



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

Case Reference	: CHI/00HH/LVL/2022/0001
Property	: Villa Borghese, Ridgeway Road, Torquay, : TQ12RS
Applicant	: Park House (Torquay) Management Limited
Representative	: Crown Property Management
Respondent	: Various leaseholders of Park House/Villa : Borghese
Representative	:
Type of Application	: Application to vary a lease pursuant to s.35 : Landlord and Tenant Act 1987
Date of Determination	: 13 th September 2022

Determination

1. This is an application for a variation of a lease. The application is made pursuant to section 35 of the Landlord and Tenant Act 1987 (“The Act”) . Section 35 is set out in full in the annex to this determination. The Applicant is Park House (Torquay) Management Limited (“The Applicant”). The Respondents are the various leaseholders of flats at Park House/AKA Villa Borghese, Ridgeway Road, Torquay, Devon, TQ12ES (The Respondents).
2. The freehold of Villa Borghese (“The building”) is owned by the Applicant and managed by Crown Property Management. The Applicant is a lessee owned

company. There are seven flats within the building which are leased to seven households on long leases dated 25th March 1967. The leases are in a common form. The building consists of a Victorian Grade 2 listed building converted in the 1960s.

3. The application is framed on the basis that the lease fails to make satisfactory provision with respect to the repair and maintenance of the building, the insurance of the building, or the provision of services.
4. The deficiency in the leases was highlighted by an application to this Tribunal made by the Applicant (CHI/ooHH/LSC/2021/0066). The Applicant was seeking a determination of the payability and reasonableness of service charges against one of the leaseholders in the building who was in arrears.
5. The tribunal found that no service charges were due because they had not been demanded in accordance with the lease. It had been assumed by the Applicant and probably the leaseholders themselves that the lease was in a standard form which allowed the recovery of interim charges in advance. In fact, the lease is limited in only allowing the Applicant to recover a fixed sum of £100 as an interim charge. Understandably this limits the ability of the Applicant who are in effect a self - funded organisation to carry out works at the building or indeed insure the building in a fashion that one would normally expect.
6. The Applicant is concerned that the current position with regard to the leases is not sustainable and there is a risk that the building will fall into a further state of disrepair.

Determination

7. I have no doubt that in its current form the lease fails to make satisfactory provision with respect to the maintenance, general repairs and insurance of the building. The Applicant is lessee owned without readily available funds. The Applicant ought to be entitled to recover money on account beyond the specified £100. Unless this is the case there is a real risk that the building will fall into further disrepair. In addition, the building needs to be insured properly – payment for which is always in advance. I understand that five of the seven leaseholders have approved the variation to the lease and short witness statements have been provided to confirm this.

8. Accordingly, I will exercise discretion to vary the lease to correct the current shortcomings. No parties will be prejudiced by the variation indeed it is likely that the variation will clarify the lease better so that leaseholders will be fully aware of where they stand in relation to current maintenance and future repair works and the placement of insurance. In addition, the amendment will enable the managing agent to professionally manage the property and create fairness in the allocation of costs and ensure a suitable service charge is set going forward. Varying the lease will provide the means for money to be collected on account to fund future maintenance and repairs.

9. I am satisfied that this is exactly the sort of case that section 35 of the Act is aimed at. Currently there is a real risk that the Applicant will not be able to properly maintain the building. The draft amendments are entirely sensible and I accept them in full.

10. In summary I will allow the variation of the leases and the draft order is approved as written. The signed order is attached to this determination.

Judge Shepherd

13th September 2022

ANNEX 1 - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Annex 2 Section 35 of the Landlord and Tenant Act 1987

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

(1) Any party to a long lease of a flat may make an application to [the appropriate tribunal]¹ 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 [;]²

(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]3 the whole of any such expenditure.

(5) [Procedure regulations under Schedule 12 to the Commonhold and Leasehold Reform Act 2002]4[and Tribunal Procedure Rules]5 shall make provision—

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

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

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

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

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

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

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

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

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