. This would give an area of 38.35% of the total area to Block A, 20.98% to Block B and 40.66% to Block C. *“The maintenance for the common areas and lifts would then be subdivided based on the area of each apartment relative to the area of each block.”* Flat 2 would then be responsible for 9.05% the maintenance of the common areas and lifts of Block C. By way of comparison, Mr Anderson compared Flat 2 with Flat 1, a flat of a similar size. Flat 1 would pay 9.77% of 38.35% and Flat 2 would pay 9.05% of 40.66%.
26. If Flat 2 was put into Block C then the contribution to the lift maintenance would be approximately 9%. If it went to Block B, as proposed, then the responsibility for lift costs would be 14.5%. Consequently, the proposal to move Flat 2 from Block A to Block B would substantially prejudice Mr and Mrs Anderson and warrant compensation.

27. Mrs Bowden seeks a variation to the lease of Flat 17, which is in Block A, upon the basis that the effect of uncapped service charges, since her purchase in 2010, have made the service charge contribution not only unaffordable but has made the flat unsaleable. Further, her financial position has been made worse by the lack of proper maintenance that has resulted in the lifts in all blocks not working. This has impacted upon her attempts to sell the flat and has rendered it virtually unsaleable.
28. She advises her lease provides for her to pay 18.97% of the Common Internal Parts Proportion in Block A and 7.17% for the Service Due Proportion which is for the external areas of the Property. There is then 2/35th for 2 car parking spaces. At the time of her purchase the freeholder agreed to make a contribution to the service charge budget, stated to be £55,000, with an intimation this would continue in certain circumstances. This contribution has not continued beyond the first year.
29. Since 2010, Mrs Bowden states the level of services provided by different managing agents has had an adverse effect upon the Property, but more so with the current management company, Inspired Property Ltd. An example is that items of maintenance are not carried out, for example none of the lifts in the 3 blocks are now in use and the intercom system is unreliable. The managing agents do not provide accounts as stipulated within the lease and the service charges increase on an annual basis. All these issues have prevented the flat securing a buyer since 2021.
30. The amendments proposed are the changes to the car parking spaces, as referred to above, to reflect that one of those spaces is difficult to use due to the position of a pillar in or near the space and a reduction of the contribution from 2/35ths to 1/35 would be reasonable. Provision should also be made to allow the spaces to be used by both motorbikes and bicycles.
31. A further amendment is to reduce the Common Internal Parts Due Proportion from 18.97% to 14.28% upon the basis that although Flat 17 is the second largest flat in the Property, it does not use any more of the communal parts than any other. It is suggested the floor area of each flat is irrelevant to the liability for the contribution to the common parts. Whilst the proposal would affect the contributions of the other properties, her flat has been subsidising the others since her ownership began in 2010.
32. Mrs Bowden also seeks a revision to Clause 2.2 of the Lease which provides for the service charge expenses, both for the individual blocks and common external areas, to be estimated by the managing agents and for the lessees then to pay half yearly based upon those estimates. The proposed amendment provides for contributions to be based upon independently audited accounts.

33. An amendment is sought to the reference to "Managing Agents" within the recitals to the lease, in that they should be subject to a periodic review by the leaseholders. This would allow the leaseholders to act where there is a poor performance, rather than seek redress through legal channels.
34. Clause 2.2 provides for the service charges to be estimated by the Managing Agents and for the leaseholders then to pay those by two equal instalments in each year. The proposal is for the lease to be amended to provide for the service charges to be based upon the actual expenditure in the previous year accompanied by audited accounts, the budget and projected expenditure and for those to then be approved by the leaseholders. This is before payments are then made by two equal instalments.
35. Mrs Bowden proposes that Clause 2.3 of the lease is amended to further reflect that payment of the service charges is subject to verification by independent auditors.

Decision

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36. The Tribunal notes that for an application to succeed under section 37(5) of 1987 Act, where an application is made in respect of more than eight leases (as here), it must not be opposed by more than 10% of the total numbers of parties concerned and at least 75% of that number consent to it. In calculating this, Section 37(6) provides the tenant under the lease shall be one of the parties concerned as will the landlord. This requirement is satisfied.
37. When making an order pursuant to section 37 of the 1987 Act, section 37(3) provides that no order can be made "*unless all the leases are varied to the same effect*". Here, the application to vary the method by which the costs relating to the car parking spaces fulfils this requirement given the effect of the variation will be to ensure all the leases are the same.
38. The Tribunal therefore grants the application to vary all the leases to provide for each leaseholder to pay a contribution of 1/35th for each car parking space. If the flat has two spaces then a charge of 2/35th will apply. This replaces a flat charge in some leases and will achieve 100% of the costs, as opposed to the current overcharge of 110.896%. It is noted this application is supported by all the participating leaseholders. When making this order the Tribunal has considered section 38(6) and whether it will cause substantial prejudice to the Respondents or other lessees who are not a party to the proceedings. It notes the Respondents support the application and the leaseholders of Flats 12 & 15 had not notified the Tribunal or other leaseholders of any objections. The Tribunal does not find there to be any prejudice.

39. The application to vary the leases for Flats 9,16 & 20, in effect to rectify an error in drafting such that the lease will then specify the Block to which the service charge is paid, cannot succeed since it does not comply with the requirements of section 37(3). The proposed variations do not require all the leases to be "*varied to the same effect*". It will only affect the leases relating to those 3 flats.

40. The Tribunal notes this application is not opposed by any other leaseholders and its purpose is to amend the relevant leases to reflect the current position. The Tribunal has determined that this part of the application could be treated as a separate application to the remaining application made by the relevant leaseholders pursuant to section 35. This to prevent this aspect of the application failing upon a procedural error when applying the overriding objective to include flexibility within proceedings. In dealing with the matter in this way it further avoids costs and expenses to the parties.

41. Whilst it may be appropriate at this point to assign these flats to specific blocks, this change doesn't solve the core issue, that if any service charges in this development are charged purely on the basis of which block the flats are in, that results in a fundamental unfairness, leading to similar flats in different blocks paying vastly different charges. In order for the charges to be shared fairly, it would be preferable in the long term to change all the leases so that each flat contributes to the whole of the charges relative to its floor area, as a proportion of the whole development. It is again noted that this is supported by all the leaseholders, save those of Flats 12 & 15 and also including the Respondents to this application.

42. The Tribunal has considered whether such an order will cause substantial prejudice, as provided for by section 36(6), and determines it does not. The amendment to the leases effectively confirms the status quo relating to the payment of the service charges by the lessees of those flats.

43. The application made to vary the leases of Flats 2 & 3, pursuant to section 37, is refused for the same reasons as given for Flats 9, 16 & 20 in that the proposed variation to those leases does not result in all the leases for the Property being varied on the same terms.

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44. The application Mr Anderson to vary the lease for Flat 2 to change the block to which it contributes to the service charges is also refused.

45. The current system for the calculation of service charges is neither accurate nor particularly fair. Mr Anderson has confirmed in his statement to the Tribunal that his application has been made in response to the s.37 application

proposing his flat be moved to Block B. This has now been refused but if this application was granted, as asked, the effect would be to alter the number of flats in Block A to 6 and increase those in Block C to 9 and thus affect their respective costs. This would then give rise to whether compensation should be paid in accordance with section 38(10).

46. At the hearing, the Tribunal raised the possibility of a review of the calculation of the service charge. A more equitable solution would be to charge all the services across the entire development, each flat paying a contribution relative to the total floor areas of the individual flats. This would negate the need for flats to be assigned to an individual block for the payment of service charges and would provide a more equitable distribution of the costs. This is not a large development and such a change is not likely to prejudice any of the leaseholders financially.
47. The Tribunal notes the service charge is currently not calculated in accordance with the provisions of the leases but to base charges solely on which block an apartment is located in would mean that almost identical flats would pay widely differing service charges, depending on the block in which they were situated. This is particularly the case because the smallest flats are all in Block B, the block with the lowest number of flats. The small flats in Block B would therefore pay disproportionate amounts of service charge relative to the smaller flats in Block C (there are no flats of similar size in Block A). The flats in Block A and C, which contain the largest flats and have greater numbers of flats than Block B, would benefit disproportionately.
48. The Tribunal acknowledges this application proposes an amendment to the calculation of the service charge as referred to in paragraph 25 above. However, this would require an amendment to all the leases within the Property to give effect to those changes. An application made pursuant to section 35, as this is, does not provide the Tribunal with the jurisdiction to alter the remaining leases. Section 35 only allows for a variation of the lease to which the application relates.

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49. The application by Mrs Bowden, pursuant to section 35 of the 1987 Act, is refused. The basis of the application is one of hardship, in that costs relating to the flat have risen to have become burdensome and much removed from those payable at the outset of the lease. Further, there was some contribution from the freeholder in 2010 which Mrs Bowden thought might continue but did not. It is alleged the flat is now unsaleable due to the high service charges and the potential liability for lift repairs. Whilst the Tribunal have some sympathy with the position Mrs Bowden now finds herself, her personal circumstances are not the basis for a variation to the lease as provided for by section 35 of the 1987

Act. There are only limited circumstances when a lease may be varied. When Mrs Bowden entered into her lease its terms were clear; her subsequent difficulties are not a reason for that lease to be changed. If her application was granted it would impact upon the contributions to be made by the other leaseholders and there is no justification within the application for this. The Tribunal cannot vary the remaining leases in the Property under the present application for the same reasons given relating to Mr Walker's application.

50. Mrs Bowden's lease provides for her to pay a contribution of 2/35th of the maintenance costs of the car park. She agrees with the variation of the lease to provide that each leaseholder pay 1/35th of the maintenance costs for each car parking space but requests her lease be varied to reflect that one of the spaces is not easily accessible. Her contribution should therefore be 1/35th. The Tribunal does not accept the reason given justifies a variation to the lease. When Mrs Bowden purchased the flat in 2010, the location, size and accessibility of the car parking space was known. The lease was entered into with that knowledge. It is not a reason for it now to be changed.
51. The same principle applies to the variation to reduce the contribution to the Common Internal Parts Due Proportion form that stipulated in the lease of 18.97% to 14.28%. This was the proportion to which Mrs Bowden agreed when entering into the lease and if it were to be reduced, as asked, this would place a burden upon the other leaseholders.
52. Mrs Bowden also seeks to widen the uses for the car park, such as to allow motorbikes and bicycles. There is no indication whether this is supported or opposed by the other leaseholders. However, in considering the provisions of section 35, a lease may be varied if it fails to make satisfactory provision for any services. Here, the lease does make satisfactory provision for car parking. The lack of provision for motorbikes or bicycles is not, of itself, unsatisfactory.
53. Mrs Bowden' application includes amendments relating to the management of the flat. Her complaints relate to the failure of the managing agents to deal adequately with repairs and general maintenance. This includes the failure of the intercom system and the fact that the lift in all the blocks are now not working. This is not a reason to vary the lease; the lease makes satisfactory provision for the maintenance of the common parts. Mrs Bowden did acknowledge at the hearing that an application was ongoing for the appointment of a new manager.
54. Similarly, Mrs Bowden sought more stringent terms regarding the estimation of service charges and that the managing agents should be subject to closer scrutiny by the leaseholders. Again, the Tribunal did not consider the requirements of section 35 were fulfilled. The lease makes adequate provision for the service charge, providing for an estimation then payable half yearly. This estimation can then be remedied by the provision of accounts and subsequent adjustments. The failure by the managing agent to provide such

accounts is an issue in the management of the property and it does not follow that it renders the provisions of the lease, in themselves, unsatisfactory.

Rights of appeal

1. 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.
2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission to appeal must be made to the First-tier Tribunal at the regional office which has been dealing with the case.
3. The application for permission to appeal must be arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
4. If the application is not made within the 28 day time limit, such applications 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.
5. 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 rounds of appeal and state the result the party making the application is seeking.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

ANNEX A

MAN/36UD/LVT/2024/0002

Applicants

1. Mr J Walker and Mrs R Walker -Flat 15
2. Mr J Barker-Flat 1
3. Mrs J Thompson -Flat 3
4. Mr A Forbes and Mrs J Forbes-Flat 4
5. Mr P Ash and Mrs A Ash-Flat 5
6. Mr A Johnson-Flat 6
7. Mr R Hamilton-Flat 7
8. Mr G Potts-Flat 8
9. Mr C Yates-Flat 9
10. Ms M Townrow-Flat 10
11. Mr F Bingham-Flat 11
12. Ms E Wigfield-Flat 12
13. Mrs J Hobson-Flat 13
14. Mr J Parkin and Mrs C Parkin -Flat 14
15. Mr G Beckwith-Flat 16
16. Ms C Holstein-Flat 18
17. Mr N Hind-Flat 19
18. Mr B Reid -Flat 20
19. Ms D Bernard and Mr P Barnard-Flat 21

Respondents

Long Term Reversions (Torquay) Ltd (1)

Mrs Pamela Bowden (2)

Mr David Anderson (3)

MAN/36UD/LVL/2025/0002

Applicant – Mrs Pamela Bowden

Respondent- Long Term Reversions (Torquay) Ltd

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Applicant – Mr David Anderson

Respondent – Long Term Reversions (Torquay) Ltd

ANNEX B

ORDER

UPON the application by the Applicant pursuant to section 37 of the Landlord & Tenant Act 1987

AND UPON the applications by the Second and Third Respondents pursuant to section 35 of the Landlord & Tenant Act 1987

IT IS ORDERED that:

1. The application made by the Applicant for the leases to be amended to change the Car Park proportion to 1/35th for each car parking space is granted and the leases set out in Schedule 1 to this order are amended as set out in Schedule 2 of this order.
2. The application made by the Applicant to amend the leases of Flats 9, 16 & 20 pursuant to section 37 of the 1987 Act is amended to a separate application made pursuant to section 35 of the 1987 Act and is granted as set out in Schedule 2 of this order,
3. The Applicant shall make an application to HM Land Registry against the freehold title and the titles set out in Schedule 1 to this order to register the variations granted by the Tribunal as contained in paragraphs 1 & 2 of this order.
4. The applications made by the Second and Third Respondents pursuant to section 35 of the Landlord & Tenant Act 1987 are refused.

SCHEDULE 1

Flat Number	Leaseholder	Date of lease and parties	Title Number
1	J. Barker	1.6.2010; Mirabeau Ltd and Comino Ltd (1) John Barker (2)	NYK 379797
2	D. & T. Anderson	16.6.2010; Mirabeau Ltd and Comino Ltd (1) Bernice Francis Webber(2)	NYK 379127
3	I Thompson	11.6.2010: Mirabeau Ltd and Comino Ltd (1) Andrew Richard(2)	NYK 379689
4	A. & J. Forbes	30.12.2009; Mirabeau Ltd and Comino Ltd (1) Joan Forbes (2)	NYK 375344
5	P. & A. Ash	24.3.2010; Mirabeau Ltd and Comino Ltd (1) James Robert (2)	NYK 377274

6	A. Johnson	26.1.2010; Mirabeau Ltd and Comino Ltd (1) Andrew Johnson (2)	NYK 376130
7	R. Hamilton	20.9.2009	NYK 374046
8	G. Potts	27.11.2009; Mirabeau Ltd and Comino Ltd (1) Geraldine Potts (2)	NYK 374487
9	C A Yates	14.5.2010; Mirabeau Ltd and Comino Ltd (1) Eric James Eades (2)	NYK 378423
10	R. Townrow	15.10.2009;	NYK 373315
11	F. P. Bingham	25.1.2010; Mirabeau Ltd and Comino Ltd (1) Edward(2)	NYK 375537
12	E. Wigfield	2.11.2009;	NYK 373689
13	J. Hobson	21.1.2010; Mirabeau Ltd and Comino Ltd (1) Louise(2)	NYK 375920
14	J. & C. Parkin	19.2.2010; Mirabeau Ltd and Comino Ltd (1) William (2)	NYK 376808
15	J. & R. Walker	18.5.2010; Mirabeau Ltd and Comino Ltd (1)Christopher (2)	NYK 378519
16	G. J. Beckwith	5.5.2010; Mirabeau Ltd and Comino Ltd (1)Gary James Beckwith (2)	NYK 378573
17	P. J. Bowden	14.5.2010; Mirabeau Ltd and Comino Ltd (1)Pamela Jeanette Bowden (2)	NYK 378376
18	C. Holstein	18.11.2009; Mirabeau Ltd and Comino Ltd (1)Andrew (2)	NYK 373883
19	N. & L. Hind	25.9.2009; Mirabeau Ltd and Comino Ltd (1) Lucy Hinds (2)	NYK 373177
20	B. Reid	7.5.2010; Mirabeau Ltd and Comino Ltd (1) Paul Ian Winstanley (2)	NYK 378426
21	D. & P. Barnard	14.5.2010; Mirabeau Ltd and Comino Ltd (1) Alastair Stewart (2)	NYK 378539

SCHEDULE 2

1. The recitals for each of the leases under which the properties are held, as referred to in Schedule 1, are to be amended such that the definition of the "Car Parking Due Proportion" at page 4 will be 1/35th.
2. The lease for Flat 9, as referred to in Schedule 1, is to be amended in Schedule 4 Part II as follows:
 1. The expense of maintaining repairing decorating treating polishing and lighting the entrance hall landings and staircases of Block C of the building used in common by two or more residents to such a standard as the Landlord may from time to time consider reasonably adequate
 2. The cost of maintaining repairing and renewing replacing servicing overhauling and keeping in good serviceable order and condition the lifts door entry system and all other fixtures and fittings being replaceable tools appliances materials equipment and other things which the Landlord may deem reasonably desirable or necessary for the maintenance appearance upkeep or cleanliness of the Common Internal Parts of Block C or any part thereof
 3. The cost of any maintenance contract insurances and other expenses relating to the lift
 4. The expense of installing maintaining repairing and renewing fire alarms and any ancillary apparatus fire prevention and fire-fighting equipment and other apparatus in Block C
3. The lease for Flat 16, as referred to in Schedule 1, is to be amended in Schedule 4 Part II as follows:
 1. The expense of maintaining repairing decorating treating polishing and lighting the entrance hall landings and staircases of Block A of the building used in common by two or more residents to such a standard as the Landlord may from time to time consider reasonably adequate
 2. The cost of maintaining repairing and renewing replacing servicing overhauling and keeping in good serviceable order and condition the lifts door entry system and all other fixtures and fittings being replaceable tools appliances materials equipment and other things which the Landlord may deem reasonably desirable or necessary for the maintenance appearance upkeep or cleanliness of the Common Internal Parts of Block A or any part thereof

3. The cost of any maintenance contract insurances and other expenses relating to the lift
4. The expense of installing maintaining repairing and renewing fire alarms and any ancillary apparatus fire prevention and fire-fighting equipment and other apparatus in Block A

4. The lease for Flat 20, as referred to in Schedule 1, is to be amended in Schedule 4 Part II as follows:

1. The expense of maintaining repairing decorating treating polishing and lighting the entrance hall landings and staircases of Block C of the building used in common by two or more residents to such a standard as the Landlord may from time to time consider reasonably adequate
2. The cost of maintaining repairing and renewing replacing servicing overhauling and keeping in good serviceable order and condition the lifts door entry system and all other fixtures and fittings being replaceable tools appliances materials equipment and other things which the Landlord may deem reasonably desirable or necessary for the maintenance appearance upkeep or cleanliness of the Common Internal Parts of Block C or any part thereof
3. The cost of any maintenance contract insurances and other expenses relating to the lift
4. The expense of installing maintaining repairing and renewing fire alarms and any ancillary apparatus fire prevention and fire-fighting equipment and other apparatus in Block C



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

Case Reference

**MAN/36UD/LVT/2024/0002
MAN/36UD/LVL/2025/0002
MAN/36UD/LVL/2025/0003**

Property

**Flats 1-21 Park Court, 46 North Park
Road, Harrogate, North Yorkshire
HG1 5AD**

Applicant

See Annex A

Representatives

Mr Jeff Walker

Respondents

See Annex A

Representatives

**Applicants-Mr R. Walker
Long Term Reversions Ltd-Rob
Chapman**

**Type of
Application**

**Application to vary leases pursuant
sections 35 & 37 of the Landlord &
Tenant Act 1987**

**Tribunal
Members**

**Tribunal Judge J. E. Oliver
Tribunal Member J. A. Jacobs**

**Date of
Determination**

22nd October 2025

Date of Reasons

23rd January 2026

REASONS FOR DECISION

Decision

1. The Tribunal makes an order as contained in Annex B to this decision.

Background

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2. On 4th May 2024 Mr J Walker of Flat 15, Park Court, Harrogate, filed an application with the Tribunal for the variation of leases at Park Court, Harrogate (“the Property”). On 7th March 2025, following a case management hearing, directions were given for the application to be re-submitted clarifying whether the application was to be made under section 35 or section 37 of the Landlord & Tenant Act 1987 (“the 1987 Act”) and for all those wanting a variation of their leases to be made parties to the proceedings.
3. On 16th June Mr Walker made an application to join eighteen additional applicants to his application (“the Applicants”) and on 18th June filed a revised section 37 application. This application contained three proposed variations to the lease as follows:
 - a. Schedule 4 Part II of the lease provides for Flats 9, 16 & 20 to contribute to the maintenance costs for Blocks A, B & C. A variation is sought to provide for those flats to contribute towards the costs of the block where they are situated to mirror the terms of the other leases of the flats at the Property.
 - b. A variation to the same Schedule for the leases of Flats 2 & 3 to change the block to which those lessees should contribute to Block B and to Block C respectively.
 - c. A variation of the leases to change the contribution each leaseholder should pay to the maintenance of the car park.
4. Mr Anderson and Mrs Bowden, being the lessees of Flats 2 and 17 respectively, objected to the proposals and filed their own applications pursuant to section 35 of the 1987 Act. The Respondent freeholder, Long Term Reversions Ltd did not object to the proposed variations proposed by Mr Walker.

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5. Mr Anderson's application, pursuant to section 35 of the 1987 Act, sought a variation to Schedule 4 Part II of his lease such that he is liable for the expenses relating to Block C, rather than Block B, as proposed in the application made by Mr Walker and others. The lease currently provides for service charge payments to be made for Block A. An alteration to the allocation of those service charges is also sought.

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6. Mrs Bowden made an application, pursuant to Section 35 of the 1987 Act, for variations to her lease as follows:

- a. To change "the Car Parking Due Proportion" from 2/35ths to 1/35th on the basis only one of the spaces is suitable for use by a standard size car. The second space is impacted by a pillar making it difficult to use without guidance. If that is not acceptable then the lease be amended to provide for parking of either a car, a motorbike or bicycle in the designated space.
- b. To change "the Common Internal Parts Due Proportion" from 18.97% to 14.29%.
- c. To change "the Service Due Proportion" from 7.17% to 4.76 %.
- d. To change the provisions of the lease to limit or cap the annual service charge increases.

7. Directions were issued on 2nd July 2025 by Judge Goodall providing for Long Term Reversions (Torquay) Ltd be designated as First Respondent to Mr Walker's application and for Mr Anderson and Mrs Bowden to be made Second and Third Respondents.

8. The Tribunal did not inspect the Property but was advised it comprises 3 blocks with a total number of 21 flats. Each of the blocks has its own entrance and lift. Block A contains 7 flats, Block B 6 flats and Block C 8 flats. All the flats, save two, have access via the entrance in their respective block and this is then the block to which the service charges are payable. However, there is an anomaly with Flats 2 and 3. In the case of Flat 2, its entrance is Block C but its lease provides for the service charge payments to be made for Block B and responsibility for the lifts and common areas in Block A. Similarly, the entrance for Flat 3 is Block C but the service charges are charged and paid for Block B.

9. The application was listed for a hearing on 22nd October 2025. At the hearing the Applicants were represented by Mr Walker. The First Respondent was represented by Mr Rob Chapman. The Second and Third Respondent attended in person. The managing agents, Inspired Property Ltd, also attended, represented by Andrea Barnard.

The Law

10. Section 35 of the 1987 provides that either party to a long lease may apply for its variation if it fails to make satisfactory provision for the repair, maintenance of the flat or land or building let to the tenant in which rights are conferred to them under it. There are also provisions for a variation relating to insurance, maintenance of installations, the recovery of expenditure and the computation of the service charges.
11. A party to a lease may also apply for its variation under section 37 of the 1987 Act, but, here, the application must relate to 2 or more leases that do not have to be drafted in the same terms but must be long leases and have the same landlord.
12. The grounds on which such an application may be made are that the object to be gained by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect. Section 37(5) provides that where an application is made in respect of more than eight leases (as here), it must not be opposed by more than 10% of the total numbers of parties concerned and at least 75% of that number consent to it. In calculating this, Section 37(6) provides the tenant under the lease shall be one of the parties concerned as will the landlord.
13. Section 38 provides that where the grounds of the application are established the Tribunal may make an order varying each of the leases concerned in such manner as is specified in the order.
14. Whilst the Tribunal can vary the leases section 38(6) sets out when it cannot do so. Section 38(6)(a) provides this is where any variation may substantially prejudice any respondent to the application, or any person who is not a party to the application and that any compensatory award made under section 36(10) would be inadequate. Section 38(6)(b) provides there should be no variation where it would not be reasonable in the circumstances for the variation to be effected.
15. Section 38(10) further provides that the Tribunal may, where it thinks fit, make an order for any party to the lease to pay to any other party to the lease or to any other party, compensation in respect of any loss or disadvantage that the Tribunal considers will be suffered by reason of the variation.

The Hearing/Submissions

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16. Mr Walker confirmed he was representing all the leaseholders of the Property in the application, save for those for No 2, and No 17 who opposed it and Flats 12 and 15 who had not responded to Mr Walker and their position was not known.
17. He confirmed that whilst the application was opposed by Mr Anderson and Mrs Bowden, it was supported by the Respondent freeholder and this was confirmed by Rob Chapman at the hearing.
18. He confirmed his reasons for the application are as follows:

(a) Schedule 4 Part II of the lease for Flat 9, which provides for the liability for the service charge and which specifies the block to which any service charges should be made, does not identify which block in the lease. The relevant clause is as follows:

- “1. The expense of maintaining repairing cleaning decorating treating polishing and lighting the entrance hall landings and staircases of Block[A][B][C] of the building used in common by two or more residents to such a standard as the Landlord may from time to time consider reasonably adequate.*
- 2. The cost of maintaining repairing and renewing and replacing servicing overhauling and keeping in good serviceable order and condition the lifts door entry and system and all other fixture and fittings being replaceable tools appliances and materials equipment and other fittings which the Landlords may deem reasonably desirable or necessary for the maintenance appearance upkeep or cleanliness of Common Internal Parts of Block [A][B][C] or any part thereof.*
- 3. The cost of any maintenance contract insurance s and other expenses relating to the lift.*
- 4. The expenses of installing maintaining repairing and renewing fire alarms and/or burglar alarms and any ancillary apparatus fire prevention and fire-fighting and any other equipment in Block[A][B][C].*

The lease for Flat 9 requires amendment to provide for the contributions to be made for Block C. This application is not opposed by the Respondents.

(b) The same alterations to Schedule 4 Part II are sought by the leaseholders of Flats 16 & 20 where the block to which the service charge contributions are to be made are also not specified. Here, the amendments sought are to specify the contributions are to be made to Block A and Block C respectively. Again, these applications are not opposed by the Respondents.

(c) The Applicants propose the same alteration to the Leases of Flats 2 and 3. The Lease for Flat 2 states the service charge contributions are to be made to Block A and an amendment is sought for this to be changed to Block B. Flat 2 has no access to Block A. The Lease for Flat 3 specifies the contributions are to be made to Block A and it is proposed this be changed to Block C. Mr & Mrs Anderson oppose this application and have made their own application. The lessee of Flat 3, Mrs Thompson supports the application.

(d) The leases for the maintenance of the car park are inconsistent. There are 35 car parking spaces; most of the flats have one space but some have 2 spaces. The charges vary between a proportion of 1/35th and a flat rate of £60. The effect of this is that the management company collects 110.896% of the costs. There are 2 visitors' spaces and the remaining 33 spaces are allocated to the leaseholders. It is proposed the leases are all varied to provide of the costs be charged at 1/35th for each space, this then including the maintenance of the visitor spaces. The Respondents confirmed they do not oppose this variation.

19. In support of the application, Mr Walker advises the amendments sought in respect of Flats 2 & 3 arise due to their position within the Property, in that their footprints are over 2 blocks. Both have access via Block C but Flat 2 pays a proportion of the service charge contribution to both Blocks A & B and Flat 3 pays to Blocks A and C. These charges are made irrespective of the provisions within the leases.

20. A table was produced to show the proposed variations to the leases would, in respect of the service charge contributions, reflect how the charges have been made by the management company since 2020. The variations would confirm the current position. The only anomaly is that for Flat 16 where the lease stipulates a contribution of 17.55% whilst the charge made is 13.74%. No explanation was readily available for this variance.

21. Upon the issue of compensation available to the Tribunal, Mr Walker suggested that since the service charges had been paid since 2020 in accordance with the proposed variations, there would be no substantial prejudice to the leaseholders in accordance with section 38(6), nor section 38(10) of the 1987 Act.

22. Mr Anderson confirmed his objection to the application, insofar as it relates to Flat 2, but has no objection to the proposed alteration to the car park charges to 1/35th for one space.
23. His application is made to counter the application made for his lease to be amended such that he pays a contribution via Block B. He believes he should pay via Block C, being the logical conclusion given the entrance to his flat is via that block and the majority of the footprint is also substantially within Block C. All the other flats are allocated the costs associated with the entrance from where they gain access. The only exceptions are Flats 2 & 3. His lease refers to Flat 2 being in Block B on the title page, but in Schedule 4 Part II the service charge payments are to be made for Block A. He seeks both to be varied to reference Block C.
24. Mr Anderson submits the application made by the majority of the leaseholders and supported by the Respondent has been done to reflect how the charges have been made by the management company. Those charges have not been made in accordance with the leases. For example, his maintenance charges are being made for Block B whilst his lease specifies Block A. Further, it is his belief the proposed amendments are based on a misunderstanding by the management company of the division of flats between the blocks and that the change will result in there being 7 flats in each block. This is not the case. There are 7 flats in Block A, 6 in Block B and 8 in Block C.
25. His proposal is that the total area of the buildings forming the Property should be divided into 3 blocks, the area of each block being determined by the flats accessed by the entrance to that block. This would give an area of 38.35% of the total area to Block A, 20.98% to Block B and 40.66% to Block C. *“The maintenance for the common areas and lifts would then be subdivided based on the area of each apartment relative to the area of each block.”* Flat 2 would then be responsible for 9.05% the maintenance of the common areas and lifts of Block C. By way of comparison, Mr Anderson compared Flat 2 with Flat 1, a flat of a similar size. Flat 1 would pay 9.77% of 38.35% and Flat 2 would pay 9.05% of 40.66%.
26. If Flat 2 was put into Block C then the contribution to the lift maintenance would be approximately 9%. If it went to Block B, as proposed, then the responsibility for lift costs would be 14.5%. Consequently, the proposal to move Flat 2 from Block A to Block B would substantially prejudice Mr and Mrs Anderson and warrant compensation.

27. Mrs Bowden seeks a variation to the lease of Flat 17, which is in Block A, upon the basis that the effect of uncapped service charges, since her purchase in 2010, have made the service charge contribution not only unaffordable but has made the flat unsaleable. Further, her financial position has been made worse by the lack of proper maintenance that has resulted in the lifts in all blocks not working. This has impacted upon her attempts to sell the flat and has rendered it virtually unsaleable.
28. She advises her lease provides for her to pay 18.97% of the Common Internal Parts Proportion in Block A and 7.17% for the Service Due Proportion which is for the external areas of the Property. There is then 2/35th for 2 car parking spaces. At the time of her purchase the freeholder agreed to make a contribution to the service charge budget, stated to be £55,000, with an intimation this would continue in certain circumstances. This contribution has not continued beyond the first year.
29. Since 2010, Mrs Bowden states the level of services provided by different managing agents has had an adverse effect upon the Property, but more so with the current management company, Inspired Property Ltd. An example is that items of maintenance are not carried out, for example none of the lifts in the 3 blocks are now in use and the intercom system is unreliable. The managing agents do not provide accounts as stipulated within the lease and the service charges increase on an annual basis. All these issues have prevented the flat securing a buyer since 2021.
30. The amendments proposed are the changes to the car parking spaces, as referred to above, to reflect that one of those spaces is difficult to use due to the position of a pillar in or near the space and a reduction of the contribution from 2/35ths to 1/35 would be reasonable. Provision should also be made to allow the spaces to be used by both motorbikes and bicycles.
31. A further amendment is to reduce the Common Internal Parts Due Proportion from 18.97% to 14.28% upon the basis that although Flat 17 is the second largest flat in the Property, it does not use any more of the communal parts than any other. It is suggested the floor area of each flat is irrelevant to the liability for the contribution to the common parts. Whilst the proposal would affect the contributions of the other properties, her flat has been subsidising the others since her ownership began in 2010.
32. Mrs Bowden also seeks a revision to Clause 2.2 of the Lease which provides for the service charge expenses, both for the individual blocks and common external areas, to be estimated by the managing agents and for the lessees then to pay half yearly based upon those estimates. The proposed amendment provides for contributions to be based upon independently audited accounts.

33. An amendment is sought to the reference to “Managing Agents” within the recitals to the lease, in that they should be subject to a periodic review by the leaseholders. This would allow the leaseholders to act where there is a poor performance, rather than seek redress through legal channels.
34. Clause 2.2 provides for the service charges to be estimated by the Managing Agents and for the leaseholders then to pay those by two equal instalments in each year. The proposal is for the lease to be amended to provide for the service charges to be based upon the actual expenditure in the previous year accompanied by audited accounts, the budget and projected expenditure and for those to then be approved by the leaseholders. This is before payments are then made by two equal instalments.
35. Mrs Bowden proposes that Clause 2.3 of the lease is amended to further reflect that payment of the service charges is subject to verification by independent auditors.

Decision

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36. The Tribunal notes that for an application to succeed under section 37(5) of 1987 Act, where an application is made in respect of more than eight leases (as here), it must not be opposed by more than 10% of the total numbers of parties concerned and at least 75% of that number consent to it. In calculating this, Section 37(6) provides the tenant under the lease shall be one of the parties concerned as will the landlord. This requirement is satisfied.
37. When making an order pursuant to section 37 of the 1987 Act, section 37(3) provides that no order can be made “*unless all the leases are varied to the same effect*”. Here, the application to vary the method by which the costs relating to the car parking spaces fulfils this requirement given the effect of the variation will be to ensure all the leases are the same.
38. The Tribunal therefore grants the application to vary all the leases to provide for each leaseholder to pay a contribution of 1/35th for each car parking space. If the flat has two spaces then a charge of 2/35th will apply. This replaces a flat charge in some leases and will achieve 100% of the costs, as opposed to the current overcharge of 110.896%. It is noted this application is supported by all the participating leaseholders. When making this order the Tribunal has considered section 38(6) and whether it will cause substantial prejudice to the Respondents or other lessees who are not a party to the proceedings. It notes the Respondents support the application and the leaseholders of Flats 12 & 15 had not notified the Tribunal or other leaseholders of any objections. The Tribunal does not find there to be any prejudice.

39. The application to vary the leases for Flats 9,16 & 20, in effect to rectify an error in drafting such that the lease will then specify the Block to which the service charge is paid, cannot succeed since it does not comply with the requirements of section 37(3). The proposed variations do not require all the leases to be "*varied to the same effect*". It will only affect the leases relating to those 3 flats.

40. The Tribunal notes this application is not opposed by any other leaseholders and its purpose is to amend the relevant leases to reflect the current position. The Tribunal has determined that this part of the application could be treated as a separate application to the remaining application made by the relevant leaseholders pursuant to section 35. This to prevent this aspect of the application failing upon a procedural error when applying the overriding objective to include flexibility within proceedings. In dealing with the matter in this way it further avoids costs and expenses to the parties.

41. Whilst it may be appropriate at this point to assign these flats to specific blocks, this change doesn't solve the core issue, that if any service charges in this development are charged purely on the basis of which block the flats are in, that results in a fundamental unfairness, leading to similar flats in different blocks paying vastly different charges. In order for the charges to be shared fairly, it would be preferable in the long term to change all the leases so that each flat contributes to the whole of the charges relative to its floor area, as a proportion of the whole development. It is again noted that this is supported by all the leaseholders, save those of Flats 12 & 15 and also including the Respondents to this application.

42. The Tribunal has considered whether such an order will cause substantial prejudice, as provided for by section 36(6), and determines it does not. The amendment to the leases effectively confirms the status quo relating to the payment of the service charges by the lessees of those flats.

43. The application made to vary the leases of Flats 2 & 3, pursuant to section 37, is refused for the same reasons as given for Flats 9, 16 & 20 in that the proposed variation to those leases does not result in all the leases for the Property being varied on the same terms.

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44. The application Mr Anderson to vary the lease for Flat 2 to change the block to which it contributes to the service charges is also refused.

45. The current system for the calculation of service charges is neither accurate nor particularly fair. Mr Anderson has confirmed in his statement to the Tribunal that his application has been made in response to the s.37 application

proposing his flat be moved to Block B. This has now been refused but if this application was granted, as asked, the effect would be to alter the number of flats in Block A to 6 and increase those in Block C to 9 and thus affect their respective costs. This would then give rise to whether compensation should be paid in accordance with section 38(10).

46. At the hearing, the Tribunal raised the possibility of a review of the calculation of the service charge. A more equitable solution would be to charge all the services across the entire development, each flat paying a contribution relative to the total floor areas of the individual flats. This would negate the need for flats to be assigned to an individual block for the payment of service charges and would provide a more equitable distribution of the costs. This is not a large development and such a change is not likely to prejudice any of the leaseholders financially.
47. The Tribunal notes the service charge is currently not calculated in accordance with the provisions of the leases but to base charges solely on which block an apartment is located in would mean that almost identical flats would pay widely differing service charges, depending on the block in which they were situated. This is particularly the case because the smallest flats are all in Block B, the block with the lowest number of flats. The small flats in Block B would therefore pay disproportionate amounts of service charge relative to the smaller flats in Block C (there are no flats of similar size in Block A). The flats in Block A and C, which contain the largest flats and have greater numbers of flats than Block B, would benefit disproportionately.
48. The Tribunal acknowledges this application proposes an amendment to the calculation of the service charge as referred to in paragraph 25 above. However, this would require an amendment to all the leases within the Property to give effect to those changes. An application made pursuant to section 35, as this is, does not provide the Tribunal with the jurisdiction to alter the remaining leases. Section 35 only allows for a variation of the lease to which the application relates.

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49. The application by Mrs Bowden, pursuant to section 35 of the 1987 Act, is refused. The basis of the application is one of hardship, in that costs relating to the flat have risen to have become burdensome and much removed from those payable at the outset of the lease. Further, there was some contribution from the freeholder in 2010 which Mrs Bowden thought might continue but did not. It is alleged the flat is now unsaleable due to the high service charges and the potential liability for lift repairs. Whilst the Tribunal have some sympathy with the position Mrs Bowden now finds herself, her personal circumstances are not the basis for a variation to the lease as provided for by section 35 of the 1987

Act. There are only limited circumstances when a lease may be varied. When Mrs Bowden entered into her lease its terms were clear; her subsequent difficulties are not a reason for that lease to be changed. If her application was granted it would impact upon the contributions to be made by the other leaseholders and there is no justification within the application for this. The Tribunal cannot vary the remaining leases in the Property under the present application for the same reasons given relating to Mr Walker's application.

50. Mrs Bowden's lease provides for her to pay a contribution of 2/35th of the maintenance costs of the car park. She agrees with the variation of the lease to provide that each leaseholder pay 1/35th of the maintenance costs for each car parking space but requests her lease be varied to reflect that one of the spaces is not easily accessible. Her contribution should therefore be 1/35th. The Tribunal does not accept the reason given justifies a variation to the lease. When Mrs Bowden purchased the flat in 2010, the location, size and accessibility of the car parking space was known. The lease was entered into with that knowledge. It is not a reason for it now to be changed.
51. The same principle applies to the variation to reduce the contribution to the Common Internal Parts Due Proportion form that stipulated in the lease of 18.97% to 14.28%. This was the proportion to which Mrs Bowden agreed when entering into the lease and if it were to be reduced, as asked, this would place a burden upon the other leaseholders.
52. Mrs Bowden also seeks to widen the uses for the car park, such as to allow motorbikes and bicycles. There is no indication whether this is supported or opposed by the other leaseholders. However, in considering the provisions of section 35, a lease may be varied if it fails to make satisfactory provision for any services. Here, the lease does make satisfactory provision for car parking. The lack of provision for motorbikes or bicycles is not, of itself, unsatisfactory.
53. Mrs Bowden' application includes amendments relating to the management of the flat. Her complaints relate to the failure of the managing agents to deal adequately with repairs and general maintenance. This includes the failure of the intercom system and the fact that the lift in all the blocks are now not working. This is not a reason to vary the lease; the lease makes satisfactory provision for the maintenance of the common parts. Mrs Bowden did acknowledge at the hearing that an application was ongoing for the appointment of a new manager.
54. Similarly, Mrs Bowden sought more stringent terms regarding the estimation of service charges and that the managing agents should be subject to closer scrutiny by the leaseholders. Again, the Tribunal did not consider the requirements of section 35 were fulfilled. The lease makes adequate provision for the service charge, providing for an estimation then payable half yearly. This estimation can then be remedied by the provision of accounts and subsequent adjustments. The failure by the managing agent to provide such

accounts is an issue in the management of the property and it does not follow that it renders the provisions of the lease, in themselves, unsatisfactory.

Rights of appeal

1. 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.
2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission to appeal must be made to the First-tier Tribunal at the regional office which has been dealing with the case.
3. The application for permission to appeal must be arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
4. If the application is not made within the 28 day time limit, such applications 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.
5. 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 rounds of appeal and state the result the party making the application is seeking.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

ANNEX A

MAN/36UD/LVT/2024/0002

Applicants

1. Mr J Walker and Mrs R Walker -Flat 15
2. Mr J Barker-Flat 1
3. Mrs J Thompson -Flat 3
4. Mr A Forbes and Mrs J Forbes-Flat 4
5. Mr P Ash and Mrs A Ash-Flat 5
6. Mr A Johnson-Flat 6
7. Mr R Hamilton-Flat 7
8. Mr G Potts-Flat 8
9. Mr C Yates-Flat 9
10. Ms M Townrow-Flat 10
11. Mr F Bingham-Flat 11
12. Ms E Wigfield-Flat 12
13. Mrs J Hobson-Flat 13
14. Mr J Parkin and Mrs C Parkin -Flat 14
15. Mr G Beckwith-Flat 16
16. Ms C Holstein-Flat 18
17. Mr N Hind-Flat 19
18. Mr B Reid -Flat 20
19. Ms D Bernard and Mr P Barnard-Flat 21

Respondents

Long Term Reversions (Torquay) Ltd (1)
Mrs Pamela Bowden (2)
Mr David Anderson (3)

MAN/36UD/LVL/2025/0002

Applicant – Mrs Pamela Bowden
Respondent- Long Term Reversions (Torquay) Ltd

MAN/36UD/LVL/2025/0003

Applicant – Mr David Anderson
Respondent – Long Term Reversions (Torquay) Ltd

ANNEX B

ORDER

UPON the application by the Applicant pursuant to section 37 of the Landlord & Tenant Act 1987

AND UPON the applications by the Second and Third Respondents pursuant to section 35 of the Landlord & Tenant Act 1987

IT IS ORDERED that:

1. The application made by the Applicant for the leases to be amended to change the Car Park proportion to 1/35th for each car parking space is granted and the leases set out in Schedule 1 to this order are amended as set out in Schedule 2 of this order.
2. The application made by the Applicant to amend the leases of Flats 9, 16 & 20 pursuant to section 37 of the 1987 Act is amended to a separate application made pursuant to section 35 of the 1987 Act and is granted as set out in Schedule 2 of this order,
3. The Applicant shall make an application to HM Land Registry against the freehold title and the titles set out in Schedule 1 to this order to register the variations granted by the Tribunal as contained in paragraphs 1 & 2 of this order.
4. The applications made by the Second and Third Respondents pursuant to section 35 of the Landlord & Tenant Act 1987 are refused.

SCHEDULE 1

Flat Number	Leaseholder	Date of lease and parties	Title Number
1	J. Barker	1.6.2010; Mirabeau Ltd and Comino Ltd (1) John Barker (2)	NYK 379797
2	D. & T. Anderson	16.6.2010; Mirabeau Ltd and Comino Ltd (1) Bernice Francis Webber(2)	NYK 379127
3	I Thompson	11.6.2010: Mirabeau Ltd and Comino Ltd (1) Andrew Richard(2)	NYK 379689
4	A. & J. Forbes	30.12.2009; Mirabeau Ltd and Comino Ltd (1) Joan Forbes (2)	NYK 375344
5	P. & A. Ash	24.3.2010; Mirabeau Ltd and Comino Ltd (1) James Robert (2)	NYK 377274

6	A. Johnson	26.1.2010; Mirabeau Ltd and Comino Ltd (1) Andrew Johnson (2)	NYK 376130
7	R. Hamilton	20.9.2009	NYK 374046
8	G. Potts	27.11.2009; Mirabeau Ltd and Comino Ltd (1) Geraldine Potts (2)	NYK 374487
9	C A Yates	14.5.2010; Mirabeau Ltd and Comino Ltd (1) Eric James Eades (2)	NYK 378423
10	R. Townrow	15.10.2009;	NYK 373315
11	F. P. Bingham	25.1.2010; Mirabeau Ltd and Comino Ltd (1) Edward(2)	NYK 375537
12	E. Wigfield	2.11.2009;	NYK 373689
13	J. Hobson	21.1.2010; Mirabeau Ltd and Comino Ltd (1) Louise(2)	NYK 375920
14	J. & C. Parkin	19.2.2010; Mirabeau Ltd and Comino Ltd (1) William (2)	NYK 376808
15	J. & R. Walker	18.5.2010; Mirabeau Ltd and Comino Ltd (1)Christopher (2)	NYK 378519
16	G. J. Beckwith	5.5.2010; Mirabeau Ltd and Comino Ltd (1)Gary James Beckwith (2)	NYK 378573
17	P. J. Bowden	14.5.2010; Mirabeau Ltd and Comino Ltd (1)Pamela Jeanette Bowden (2)	NYK 378376
18	C. Holstein	18.11.2009; Mirabeau Ltd and Comino Ltd (1)Andrew (2)	NYK 373883
19	N. & L. Hind	25.9.2009; Mirabeau Ltd and Comino Ltd (1) Lucy Hinds (2)	NYK 373177
20	B. Reid	7.5.2010; Mirabeau Ltd and Comino Ltd (1) Paul IanWinstanley (2)	NYK 378426
21	D. & P. Barnard	14.5.2010; Mirabeau Ltd and Comino Ltd (1) Alastair Stewart (2)	NYK 378539

SCHEDULE 2

1. The recitals for each of the leases under which the properties are held, as referred to in Schedule 1, are to be amended such that the definition of the "Car Parking Due Proportion" at page 4 will be 1/35th.
2. The lease for Flat 9, as referred to in Schedule 1, is to be amended in Schedule 4 Part II as follows:
 1. The expense of maintaining repairing decorating treating polishing and lighting the entrance hall landings and staircases of Block C of the building used in common by two or more residents to such a standard as the Landlord may from time to time consider reasonably adequate
 2. The cost of maintaining repairing and renewing replacing servicing overhauling and keeping in good serviceable order and condition the lifts door entry system and all other fixtures and fittings being replaceable tools appliances materials equipment and other things which the Landlord may deem reasonably desirable or necessary for the maintenance appearance upkeep or cleanliness of the Common Internal Parts of Block C or any part thereof
 3. The cost of any maintenance contract insurances and other expenses relating to the lift
 4. The expense of installing maintaining repairing and renewing fire alarms and any ancillary apparatus fire prevention and fire-fighting equipment and other apparatus in Block C
3. The lease for Flat 16, as referred to in Schedule 1, is to be amended in Schedule 4 Part II as follows:
 1. The expense of maintaining repairing decorating treating polishing and lighting the entrance hall landings and staircases of Block A of the building used in common by two or more residents to such a standard as the Landlord may from time to time consider reasonably adequate
 2. The cost of maintaining repairing and renewing replacing servicing overhauling and keeping in good serviceable order and condition the lifts door entry system and all other fixtures and fittings being replaceable tools appliances materials equipment and other things which the Landlord may deem reasonably desirable or necessary for the maintenance appearance upkeep or cleanliness of the Common Internal Parts of Block A or any part thereof

3. The cost of any maintenance contract insurances and other expenses relating to the lift
4. The expense of installing maintaining repairing and renewing fire alarms and any ancillary apparatus fire prevention and fire-fighting equipment and other apparatus in Block A

4. The lease for Flat 20, as referred to in Schedule 1, is to be amended in Schedule 4 Part II as follows:

1. The expense of maintaining repairing decorating treating polishing and lighting the entrance hall landings and staircases of Block C of the building used in common by two or more residents to such a standard as the Landlord may from time to time consider reasonably adequate
2. The cost of maintaining repairing and renewing replacing servicing overhauling and keeping in good serviceable order and condition the lifts door entry system and all other fixtures and fittings being replaceable tools appliances materials equipment and other things which the Landlord may deem reasonably desirable or necessary for the maintenance appearance upkeep or cleanliness of the Common Internal Parts of Block C or any part thereof
3. The cost of any maintenance contract insurances and other expenses relating to the lift
4. The expense of installing maintaining repairing and renewing fire alarms and any ancillary apparatus fire prevention and fire-fighting equipment and other apparatus in Block C