2742

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BC/LVL/2012/0022**
Property	:	**Flat 35 & Garage 4, The Hollies, New Wanstead, London E11 2SL**
Applicant	:	**Forschell Properties Ltd**
Representative	:	**Seddons Solicitors**
Respondent	:	**Alexander Smolen**
Type of Application	:	**Variation of lease**
Tribunal Members	:	**Judge Nicol** **TN Johnson FRICS** **LL Hart**
Date of Decision	:	**26th September 2013**

SUPPLEMENTARY DECISION

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1. In paragraph 38 of its decision of 25th July 2013 the Tribunal directed that further steps should be taken so that the Tribunal could consider the final form of the lease varied in accordance with the contents of that decision. The Applicant duly filed and served a supplementary bundle containing the varied lease, both with the variations clearly marked and in a clean, re-numbered copy.

2. Unfortunately, the Respondent has chosen not to comply with the Tribunal's directions and has again missed an opportunity to put his case. He has also not sought to explain or justify his non-compliance.

3. The Tribunal has examined the varied lease carefully. There is a word missing at the end of the clause now numbered 3.32.3. Otherwise, the Tribunal is satisfied that the clean copy provided in the bundle properly executes the Tribunal's decision of 25th July 2013 and is hereby approved.

Name: NK Nicol **Date:** 26th September 2013

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Tribunal Members	:	**Mr NK Nicol** **Mr TN Johnson FRICS** **Mrs LL Hart**
Date of Decision	:	**14th August 2013**

DECISION ON APPLICATION TO EXTEND TIME TO SEEK PERMISSION TO APPEAL AND TO AMEND THE ORIGINAL DECISION BY USE OF THE SLIP RULE

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1. The Tribunal issued its determination in this matter on 25th July 2013 and it was sent to the parties on 26th July 2013. By letter dated 12th August 2013, the Respondent indicated that he wished to appeal but was unlikely to be able to seek permission within the 28-day time limit in the light of summer and Jewish holidays and his wish to obtain a transcript of the hearing. Unfortunately, he did not give an indication of how long he wants the extension of time for.

2. By letter dated 13th August 2013 the Respondent's solicitors objected to any extension of time on the basis that the Applicant has sufficient time already.

3. The Tribunal is content to extend time for seeking permission to appeal by 14 days to 6th September 2013. It would be preferable that any grounds on which the Applicant seeks to rely which would be better informed by the transcript of the hearing are so informed and a limited extension of time is appropriate to allow for this possibility. However, this is not a decision that time may be extended until a transcript has been obtained and fully reviewed. There will come a time when the administration of justice will require any appeal to go ahead or be abandoned. This would not preclude the Applicant from relying on the transcript later.

4. The Applicant is not precluded from seeking a further extension of time but he is far more likely to succeed if he can be specific about the length of the extension he seeks.

5. By letter dated 13th August 2013 the Respondent questioned paragraph 38(b) of the Tribunal's order of 25th July 2013. Paragraphs 1.33 and 6.5 in the proposed lease were ordered to be re-drafted but the Respondent could not identify what re-drafting was required. The detail of what re-drafting was required for paragraphs 1.33 and 6.5 was accidentally omitted from the original decision. The Tribunal has the power to correct that omission under rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Therefore, the following is added to the decision of 25th July 2013:-

    1.33 The proposed clause is missing a closing bracket between "others" and "where".

    6.5 The Respondent themselves identified the problem with this clause in their letter of 13th August 2013 in that the words "Service Act 1962" should be inserted after "Recorded Delivery".

Tribunal Judge: NK Nicol

Date: 14th August 2013

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Type of Application	:	**Variation of lease**
Tribunal Members	:	**Mr NK Nicol** **Mr TN Johnson FRICS** **Mrs LL Hart**
Date and venue of Hearing	:	**18th July 2013** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**25th July 2013**

DECISION

Tribunal's Decision

1) The Tribunal rejected the Respondent's submission that the chairman, Mr Nicol, should recuse himself because there were no grounds on which an independent, fair-minded and well-informed observer would think that there was actual or possible bias.

2) The Tribunal is satisfied that the current lease between the parties fails to make satisfactory provision on a number of the grounds set out in section 35(2) of the Landlord and Tenant Act 1987 ("the Act") so that the lease should be varied as detailed in the Schedule at Appendix II to this decision.

3) Some of the variations proposed by the Applicant need to be deleted or re-drafted, as also detailed in the Schedule at Appendix II to this decision, because they do not accord with the Tribunal's powers under ss.35 and 38 of the Act.

4) The Tribunal thereby makes the order set out paragraph 38 of this decision.

Background

1. The Applicant is a lessee-owned company which owns the freehold of a block of 34 properties and associated garages called The Hollies. The Respondent is one of the lessees, having a lease of one of the penthouse properties and a separate lease to one of the garages. The parties have been in front of the Tribunal before (ref: LON/00BC/LSC/ 2010/0037) – the Respondent applied for a determination of the payability of service charges for the years 1998 to 2010 and, by a decision dated 23rd July 2010, the Tribunal determined that they were payable.

2. It appears to be common ground that The Hollies is not in the state it should be or that the lessees want. The Respondent puts this down to inadequate management by the Applicant although it is worth noting that he has never challenged the reasonableness of any service charges, even in his previous application. The Applicant is concerned that there is longstanding serious dilapidation to one of the exterior facades but one of the reasons they have yet to address it is what they perceive as inadequacies in the lease. In particular, they claim that the division of repairing responsibilities in the Respondent's existing lease is unclear and that the lack of adequate provision for advance service charges or a reserve fund severely hampers their ability to carry out major works of the kind now required.

3. All the lessees used to have similar leases for their flats and garages. However, currently all but two of the leases have been voluntarily replaced with new leases. The Respondent is one of the two remaining lessees who have not accepted any variation. The Applicant has applied under section 35 of the Landlord and Tenant Act 1985 for an order varying the Respondent's flat and garage leases so that he would have one in a form similar to the new leases adopted by the other lessees. The full relevant statutory provisions are set out in Appendix I to this decision.

4. The Tribunal made directions on 28th November 2012. However, when the matter came on for hearing on 25th April 2013, there was insufficient time to hear it. The hearing was used to consider submissions from the Respondent that the application should be dismissed for abuse of process. In a decision dated 30th April 2013, the Tribunal rejected those submissions.

5. At the same time, the Tribunal also made some further directions which it was hoped would allow for the case to be presented in a way which would be better for both parties and the Tribunal. In particular, the Tribunal was concerned that the Respondent had yet to take the opportunity to state his grounds of opposition to each of the proposed variations to his lease. His statement of case set out objections to the variation exercise as a whole but it would certainly not have been inconsistent with his case, and would have been of considerable help to both the Tribunal and his prospects of successfully resisting the application, if he could have set out his objection to each variation individually. To that end, the Tribunal ordered that the Schedule appended to the Applicant's statement of case, known as a Scott Schedule, should be amended with additional columns specifying the statutory provision relied on for each variation and giving the Respondent space to put his objections.

6. Unfortunately, and for reasons which are not apparent to the Tribunal even after pressing the Respondent to explain, the Respondent did not comply with the directions. The Applicant served the Scott Schedule, first in an amended form which they felt helped to clarify their case by grouping proposed variations by subject, and then in the original form in case the Respondent objected to the form of the first. The Respondent simply put a large cross through the entire column set aside for his comments.

7. The Tribunal found the revised version of the Scott Schedule helpful in that it provided a structure which set out the proposed variations and their alleged justification in a clear way. It has been replicated at Appendix II to this decision. The final column which should have had the Respondent's comments has instead been used for the Tribunal's findings on each proposed variation.

Preliminary matters

8. The application was heard on 18th July 2013 – it had been set down for two days but the hearing was finished within the first by continuing until 5pm. The Respondent had asked for the hearing to be recorded. Although this is not normal practice in this Tribunal and has rarely been done, the Tribunal acceded to the request and electronic recording equipment was operational throughout the day, monitored by the case officer, Mr Rush.

9. The Tribunal started the hearing by asking why the directions had not been complied with. Instead, the Respondent asked the Tribunal if he could address other matters first and he was given the floor. Towards the end of the hearing, near the end of the day, he raised an objection to the alleged late and non-delivery of documents from the Applicant. When asked why he had not mentioned this earlier, he claimed not to have been given the opportunity. This is clearly incorrect. The first 1½-2 hours were concerned solely with his submissions, giving him plenty of opportunity to raise any preliminary issue.

10. In the event, the Respondent applied for the chairman of the Tribunal, Mr Nicol, to recuse himself for actual or apparent bias. The Tribunal explained to him that the relevant legal test is whether an independent, fair-minded and well-informed observer would regard any relevant matters as indicating that there was or might be bias. The Respondent accepted this as the relevant test and then gave the following grounds for his application:-

(a) The Respondent alleged that, during the hearing on 25th April 2013, Mr Nicol had "descended into the arena" by which he meant that Mr Nicol had intervened in the parties' submissions and argued the Applicant's case for them. In particular, he said that Mr Nicol had volunteered legal submissions and procedural suggestions in the Applicant's favour instead of waiting for counsel, Ms Gibbons, to make them. The Tribunal rejects this allegation. There are two problems with it. Firstly, it was a misperception that Mr Nicol's interventions particularly favoured one side or the other. For example, the Respondent appeared convinced that the suggestion of using the Scott Schedule was favourable to the Applicant when its main purpose was to give the Respondent a better opportunity to put his case. Secondly, in the opinion of all three members of the Tribunal, Mr Nicol's interventions did not go beyond the normal kind of interventions chairmen of such Tribunals typically use, particularly in a jurisdiction such as this one which often has to deal with unrepresented litigants. It is not feasible for the Tribunal to sit and wait for the parties to make relevant submissions and then limit their consideration to whatever happens to have been raised. It is essential that the Tribunal is proactive and does not limit itself to formal strictures in order to ensure that the overriding requirement of justice is satisfied.

(b) The Respondent asserted that the decision of 30th April 2013 rejecting the dismissal of the application for abuse of process was so obviously wrong as to demonstrate bias. The Tribunal pointed out that the decision was of the entire Tribunal, not Mr Nicol alone, but the Respondent maintained that his objection was only to Mr Nicol. In the Tribunal's opinion, the decision was so obviously right that permission to appeal would have been refused if it had been sought. The Tribunal's reasoning in support is already set out in the decision itself and is not repeated here.

11. In a letter dated 3rd April 2013 the Respondent recorded an alleged rumour that the directors of the Applicant company would obtain a favourable Tribunal decision through contacts in the Freemasons or amongst solicitors. The Tribunal asked the Respondent whether this constituted one of the grounds for his application but he stated that it did not.

12. The Tribunal asked the Respondent why he had not put his application formally into writing in advance. He pointed out that he had complained in a letter dated 7th June 2013 that the hearing on 25th April 2013 had been in breach of Art.6 of the European Convention on Human Rights and that Mr Nicol had "descended into the arena." He thought his letter was self-explanatory and the lack of a direct, substantive response meant that his points had been accepted without the need for any more action by him. He assumed that a differently-constituted Tribunal would be convened without any application on his part. The Tribunal explained that such an assumption is not justified. Nothing was said by the Tribunal or its staff which could have given the impression that the membership of the Tribunal would be changed. The new hearing was a re-convene of the existing Tribunal and the membership would not be changed unless it was both requested and there were good grounds for doing so. Given that Tribunal members are part-time, re-arranging the constitution of a Tribunal is no small matter and cannot be done simply on the basis of a complaint unsupported by any specific request for a change.

13. The Respondent's remedy if he felt that the Tribunal's decision was wrong in any way would have been to appeal it. He said he did not do so, not because he is not aware of the appeal procedure, but because he thought he could not do so when the decision of 30th April 2013 was not accompanied by the Tribunal's usual document explaining how to appeal. In relation to his application for Mr Nicol's recusal, he was informed of its rejection before the hearing continued but the Tribunal also explained that his right of appeal would run from the date that this written decision was sent out to him.

14. Part of the Respondent's submissions both at the last hearing and this one related to his contention that the Applicant had appointed managing agents but denied doing so which he said meant the

Applicant was lying. He had wanted to raise this point in cross-examination of one the Applicant's directors, Mr Adam Lay. He also wanted to cross-examine Mr David Conway, another director, about why he recently resigned. He was disappointed that neither had been brought to the hearing by the Applicant. It was not clear that he intended his comment on their absence to have any particular consequences but, in any event, the Applicant is entitled to try to prove its case in the manner it decides and the Tribunal has no criticism of the non-attendance at the hearing of either Mr Lay or Mr Conway.

15. After the hearing, on 19th July 2013, the Respondent sent a lengthy fax to the Tribunal. It was too late to be taken into account but one matter was mentioned on which it is necessary to correct a mistaken impression. The fax alleges that both the Tribunal and Ms Gibbons for the Applicant accepted the Respondent's submissions that Mr Lay had told untruths. There was no such acceptance. The Tribunal did not attempt to adjudicate on the validity of these particular submissions. Instead, the Tribunal repeatedly asked the Respondent to explain the relevance of his allegations of lies. The issue before the Tribunal is whether certain lease terms should be varied which did not appear to turn on whether someone had told a lie or a million lies about unrelated matters. His response was that it undermines the credibility of Mr Lay and one lie unravels everything but the Tribunal has no hesitation in rejecting such a simplistic view.

16. The Respondent also alleged at the hearing that Ms Gibbons had failed in her duties to the Tribunal by concealing relevant matters. In the absence of a single shred of supporting evidence, the Tribunal also has no hesitation in rejecting this very serious allegation.

17. Following on from this is a matter which exemplifies the Respondent's approach to these proceedings. He alleged that Ms Gibbons had concealed an existing claim he has in the county court against the Applicant (a claim which, despite being the Claimant, he has allowed to lie fallow for at least 8 years). About one week before the hearing, the Applicant provided further documents to both the Respondent and the Tribunal including the pleadings from the claim. Instead of welcoming the fact that his claim was not being concealed, the Respondent claimed that the delivery of these documents was vexatious and had no motivation other than to hinder his defence to the application.

18. Further to this submission, the Respondent said that the Tribunal had demonstrated its bias and acted unfairly by referring to these documents. His attitude did not change when it was pointed out that the Tribunal had spent most of its time during the hearing referring to documents in the bundle presented to the previous hearing and that, in any event, the further documents consisted entirely of material he had already seen, such as the Scott Schedule and the pleadings in earlier county court cases to which he was a party. He was particularly vexed

that the covering letter enclosing the documents did not indicate that they had been filed at the Tribunal. He said that he had consequently assumed that they had not been.

19. It was obvious that the Respondent believed the Applicant to have acted incorrectly in serving the further documents, particularly about one week before the hearing. Therefore, the Tribunal asked him what he had done to raise the issue. He objected to the idea that there was any onus on him to do so. He claimed to believe that, since the Applicant had conduct of the case and they were the party allegedly in breach of procedure, he had no obligation to do anything. Although the Respondent is not a lawyer, he has been in enough litigation to know that both parties have a duty to try to ensure that proceedings run as smoothly as possible. Of course a party has to bear the consequences if they do something wrong but it is not open to the other party to observe that behaviour and wait for it to blow up in the faces of that party or the court or Tribunal. If the Respondent genuinely felt that the Applicant had breached procedure, he should have raised the issue promptly both with the Applicant and the Tribunal. He had no excuse for not doing so. The Tribunal is not satisfied that either the Applicant did anything wrong in serving the additional documents when they did or that the Respondent suffered any prejudice as a result.

20. At the same time as serving the additional documents, the Applicant's solicitors sent the Respondent a copy of their counsel's Skeleton Argument. The Respondent says he did not receive it and was not aware of its existence until the hearing (he made the exact same complaint to the Tribunal which heard his application in 2010). This is unfortunate. The Tribunal had read the Skeleton Argument in advance of the hearing, unaware that the Respondent had not had the same opportunity. In the event, the Tribunal decided it could reach its decision without the help of the Skeleton Argument and no part of this decision relies on anything in it.

Lease variations

21. Although the Tribunal's findings on each variation proposed by the Applicant for the Respondent's flat and garage leases are set out in Appendix II to this decision, it is necessary to set out the Tribunal's more general reasoning and to address the Respondent's grounds of opposition to the application as a whole.

22. The Tribunal's power to vary a lease is limited and deliberately so. A lease is a form of contract, freely entered into by the parties. That contractual agreement should only be varied against the will of at least one of those parties when grounds to do so are clearly made out and it is appropriate to do so. Terms cannot be varied simply for reasons of one party's convenience or preference.

23. Both parties in this case complained of the behaviour of the other party. However, that is not the most important consideration. Parties to a lease can, and normally do, change over the term of that lease. The lease should not be varied and, furthermore, a variation should not be refused, solely on the basis of a party's current behaviour. The interests of the parties to the lease must be considered over the whole term of the lease.

24. The first step in considering whether to vary a lease is to look at whether any of the grounds have been made out under section 35(2) of the Act (fully set out in Appendix I). The Tribunal is satisfied that the lease fails to make satisfactory provision with respect to the following matters:-

(a) The Respondent's current lease provides that insurance and other service charges are paid in "the proportion attributable by the Lessor to the demised premises" (clauses 1 and 3(v)). Rateable values were used in the past to determine that proportion and the Tribunal held in its decision of 23rd July 2010 that the resulting apportionment to the Respondent was reasonable. However, the 32 leases which have been changed now apportion service charges by the strict ratio of 1/34th (it is worth noting that this was the apportionment the Respondent argued for in his previous application but that, without giving any specific reasoning, he now objects to it). Apportionment by rateable value or floor size would now result in the Applicant recovering more than 100% of the service charge expenditure because the Respondent's property, as a penthouse, is one of the larger ones and such a calculation would result in his contributing more than 1/34th. Furthermore, the Respondent's lease does not provide for what happens if the number of flats at the Hollies is expanded or reduced. The Tribunal is satisfied that there is not satisfactory provision for the computation of the service charge in these circumstances.

(b) The Respondent's current lease does not provide for service charges to be collected in advance, other than a sum of £50 which is too small to be meaningful, or for a balancing charge if actual expenditure exceeds such advance charges. It also does not provide for the collection of a reserve fund. Such arrangements cannot be regarded as satisfactory for the purposes of carrying out major repair or refurbishment works, particularly on a building of this size. The Applicant has no significant assets on which to draw and needs to be able to collect funds in advance of a major project to ensure that it is financed properly.

(c) The Respondent's current lease demises to him the roof and external walls of his property (First Schedule). He is also required to repair the demised premises, other than parts referred to in the lessor's repairing covenant (clauses 3(i) and 4(c)). The lessor's repairing covenant refers to some parts of the exterior of the building but not the roof. The Hollies is a large building and this arrangement results in repairing obligations being spread amongst as many lessees whose leases provide

similarly. In fact, all but two of the leases have been changed to put the repairing obligations on the lessor. In any event, it is a significant complication for the lessor to arrange repairs to the roof when one part of it is outside their remit. The Applicant's counsel conceded that a proper interpretation of the lease may well result in the external face of the walls being regarded as the lessor's responsibility but the Tribunal can see the force in the contention that it is not clear and could result in future disputes about the division of responsibility.

(d) The Respondent's current lease makes no provision for the payment of interest or any other charge in the event of non-payment of service charges. This issue comes within section 35(2)(e) and (3A) of the Act. Again, given the importance of ensuring there are funds for major works, the Tribunal is satisfied that the absence of any such provision is unsatisfactory.

(e) The Respondent's current lease can clearly be seen to make inadequate provision in relation to the above matters. In relation to insurance, a comparison with the proposed terms of variation is instructive. Clause 4(vii) of the existing lease is short and leaves a number of questions unanswered. The proposed new clauses 5.2, 5.4 and 5.5 make more extensive provision including, for example, for rent abatement and for the lessee to end the term on the lessor's default in applying insurance monies.

(f) Similarly, clauses 1.25 and 4.3 and paragraphs 7 and 9-12 of the First Schedule to the proposed new lease oblige the lessor to provide services not mentioned in the Respondent's current lease, namely to pay expenses relating to insurance claims, employ appropriate professionals, do what is necessary or desirable for the proper management of the estate and keep proper books of account. The absence of such provision is not satisfactory for the purposes of maintaining the demise, the block it is in, the land it is on and the services which are reasonably necessary for lessees to enjoy a reasonable standard of accommodation.

(g) The Respondent's current lease makes no provision for the recovery of costs for providing consents or licenses, enforcing covenants and replacing keys or for the recovery of the costs of legal proceedings. Again, this is not satisfactory for the purposes of maintaining services which are reasonably necessary for lessees to enjoy a reasonable standard of accommodation or the recovery of expenditure incurred for the benefit of the Respondent and the other lessees.

(h) The Respondent's current lease does not have a mutual enforceability clause by which the lessor is obliged to each lessee to enforce the covenants in their leases against other lessees. This is clearly not satisfactory in relation to a number of the statutory grounds but particularly in relation to the maintenance of serves which are reasonably necessary for lessees to enjoy a reasonable standard of accommodation.

25. The establishment of grounds for the variation of a lease is not determinative by itself of the form in which the variation takes place. The Respondent was particularly concerned at the Applicant's proposal to remove the roof to his property from his demise. The Applicant anticipated this objection to the extent of making two alternative proposals at clause 1.9.6 of the proposed new lease. The first proposal retained the roof within the Respondent's demise whereas the second divided the structure from the ceiling of the Respondent's flat to the exterior of the roof between the parties.

26. There have been serious difficulties between the parties. Ms Gibbons pointed out that the Applicant's Defence and Counterclaim in the county court proceedings brought by the Respondent alleged that he had committed trespass and criminal damage by cutting television cables which ran across his part of the roof. The Tribunal is not in a position to determine the accuracy of this allegation and was not invited to do so. Nevertheless, this provides an insight as to why the Applicant would prefer to remove the roof from the Respondent's demise.

27. However, as already mentioned, the Tribunal is not concerned with a party's preferences rather than the statutory test under section 35(2) of the Act. Satisfactory provision for the repair and maintenance of the roof and of services for which access is needed to the roof may be made without going as far as changing the Respondent's demise. The lease terms proposed by the Applicant provide for the lessor to be obliged to repair the roof even if it remains within the Respondent's demise. Further, the proposed lease terms have comprehensive reserved rights and provisions for access for the lessor to meet their obligations in relation to repairs and the provision of services. In those circumstances, the Tribunal must err in favour of the option which interferes least with the Respondent's existing rights, namely not removing the roof from his demise.

28. The Tribunal is not limited to ordering variation of just the terms of the current lease which are directly concerned with the relevant grounds under section 35(2). Having decided that the grounds are made out, the Tribunal still has to consider how best the variations should be executed. The following factors are relevant to that consideration:-

(a) Leases last for lengthy terms, normally for at least 99 years. During that time, the use of English language changes. Older leases can seem difficult to understand by the way they are expressed. It is preferable that any variation is executed in modern language so as to maximise its clarity.

(b) Clarity may also be achieved by exemplifying or making existing obligations more specific. So long as no substantive change is introduced, it is possible to express terms in a more detailed way.

(c) It is preferable that terms in the leases of properties which are managed together should be in similar terms. This was expressed at

paragraph 31 of the Tribunal's decision dated 29th October 2012 in relation to 61 Queen's Gate (ref: LON/00AW/OCE/2012/0054) as follows:

> It seems to the Tribunal that a guiding principle for determining the relevant terms should be the convenience of the management of the relevant premises. It is in the nature of leasehold interests that there has to be a degree of communal management of the relevant property which is normally the responsibility of the freeholder. The greater the degree of uniformity in the terms of each lease, the simpler the task of management and the lower the risk that disputes will occur.

29. In accordance with these principles, the Tribunal may vary lease terms which supplement or complement those which are to be varied on the grounds set out in section 35(2) so that they are consistent, consistently expressed and provide more clarity and detail than would otherwise be the case. The alternative is to leave a mixture of terms expressed in different ways with no consistency within the lease or between leases of properties which are managed together.

30. Having said that, the Tribunal is not empowered to vary terms which produce substantive change outside the grounds set out in section 35(2). The Respondent made it very clear that he opposed any changes of any kind whatsoever being made to his lease. His position is arguably not reasonable in relation to some of the terms but that is irrelevant to the Tribunal's considerations. For example, the lease proposed by the Applicant included terms relating to alienation of the leasehold interest which are arguably the kind of terms which most people looking to enter into a lease would regard as not merely acceptable but preferable. However, the Tribunal has no power to impose those terms on the Respondent.

The Respondent's objections

31. The Respondent objected to the entire exercise of considering any variations to his lease. He asserted that the existing terms had worked more than adequately and did not need any change. He supported that to the extent of opposing even those changes which would indisputably work in his favour, such as reducing his proportionate contribution from the one using rateable values down to a fixed 1/34th. However, his case is undermined by the nature of some of the litigation in which he is involved against the Applicant. The pleadings in the county court clearly show a difference of opinion as to the meaning and effect of some of the terms.

32. Moreover, the existing arrangements do not include satisfactory provision for some basic elements needed to manage this property

successfully. The lack of advance service charges or a reserve fund make major works difficult whatever the intentions of the parties.

33. The Respondent argued that the fact that the Applicant is lessee-owned meant that the lease was irrelevant in that the lessees could decide between them to do anything they want. However, that is only possible if the parties can amicably agree on the way forward. The lease is the contractual agreement between the parties which provides how things are to be done. It is not necessary to re-invent the wheel by agreeing ad hoc arrangements each time something needs to get done and, in the event of a dispute, there is a definitive document on the basis of which that dispute may be settled.

34. The fact is that the Respondent's own behaviour demonstrates why it is necessary to rely on the lease and so why the lease needs to be in good order so that it can be relied on. He claimed to have been entirely reasonable and community-minded at all times and that, if the Applicant had only approached him in a friendly way, all matters could have been resolved amicably. The Tribunal has to say that there is substantial evidence to the contrary:-

(a) The Respondent commenced county court proceedings against the Applicant 11 years ago which he has then not pursued for at least the last 8 years.

(b) In 2010, he challenged all his service charges over a 12-year period but the Tribunal found against him on his entire case, finding that he had made a number of claims unsupported by any evidence.

(c) According to the previous Tribunal's decision of 23rd July 2010, he "has failed to pay his service charges for a number of years, even though he had been given an opportunity at each general meeting to put any concerns that he might have."

(d) The amount found by the Tribunal to be payable is still outstanding because the Applicant has served a section 146 notice on that basis. The Respondent himself brought the Tribunal's attention to this, apparently on the basis that it is evidence of wrongdoing by the Applicant when it is, of course, evidence of his own continuing default.

(e) He refuses to consider any changes to his lease at all, despite the fact that some would clearly be in his favour and/or helpful to the management both of his property and those of his fellow lessees.

(f) He has been belligerent and hostile through much of the proceedings in front of this Tribunal. He has taken genuine attempts to be fair and even to help him as conclusive signs of bias against him.

(g) This is consistent with his correspondence during the proceedings which consists to a large extent of pedantic demands for compliance by the Applicant and the Tribunal with every detail of his interpretation of the Tribunal's directions, irrespective of whether this helps or hinders the conduct of the proceedings. For example, he made much of the fact

that he was served with a copy of the Applicant's statement of case in which there was an unsigned statement of truth. Despite the fact that there is no requirement in this Tribunal for such a statement of truth and despite the Tribunal pointing out that he had had sufficient notice of the Applicant's case to be able to respond, he still made lengthy written comments on this issue and did not himself attempt to comply with any directions until the supposed default had been remedied to his satisfaction.

(h) Similarly, most of his written submissions and supporting documentation were directed at rehearsing past grievances which were not relevant to whether his lease should be varied. As well as his allegation that Mr Lay had lied, he made much of his existing county court claim (despite his apparent lack of interest in it for the last 8 years) and the Applicant's alleged failure to follow up on section 20 consultation notices issued in 2006 and 2008. He showed no insight that his continuing active opposition to paying his service charges or to varying his lease might be at least part of the reason for the Applicant's admitted failure yet to address the condition of the estate.

(i) Even when decisions have been provided with full reasoning, such as this Tribunal's decision of 30th April 2013, he has refused to accept them, trying to run the same arguments again and taking any rejection of his arguments as further definitive signs of bias.

(j) He alleged that his fellow lessees only signed the new leases because they were "muddled up" or even forced to do so and because the Applicant concealed relevant matters but he produced no evidence in support, despite the fact that this issue had been referred to in the Tribunal's decision of 30th April 2013.

35. The Respondent pointed to a letter from the former Company Secretary, Mr Jack Alper. It was undated but attached an apparently contemporaneous article from the Daily Telegraph dated 3rd September 1983. In the letter, Mr Alper stated, "When the end of the original lease approaches, the shareholders will convene and vote for a long extension of the present lease under the existing terms." The Respondent had previously argued that this meant he had a lease in perpetuity but he eschewed such an argument this time. Instead, he said it meant the lessees were entitled to continue their leases until they were extended and any such extension would be on existing terms.

36. The Tribunal explained to the Respondent that a statement such as this does not constitute a legally binding obligation without considerably more. When pressed for the basis on which he said it was legally binding, he had nothing to put forward. The Tribunal has no doubt that Mr Alper meant what he said when he said it but he was only expressing his current intention. There are no grounds whatsoever for regarding the statement as intended to bind all future directors of the

Applicant to one particular course of action, even if it were possible to do so.

37. The Respondent pointed to his claim in the county court. As the Tribunal understood his submission, he was suggesting that the proposed variations in the lease would somehow interfere with his claim. The Tribunal explained that the variations are not to be retrospective and so will have no effect on any extant claim for past breaches of covenant. If his claim is valid, it will continue to be valid. If it has no merit, it will continue to have no merit.

The Tribunal's Order

38. The Tribunal has decided to order that the leases between the Applicant and the Respondent for Flat 35 & Garage 4, The Hollies, New Wanstead, London E11 2SL should be varied in the form proposed by the Applicant, save in the following respects (as further referred to in the Schedule at Appendix II):-

(a) The following clauses shall be deleted: 1.9.6 (the option changing the roof demise), 3.16, 3.26, 3.35, 6.3 and Fourth Schedule paragraph 5.

(b) The Applicant shall re-draft the following clauses: 1.33, 2, 3.14-3.16, 3.32, 3.33.3, 3.34 and 6.5.

(c) By 4pm on 16th August 2013, the Applicant shall submit the re-drafted clauses to the Respondent.

(d) By 4pm on 6th September 2013, the Respondent shall serve on the Applicant a statement as to whether he agrees the re-drafting or, if he objects, his reasons for doing so (the Tribunal will not consider any objections which are inconsistent with this decision such as whether a clause should be included in the lease at all rather than its form).

(e) By 4pm on 20th September 2013, the Applicant shall serve on the Respondent and file with the Tribunal a supplementary bundle containing a revised proposed lease, including the re-drafted terms, omitting the deleted terms and re-numbering throughout accordingly, and the Respondent's response to the re-drafted terms.

(f) The Tribunal will as soon as possible thereafter issue a supplementary decision addressing the re-drafted terms.

Tribunal Judge: NK Nicol

Date: 25th July 2013

Appendix I – relevant legislation

Landlord and Tenant Act 1987

Section 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 a leasehold valuation 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 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.

Section 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 court considers he is likely to suffer as a result of the variation.

Appendix II – Schedule of lease variations

	Proposed New Lease		*Existing Lease*		*Statutory provisions*	**Tribunal's Findings**
	Clauses	Content	Clauses	Content		
Administrative Provisions						
1	pp. 1-3, 1.6, 1.7, 2, 6.2, 6.3, 7	Prescribed clauses, provisions necessary to give effect to variations and words of demise	Recital, 1 (both leases)	Recitals necessary at date of grant and words of demise	ss.35 & 38	These variations are appropriate because they supplement and give effect to variations directly within s.35(2) while not in themselves substantively changing the terms of the lease, save for clause 6.3 which must be deleted. Further, clause 2 erroneously refers to surrender and must be re-drafted with words to the effect that the existing leases have been varied further to this Tribunal order.
2	6.5	Provisions as to service of documents	8 flat, Proviso (d) garage	Provisions as to service of documents		
Particulars						
3	1.27	Term is 99 years from 25/3/64	1 (both leases)	Term is 99 years from 25/3/64	No change	These variations are appropriate because they either involve no substantive change compared to the original lease or they supplement and give effect to variations directly within s.35(2) while not in themselves substantively changing the terms of the lease.
Interpretation clauses						
4	1.28 to 1.38, 6.4	Clauses to aid the interpretation of the lease, the provisions of which would otherwise be implied	Recital on 1st page, (both leases), 7(ii) flat, otherwise implied	Clauses/rules of construction to aid the interpretation of the lease	No change *or* necessary to give effect to all other proposed variations: ss.35 and 38	
Rights Granted						

5	1.4, 1.5, 1.19, 2, 3rd Sch	1. Right to use service media 2. Right of support and shelter 3. Right of entry for repair 4. Right to use the Common Parts 5. Right of access to dustbin/refuse area and for use of rubbish chute 6. Right to park 7. Right to use grassed areas 8. Right to use airspace	1 & 3rd Sch flat, 1 garage	1. Right of way over common parts 2. Right to use lawns and grounds 3. Right to use refuse chute 4. Right of support and shelter 5. Right to use service media 6. Right of entry for repair purposes 7. All other rights currently enjoyed 8. The benefit of the covenants in other leases	No material change *or* More extensive rights proposed therefore to R's advantage	These variations are appropriate because, while they are not worded identically to the terms of the original lease, they do not in themselves substantively change them. Further, the wording provides clarification by being more modern and by providing some more detail of the meaning of existing provisions. There is one exception – paragraph 5 of the Fourth Schedule purports to provide the lessor with rights which do not exist in the original lease but they do not come within s.35(2) and there is no justification for its inclusion so that it must be deleted.
Rights Reserved						
6	1.19, 2, 4th Sch	1. Right of entry for repair etc. 2. Right to use service media 3. Right to construct and maintain Pipes 4. Easements currently enjoyed 5. Right to develop	1, 2(i)(h), & 4th Schedule flat	1. Right of way over common parts 2. Right to use lawns and grounds 3. Right to use refuse chute 4. Right of support and shelter 5. Right to use service media 6. Right of entry for repair purposes 7. All other rights currently enjoyed Right of entry to carry out Lessor's obligations	No material change	
Rent						
7	2.1	£2pa payable on 1st January	1 flat lease, 2(i) Deed	£1 on 1st January in respect of Flat £1 on 25th December in respect of	No material change	These variations are appropriate as they involve no substantive change but merely provide wording

			of Variation , 1 garage	Garage		consistent with the other variations and with the other leases.
8	1.22, 3.1	To pay Rents without deduction	2(i)(a) flat, 2(A) garage	To pay rents without deduction	No change	
Insurance						
9	1.12, 1.13, 2.2, 5.3, para 6 2nd Sch	To pay 1/34th (subject to variation) of the insurance premium on demand	1 flat, 1 garage	To pay, on the quarter day following expenditure, a proportion attributable by the Lessor to the flat of the insurance premium To pay the cost of insuring the garage	s.35(2)(f)	As referred to in the main body of the Tribunal's decision, the Tribunal is satisfied that these variations are appropriate because the original lease fails to make satisfactory provision in relation to the matters set out in sub-paragraphs (a), (b) and (f) of section 35(2). In relation to item 12 and the proposed clause 5.7, the Tribunal's approval of the variation is not on the basis that it is to the Respondent's advantage (which is not a ground for variation) but on the basis that the new clause supplements the other variations and provides clarification rather than substantive change.
10	1.14, 1.18, 5.1, 5.2, 5.4, 5.5	Landlord's covenant to insure and to rebuild/reinstate following damage/destruction	4(c)(vii) flat, 3(B) garage	Lessor's covenant to insure and to rebuild/reinstate following damage/destruction	s.35(2)(a) s.35(2)(b)	
11	5.6	Tenant's covenants in respect of insurance	3(2) & para 2, 2nd Sch flat, 2(E) garage	Lessee's covenant not to render insurance void or voidable or do anything to increase premium	s.35(2)(a) s.35(2)(b)	
12	5.7	Landlord's covenant to provide copies of insurance documentation	4(c)(vii) flat, 3(B) garage	Landlord's covenant to provide copies of insurance documentation	Proposed changes to R's advantage	
Service Charges						
Service Charge Regime						
13	1.1, 1.2,	To pay a service charge,	1, 2(i)(a),	To pay a service charge, being	s.35(2)(a)	As referred to in the main body of

	1.8, 1.23, 1.24, 1.25, 2.2, 2nd Sch	being 1/34th (subject to variation) of the Landlord's annual expenses in advance by four quarterly payments on the usual quarter days. Any excess is to be paid on 14 days' notice and any overpayment is to be credited against the next quarterly payment	& 3(v) flat	£50pa payable in arrear on the usual quarter days plus a proportion attributable by the Lessor to the flat of the amount by which the Lessor shall estimate that the costs to be incurred in the succeeding 6 months exceed the balance of the Maintenance Fund on 1 months' notice	s.35(2)(e) s.35(2)(f)	the Tribunal's decision, the Tribunal is satisfied that these variations are appropriate because the original lease fails to make satisfactory provision in relation to the matters set out in sub-paragraphs (a), (e) and (f) of section 35(2).
Services the cost of which the Tenant is liable to contribute towards (save for repair, which is dealt with below)						
14	Para 7, 1st Sch	Payment of expenses related to settling insurance claims	No equivalent provision		s.35(2)(a), (c),(d),(e) & (f)	As referred to in the main body of the Tribunal's decision, the Tribunal is satisfied that these variations are appropriate because the original lease fails to make satisfactory provision in relation to the matters set out in sub-paragraphs (a), (c), (d), (e) and (f) of section 35(2).
15	Paras 9 & 10, 1st Sch	employment of third parties	5 flat	For the purpose of complying with its obligations, the Lessor may employ such person or firm as it shall in its absolute discretion deem expedient		
16	Para 11, 1st Sch	all things desirable for the proper maintenance, safety, amenity and administration of the Estate or for the improvement of the services or facilities in or for the Estate	No equivalent provision		s.35(2)(a), (c),(d),(e) & (f)	
17	Para 12 1st Sch	Keeping proper books of account	No equivalent provision		s.35(2)(e) s.35(2)(f)	
18	Para 13,	Set aside a reserve fund	No equivalent provision		s.35(2)(a),	

	1st Sch				(c) to (f)	
Interest						
19	1.15, 3.29A	3% above base	No equivalent provision		s.35(2)(e)	As referred to in the main body of the Tribunal's decision, the Tribunal is satisfied that this variation is appropriate because the original lease fails to make satisfactory provision in relation to the matters set out in sub-paragraphs (2)(a), (c), (d), (e) and (f) and (3A) of section 35.
Repairing Obligations						
20	3.6	Tenant's covenant to decorate once every 7 years and in the last year of the term the interior of the flat and the garage door and door frame in a colour approved by the Landlord	3(iii) flat, 2(C) & (F) garage	Lessee's covenant to decorate the flat internally once every 7 years and in the last year of the term and to keep the garage door in good repair and condition and not to paint it other than in a colour approved by the Lessor	s.35(2)(a) (iii)	As referred to in the main body of the Tribunal's decision, the Tribunal is satisfied that these variations are appropriate because the original lease fails to make satisfactory provision in relation to the matters set out in sub-paragraphs (a), (c), (d) and (e) of section 35(2). In relation to clause 1.9.6 of the proposed new lease, as explained in the main body of this decision the Tribunal orders that it shall include the option retaining the roof within the Respondent's demise.
21	1.9, 1.10, 1.19, 3.3, 3.4, 3.5	Tenant's covenants to repair, replace, and clean excluding external and structural parts	3(i) flat,	Lessee's covenants to keep Premises in good repair and condition to include roof and external walls of the flat unless Lessor's responsibility	s.35(2)(a) s.35(2)(e)	
22	1.3, 1.4, 1.11, 1.19 1.16, 4.3, paras 1-4 & 8 1st Sch	Landlord's covenant to maintain, decorate, clean and keep reasonably lit the structure and exterior of the Building and the garages, the Common Parts, the Pipes and	4(c)(i), (ii), (iii), (v), (vi) flat	Lessor's covenant to paint, repair, maintain and keep reasonably lit the service media, common parts, boundaries and exterior parts of the Hollies unless the Lessee's are responsible		
			~~7(i)~~	~~All internal party walls, floors and~~		

		boundaries		ceilings to be maintained rebuilt and repaired at the joint expense of neighbouring lessees		
23	Para 5, 1st Sch	Landlord's covenant to maintain etc. security and fire equipment	No equivalent provision		s.35(2)(c) s.35(2)(d)	
User						
24	3.11.1	The Flat as a private residence in the occupation of one household	Para 1, 2nd Sch flat	As a private dwellinghouse only	No material change	These variations are appropriate as they involve no substantive change but merely provide wording which is modern and clarificatory so that it is consistent with the other variations and with the other leases.
25	3.11.2	The Garage as a private garage, in particular, not to store combustible material and not to do anything which may adversely affect the insurance	2(E) and (I) garage	As a private motor garage, other than with formal consent Not to do anything which may adversely affect insurance, in particular, not to store petrol or other motor spirit	No material change	
26	3.12	Not to use for auction, trade, illegal/immoral purpose etc.	Para 1, 2nd Sch, 2(I) garage	Use of flat only as a private dwelling house and not for any illegal or immoral purpose Not to carry on any business in the garage	No material change	
27	1.5, 1.17, 3.13	Not to cause a nuisance to neighbours	3(ii) & Para 1, 2nd Sch, 2(J) garage	Not to cause a nuisance to neighbours	No material change	
28	3.10	Not to do anything which exposes the Landlord to a statutory penalty	3(ii) flat, 2(K) garage	Not to do anything which may cause damage to the Lessor To observe all regulatory and statutory provisions and official	No material change	

				regulations and instructions		
Alienation						
29	3.14.1	Not to part with possession of part only except by way of underletting of garage to the lessee of another flat	2(i)(g) flat, 2(G) & (H) garage	To give notice of alienation Not to underlet the garage or any part thereof and not to assign it independently of the lease of the flat		Counsel for the Applicant correctly conceded that there are no grounds in s.35(2) justifying these variations. It is arguable that the Respondent, acting reasonably, should agree to them but that does not empower the Tribunal to order them. Therefore, the terms of the proposed new lease must be re-drafted so as to provide no substantive change relative to the original lease.
30	3.14.2	Not to underlet without consent	2(i)(g) flat, 2(G) garage	To give notice of underletting Not to underlet the garage or any part thereof		
31	3.14.3	Not to permit sub-underletting		No equivalent provision		
32	3.14.4	Not to part with possession without a covenant from sub-tenant		No equivalent provision		
33	3.15	To give notice of assignment etc. within 28 days and pay Landlord's reasonable fee	2(i)(g) flat, 2(N) garage	To give notice of assignment etc. re. the flat within 1 month and pay 3 guineas To give notice of assignment etc. re. the garage within 1 month and pay £3.15	No material change	
34	3.16	Shares in A to be transferred on assignment	Assumed to reflect Memorandum and Articles of A			
Tenant's other obligations						
35	3.2	To pay all council taxes, rates, assessments, duties, charges, impositions, outgoings and VAT	2(i)(a) & (b) flat, 2(B) garage	To pay all Schedule A Tax, rates, taxes, assessments, charges, impositions, outgoings	No material change	This variation is appropriate as it involves no substantive change but merely provides wording consistent with the other variations and with the other leases.
~~36~~	~~1.3, 3.7~~	~~Not to make structural~~	~~2(i)(d)~~	~~Not to alter flat without consent~~	~~s.35(2)(a)~~	The Tribunal is satisfied that these

		Landlord may execute repairs, the cost of which is recoverable from the Tenant		the Tenant To permit the Landlord to enter the garage and to carry out any exterior painting of the door, repairs, alterations or additions		
41	1.20, 3.20, 3.21, 3.22	Not to commit breach of planning	3(ii) flat, 2(K) garage	Not to do anything which may cause damage to the Lessor To observe all regulatory and statutory provisions and official regulations and instructions	s.35(2)(a)	
42	3.23.1	To pay the Landlords' costs of any application for a consent or licence	No equivalent provision		s.35(2)(e)	This variation is appropriate. Arguably, it makes express what the lessor already has power to do but, to the extent that the lessor does not have such a power, the current lease fails to make satisfactory provision under s.35(2)(e).
43	3.23.2	To pay the Landlord's costs of a s.146 notice	2(i)(e) flat	To pay the Landlord's costs of a s.146 notice	No change	This variation is appropriate as it involves no substantive change but merely provides wording consistent with the other variations and with the other leases.
44	3.23.3	To pay the Landlord's legal costs	No equivalent provision		s.35(2)(e)	The Tribunal is satisfied that this variation is appropriate because the original lease fails to make satisfactory provision in relation to the matters set out s 35(2)(e).
45	3.24	To indemnify the Landlord in respect of loss caused by Tenant	3(ii) flat	Not to do anything which may cause damage to the Lessor Cause of action at common law	No material change	This variation is appropriate as it involves no substantive change but merely provides wording consistent with the other variations and with

						the other leases.
46	3.25	Not to obstruct any window or light on the Estate	3(ii) flat	Not to cause nuisance, annoyance or inconvenience to Lessor, other lessees or occupiers Cause of action at common law	s.35(2)(d)	This variation is appropriate. There is already a clause prohibiting nuisance in general but this new clause clarifies that in one respect without introducing substantive change. To the extent that this is not correct, the current lease fails to make satisfactory provision.
47	3.26	Prevent encroachment or the acquisition of easements	No equivalent provision			This variation is not appropriate. It involves substantive change which does not come within s.35(2) and must be deleted.
48	3.27	To yield up in repair	2(i)(J) flat, 2(L) garage	To yield up in repair	No material change	These variations are appropriate as they involve no substantive change but merely provide wording which is modern and clarificatory so that it is consistent with the other variations and with the other leases.
49	3.28	To provide particulars of any notice to the Landlord	2(i)(f) flat	To deliver a copy of any notice to the Lessor	No material change	
50	3.29, 3.30, 3.36	Not to obstruct the landlord from accessing anything other than the Premises To permit the Landlord to exercise lease rights Not to leave, store or hang any objects in, or obstruct, the common parts	Para 7, 2nd Sch flat, 2(M) garage	Not to obstruct any carriageway, lawn, path, entrance, porch, passage, landing or staircase Not to obstruct the approach to the garage	s.35(2)(a)	These variations are appropriate as they involve no substantive change but merely provide wording which is modern and clarificatory so that it is consistent with the other variations and with the other leases. To the extent that this is not correct, the current lease fails to make satisfactory provision.
51	3.31	Not to discharge inappropriate fluids nor	Para 3, 8, 2nd	Not to throw refuse into sanitary apparatus or pipes	s.35(2)(a)	

		block Pipes	Sch flat	Not to permit leaks through the floor		
52	3.32	Not to play music etc. between 11pm and 7am or so as to cause nuisance	3(ii) & para 4, 2nd Sch flat	Not to cause nuisance, annoyance or inconvenience Not to play music etc. so as to cause annoyance		This variation is appropriate as it involves no substantive change but merely provides wording consistent with the other variations and with the other leases, save in one respect. The particular prohibition not to play music between the hours of 11pm and 7am is a substantive extension compared to the original lease and must be deleted.
53	3.33.1	Not to hang washing so as to be visible from outside	Para 5, 2nd Sch flat	No clothes or other articles to be hung or exposed from or outside the flat	No material change	This variation is appropriate as it involves no substantive change but merely provides wording consistent with the other variations and with the other leases.
54	3.33.2, 3.33.4	Restrictions as to what can be placed and used on balconies etc.	Para 2, 2nd Sch flat, 2(E) garage	Restriction against doing anything which may render insurance void or voidable	s.35(2)(a)(i) & (ii)	This variation is appropriate. There is already a clause concerning voiding the insurance but this new clause clarifies that in one respect without introducing substantive change. To the extent that this is not correct, the current lease fails to make satisfactory provision.
55	3.33.3	Not to shake any mats, brooms or other articles other than inside the Premises	Para 2, 2nd Sch	Not to shake any mat outside the window of the flat		These new clauses go beyond the those in the original lease without any justification under s.35(2) and must be re-drafted so that they do not.
56	3.34	Not to keep any dog or other animal bird or pet	Para 5, 2nd Sch	Not to keep any dog or other animal nor any chickens or other		

		whatsoever except guide dogs required by the tenant		fowl (except a small caged bird) without written consent		
57	3.35	Requirement to cover floors	3(ii) flat	Not to cause nuisance, annoyance or inconvenience to other lessees or occupiers		This new clause goes beyond anything in the original lease without any justification under s.35(2) and must be deleted.
58	3.37	Not to leave common parts unlocked and to pay for replacement keys if necessary	No equivalent provision		s.35(2)(c) s.35(2)(e)	The Tribunal is satisfied that these variations are appropriate because the original lease fails to make satisfactory provision in relation to the matters set out in sub-paragraphs (a), (c) and (e) of section 35(2).
59	3.38	To observe Landlord's regulations	3(iv) flat	To observe stipulations in 2nd Sch	s.35(2)(a)	
Landlord's covenants						
60	4.1	Covenant for quiet enjoyment	4(a) flat 3(A) garage	Covenant for quiet enjoyment	No change	This variation is appropriate as it involves no substantive change but merely provides wording consistent with the other variations and with the other leases.
61	4.2	Mutual enforceability covenant	3, 4(b) & para 8 3rd Sch, flat	Covenant by the Lessor to grant leases on similar terms Covenant by lessee with all other lessees and the benefit of the covenants in the other leases is granted to the lessee, but he cannot require the landlord to enforce	s.35(2)(a) s.35(2)(e)	As referred to in the main body of this decision, the Tribunal is satisfied that this variations is appropriate because the original lease fails to make satisfactory provision in relation to the matters set out in sub-paragraphs (a) and (e) of section 35(2).
62	Para 6, 1st Sch	To pay rates etc.	4(c)(iv) flat	To pay rates etc.	No change	These variations are appropriate as they involve no substantive change but merely provide wording which is modern and clarificatory so that
Provisos						
63	6.1	Forfeiture clause	6 flat	Forfeiture clause	No	

			proviso (c) garage		change	they are consistent with the other variations and with the other leases.