FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00MG/LSC/2025/0667** **CAM/00MG/LVL/2025/0007**
Property	**:**	**Ascot & Dunton House** **North Third Street** **Central Milton Keynes MK9 3LZ**
Applicant/Respondent	**:**	**Avon Ground Rents Limited**
Respondents/Applicants	**:**	**Ann Savell and the other leaseholders identified in Schedule 1 to this decision**
Applications	**:**	**Vary leases/Determine payability of service charges**
Tribunal members	**:**	**Judge David Wyatt** **Judge Bernadette MacQueen**
Date	**:**	**30 March 2026**

DECISION

Decisions and direction

(1) The tribunal makes the accompanying order to vary the specified leases with effect from the retrospective dates specified in the order.

(2) The effect of that order is that the service charges paid are treated as having been payable in the proportions which were disputed for the 2020 to 2025 service charge periods described below.

(3) The legal costs incurred by Avon Ground Rents Limited in connection with the relevant proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Savell Leaseholders (as defined below).

(4) The tribunal makes no order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(5) By **10 April 2026** Avon Ground Rents Limited must send a copy of this decision to each of the Respondent leaseholders, by first class post (and by e-mail where possible).

Reasons for the decision

Basic details

1. Ascot House is a block (24 flats) in the middle of a wider development area, with car parking, planting and two smaller blocks in the space between it and Dunton House (16 flats), and other blocks in similar proximity. All the blocks appear detached.

2. Avon Ground Rents Limited ("**Avon**") is the registered proprietor of the freehold parcels of land known as Ascot House and Dunton House. Their respective title numbers are BM177358 (which includes small nearby areas) and BM171551 (which includes larger such areas). Avon say they purchased on 17 July 2020. They completed their purchase on 13 November 2020.

3. It was not disputed that a previous freeholder of Ascot House and Dunton House also owned another block, Emberton House (40 flats), a total of 80 flats. That may be one of the causes of the differing service charge references in the leases of Ascot and Dunton.

Applications

4. By an application dated 12 June 2025, Ms Ann Savell, one of the leaseholders of Flat 4 at Ascot House, applied to the tribunal (CAM/00MG/LSC/2025/0667) under section 27A of the Landlord and Tenant Act 1985 (the "**1985 Act**"). They sought determination of payability of disputed service charges for the years from 2019 to 2025.

5. They raised only the issues that Avon was charging them 2.5% of expenditure (on Dunton House, as well as Ascot House) when their lease provided for 1.25% of expenditure (on Ascot House only). They also sought order(s) under section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the "**2002 Act**").

6. On 14 August 2025, the tribunal gave directions for case documents and a bundle to prepare for a hearing. In their statement of case, the leaseholder(s) said the issue had been raised with the managing agents on 5 June 2025. The agents initially sought to rely on a lease provision enabling change of apportionments (which applies if the landlord built the flats differently). They then said apportionments were arranged for practical purposes, with the estate treated as both buildings and everyone paying an equal share of costs; they said that was fair and practical. They later said that if a variation application was made the tribunal would resolve the matter in their favour.

7. Ms Savell said she was willing to negotiate. As described below, she produced schedules specifying the total amount said to have been overcharged each year (at 2.5% of costs relating to both buildings rather than 1.25% of Ascot House costs), plus in 2023/24 a specific additional charge of £857.47 relating to a new lift in Dunton House.

8. By applications dated 12 November 2025 (CAM/00MG/LVL/2025/0007), Avon then sought variation of the leases described in Schedule 1 to this decision, under section 35 of the Landlord and Tenant Act 1987 (the "**1987 Act**"). On 27 November 2025, the tribunal gave case management directions providing for notification of those potentially interested and for these cases to be heard together, with a review case management hearing on 8 December 2025. Pursuant to those directions, Avon has produced evidence that it notified the mortgagees of Flats 1, 5, 10, 14 and 21 Ascot House of these proceedings with copies of the relevant documents. None have responded.

9. The directions gave the parties permission to rely on expert evidence of a valuer on any issue of compensation/any loss or disadvantage said to be caused by the variations sought, if that was produced in a report by the deadlines directed. None was produced.

10. On 12 December 2025, further directions were given following the case management hearing, providing for these cases to be heard on 17 March 2026 (and for separate service charge cases between some of the same parties about different properties, which will be the subject of a separate decision, the following day). The tribunal later dealt with various new case management applications and other correspondence. Ultimately, enough was produced that the tribunal agreed to add Alan Savell (as joint leaseholder of 5 Ascot House), Neville Fernandes (7 Ascot House), Alyson Andrews (10 Ascot House) and Laura Grunberger (12 Ascot House) as additional Applicants in the service charge case, all represented by Ann Savell (the "**Savell Leaseholders**").

11. Pursuant to the directions, the leaseholders produced their hearing bundle and Avon produced their hearing bundles. The day before the hearing, supplemental bundles of Land Registry title register entries and plans, skeleton arguments and an authorities bundle were produced for Avon. At the hearing on 17 March 2026, Avon was represented by Mr Piers Harrison of counsel, instructed by Scott Cohen solicitors. The Savell Leaseholders were represented by Ms Savell. We are grateful for their help. We were satisfied that the other leaseholders had been notified (or reasonable steps had been taken to notify them) of the hearing and it was in the interests of justice to proceed in their absence. Laura Grunberger attended the hearing, as did Lorraine Scott of Scott Cohen.

The basic facts and arguments in the service charge case

12. The relevant leases are described under the lease variation heading below. Unlike most of the leases in Ascot and Dunton, they do not provide for an equal share of the costs relating to both blocks. Many appear to be those granted the earliest (originally, in the case of those later extended). For

example, the lease of 5 Ascot House was the third lease of a flat in Ascot House, granted on 7 October 1996 for a term of 99 years.

13. Avon said their method of billing was in place at the time of their purchase in 2020 and continued throughout, allocating and apportioning the expenses of maintenance of Ascot House and Dunton House equally between the 40 leaseholders. They produced sample historic service charge statements indicating that the relevant leaseholders were charged equal amounts whether their lease specified 1/80 or 1/40 - for example, identical charges of £388.75 on 1 July 2002 and £419.88 on 1 January 2003 for Flat 5 in Ascot House and Flat 212B in Dunton House (Mr Harrison confirmed a previous reference by Avon to Flat 7 was a mistake; that is one of the leases sought to be varied). Mr Harrison gave an additional example of identical amounts demanded in 2013 for these flats.

14. Avon produced [491 on] demands for 28 August 2020 showing identical amounts demanded in relation to Flats 1, 3, 5, 7, 8, 10, 11, 12, 14, 16, 21, 22, 24 Ascot House and Flats 212H, 212J and 212L Dunton House. They also produced examples of service charge statements from 2020, 2024 and 2025 which made it clear that 2.5% of expenditure was being charged and referred (for example) to:

> "Re: *Flat 5, Ascot House*
> *Ascot & Dunton House*"

15. Avon said there had been no dispute until this was raised by Ms Savell last year. The elements of the lease variation cases are examined in turn below, including the amounts said by Ms Savell to have been overcharged.

16. In relation to the service charge case, Avon said in their statement of case that the conduct of the parties gave rise to an estoppel by convention, promissory or proprietary estoppel and/or constituted agreement or admission within s.27A(4) of the 1985 Act. Only the first and last arguments were pursued at the hearing.

Estoppel by convention

17. Mr Harrison relied on Admiralty Park Management Co Ltd v Ojo [2016] UKUT 421 (LC). He noted the similar basic problem, as outlined at [12], of charging a proportion of costs relating to nine buildings - rather than charging only for the relevant building as required by the terms of the lease.

18. Mr Harrison acknowledged Ms Savell's submission that there had not been a shared assumption, one of the requirements identified in HMRC v Benchdollar [2009] EWHC 1310 (Ch), later refined as confirmed in HMRC v Tinkler [2021] UKSC 39. He suggested that was one of the reasons the Upper Tribunal in G & A Gorrara Ltd & Ors v Kenilworth Court Block E RTM Co Ltd [2024] UKUT 81 (LC) had discouraged estoppel arguments. He referred to Republic of India v India Steam Ship Company Limited [1998] AC 878 as authority that the assumption may be shared or may be made by one party and acquiesced in by the other, as noted in Ojo at [37]. Mr Harrison observed

that India and Ojo had not been cited to the Upper Tribunal in Gorrara. He referred us to the reasoning in Ojo at [35] onwards.

19. It was clear enough from the service charge documents shown to us for 2020 onwards that these referred to both Ascot and Dunton House and 2.5% of expenditure. Ms Savell or others may not have known that Dunton House was a separate block, assuming this was an unfamiliar label for Ascot House, as Ms Savell suggested at the hearing. However, the references in the service charge statements gave the flat number and building in the first line and then both buildings in the second line, indicating that the costs relating to both buildings were included. The leaseholders might also never have looked at the apportionment wording in their lease and locked it away, as Ms Savell said. Nonetheless, sufficient information was available to them from 2020 onwards.

20. However, we are not satisfied that an estoppel by convention prevents the leaseholders from relying on the discrepancies in their leases in relation to the service charge proportions - or whether costs in relation to both blocks can be included - for the periods the subject of the service charge case. These extend back at the earliest to the period from June 2019 to June 2020 (although the inclusion of that first year in these proceedings seems dubious if Avon did not acquire the freehold until shortly after this), for six years before the dispute was raised (and then the service charge case began) in June 2025.

21. The extract from India is a summary and confirms that it is not enough that each party acts on an assumption not communicated to the other. Even if Mr Harrison is right that the common assumption need not be shared (Tinkler and Benchdollar were, strictly speaking, cases about non-contractual dealings [78]), Tinkler considered various authorities from contractual contexts, including India, confirming the same basic requirements, including the need for a statement or conduct between the parties that "crosses the line" and ensures relevant reliance [34]. The Upper Tribunal warned in Gorrara that estoppel by convention is a technical doctrine developed and useful in commercial disputes but with demanding requirements, where service charge matters can "*drift on for years*" without any relevant communication.

22. The circumstances in Ojo were extreme; not only had the apportionment been obvious and payments made for a long period. The Upper Tribunal noted that there had "*Moreover*" [40] been a previous service charge payability case in the tribunal at which the leaseholder confirmed contractual liability was not denied and then a further service charge case at which the tenant had again not raised the issue (the tribunal had raised it at the hearing). That explains why in that case the Upper Tribunal found sufficient communication that the leaseholder expected their landlord to rely on the relevant assumption.

23. At least in relation to the relevant periods, we are not satisfied that the conduct of the leaseholders was sufficient to convey to Avon that they expected Avon to rely on the relevant assumption. Unqualified payment of service charge demands is not enough, where as Ms Savell pointed out leaseholders will pay service charges demanded even if they wish to dispute them, to guard against risks of forfeiture and/or potentially disproportionate

enforcement costs. Accordingly, we agree with Ms Savell that the circumstances here were not enough to cross the line, even in relation to those leaseholders who held their leases throughout the relevant periods. Further, as noted in the table below, some of the leaseholders did not acquire their leases until more recently.

24. Further, at least in relation to the relevant periods, Ms Savell is probably right that Avon did not rely on any relevant assumption, but were responsible for taking their own independent view based on whatever their seller (not the current leaseholders) provided and/or was simplest for them.

Agreement for the purposes of section 27A(4)

25. We are not satisfied that the leaseholders are to be taken to have agreed the relevant matters for the periods the subject of the service charge case. We accept Mr Harrison's point that the relevant information was sufficiently available (at least from 2020), as noted above, and the matter of the proportion and buildings arose each time payment was made, twice yearly against that information for years. We are not satisfied that the circumstances are enough to show the "something more" which the Upper Tribunal confirmed in Gorrara was required (in addition to sufficient information and an unqualified series of payments) by reference to sections 27A(4) and (5).

26. It does not seem necessary or appropriate for us to attempt to decide whether agreement of the relevant matters in relation to the service charge years before those the subject of the service charge case is to be inferred (or an estoppel arises). We heard no specific argument about this and it relates to the previous freeholder and some previous leaseholders, who are not parties. In relation to those leaseholders who owned their leases during these years, the long delay before the dispute was first raised indicates that agreement might be inferred, looking at Gorarra and its analysis of the earlier authorities, but we make no finding about that.

27. We do consider it a significant factor for the purposes of the lease variation cases that: (a) it is not disputed that all service charges were allocated/apportioned in this way throughout, or at least since 2002; (b) sufficient information was available at least from 2020; (c) the leaseholders held their leases from the dates specified in the table in Schedule 1 below; and (d) there was no dispute about this until Ms Savell raised the issue for the first time in June 2025.

Review

28. Sections 35 and 38 of the 1987 Act are set out in Schedule 2 to this decision. Section 38 sets out the tribunal's powers in respect of orders on applications under section 35. Since each of the Leases is a long lease of a flat and Avon is a party to each of them, we are satisfied that it was entitled to make these lease variation applications under section 35(1).

29. The parties were already aware of the decision in 56 Westbourne Terrace RTM Company Limited v Polturak & Ors [2025] UKUT 88 (LC). The numbered headings below follow the potential issues described in that decision.

(1) Whether there are grounds under s.35(2)

30. The grounds on which applications may be made under section 35 of the 1987 Act to vary a long lease of a flat are set out in s.35(2). They are that the lease fails to make "***satisfactory provision***" with respect to one or more of the matters specified in s.35(2).

31. Avon relied on the matters specified in section 35(2)(f). Accordingly, the key relevant parts of s.35(2) are:

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

"(4) For the purposes of subsection (2)(f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if—

(a) it provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and

(b) other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and

(c) the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would either exceed or be less than the whole of any such expenditure."

"(8) In this section "service charge" has the meaning given by section 18(1) of the 1985 Act."

Leases

32. The leases the subject of the variation applications are in varying forms. Those of Flats 1, 5, 7, 11, 12 and 21 Ascot House were granted in 1996 to 1999 for terms of 99 years from 1996. The current leases of Flats 10, 14 and 24 Ascot House, and Flat 212L, Dunton House, are newer (extended) leases granted in 2016 to 2018, all for a term to 2185.

33. Avon does not seek variation of any of the provisions in the main body of the leases. Taking the lease of 1 Ascot House as an example, these define the "*Landlord's Property*" as the "*block or block of flats*" and any garages, parking areas, common parts and other areas "*and known as the address specified in Paragraph 5 of the Particulars all of which said premises are hatched red on the plan annexed and are registered at HM Land Registry forming the whole or part (as the case may be) of the title number specified in Paragraph 12 of the Particulars*". Clause 4.2.6 is a tenant covenant to pay the "*Tenant's share as specified in Paragraph 10 of the Particulars*" of the total expenditure reasonably and properly made in carrying out the obligations of repair, insurance and provision of services for the "*Landlord's property*".

34. All the matters Avon seek to change are in the Particulars on the first page(s) of each (original) lease. It was not disputed that:

a. the leases of 15 of the 24 flats in Ascot House define the tenant's share as 1/40th (2.5%) and the building as Ascot House and Dunton House (the lease of Flat 3 was produced as an example). The Particulars in the other nine leases have differing paragraph numbers but define the "*Tenant's share of total expenditure*" as "*.0125% or one eightieth*" (or "*1.25% or one eightieth*"), the Landlord's "*Building and address*" as Ascot House, and most identify only the landlord's freehold title number BM177358 (i.e. Ascot House), without reference to Dunton House (some identify both freehold title numbers); and

b. the leases of 15 of the 16 flats in Dunton House define the tenant's share as 1/40th and the Building as both blocks. The other lease, of Flat 212L, defines this as 1/80th and the Landlord's property as Dunton House, identifying that title number without reference to Ascot House.

35. We note that, even when the previous landlord owned all three blocks with 80 flats in total, the provisions in these leases seem wrong. Most only mention one block and the others only mention two.

36. Avon seeks variation of the nine leases in Ascot House and the single lease in Dunton House (Flat 212L). The paragraph numbering is different in the leases of Flats 7, 10, 11, 12 and 14 (the building etc is paragraph 4, the tenant's share is paragraph 9 and the landlord's title is paragraph 11).

37. Ms Savell argued that s.35(2)(f) was not satisfied, relying on the reasoning noted in Cleary v Lakeside Developments Ltd [2011] UKUT 264 (LC) and Triplerose v Stride [2019] UKUT 99 (LC), to the effect (as confirmed in 56 Westbourne Terrace) that service charge provisions which are clear and have not produced practical problems are not unsatisfactory merely because they do not allow recovery of all expenditure from leaseholders.

38. However, as Mr Harrison emphasised, these decisions concerned other grounds under section 35(2), where the meaning of "unsatisfactory" is left open. In contrast, section 35(4) provides that if the conditions specified in it are satisfied then the lease fails to make satisfactory provision for the purposes of s.35(2)(f).

39. All the elements of section 35(4) are satisfied. The circumstances plainly satisfy sub-sections (a) and (b). As to (c), the effect of the specified proportions is that the aggregate of the amounts payable would be less than the whole of the relevant expenditure (even apart from costs related to the other building). As Mr Harrison observed, the Ascot House leases might sensibly have provided for payment of 1/24th of the costs of Ascot House alone. Instead, they currently provide for 1/80th of the costs of Ascot House alone (or both blocks, in some cases). Sub-section (c) is satisfied. Accordingly, each of the leases the subject of the variation cases fails to make satisfactory provision with respect to the computation of a service charge payable under it for the purposes of section 35(2)(f).

40. Under section 38 of the 1987 Act, since we are satisfied that there are grounds under s.35(2), we "*may*" make an order varying the specified leases unless section 38(6) applies (section 38(7) is not relevant here). Section 38(6)

provides that a tribunal shall not make an order effecting any variation of a lease if it appears to the tribunal that: (a) the variation "*would be likely substantially to prejudice any respondent … or any person who is not a party to the application*" and that compensation would not be an adequate remedy; or (b) that: "*for any other reason it would not be reasonable in the circumstances for the variation to be effected*." Section 38(10) gives power to provide for a party to pay "*compensation in respect of any loss or disadvantage*" the tribunal considers is likely to be suffered as a result of the variation.

(2) Whether the variation would substantially prejudice any person

41. Avon said that the proposed variations would not substantially prejudice the leaseholders because they accord with the existing approach that each leaseholder pays 1/40th of the costs of maintaining both buildings. Mr Harrison said this was the historical and existing basis. None of the leaseholders said they had ever paid less, or only for one building, or produced any historical demand based on the literal wording of the relevant leases. He also observed that solicitors for prospective buyers obtain service charge information based on what was demanded, so the existing basis would have been presented to them.

42. We asked about registration of any order. There was no objection to our proposal to add to any variation order a requirement on Avon to register and make all necessary applications to the Land Registry to effect the variations, to avoid any prejudice from any uncertainty about this. Mr Harrison helpfully took us to the example order from an Upper Tribunal case at the end of his authorities bundle. As noted below, Ms Savell said that none of the leaseholders should have to pay for the costs of the proceedings/any variations. Mr Harrison could not comment on potential recoverability under the terms of the leases, but rightly noted it was not obvious that the costs of the variation cases could be recovered. He opposed any condition/order to the effect that Avon bear their own costs.

43. It was confirmed that no leaseholders are in arrears (save for one leaseholder who has not paid an administration charge sought from them, which is not relevant to the service charge allocation/apportionment issues here).

44. To avoid repetition, please see below the other issues considered in relation to compensation. We consider that on balance the retrospective variations sought would substantially prejudice the leaseholders unless sufficient provision is made for prompt registration and for the landlord to bear its own costs of these proceedings and registration, for the reasons explained below.

(3) If so, whether money would be adequate compensation for that prejudice and (4) whether for any other reason it would not be reasonable in the circumstances for the variation to be effected

45. If such prejudice is not avoided by the terms of any variation order, it seems money would be adequate compensation.

46. Ms Savell said that we should not make any variation because the leases had been entered into freely and Avon had purchased as a large commercial landlord well able to take advice when they purchased. The change would be very significant, doubling (or more) their liability. This was a separate building, with unpredictable costs, and the leaseholders ought to be left able to negotiate, she argued. Mr Harrison observed that it seemed none of the parties were the original contracting parties.

47. We are not persuaded that (subject to the registration/cost matters noted above and compensation matters noted below) it would not be reasonable for the variation to be effected. The tribunal should be slow to interfere with freely negotiated contracts, as Ms Savell said. However, errors in leases are sadly common, the minority of the leases in these buildings contained errors and there is no dispute that the requested variations will reflect the way in which service charge costs have always been allocated and apportioned, in equal shares for both buildings, so this is not entirely unpredictable. We have given weight to the fact that leaseholders in a separate block are paying for another, but as Mr Harrison submitted that works both ways in these cases. These blocks appear broadly similar - no significant differences were drawn to our attention.

(5) Whether any variation should take effect retrospectively, or only from the date of the application(s) or any order

48. Avon said that the relevant defects date back to the grant of each relevant lease, which was not disputed. Initially, Avon asked that their proposed variations be backdated to their acquisition of the freehold. The case management directions required Avon to notify previous leaseholders if this would take the retrospective period before the date the current leaseholder acquired their lease. Avon then said that they acquired the freehold on 17 July 2020 (as discussed at the hearing, we take it that was when they exchanged contracts, since the Land Registry entries indicate completion in November 2020). Avon said that all the Respondent leaseholders acquired their interest after that date save for Alyson Andrews, who acquired their lease of Flat 10 on 6 August 2021 and was registered as proprietor on 12 August 2021. Avon asked that their proposed variations take effect from 12 August 2021 for the lease of Flat 10 and from 17 July 2020 for the other relevant leases.

49. Shortly before the hearing, the requisite Land Registry documents were produced and it was confirmed that Alison Kane had been the leaseholder of Flat 14 at Ascot House and Flat 212L at Dunton House from grant (in 2018) until June 2024. Avon said that the current leaseholders of those flats, as identified below, are also the personal representatives of her estate. The table at Schedule 1 to this decision is based on the Land Registry entries produced in the second supplemental bundle.

50. At the hearing, Ms Savell said that any order should not be retrospective, but take effect only from the date of our order or failing that the date of the variation applications.

51. We consider that the variations should be retrospective to the extent proposed by Avon. At least by 17 July 2020, the relevant matters were unsatisfactory (or defects) and (subject to the registration/costs matters) we consider it better to back-date the variations for the reasons explained above and below, and to avoid further uncertainty and potential litigation between the parties about these issues in relation to previous periods.

(6) Whether compensation should be paid to any person in respect of any loss or disadvantage they are likely to suffer as a result of the variation

52. The leaseholders failed to produce any expert evidence and made no case for compensation beyond (in the case of the Savell Leaseholders) suggesting that the tribunal "simply needs to review the overcharging". Ms Savell set out their calculations, of £15,971.87 for the period from 2019-2025 and approximately £30,376.19 for the period from 2004 to 2020 [518 and 522]. Both these figures include interest calculated at 8%. Without interest, their calculations were £12,250.82 and £14,806.85 respectively. Ms Savell said it would be entirely unfair for the leaseholders to have to pay any costs, and informed us at the hearing that the leaseholders had to pay for legal advice to enable them to answer the technical estoppel arguments made by Avon.

53. Avon noted in their reply that there was no allegation that the proposed variations would diminish the value of the relevant leases, or that the relevant leaseholders paid more for their leases on the basis that they had preferential service charge terms. We asked Mr Harrison about the indications from Cleary at [31], noted in Triplerose Ltd v Stride [2019] UKUT 99 (LC), that a loss or disadvantage is "*not … only to be measured in terms of the diminution in value of a party's interest in the property, and it is on the face of it hard to see how a requirement that the lessees should have to pay £200 a year for something for which they at present pay nothing would not be a loss or disadvantage requiring the payment of compensation*".

54. Mr Harrison said that the case law was mixed, referring us to the various cases discussed in Tanfield at 31-10. He emphasised that the relevant parts of Cleary (and Triplerose), which were not cases under s.35(2)(f), were obiter (comments in passing). He referred to Baystone Investments Ltd v Perkins [2010] UKUT 70 (LC), which notes that the FTT had declined to order compensation because adding service charge liability for maintenance costs would benefit an estate where it was agreed the omission had led to inadequate maintenance [3-4] but this is an Upper Tribunal decision only in relation to a separate issue (an order that the landlord pay the costs of the tenants).

55. Mr Harrison relied on Parkinson v Keeney Construction Limited [2015] UKUT 607, emphasising that the paragraphs noted below were part of the ratio (the reasons for the decision) of HHJ Huskinson. Mr Harrison observed that all leaseholders might benefit in future, given the risk that some landlords would have a disincentive to repair if they could not recover their costs.

> [18.] "*The F-tT rejected the argument that section 38(10) should be applied so as to put any claimant for compensation into the*

same position as that claimant would have been in if the financial contributions toward service charge made by that claimant under the lease remained in the original unamended percentage … The F-tT rightly observed that, having provided a mechanism in the 1987 Act to amend leases where the lease fails to make satisfactory provision in respect of certain matters, it seems unlikely that Parliament would have intended that this cure would be effectively nullified by the award of compensation…"

[19.] "*There is an advantage not only to a lessor but also to lessees that the leases under which flats are held should be well drafted and should, in particular, make satisfactory provisions with respect to the payment of service charge. Where the existing leases of the flats in a building do not make satisfactory provisions in this regard, then an amendment to secure that satisfactory provisions are made (such that each lessee pays a fair share of the relevant expenditure) is not an amendment which necessarily brings loss or disadvantage to a lessee even though that lessee may be paying a higher percentage of the service costs than previously…*"

56. The potential claims of the leaseholders for the historic "overpayments" appear to have some value, at least for the years from 2020, and their strict contractual liability is being increased to the same level as the other leaseholders.

57. However, in the circumstances, we are not satisfied that depriving the leaseholders of these claims (or increasing their future contractual liability to the basis on which they have already been paying their service charges for years) is a sufficient loss or disadvantage that we should order payment of compensation, if the variation order can be made in terms which seek to avoid any further uncertainty, litigation or loss to the leaseholders in relation to these matters by providing that:

   a. Avon promptly takes any action needed to register the variation order;

   b. there are no additional costs to the leaseholders as a result of these proceedings and any necessary applications to register the variation order; and

   c. there is no uncertainty or risk of further litigation about such costs.

58. It was not disputed that all the relevant leaseholders are paid up to date, and have for many years been paying, as if these variations had already been made. There was no suggestion, let alone expert evidence (despite the specific permission given) that these variations would affect value or the previous terms had any effect on purchase prices. We accept Mr Harrison's submission that purchasers probably based their assessments on the actual service charges and it seems if the variations are made there will be no material change to the management of the estate.

59. In the circumstances, we consider that (subject to provision for the registration/costs matters above) the potential benefits to the leaseholders (as explained in Parkinson) will offset the disadvantages, including the loss of their potential claims for previous “overpayments”.

Service charge payability

(6) It was not disputed, and we find, that the effect of our decision to make a retrospective order on the variation cases in the terms proposed by Avon (subject to the minor corrections discussed at the hearing) is that the service charges for 2020 to 2025 are to be treated as having been payable in the allocations/proportions demanded.

Section 20C/paragraph 5A

60. There is no obvious provision in the service charge machinery which might include the costs of these proceedings. Clause 4.2.6 refers to repair, insurance and provision of services, referring to clause 6 when it appears to mean clause 5. This includes such matters as inspections, cleaning, managing agents, accountants and paying taxes. There is a reference to enforcing covenants and conditions substantially similar to the tenant covenants in the lease. It is difficult to see how defending the service charge case or bringing the lease variation cases could be described as enforcement of the existing covenants and conditions. These were seeking to defend a different practice (which would have been unsuccessful but for the lease variation cases) and then seeking to change the terms of the leases.

61. In view of our decision on the necessary terms of the lease variation order, it seems just and equitable to make a matching order under section 20C of the 1985 Act. That may be unnecessary, but it seems consistent. We would otherwise have been minded to make such an order on the basis that it seems just and equitable to avoid any potential dispute in future about whether any costs of these proceedings can be claimed through the service charge, since there were no submissions to suggest that such costs could be recovered under the terms of the leases and it seems clear they cannot.

62. It seems even less likely that any argument could be made for recovery of any costs in relation to these proceedings from an individual leaseholder as an administration charge. The leases seem to contain only the usual provision for legal costs in contemplation of proceedings under section 146/147 of the Law of Property Act 1925 (clause 4.2.13). However, since no particular administration charge has been identified or seems remotely likely, we consider it better not to make any order under paragraph 5A of Schedule 11 to the 2002 Act. This is not intended to preclude anyone from applying for such an order if any such administration charge is sought in future.

Judge David Wyatt **30 March 2026**

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

SCHEDULE 1 - the leaseholder parties

Applicants in the service charge case:

Peter Alan Savell and Ann Savell (5 Ascot House)
Neville Selwyn Fernandes (7 Ascot House)
Alyson Jayne Andrews (10 Ascot House)
Laura Zoch Grunberger (12 Ascot House)

Respondents to the lease variation cases:

Flat	Respondent leaseholder	Acquired	Title number
1 Ascot House (1)	Sandip Kumar Hargun	18 June 2015	BM216275
5 Ascot House (3)	Peter Alan Savell and Ann Savell	8 April 2004	BM217809
7 Ascot House (5)	Neville Selwyn Fernandes	10 April 2002	BM221793
10 Ascot House	*Alyson Jayne Andrews*	*6 August 2021*	*BM432661*
11 Ascot House (13)	Saqib Usman	9 August 2000	BM249031
12 Ascot House (4)	Laura Zoch Grunberger	3 March 2006	BM221143
14 Ascot House	*Georgina Mary Kane and Victoria Katherine Eibhlin Kane*	*5 June 2024 (previously Alison Kane)*	*BM422508*
21 Ascot House (2)	Leo Simon Fernandes	29 April 2005	BM217736
24 Ascot House	*Michael Joseph Hood*	*8 October 2018*	*BM427325*
Flat 212L, Dunton House	*Victoria Katherine Eibhlin Kane [629]*	*15 May 2024 (previously Alison Kane)*	*BM423439*

SCHEDULE 2

Sections 35 & 38 of the Landlord and Tenant Act 1987

35.— Application by party to lease for variation of lease.

(1) Any party to a long lease of a flat may make an application to the appropriate tribunal for an order varying the lease in such manner as is specified in the application.

(2) The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely—

(a) the repair or maintenance of—
(i) the flat in question, or
(ii) the building containing the flat, or
(iii) any land or building which is let to the tenant under the lease or in respect of which rights are conferred on him under it;

(b) the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);

(c) the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation;

(d) the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, and whether they are services provided for the benefit of those occupiers or services provided for the benefit of the occupiers of a number of flats including that flat);

(e) the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party;

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

(g) such other matters as may be prescribed by regulations made by the Secretary of State.

(3) For the purposes of subsection (2)(c) and (d) the factors for determining, in relation to the occupiers of a flat, what is a reasonable standard of accommodation may include—

(a) factors relating to the safety and security of the flat and its occupiers and of any common parts of the building containing the flat; and

(b) other factors relating to the condition of any such common parts.

(3A) For the purposes of subsection (2)(e) the factors for determining, in relation to a service charge payable under a lease, whether the lease makes satisfactory provision include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.

(4) For the purposes of subsection (2)(f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if—

(a) it provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and

(b) other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and

(c) the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would either exceed or be less than the whole of any such expenditure.

(5) Procedure regulations under Schedule 12 to the Commonhold and Leasehold Reform Act 2002 and Tribunal Procedure Rules shall make provision—

(a) for requiring notice of any application under this Part to be served by the person making the application, and by any respondent to the application, on any person who the applicant, or (as the case may be) the respondent, knows or has reason to believe is likely to be affected by any variation specified in the application, and

(b) for enabling persons served with any such notice to be joined as parties to the proceedings.

(6) For the purposes of this Part a long lease shall not be regarded as a long lease of a flat if—

(a) the demised premises consist of or include three or more flats contained in the same building; or

(b) the lease constitutes a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.

(8) In this section "service charge" has the meaning given by section 18(1) of the 1985 Act.

(9) For the purposes of this section and sections 36 to 39, "appropriate tribunal" means—

(a) if one or more of the long leases concerned relates to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) if one or more of the long leases concerned relates to property in Wales, a leasehold valuation tribunal.

38.— Orders varying leases.

(1) If, on an application under section 35, the grounds on which the application was made are established to the satisfaction of the tribunal, the tribunal may (subject to subsections (6) and (7)) make an order varying the lease specified in the application in such manner as is specified in the order.

(2) If—

(a) an application under section 36 was made in connection with that application, and

(b) the grounds set out in subsection (3) of that section are established to the satisfaction of the tribunal with respect to the leases specified in the application under section 36,

the tribunal may (subject to subsections (6) and (7)) also make an order varying each of those leases in such manner as is specified in the order.

(3) If, on an application under section 37, the grounds set out in subsection (3) of that section are established to the satisfaction of the tribunal with respect to the leases specified in the application, the tribunal may (subject to subsections (6) and (7)) make an order varying each of those leases in such manner as is specified in the order.

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

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

(6) A tribunal shall not make an order under this section effecting any variation of a lease if it appears to the tribunal —

(a) that the variation would be likely substantially to prejudice—
(i) any respondent to the application, or
(ii) any person who is not a party to the application,
and that an award under subsection (10) would not afford him adequate compensation, or

(b) that for any other reason it would not be reasonable in the circumstances for the variation to be effected.

(7) A tribunal shall not, on an application relating to the provision to be made by a lease with respect to insurance, make an order under this section effecting any variation of the lease—

(a) which terminates any existing right of the landlord under its terms to nominate an insurer for insurance purposes; or

(b) which requires the landlord to nominate a number of insurers from which the tenant would be entitled to select an insurer for those purposes; or

(c) which, in a case where the lease requires the tenant to effect insurance with a specified insurer, requires the tenant to effect insurance otherwise than with another specified insurer.

(8) A tribunal may, instead of making an order varying a lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified; and accordingly any reference in this Part (however expressed) to an order which effects any variation of a lease or to any variation effected by an order shall include a reference to an order which directs the parties to a lease to effect a variation of it or (as the case may be) a reference to any variation effected in pursuance of such an order.

(9) A tribunal may by order direct that a memorandum of any variation of a lease effected by an order under this section shall be endorsed on such documents as are specified in the order.

(10) Where a tribunal makes an order under this section varying a lease the tribunal may, if it thinks fit, make an order providing for any party to the lease to pay, to any other party to the lease or to any other person, compensation in respect of any loss or disadvantage that the tribunal considers he is likely to suffer as a result of the variation.

CAM/00MG/LVL/2025/0007

IN THE FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

IN THE MATTER OF PART IV OF THE LANDLORD AND TENANT ACT 1987

IN THE MATTER OF ASCOT HOUSE AND DUNTON HOUSE, NORTH THIRD STREET, CENTRAL MILTON KEYNES

BETWEEN :

AVON GROUND RENTS LIMITED

Applicant

and

(1) SANDIP KUMAR HARGUN

(2) ANN SAVELL & PETER ALAN SAVELL

(3) NEVILLE SELWYN FERNANDES

(4) ALYSON JAYNE ANDREWS

(5) SAQIB USMAN

(6) LAURA ZOCH GRUNBERGER

(7) GEORGINA MARY KANE & VICTORIA KATHERINE EIBHLIN KANE

(8) LEO SIMON FERNANDES

(9) MICHAEL JOSEPH HOOD

(10) VICTORIA KATHERINE EIBHLIN KANE

Respondents

ORDER

UPON the application by the Applicant under section 35 of the Landlord and Tenant Act 1987 and for the reasons described in the decision notice produced today

AND UPON the condition that the Applicant complies with paragraphs 3 and 4 of this order, or delivers to the Respondents an undertaking to do so

IT IS HEREBY ORDERED that pursuant to section 35(2)(f) and 38 of that Act

1. The leases of the Respondents are, by this order, varied as follows:

   1.1. The leases of the following flats at Ascot House, Flats 1, 5, 21 and 24 are varied as follows:

      1.1.1. Paragraph 5 of the Particulars is varied so as to substitute "*Ascot House and Dunton House*" for "*Ascot House*".

      1.1.2. Paragraph 10 of the Particulars is varied so as to substitute "*2.5% or one fortieth*" for the existing "*.0125% or one eightieth*" or "*1.25% or one eightieth*".

      1.1.3. Paragraph 12 of the Particulars is varied so as to substitute "*BM177358 and BM171551*" for the existing "*BM177358*".

   1.2. The lease of Flat 212L at Dunton House and the leases of the following flats at Ascot House, Flats 7, 10, 11, 12 and 14 are varied as follows:

      1.2.1. Paragraph 4 of the Particulars is varied so as to substitute "*Ascot House and Dunton House*" for "*Dunton House*".

      1.2.2. Paragraph 9 of the Particulars is varied so as to substitute "*2.5% or one fortieth*" for the existing "*.0125% or one eightieth*" or "*1.25% or one eightieth*".

      1.2.3. In the leases of the following flats at Ascot House, Flats 7 and 12, Paragraph 11 of the Particulars is varied so as to substitute "*BM177358 and BM171551*" for the existing "*BM177358*".

      1.2.4. In the lease of Flat 212L at Dunton House, Paragraph 11 of the Particulars is varied so as to substitute "*BM177358 and BM171551*" for the existing "*BM171551*".

2. These variations will take effect as from 17th July 2020 save in relation to the leases of the Respondents listed below in which case they will take effect from 12 August 2021:

   2.1. Alyson Jayne Andrews in relation to Flat 10, Ascot House (having acquired the Lease on 6th August 2021 with the date of registration of the lease being 12th August 2021).

3. The Applicant shall ensure that this order is registered in the registers at HM Land Registry for the relevant leases and the relevant freehold titles. In

particular, the Applicant shall promptly lodge with HM Land Registry all applications needed to make such entries as may be appropriate for the purpose of recording and giving effect to the terms of this order and those applications must be accompanied by certified copies of this order.

4. The Applicant must bear its own costs of the tribunal proceedings in relation to the service charge case reference CAM/00MG/LSC/2025/0667 and the lease variation cases reference CAM/00MG/LVL/2025/0007, and the costs of compliance with paragraph 3 of this order; it must not seek to recover any of those costs from any leaseholder.

Judge David Wyatt **30 March 2026**