



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

**Case Reference** : **HAV/21UG/LVT/2025/0003**

**Property** : **53 Hastings Road, Bexhill on Sea,  
East Sussex, TN40 2NH**

**Applicant** : **Boscobel Management Ltd**

**Respondent** : **Grant Wells (Flat 3)**

**Type of Application** : **s.37 1987 Act**

**Tribunal Member** : **Judge Dovar**

**Date of Decision** : **1<sup>st</sup> June 2026**

---

**DECISION**

---

© CROWN COPYRIGHT

1. This is an application for the variation of the five leases of the Property under s.37 of the Landlord and Tenant Act 1987 in relation to service charge recovery.
2. By directions dated 24<sup>th</sup> April 2026, the Tribunal notified the parties that it intended to deal with this matter without a hearing unless either objected; none has.
3. The Property comprises five leasehold flats; originally a large house built in the 1920s, but in 1973 it was converted into five two bedroom flats. The freehold of the Property is owned by the Applicant company. Four of the five leaseholders consent to the proposed variation. The lessee of Flat 3, the Respondent opposes the application.
4. The current lease terms provide for a limit of £50 per annum to be collected in advance of service charge expenditure for each year. Whilst it can collect further sums through the service charge once it has incurred expenditure, the limit on advance payment provides operational difficulties for the Applicant; particularly in that it is a tenant owned freeholder and as such has limited resources to call on when seeking to cover the cost of expenditure in advance.
5. It seeks the following variations:
  - a. To remove the £50 limit on payments in advance and facilitate recovery of a reasonable estimated amount;
  - b. To move the accounting year from 24<sup>th</sup> December to 1<sup>st</sup> January;
  - c. To include an index linked reserve fund.

### **Criteria for Application**

6. Section 37 provides the criteria a Tribunal must apply when determining whether to make a variation. It is in the following terms (with emphasis added):

#### Section 37

*(1) Subject to the following provisions of this section, an application may be made to the appropriate tribunal in respect of **two or more leases for an order varying each of those leases in such manner as is specified in the application.***

*(2) Those leases must be **long leases of flats under which the landlord is the same person**, but they need not be leases of flats which are in the same building, nor leases which are drafted in identical terms.*

*(3) The grounds on which an application may be made under this section are that **the object to be achieved by the variation***

**cannot be satisfactorily achieved unless all the leases are varied to the same effect.**

(4) *An application under this section in respect of any leases may be made by the landlord or any of the tenants under the leases.*

(5) *Any such application shall only be made if—*

*(a) in a case where the application is in respect of less than nine leases, all, or all but one, of the parties concerned consent to it; or*

*(b) in a case where the application is in respect of more than eight leases, it is not opposed for any reason by more than 10 per cent. of the total number of the parties concerned and at least 75 per cent. of that number consent to it.*

(6) *For the purposes of subsection (5)—*

*(a) in the case of each lease in respect of which the application is made, the tenant under the lease shall constitute one of the parties concerned (so that in determining the total number of the parties concerned a person who is the tenant under a number of such leases shall be regarded as constituting a corresponding number of the parties concerned); and*

*(b) the landlord shall also constitute one of the parties concerned.*

7. Section 38 provides that if the criteria is made out, the Tribunal may make an order varying each of the leases in such manner as specified in the order. That is subject to sub sections 38(6). That provides that an order should not be made if it would substantially prejudice any respondent, and that could not be compensated with in damages or that for some other reason it would not be reasonable to make the order.

### **Two or more long leases**

8. The criteria set out at s.37(1) and(2) is clearly met in this case.

### **Object to be achieved**

9. The object to be achieved is to enhance the ability to obtain payment in advance of service charge expenditure, both by removing the £50 limit and to add in a separate sinking fund.
10. Given that this relates to the recovery of service charge expenditure which affects all the leases, and that it would not be fair, nor workable for the leases to be out of kilter with each other in this respect, I do consider that the object to be achieved cannot be satisfactorily achieved

unless they are all varied. Therefore the criteria required by s.37(3) is met.

***Where less than 9 flats, all but one consent***

11. The criteria of s.37(5) is met, as there are five flats, and all the leaseholders have consented save for Mr Wells.

**Mr Wells Objections**

12. It follows that the criteria in s.37 is made out. Mr Wells has set out his objections which need to be explored to see if they provide any reason why an order should not be made.
13. Firstly, he relies on the additional provision for the 'Additional Service Charge'. That does not assist the Applicant as that provides for a further payment to be made by the leaseholders *after* the costs have incurred and to the extent that those costs exceed the sum paid in advance (presently £50). This is the issue that the variation seeks to address, being an inability to obtain sufficient sums in advance to pay for works.
14. Secondly, he complains of a lack of efficiency with preparing accounts. I cannot see that this provides a basis for refusing the order sought. He has ample other rights in order to scrutinise accounts and challenge any estimated sums sought; i.e. under ss.19 and 21 of the Landlord and Tenant Act 1985.
15. Thirdly, he refers to the attempt to change the accounting year from December to June. In fact, the proposed variations seek to change the accounting year to 1<sup>st</sup> January for both accounts and a payment on account. I do not see this as a reason for refusing the variation. As stated above, the purpose is to improve the service charge mechanism and that requires all the leases to be changed so that the mechanism operates properly.
16. Finally, it is said that £50 has not been demanded of him and it is contended that the Applicant's financial dealings are opaque. The first is not relevant to the application, the second can be dealt with by other means; again under s.21 of the Landlord and Tenant Act 1985.

**Conclusion**

17. The s.37 criteria has been made out and there is nothing that the Respondent has said that gives me cause for concern about the proposed variations. Accordingly, I order that the variations as sought shall be made as annexed to this determination as they apply to all the leases of the Property

## **Annex**

### **SCHEDULE**

- (a) The words “Twenty fourth June” in the fourth line of Clause 3. (f) of the Registered Lease dated 4 June 1973 shall be deleted and replaced with the following wording:-

“First of January”

- (b) The words “Fifty pounds” in the fifth line of Clause 3. (f) of the Registered Lease dated 4 June 1973 shall be deleted and replaced with the following wording:-

“a reasonable estimated cost for the anticipated expenditure” based on the prior years expenditure and any known works required during the period. Payable in advance on dates provided.”

- (c) The words “Twenty fifth December to Twenty fourth December” in the second line of Clause 3. (f)(ii) of the Registered Lease dated 4 June 1973 shall be deleted and replaced with the following wording:-

“First of January to Thirty First of December”

- (d) A New Clause 3.(f) (vi) shall be inserted after Clause 3.(f)(v) as follows:-

(vi) The Landlord is permitted to put aside £100 per year per flat to rise with the rate of inflation. This sum to be held in trust by the Lessor for the benefit of all of the Lessees of the five flats within the building names as Reserve fund for items of future expenditure to be or expected to be incurred at any time in connection with providing the services.

---

## **Appeals**

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) .

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.