

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	HAV/21UD/LVL/2025/0006
Property	**:**	Flat 2, 17 Wykeham Road, Hastings TN34 1UA
Applicant	**:**	Keith Powell
Representative	**:**	Lyon Davidson Solicitors
Respondents	**:**	17 Wykeham Road Limited
Representative	**:**	Stephen Rimmer LLP
Type of Application	**:**	Lease variation pursuant to section 35 of the Landlord and Tenant Act 1987
Tribunal Member(s)	**:**	Judge D Gethin Ms C Barton MRICS
Date type and venue of Hearing	**:**	30 September 2026 – On the papers
Date of Decision	**:**	6 October 2026

DECISION

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Summary of the Decisions of the Tribunal

1. **The Tribunal determines that**

   (i) the lease of Flat 2, 17 Wykeham Road, Hastings TN34 1UA fails to make satisfactory provision for a matter as set out in the Landlord and Tenant Act 1987, s.35(2)

   (ii) the lease of Flat 2, 17 Wykeham Road, Hastings TN34 1UA should be varied as sought by the Applicant, in part, with an additional Clause 4A to be added to the Lease as follows:

   "*The Managers named within the Lease as Wykeham Mansions Limited is a company which was dissolved on 29 January 2008. Any reference to the Managers in the Lease shall now be read as if reference was being made directly to the Landlord.*

   ***For the avoidance of doubt, the covenants given by the Managers in Clause 4 of the Lease shall now be assumed by the Landlord who will now be obliged to perform the covenants as if they had given them themselves originally within the Lease.*"**

   (iii) the lease variation is to take effect as of 28 January 2008.

2. **The parties are ordered to endorse a memorandum of this variation on the originals and the counterparts and apply to the Land Registry for a record of the variation to be placed in the property registers of the various titles.**

3. **The Tribunal makes no order for compensation under section 38(10) of the Landlord and Tenant Act 1987.**

4. **The Tribunal makes no order under section 20C of the Landlord and Tenant Act 1985.**

5. **The Tribunal makes no order for the reimbursement of Tribunal fees incurred by the Applicant.**

The Application

6. The Applicant seeks a variation of their lease of Flat 2, 17 Wykeham Road, Hastings TN34 1 UA ("the Property") pursuant to section 35 of the Landlord and Tenant Act 1987 ("the 1987 Act"). The Application was received by the Tribunal on 1 September 2025. The proposed variation would:

    (1) amend the insurance covenant in Clause 3(b);
    (2) insert a new Clause 4A treating references to the dissolved Managers as references to the Respondent and transferring the Managers' covenants to the Respondent; and
    (3) delete Clause 5(b) which concerns the mechanism by which the Respondent can determine the Managers' rights if the Managers should fail to perform and observe any of the covenants on their behalf in the lease.

7. The Property is one of seven flats within the building at 17 Wykeham Road, Hastings TN34 1UA ("the Building"). From the office copy of the freehold title for the Building [130-133], it appears that there are 3 ground floor flats, with a further two flats on each of the first and second floors. The Property is a one-bedroom, first-floor flat with living room and separate kitchen and bathroom.

8. It is claimed that the lease currently contains a clause where the Tenant covenants with the Landlord and separately with the Managers to pay to the Managers the costs of the services and other things which the Managers covenant to perform. The original Managers to the lease, Wykeham Mansions Limited, was dissolved on 29 January 2008 and no company or person has been substituted in its place.

9. It is claimed that the Respondent landlord has remedied deficiencies contained within other leases of flats located in the Building which contained similar provisions but has not responded to the Applicant's requests to do the same.

10. The Applicant submits that the Building is now in disrepair and there is no party against which any coercive order or claim can be made. The Applicant seeks to vary the lease insofar as he wishes to amend the insurance clause and to place the obligations of the Managers in the hands of the Respondent.

11. Further to the Directions of Judge Skinner dated 2 February 2026 ("the Initial Directions"), a proposed deed of variation was provided by the

Applicant. This was included with other documents served on the Respondent via Scott Estates, the purported managing agents.

12. The Applicant's solicitors sent a letter dated 9 March 2026 to the Respondent enclosing copies of the Application, the Lease, the Proposed Variation, the Draft Deed of Variation and the Initial Directions. That letter and enclosures was sent by 1st class post c/o Scott Estates, and thereby deemed served on 11 March 2026, as well as by email to staff@scott-estates.co.uk on 9 March 2026 at 12:44pm to which the Tribunal was copied.

13. On 5 June 2026 at 5:41pm, the Respondent wrote to the Tribunal by email claiming that it had not been served in accordance with the Initial Directions.

14. The Respondent's solicitors, in their two emails sent on 8 June 2026, submit that the Applicant had failed to comply with paragraph 20 of the Initial Directions, by failing to send copies of the directed documents by 5pm on 9 March 2026 to the Respondent, and that the application thereby stands automatically struck out.

15. Judge Skinner, satisfied that the Applicant had complied with paragraph 20 of the Initial Directions, issued his findings in the Review of the Determination Bundle dated 5 May 2026 sent to the Respondent by email to staff@scott-estates.co.uk on 8 May 2026.

16. The Tribunal has identified that the issue to be determined by it is whether the proposed variations should be made.

17. The Applicant further seeks an order pursuant to Section 20C of the Landlord and Tenant Act 1985.

18. There does not appear to be any dispute that the parties are the correct Applicant and Respondent, although the Tribunal notes that it would have assisted if Office Copy Entries of the relevant leasehold title had been provided.

19. The matter was listed for determination on 12 June 2026. Prior to the promulgation of the Tribunal's Decision, the parties' correspondence of 5-8 June 2026 was placed before it.

20. The Respondent's solicitors indicated that they wish to make submissions in support of opposing the Application. Having regard for rule 3 of The Tribunal Procedure (First-tier Tribunal) (Property

Chamber) Rules 2013 ("the 2013 Rules") to deal with cases fairly and justly and, in particular, having regard for "*ensuring, so far as practicable, that the parties are able to participate fully in the proceedings*" and "*avoiding delay, so far as compatible with proper consideration of the issues*", further directions dated 17 June 2026 ("the Further Directions" were issued.

21. The Respondent's solicitors were of the view that other leaseholders within the building in which the Property is situate should be included in the Application. We did not regard that as necessary given the nature of the proposed variation.

22. The Further Directions confirmed that the Tribunal would determine the application on the papers received unless a party objected in writing to the Tribunal within 28 days of the date of receipt of the Directions. No party has objected to the application being determined on the papers. The matter is therefore determined on the papers in accordance with Rule 31 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

23. In accordance with the Further Directions, an amended hearing bundle was provided by the Applicant's solicitors. References in [ ] in this decision are to pages taken from the bundle unless otherwise specified. The Respondent's solicitors provided separate office copies of the leasehold titles for Flats 3, 4 and 5, 17 Wykeham Road.

The Hearing

24. The matter was determined by way of a paper hearing which took place on 30 September 2026.

The Law

25. The relevant provisions in section 35 of the Act are as follows:

> *(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.

....

(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.

(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; …*

The Applicant's case

26. The Applicant is the registered proprietor of the leasehold of the Property since 15 January 2019. The Property is subject to a tripartite lease dated 21 March 1982 made between (1) Diana Joy Chrzascz (2) Julie Escudier and (3) Wykeham Mansions Limited ("the Lease").

27. The Applicant's case is that the Lease is defective because the Managers originally named in the tripartite lease, Wykeham Mansions Limited, was dissolved on 29 January 2008 and no replacement has ever been appointed. The Applicant contends that the Lease therefore fails to make satisfactory provision for repair, maintenance, services and recovery of expenditure under section 35(2) of the 1987 Act.

28. The Applicant contends that obligations relating to repair and management under Clause 4 of the Lease remain vested in a non-existent entity and that the Building has fallen into disrepair, including water ingress affecting the Property. The Applicant says there is no effective party against whom repairing obligations may be enforced.

29. The Applicant relies heavily upon the fact that the leases of Flats 3, 4 and 5 were surrendered and re-granted as part of statutory lease extensions with wording substantially identical to the variations now sought, including transfer of managerial obligations from the dissolved Managers to the Respondent's predecessor-in-title.

30. The Applicant submits that the Deeds of Surrender and Regrant for Flats 3, 4 and 5 dated 23 May 2017, 26 November 2019 and 9 August 2016 respectively [108-114, 116-122 and 124-129] demonstrate recognition that the original lease structure was defective.

31. The Applicant further contends that the dissolution of Wykeham Mansions Limited has resulted in a lease making unsatisfactory provision in respect of matters falling within section 35(2)(a)-(c) and (e).

The Respondent's case

32. The Respondent is the freehold owner of 17 Wykeham Road, Hastings, East Sussex TN134 1UA ("the Building") since 22 October 2021. The freehold of the Building is registered under title number ESX31481 [130-133].

Insurance covenant

33. The Respondent opposes the proposed amendment to Clause 3(b). The Respondent submits that the existing insurance covenant is comprehensive and already requires insurance of the Building for full reinstatement value with a reputable insurer.

34. The Respondent argues that the proposed wording introduces uncertainty because mortgage lender requirements differ and may change over time. UK Finance does not approve individual policies, and the Respondent could be placed in technical breach through circumstances outside its control.

35. The Respondent further notes that the Applicant has produced no evidence that the present wording has caused any practical problem with securing a mortgage.

Managerial obligations

36. The Respondent disputes the Applicant's assertion that no party replaced the dissolved Managers. The Respondent contends that, after dissolution, management functions were undertaken firstly by Bridgeford & Co and subsequently by Scott Estates Management Ltd.

37. The Respondent relies upon documentary evidence showing:

- service charge statement of account administered by Bridgeford & Co evidencing payments made by the Applicant to that

company in January 2019 [92-95] prior to the Respondent acquiring the freehold of the Building;

- subsequent management activities by Scott Estates Management Ltd following the Respondent's acquisition of the freehold as evidenced by section 20 consultations in December 2021 [97-98] and December 2022 [100-103] and a recent statement of account [105-106].

38. The Respondent therefore submits that there has never been any interruption in the practical management of the Building notwithstanding the dissolution of the Managers named in the Lease.

Building management and repairs

39. The Respondent rejects allegations of management failure. It relies upon evidence of major works consultation undertaken in 2021 and again in 2022, including section 20 consultation relating to fire safety works, external repairs and roof works.

40. The Respondent contends that the building has continuously been managed, service charges collected, insurance maintained and repairs undertaken.

41. The Respondent further alleges that the Applicant has accrued substantial service charge arrears. The Respondent accepts that those arrears are not themselves determinative of the section 35 application but relies upon them in challenging the Applicant's criticisms of building management.

Deletion of Clause 5(b)

42. The Respondent places particular reliance upon Clause 5(b). The Respondent submits that Clause 5(b) already provides a contractual mechanism enabling the Respondent to terminate the Managers' rights and assume the Managers' rights and obligations in cases of management failure.

43. The Respondent describes Clause 5(b) as an important "*step-in*" provision designed to ensure continuity of management if things go wrong. It says that deletion of the clause would remove a safeguard rather than cure a defect.

44. The Respondent submits that the existence of Clause 5(b) is in itself strong evidence that the lease already contains machinery capable of

dealing with managerial default and therefore makes satisfactory provision for management.

Surrender and Regrants

45. The Respondent accepts that the leases of Flats 3, 4 and 5 contain wording which is materially similar to that sought by the Applicant. Indeed, the documents exhibited demonstrate that the insurance wording and transfer of managerial obligations closely resemble the Applicant's proposals.

46. However, the Respondent argues that this does not assist the Applicant because those leases were not varied to remedy a defect. Those leases were surrendered and re-granted by the Respondent's predecessor-in-title pursuant to statutory lease extension claims under section 56 Leasehold Reform, Housing and Urban Development Act 1993.

47. The Respondent submits that consistency between leases is not the statutory test. The question for the Tribunal is whether this lease fails to make satisfactory provision.

Discussion and determination

48. The issue is whether the Lease presently fails to make satisfactory provision in accordance with section 35(2) of the 1987 Act. If it does, then the Tribunal has the power to direct the Lease be varied. The Tribunal must determine:

    (a) what relevance should be given to the Deeds of Surrender and Regrant for Flats 3, 4 and 5;

    (b) whether the insurance covenant presently makes satisfactory provision;

    (c) whether the dissolution of Wykeham Mansions Limited has created a real defect in the lease, or merely a technical anomaly, having regard as to whether management functions have in fact continued notwithstanding the dissolution of the Managers;

    (d) what significance should be attached to Clause 5(b) as an existing contractual mechanism for continuity of management;

    (e) whether the specific variations sought are necessary and appropriate to remedy any defect identified.

Deeds of Surrender and Regrant

49. We find that the Deeds do not assist the Applicant to the extent he submits. The Respondent was not the freeholder at the relevant time, each deed pre-dating the Respondent's ownership by 2-5 years. The Respondent should not be bound by the conduct of its predecessor-in-title. The Deeds are evidentially useful as to wording that could be employed, but they are not binding on whether the existing leases, or more importantly the Lease, fail to make satisfactory provision for those matters in section 35(2) of the 1987 Act.

50. From the Schedule of notices of leases registered on the office copy of the freehold title as at 30 June 2025 [132-133], it appears that the lease of Flat 1 was extended on 2 September 2021 prior to the Respondent's acquisition of the freehold. Neither party submitted any deed concerning that lease extension.

51. Neither of the leases for Flat 1A and Flat 1B had been extended as at 30 June 2025. Any amendment to the Lease for the sole reason of achieving consistency with the leases of Flats 3, 4 and 5 would fail if other leases remain in their original terms (Flats 1, 1A and 1B). In any event, achieving consistency in lease terms is not the statutory test.

Insurance covenant

52. The current wording in the Lease is typical of the wording we would expect to see regarding a landlord's covenant to insure. The Applicant has not provided any evidence in support of his submission that the current wording fails to make satisfactory provision.

53. It is understandable that the Applicant may wish to ensure consistency between each of the leases, but for the reasons given above, there is no evidence that varying the Lease would achieve that.

54. The Tribunal declines to vary Clause 3(b) of the Lease [36] concerning the insurance covenant as the Applicant has failed to evidence that the Lease in its current form fails to make satisfactory provision, notwithstanding the wording in the Deeds of Surrender and Regrant for Flats 3, 4 and 5.

Managers' covenants

55. The Managers were dissolved in 2008. This pre-dates the ownership by some significant margin of the leasehold and freehold respectively by the Applicant and the Respondent.

56. Neither party was able to evidence whether, prior to its dissolution, the Respondent's predecessor-in-title had served notice on the Managers in accordance with Clause 5(b) of the Lease [39]. Had there been evidence that the landlord at the time had determined the Managers' rights and that the landlord had assumed the Managers' rights and obligations, then the matter would have been satisfactorily addressed.

57. The evidence is that whether or not notice under Clause 5(b) was served, the Respondent's predecessor-in-title went on to appoint a managing agent. Given the Managers were dissolved in 2008 and the Applicant did not acquire the leasehold of the Property until 2019, the course of conduct in employing a managing agent arguably creates an estoppel by convention but that is not a matter we need to decide.

58. However, we do not accept the Respondent's submission that the practical management of the Building by the managing agent overrides the provisions of the Lease.

59. When a company is dissolved, its property and transferable contractual rights pass automatically to the Crown as *bona vacantia* under section 1012 of the Companies Act 2006. The Crown typically disclaims interest in onerous contracts, leases, or low-value rights to avoid liability or active management. There is no evidence as to whether any transferable contractual rights have passed to the Crown and, if so, whether the Crown has disclaimed them.

60. Whilst Clause 5(b) provided a contractual mechanism for determining the Managers' rights under the Lease, it did not expressly envisage what would happen if the Managers were dissolved if such notice was not first served. If notice was not served, it would now be necessary to apply to court to restore the Managers to the Register, then once restored, the Managers would be treated as having continued in existence, allowing valid service of the requisite notice.

61. We consequently find that the current provision does not make satisfactory provision for the passing of the Managers' rights and obligations to the Respondent, absent evidence that that had already take place.

62. We are therefore not required to make a finding as to whether there has been a failure to maintain the Building as the Applicant alleges. However, we would make the following comments.

63. The Applicant failed to produce any evidence in support of his allegation that the Respondent has failed to prevent water ingress or any other disrepair to the Building or the Property.

64. The significant arrears accrued by the Applicant are not a matter that we need to have regard to either, but the Respondent is an impecunious landlord. If the Applicant does not pay his lawfully due service charge, it will inevitably impact the Respondent's ability to keep the Building in repair.

65. Both parties are encouraged to review their respective positions and move forward in a more productive manner than this appeal has suggested is the case.

66. The Tribunal therefore varies the Lease in the terms proposed by the Applicant in its draft deed of variation, namely a new Clause 4A shall be inserted into the Lease as follows:

"*The Managers named within the Lease as Wykeham Mansions Limited is a company which was dissolved on 29 January 2008. Any reference to the Managers in the Lease shall now be read as if reference was being made directly to the Landlord.*

For the avoidance of doubt, the covenants given by the Managers in Clause 4 of the Lease shall now be assumed by the Landlord who will now be obliged to perform the covenants as if they had given them themselves originally within the Lease."

67. The Tribunal has the power to direct the variation shall take effect retrospectively. In order to circumvent any issues arising from the dissolution of the Managers, the variation shall take effect from 28 January 2008 being the day before the Managers were dissolved.

68. The parties are ordered to endorse a memorandum of this variation on the originals and the counterparts and apply to the Land Registry for a record of the variation to be placed in the property registers of the various titles.

69. Given the above circumstances the Tribunal finds that the proposed variation is not likely to substantially prejudice any other person because the proposal would assist the effective management of the buildings which should benefit all the leaseholders. The Tribunal makes no order for compensation under section 38(10) of the 1987 Act.

70. Presumably because the Respondent was of the view that the Lease should not be varied at all, the Respondent had not availed itself of the opportunity under section 36 of the 1987 Act asking the Tribunal, in the event of its deciding to make an order effecting any variation of the lease in pursuance of the original application, to make an order which effects a corresponding variation of each of such one or more other leases as are specified in the section 36 application.

71. The Respondent should give consideration as to whether, in light of this decision, it can vary the leases of Flats 1, 1A and 1B (if not already varied) by agreement with those leaseholders, or is required to make its own section 35 application in respect of those flats.

Deletion of Clause 5(b)

72. Although we have directed that the Lease be varied to insert a new Clause 4A, the rest of the lease, and of other leases, have not been varied in such a way that precludes the appointment of new Managers (as opposed to managing agents).

73. Given it is open to the Respondent to do so, we would not regard it as prudent to remove Clause 5(b) but that, of course, is not the statutory test for varying any lease.

74. Whilst Clause 5(b) is arguably rendered otiose by the insertion of new Clause 4A, it would be wrong to say that its continued inclusion fails to make satisfactory provision which implies a deficit. Retaining Clause 5(b) might be argued to be 'overprovision' but that is not a ground upon which we have the power to vary a lease.

75. The Tribunal declines to remove Clause 5(b) of the Lease [39] as its inclusion is not a failure to make satisfactory provision in respect of the matters listed in section 35(2) of the Lease.

Section 20C application and reimbursement of Tribunal fees

76. The Applicant has requested an order under section 20C of the 1985 Act. Given that his application has succeeded only in part, this request is refused.

77. At paragraphs 47-48 of the witness statement of Ms Hau, director of the Respondent, dated 12 July 2026 [83-90], Ms Hau submits that the Respondent has been required to respond to these proceedings in order to protect its position and the interests of all leaseholders within the Building. Ms Hau submits that the proposed lease variations are

unnecessary and the Respondent has incurred management and legal costs in responding to the application. She further submits that the Applicant has advanced a number of factual assertions that the Respondent disputes, including allegations concerning the management history of the Building and the treatment of other leases. These matters have required investigation and the preparation of evidence in order to respond properly to the application.

78. At paragraph 9 of the Applicant's Reply dated 21 August 2026 [135-138], the Applicant makes a bare submission "*that it would be just and equitable to make an order under s. 20C Landlord and Tenant Act 1985*" but gives no further reasons in support.

79. It is regrettable that the Respondent did not offer to vary the lease by inserting new Clause 4A, nor avail itself of the opportunity once these proceedings were issued to vary the other, as yet unvaried, leases by way of a section 36 application.

80. Whilst the Applicant has succeeded in the application to an extent, the Application was unnecessarily wide in scope regarding the proposed variation to Clause 3(b) and deletion of Clause 5(b). Success in bringing an application is only one factor when considering an application for an order under s.20C of the 1985 Act.

81. We have also had regard to the fact that the Respondent is an impecunious landlord. If the Applicant is not required to contribute towards the Respondent's costs, other leaseholders in the Building will be required to do so or the Respondent will need to make a separate call on its members to place it in funds for any shortfall.

82. We do not accept that the failure to agree a variation of the Lease has deprived the Applicant of a remedy in respect of any alleged failure to remedy disrepair which, we note, has not been evidenced in these proceedings.

83. The Applicant could have applied to this Tribunal for the appointment of a manager under section 24 of the Landlord and Tenant Act 1987, or to rely on the parties' estoppel by convention and sought redress against the Respondent directly. He chose neither.

84. If the Respondent does seek its costs of these proceedings through the service charge, the Applicant will still have the right to seek a determination as to whether those costs are payable and whether the service charge is reasonable.

85. We consequently decline to make an order under section 20C of the 1985 Act or to order that the Respondent should reimburse the Applicant's Tribunal fees of the proceedings.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. 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. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.

3. 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.

4. 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.