FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AF/OLR/2025/0869**
Property	**:**	**Flat 3 Regency Court, Hamlet Road, London SE19 2AR**
Applicants	**:**	**Resonance Everyone in GP Limited** **Resonance Everyone in Nominee Limited**
Representative	**:**	**Mr Ashpen Rajah, Counsel instructed by Keystone Law Limited**
Respondent	**:**	**Regency Court Freehold Limited**
Representative	**:**	**Mr Richard Alford, Counsel instructed by Amphlett Lissimore solicitors**
Type of Application	**:**	**Application under section 48 of the Leasehold Reform Housing and Urban Development Act 1993**
Tribunal Members	**:**	**Judge Dutton** **Mr R Waterhouse BSc(Hons)LLM Property Law MA FRICS**
Date of Determination by video conferencing	**:**	**10th February 2026**
Date of Decision	**:**	**2 March 2026**

DECISION

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DECISION

The Tribunal finds that the amendments sought by the Respondents do not fall within the provisions of section 57(6)(a) or (b) of the Leasehold Reform Housing and Urban Development Act 1993 and are therefore disallowed.

BACKGROUND

1. This application was made by Resonance Everyone in GP Limited and Resonance Everyone in Nominee Limited (the Applicant) initially seeking a determination as to the premium payable in respect of the property at Flat 3 Regency House, Hamlet Road, London SE19 2AR (the Property). A notice under section 42 of the Leasehold Reform Housing and Urban Development Act 1993 (the Act) was served on 8th October 2024 and the Respondent, Regency Court Freehold Limited responded by way of a section 45 notice on the 20th November admitting the Applicant's right to seek a lease extension but seeking a greater premium and also seeking to install wording into a draft lease annexed thereto.

2. The premium payable has been agreed, and it is not something therefore that we need to consider. The premium was in fact agreed at £38,000 on 10th July 2025.

3. Much of the terms of the extended lease are agreed. The Applicant originally sought to make their own amendments to the draft lease but they did not pursue those before us. We were left, therefore, to deal with the three amendments that the Respondent sought to the existing lease. Those amendments are as follows:

   a new clause 5 in part 8 of the new lease sought the following wording:

   "5. The Tenant will not underlet the whole of the Property unless the underlease is on an assured shorthold tenancy agreement or any other tenancy agreement whereby the tenant does not obtain security of tenure on expiry or earlier termination of the term and the agreement contains covenants substantially the same as those contained in this lease and provides that the undertenant may not do anything that would or might cause the Tenant to be in breach of the Tenants covenants contained in the lease."

4. Further amendments were sought were in relation to a new sub-clause (h) and (i) again in part 8 of the proposed lease and they say as follows:

   "(h) sing or dance or play any musical instrument or equipment for making or reproducing sound or to act in such manner so as to be audible outside the Property between the hours of 22.00 and 8.00 or at any time so as to cause annoyance to the landlord or any other occupiers of the building, or
   (i). to play or loiter in the Shared Garden or make any avoidable noise in the shared garden between the hours of 22.00 and 8.00; or"

5. The relevant law in respect of this matter is to be found in section 57 of the Act. At sub section (1) it confirms that the new lease is to be granted to the tenant under section 56 on the same terms as those as the existing lease as they apply on

the relevant date (the date of the notice to purchase) but with such modifications may be required to take account of three matters set out there in which are not relevant to this application.

6. Instead, we need to look at sub section (6) of section 57 which says as follows:

(6) Sub section (1) to (5) shall effect subject to any agreement between the landlord and tenant as to the terms of the new lease or any agreement collateral thereto; and either of them may require that for the purposes of the new lease any term of the existing lease shall be excluded or modified insofar as –

a. It is necessary to do so in order to remedy a defect in the existing lease; or

b. It would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease, which affect the suitability on the relevant date of the provisions of that lease.

7. To assist us in this case we were provided with a bundle of documents running to some 827 pages. This included the notices served in 2024, copies of the freehold and leasehold title, a number of emails and witness statements from
(a) Sal Mamujee the Applicant's solicitor dated 27th January 2026,
(b) a witness statement from Barrington King, sole director and shareholder of the Respondent dated 3rd December 2025,
(c) witness statement of Andrew Robinson, former director of the Respondent dated 5th December 2025,
(d) statement of Rachel Carlisle (formerly Ludlow), a former employee of the Respondent solicitors dated 17th December 2025 and finally
(e) a witness statement from Neelam Trikha, the Respondent's current solicitor dated 3rd December 2025. We have noted the contents of same and borne them in mind in reaching our decision.

8. Just before the hearing we received further short witness statements from Mr Mamujee and from Mr King. We were provided with skeleton arguments from Mr Ashpen Rajah, Counsel for the Applicants and from Mr Richard Alford, Counsel for the Respondent. We were also on the morning of the hearing provided with an authorities bundle, which we will refer to as necessary during the course of this decision.

9. Insofar as the matters contained in the bundle are concerned, these are of course common to both parties and we do not propose to go into great detail in respect of in particular the witness statements of the various named persons save insofar as we will refer to those parts which we consider to be of relevance to this application.

10. The same goes to an extent to the skeleton arguments produced by Counsel for which we are very grateful and which were very helpful. We have fully noted the contents of both. Counsel made oral submissions to us essentially based on those skeleton arguments and we will recount those matters as necessary.

11. At the start of the hearing Mr Rajah referred us to the additional late witness statements of Mr Mamujee and Mr King but he took no point on their admissibility. He called Mr Mamujee to give some evidence. He tended his witness statements as evidence in chief, and we have noted all that was said in that regard. He had no questions of the witnesses tendered on behalf of the Respondent.

12. Mr Mamujee was asked questions by Mr Alford to which he responded confirming that he did not act for the Applicants on their original purchase but for another party. He was referred to the leasehold property enquiries form, which was included in the bundle at page 422(PDF). In particular his attention was drawn to section 7(2) under the heading 'General' where the question asked are all flats on leases with similar terms and the word 'No' was ticked. He responded that the forms were passed on to the actual purchaser for them to review but in his 30 years of experience, he would not have raised a query requesting sight of all other leases in the building to determine what differences there may be. Annexed to his second witness statement was a copy of an under lease dated 24th February 2023 made between the Applicants of the one part and Nacro of the other part. It seems that a copy of this lease was not produced to the Respondents and may therefore in breach of the terms of the existing lease. That, however, is not a matter for us to involve ourselves in today.

13. In his submissions to us Mr Rajah made the following points. The first was to confirm that in his view and he thinks this was agreed, the relevant section of the Act is section 57(6). This refers to 'defects' or whether it is 'unreasonable' to include or include without modification. His submission was there was no power to install a new term and in that regard he referred us to the case of *Gordon v the Church Commissioners reference LRA/110/2006* the judgment of His Honour Judge Huskinson. At paragraph 39 of the judgment the learned Judge says as follows: *"The 1993 Act provides in section 57(1) that subject to certain matters, the new lease to be granted to a tenant under section 56 shall be a lease on the same terms as those of the existing lease as they apply the relevant date subject to certain potential departures from these existing terms as provided for in section 57. Thus the starting point is firmly based in the terms of the existing lease. This is unsurprising bearing in mind that at the date when the new lease falls to be granted, there may well be a substantial number of years (in the present case it happens to be just over 50 years) still unexpired on the existing lease, such that apart from the renewal the landlord and tenant would continue to be bound by the existing term for many years to come."*

14. In this case there is still a substantial term left on the lease, which does not expire until 24th December 2076.

15. Returning to the Gordon case, at paragraph 41 the Judge says as follows: *"Turning to section 57(6) the opening passage prior to the semi-colon gives the landlord and the tenant power to agree terms different from those which would otherwise emerge from the application of sections 57(1) to (5). There then come the crucial words after the semi-colon, namely that either the parties "may require that for the purposes of the new lease, any term on the existing lease shall be excluded or modified insofar as" either at paragraphs (a) or (b) apply. In contrast to the approach where sub-paragraphs (a) to (c) of section 57(1)*

apply, the wording in section 57(6) contemplate that parties having open on the table before them the terms of existing lease and identifying one or more of those terms as being a term which by reasons of the matters in paragraphs (a) or (b) should either be excluded from the lease or should be modified in the new lease. In my judgement there is no power under section 57(6) for a party to require that there is added into the new lease a new provision which is not to be found in the old lease. There is nothing illogical or unfair on this because apart from the grant of the new lease, the parties would have continued to be bound by the terms of the old lease for the next X years where X may be a substantial period (over 50 years in the present case). It is one thing to exclude or modify a term or terms with the existing lease where a good reason, (ie within paragraph (a) or (b) of section 57(6)), it's another thing to permit a party to seek a re-writing of the lease by the introduction of new provisions".
It is said by Mr Rajah that the inclusion of the new clause relating to under letting and the arrangements for the use of the shared garden are new terms and are not allowed.

16. The next matter which Mr Rajah referred to was the question of defect and again returning to the Gordon case, he relied on the dicta of Judge Huskinson and in particular that contained in paragraph 47. In the seventh line of that paragraph, he says the following:
"There is no definition in the statute of the word "defect" which is an everyday English word. The short Oxford English Dictionary gives as a meaning: shortcoming, fault, flaw, imperfection. I consider it proper to adopt this fairly broad meaning of defect but subject to the following qualification. I conclude that a lease can only properly be described as containing a defect (in the sense of shortcoming, fault, flaw or even imperfection) if it can objectively be said to contain such defect when reasonably viewed from the standpoint of both a reasonable landlord and a reasonable tenant. It may be noted that once a defect is shown to exist in the existing lease, then a party may "require" that for the purposes of a new lease any term of the existing lease shall be excluded or modified insofar as it is necessary in order to remedy a defect. This mandatory language indicates that the concept of defect is a shortcoming below an objectively measured satisfactory standard. It is not sufficient for the provision to be a defect only when viewed from the standpoint of one or other party."

17. Mr Rajah also relied on a paragraph in the case of Rossman v Crown Estate Commissioners and extracts from Hague which we do not need to repeat in this decision.

18. He then went on to deal with the particular terms starting with the under letting clause. This was, he said, a wholly new clause seeking to prohibit letting and thus avoid security of tenure. The Respondent says the absence of the under letting restriction is a defect and in this regard relies on matters that occurred in 2008 when there was a particularly difficult occupier of Flat 3 who caused a number of issues of an anti-social nature. We were referred to the witness statements Mr King and Mr Robinson, which set out in some detail the circumstances surrounding the problems encountered at flat in 2008. We noted all that was said.

19. It was Mr Rajah's contention that the original lease included covenants to prevent nuisance and the flat had in fact changed hands twice since 2008 and this was the only example of there being a difficulty. In his submission, therefore, this one incident did not create a defect.

20. The main change in fact was the arrangements made by the Respondent to vary the terms of the existing leases. This was the change that the Respondent relies upon in making the existing lease appear unreasonable. It is as set out in Mr Alford's skeleton argument at paragraph 41/42 that a number of leases (75%) have been varied over a passage of time. This Mr Rajah said was the choice of the freeholder and the then tenant. The Applicant was not involved and therefore is not bound by the alterations. In this regard, Mr Rajah relied on the existing lease at clause 5(c) , which says as follows*: "The lessor will require any person to whom it shall grant a lease will sell the other flat comprised in the mansion to covenant to observe the restrictions set forth in the first schedule hereto and shall incorporate in the disposition of each other flats similar restrictions and stipulations as are herein contained."*

21. The changes made to the other leases were voluntary and should not, he said, be used as a tool to force through these changes. The agreement exhibited at page 233 of the bundle dated 13th March 2013 shows that at that time Flats 1, 2, 6, 8 and 14 agreed to a new lease incorporating matters that were felt to be reasonable. It should be noted that Mr King was the owner of Flats 5, 7, 11 and 16.

22. As Mr Rajah said, the Applicant knew nothing of this. He also argued that in his view the Respondent was in breach of the terms of the intended extended lease under part 10, because there is says as follows: "*10(2) Every lease of a flat in the building granted by the landlord whether before or after this lease shall contain obligations by the tenant of that flat similar to those in this lease and that the landlord will observe and perform similar obligations in respect of any other flat in the building not for the time being let on a lease containing those obligations."*

23. It was, in the submission made by Mr Rajah, that they created new leases, which was in breach of the covenant to issue leases on the same term. Three other leases were not changed, and it would be in those circumstances unreasonable to force this change through.

24. As to the question as to whether it was unreasonable not to make the changes, he relied on paragraphs 30 and 31 of his skeleton argument where he makes the point that the term of the extended lease will be for nearly 141 years until December 2166 and may be extended again depending on the building is still standing. It is not a case, therefore, in which the Respondent has any realistic expectation of retaking possession in the foreseeable future. Accordingly, the security tenure point in reality has no impact on the Respondent. In any event, the problems that they suffered from the tenant in 2008 are not covered by the new clause. Further, it was pointed out by Mr Rajah that the terms of the clause are unclear and takes no notice of the pending Renters Rights Act. It is the Applicant's business model to grant medium term leases of 15 years or so to housing partners as it had done with the under lease produced by Mr Mamujee.

25. Mr Rajah then moved on to the other proposed amendments. The objection to the change in the hours at new paragraph 8(h) seem to have no reason. There are three other leases that allow noise to emanate from the flat for an hour later in the evening and an hour earlier in the morning. There was no evidence, he said, used to show that the change was necessary either to cure a defect or requiring modification on a reasonableness basis.

26. The inclusion of clause 8(i) is new. If the Applicant did not proceed with the new lease the Respondent would have to accept the existing terms. It would also conflict with the under lease.

27. At this point we should refer to the existing wording contained in the first schedule to the lease. Paragraph 1 of the first schedule says as follows: *"Not to use the flat or permit the same to be used other than as a private dwellinghouse nor for any purpose from which a nuisance can arise to the owner lessee and occupier of the flat comprised in the Mansion or in the neighbourhood nor for any illegal immoral purposes.*

28. The other paragraph in the first schedule which is relevant is at 4 says as follows*: "No piano, pianola, gramophone, wireless, loudspeaker or mechanical or other musical instrument of any kind shall be played or used nor shall any singing be practised in the flat so as to be audible outside the flat between the hours of 11.00pm and 9.00am."*

29. We then heard from Mr Alford. He referred us to the Gordon case and in particular paragraph 43 where the Judge considered the meaning of modified and we have noted what is said therein.

30. He then moved on to specifically deal with the proposed "alterations." His submission was that the existing leases were defective and that as he put it, quite literally put the building in significant danger and risk of a gas explosion in or around 2008. The defect in the existing lease is therefore not merely theoretical but real and poses a threat to all other flats in the building and their respective occupiers. His view was that the defect could be properly and efficiently remedied by including the proposed wording. His submission to us was that the changes to the under letting provisions is merely a modification and was either remedying a defect or allowing the matter to be considered on an unreasonable basis and should be permitted. It was reasonable, he said, to allow the Respondent to exercise some control over who and how the sub-letting went forward and the terms. He accepted that the sub-lease granted by the Applicants and now in situ did not obviously offend this term. There was, however, concern that there had been a lack of notice although this was not central to the case but showed that the Applicants had overlooked the requirement. In his submission, in practical terms the under lease in the form that the Applicants had used to date would not offend the new covenant.

31. It was also put to us by Mr Alford that the Applicant bought knowing that this was a wasting asset and from the enquiries would have known that there were other leases not in the same terms. We had heard from Mr Mamujee that no real enquiries were made in that regard. In his submissions to us Mr Alford said we

needed to focus on whether the changes were to remedy a defect or that whether it would be unreasonable not to include them. He was of the view that the new clause 5 (see above) was clearly intended to remedy a defect and was necessary. Insofar as the other alterations, the changes occurring since the commencement of the lease was a wide definition. There was a significant change in the legal landscape of the block with 75% adopting the new lease. There is also a change in the London housing market, and it would be reasonable to allow the modification to include the restrictions, which would therefore be reasonable.

32. Mr Rajah responded briefly to the points raised by Mr Alford. His submission briefly was that the landlord is now in breach by granting new leases contrary to the arrangements in the existing lease. The existing clauses are fine and do not need any additional modification. The new provisions do not deal with any of the circumstances that arose in 2008 and there was in any event some inconsistency with the use of the word Term and term. Finally, he made the point that the Applicants bought the Property for business purposes to provide assistance with their housing partners and these changes could cause prejudice to the Applicants.

DECISION

33. We are very grateful to Mr Rajah and Mr Alford for their elegant submissions and the skeleton arguments that they produced. The leading authority in this case is the Gordon Upper Tribunal case. We were referred to the Supreme Court Decision in *Howard De Walden Estates Limited v Aggio and Earl Cadogan and Others v 26 Cadogan Square Limited*. This case was not on all fours. The only element that seemed to be relied upon by Mr Alford at least was to be found at paragraph 49 of Lord Neuberger's judgement, which he says as follows: *"Section 57(6) also indicates that the LVT was intended to have relatively wide powers, often involving sophisticated judgments*."

34. We found some comfort in the wording contained in Hague, in particular at paragraph 32.10(a) which says as follows: *"..If it is necessary to do so in order to remedy a defect in the existing lease. The word necessary has been construed strictly and not equivalent to convenient. The word defect is not defined but given the use of the word necessary a strict or narrow interpretation seems a proper one. Accordingly, the use of this provision to attempt to modernise a term is generally in the face of opposition from the other party would not be permissible.*"

35. Moving on then to paragraph 57(6)(b) the learned authors say this: *"The word changes is not defined and would appear include, for example, physical changes in the Property used by the tenant as well as changes in acceptable conveyancing practice. It has been held that the enactment of the Landlord and Tenant (Covenants) Act 1995 is a change falling within section 57(6)(b)."*

36. Our findings are as follows. We cannot see that the proposed amendments to be made by the Respondents can be a 'defect'. The existing lease works, maybe not the extent that the landlord may wish, but nonetheless it has changed hands at least two times since 2008 and presumably the purchaser at that time considered the arrangements contained in the lease to be satisfactory. The fact that 75% may have agreed to changes is not in our findings relevant to this case. Firstly, the

director Mr King is the owner of at least four flats in the building and the other flats that agreed in 2013 to the changes had their reasons for doing so. We also bear in mind that a number of the changes made in 2013 and onwards are included in the draft lease which have been approved by the Applicant. It is merely these three clauses that have caused concern.

37. For our part, we cannot see that the change to the wording in respect of the under letting does anything to prevent the problems that may have arisen in 2008. That was a difficult tenant, which you could get at any time, and the arrangements for under letting as suggested by the Respondents do not in our view correct any defect. Nor do we think it reasonable to include these new provisions in a lease which, as has been stated, were it not extended would continue until 2076. Further, the Applicant uses the premises with its housing partners, and the proposed restrictions may inhibit that use.

38. The other two changes proposed in respect of the noise question and the use of the garden, seem to us to be neither a reasonable change nor a correcting a defect. In the existing lease at paragraph 6 of the third schedule there is a right for the lessee to use for purposes of recreation only the common garden shown edged [xxx](*sic no colour is shown in the lease*) on the said plan. This is the right that exists and we do not in truth consider that the proposed wording assists in that regard. We are not clear what would be meant by play or loiter and nor are the hours of restriction appropriate given that this appears to be a completely new clause which is not allowed as has been long established.

39. Insofar as the singing and dancing clause is concerned, the first schedule at paragraph 4 contains this restriction, then changing it by a couple of hours does not seem to us to be necessary to either remedy a defect or reflect that there have been changes occurring since the date of commencement of the existing lease.

40. In those circumstances, we find that none of the alterations proposed by the Respondent fall within the definitions allowed under section 57(6) of the Act and we therefore decline to make an order that they be included.

41. We are very grateful to the parties for limiting the areas of dispute as much as they have done. The terms of the new lease are as has been agreed prior to our hearing save for the exclusion of these disputed terms.

Judge: Andrew Dutton

A A Dutton

Date: 2 March 2026

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.