



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

Case Reference : **BIR/00CM/LVT/2020/0002**

HMCTS (paper, video, audio) : **P: PAPERREMOTE**

Properties : **Various Properties as shown on Schedules A & B attached to this Decision**

Applicant : **Gentoo Group Limited**

Representative : **Ward Hadaway Solicitors**

Respondent : **The leaseholders as shown on Schedules A & B attached to these Directions**

Type of Application : **An application under section 37 of the Landlord and Tenant Act 1987**

Tribunal Members : **V Ward BSc Hons FRICS – Regional Surveyor
Judge D Barlow**

Date of Decision : **5 June 2020**

Date of Correction : **1 July 2020**

DECISION

Incorporating Correction under Rule 50 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

COVID-19 PANDEMIC: DESCRIPTION OF HEARING

This has been a hearing on the papers which has been consented to by the parties. The form of remote hearing was Paper Remote:(P:PAPERREMOTE): A face-to-face hearing was not held because it was not practicable, no-one requested it and all issues could be determined in a hearing on paper. No physical property inspections were undertaken.

CORRECTION

By way of a letter dated 1 July 2020, the Applicant advised the Tribunal that the decision and orders of 5 June 2020 had neglected to include the Respondent identified below, within Schedule B.

Address: 10 Dunstanburgh Close, Washington, NE38 0JE
Lease Date: 05/12/2005
Owner name/Respondent: Mr P L McIntosh

The Applicant confirmed that these details had been provided to the Tribunal as part of application.

The Tribunal notes that this party was noted as a Respondent throughout the determination and the omission was accidental.

Accordingly, the Tribunal corrects this error under Rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and amends Schedule B of the decision and orders accordingly. The substantive elements of the decision are unchanged.

BACKGROUND

- 1) The Applicant seeks to vary leases under section 37 of the Landlord and Tenant Act 1987 ("the Act").
- 2) The Applicant is the freeholder of the 67 properties shown in the schedule attached to this decision. The properties are served by a communal District Heating System (DHS) which is coming to the end of its useful life. In the opinion of the Applicant, the cost of replacement of the DHS (which serves 1051 freehold and leasehold residential properties) would be extremely high for individual leaseholders and disproportionate. The Applicant has undertaken a major consultation to consider the DHS and proposes the removal of the same and its replacement with individual combi boilers installed to each property. The new boilers will become the legal property of the leaseholder with the latter being responsible for the maintenance of the same and in due course the replacement of the same.
- 3) The leases (of which there are two types) need to be varied to remove reference to the DHS, the Applicant's obligation to maintain it and the leaseholder's obligation to contribute to the maintenance costs. The Applicant confirms that it will

indemnify the leaseholders from the legal costs involved in the variation incurred with their own legal representation.

- 4) The Tribunal identified the following issues to be determined:
 - What is the object to be achieved by the proposed variation? Can the object be achieved satisfactorily without all the leases being varied to the same effect?
 - Is the proposed variation within the contemplation of sections 37 and 38 of the 1987 Act?
 - Is there a sufficient majority for an application under section 37 of the 1987 Act?
 - If it does make an order varying the leases, should the Tribunal order any person to pay compensation to any other person (see section 38(10) of the 1987 Act).
- 5) By Directions dated 21 February 2020, the Applicant was instructed by 6 March 2020 to give notice of the application to any other persons not named as parties, the Applicant knew or believed was likely to be affected by any variation of lease and confirm this to the Tribunal with details. This would include mortgage lenders (building society/ bank etc) and guarantors. Such persons were to be informed that they may apply to the Tribunal to be joined as parties. The Applicant confirmed to the Tribunal by 6 March 2020 that this has been done. By the same date, the Applicant was also instructed to send a copy of these Directions and a copy of the application form (and supporting documents) to each Respondent. The Applicant again confirmed to the Tribunal by 6 March 2020 that this has been done
- 6) The Tribunal's Directions invited any Respondent, to submit comments or representations to the Tribunal by 20 March 2020, to indicate if they wished to take an active part in the proceedings and if they required a copy of the Applicant's bundle. No Respondent contacted the Applicant or the Tribunal to the effect that they wished to play an active part in these proceedings
- 7) The Applicant had indicated that they would be content with a paper determination i.e. without an oral hearing however the Tribunal considered that an oral hearing was required in this matter. The Tribunal also indicated they wanted to inspect a sample of properties (maximum of five) affected by the proposal.
- 8) On 3 April 2020, the Applicant sent a copy of the hearing bundle to the Tribunal as directed.
- 9) In a letter accompanying the bundle, the Applicant requested the Tribunal again give consideration to determining the matter without an oral hearing for the following reasons:

- The works had already been suspended for three weeks due to the current Covid-19 Public Health Emergency (PHE).
 - The works proposed, that were the catalyst for the application, will be completely funded by the Applicant at no cost to the Respondents.
 - No Respondent or mortgagee has indicated any wish to take an active part in these proceedings.
- 10) In light of the above, the Tribunal issued Directions Order No:2 on 22 April 2020.
 - 11) In those Directions, the Tribunal proposed to set aside the original provisions of the Directions of 21 February 2020 relating to the oral hearing and the inspection of a sample of properties. The parties were advised that the Tribunal proposed to determine the application on the basis of the written submissions of parties alone without an oral hearing. The Directions advised that any Respondent who objected to this proposal, must contact the Tribunal by 22 May 2020. For the avoidance of doubt, the Respondents were advised that if no objections were received by this date, the Tribunal would proceed to determine the matter without an oral hearing.
 - 12) The Applicant was to distribute a copy of these Directions to all Respondents by 8 May 2020 and was to confirm to the Tribunal by even date that this has been done. By way of a letter dated 7 May 2020, the Applicant confirmed that this had been done.
 - 13) No objections were received; therefore, the Tribunal therefore determines this matter on the basis of the written submissions of the Applicant. No communication whatsoever has been received from any Respondent.

Submissions of the Applicant

- 14) The statement by the Applicant responded to the Tribunal's identified issues, see 4) above, in respect of an application made pursuant to s37 Landlord and Tenant Act 1987
 - a) **What is the object to be achieved by the proposed variation? Can the object be achieved satisfactorily without all the leases being varied to the same effect?**

The Applicant. The variation is to amend the leases to remove reference to the DHS, to remove the obligation on the Respondent to maintain repair and renew the DHS, and to supply water and space heating. The proposed variation removes the obligation for the Leaseholders to pay for such a service. Continuing, the Applicant stated that the object could not be achieved satisfactorily without all the leases being varied to the same effect. If one leaseholder did not agree to the variation, the

Applicant would have a contractual obligation to provide the service, i.e. the DHS, for that one leaseholder, and be unable to recover the total costs of provision.

b) Is the proposed variation within the contemplation of sections 37 and 38 of the 1987 Act?

The Applicant. This is a situation whereby the leases need to reflect the proposed change to the physical provision of heating to the premises. The majority of leaseholders are in agreement that their existing heating system is replaced, free of charge by the Applicant, to a system that will reduce their liability to contribute through the service charge to large capital expenditure to replace the DHS.

The leaseholders will need to take on the obligation of repair, service maintenance and replacement of their heating system within their property henceforth.

The Applicant is the landlord for all leases, which are not all in the same building. The leases are not all in identical terms. Over 75% of leaseholders have consented.

c) Is there is a sufficient majority for an application under section 37 of the 1987 Act?

The Applicant stated that they had received 51 responses agreeing to the variation, which is 76.12 % of the 67 properties with no objections.

d) If it does make an order varying the leases, should the Tribunal order a person to pay compensation to any other person (see section 38(10) of the 1987 Act.

The Applicant stated that they are funding the works of decommissioning the DHS and installing the gas central heating boilers, which is a multi-million pound project to benefit 1051 properties.

The Respondents will be relieved from obligations under the existing leases to contribute towards maintenance, repair, servicing and replacement of the District Heating System, were it to be retained, so their liability will be substantially reduced immediately and in future.

The Applicant confirmed that they will indemnify leaseholders for any legal costs incurred in connection with any work carried out by their own solicitors/mortgagee's solicitors.

It is therefore not considered appropriate for any compensation to be awarded to any person.

Confirmation of Majority

- 15) The Tribunal was provided with a sample copy of the Applicant's letter dated 24 May 2019 to each of the Respondents which set out their proposal for the replacement of the DHS. This letter, which referred to previous consultation correspondence between the parties relating to the matter, explained that if the DHS were replaced in its entirety, the costs would be extremely high as under the terms of the lease, they would be recoverable from the Respondent. The costs were estimated at £119.20 per annum for servicing and an additional £14,000 for boiler house upgrades, contingencies for pipework remaining and future upgrades. The Applicant explained that these costs were taken into account when formulating their proposal as they did not consider the charges "appropriate".
- 16) The letter continued by saying that Northern Gas Networks had agreed to connect mains gas free of charge to each property and further, the proposal would enhance the value of the properties and remove liability for the DHS. The letter outlined the legal background to the proposal and invited the Respondent to agree to by signing a return form.
- 17) At the time of application, the Applicant had received 52 responses agreeing to the variation, which was 77.61% of the 67 properties. However, on 14 May 2020, the Applicant wrote to Tribunal advising that a transfer of title had taken place in relation to 69 Bamburgh Close, Oxclose NE38 8BJ where the vendors had agreed to the variation. The Applicant wrote to the new owners, Mr S and Mrs L Stacey on 12 May 2020 outlining the proposal and advising them if they wished to object, they must contact the Tribunal by 22 May 2020. Neither the Applicant nor the Tribunal have received any objections from the new owners. The decision in *Dixon v Wellington Close Management Ltd* [2012] UKUT 95(LC) which was followed in *Simon v St Mildred's Court Resident Assoc. Ltd* [2015] UKUT 508 (LC) gave the relevant point of time to determine whether an application was not opposed by more than 10% of the total number of parties concerned, was the time at which the paper application was made and not at the date of any tribunal hearing. It is the date of the application that matters. This means that the Applicant maintains 77.61% support.
- 18) The Applicant has not received any objections to the proposal.
- 19) Details of the properties where the leaseholders have agreed to the variation are shown in bold on the Respondents Schedules A and B attached to the decision.

The Proposed Variations

- 20) There are two forms of lease on the estate that require variation.
- 21) Proposed variation - Lease Type One – relating to the properties shown in Schedule A attached to this decision.

1. Deletion of existing clauses

- 1.1. Clause 6.2.3 of the Leases shall be deleted.
- 1.2. Clause 6.4 of the Leases shall be deleted.
- 1.3. Any and all reference in the offer notices attached to the Leases (if any) to any communal heating and/ or any district heating scheme shall be deleted.

2. Addition of new clauses

- 2.1. The following shall be added to the Leases as a new clause 1.30:

"1.30 "the Boiler" means the boiler installed within and solely serving the Premises from time to time.

- 2.2. The following shall be added to the Leases as a new clause 4.9:

"4.9. Maintenance and Repair of the Boiler

4.9.1 Throughout the Term and at the Tenant's sole cost to keep the Boiler well and substantially repaired, maintained and (where reasonably required) renewed and / or replaced.

4.9.2 The Tenant shall ensure that the Boiler is serviced by an appropriately qualified professional at such regular intervals as shall be reasonably necessary."

- 2.3. The following shall be added to the Leases as a new clause 7.10:

"7.10 For the avoidance of doubt, the Landlord shall have no responsibility for any form of heating within the Building or the Premises."

3. Replacement of existing clauses

- 3.1. Clause 1.21.2 of the Leases shall be deleted and replaced by the following clause;

"1.21.2. communal lighting cleaning refuse collection and removal"

- 3.2. Clause 1.21.8 of the Leases shall be deleted and replaced by the following clause;

"1.21.8. other matters specified in the Offer Notice as being in the nature of a management or maintenance service but excluding:

1.21.8.1 repairs or improvements; and

1.21.8.2 any matters relating to any communal heating and / or any district heating scheme"

- 3.3. The First Schedule of the Leases shall be deleted and replaced by the following Schedule;

"First Schedule

The Premises include the surface of the floors above the joist or other supporting floor structure and the surface of the floor of the balcony (if any) and the ceiling of the Flat up to but excluding the joists or other supporting floor structure or beams to which the ceiling is attached and all walls save the exterior walls and walls dividing it from any other flat or from the common halls staircase landings steps and passages in the Building (but including the surfaces of such walls within the Flat and the door and door frames window frames and the glass in them and all wires pipes cables conduits sewers and other conducting media serving exclusively the Flat) together with the Private Garden (if any) and the Boiler and together with the Landlord's fixtures and fittings sanitary apparatus and appurtenances installed in the Flat or affixed to the Flat."

3.4. Paragraph 2 of the Fifth Schedule of the Leases shall be deleted and replaced by the following paragraph;

"2. The costs of periodically inspecting maintaining overhauling repairing and where necessary replacing the whole of the gas electricity and water pipes and cables serving the Building and the lifts lift shafts and machinery (if any)"

3.5. Paragraph 3 of the Fifth Schedule of the Leases shall be deleted and replaced by the following paragraph;

"3. The cost (if any) of the electric current for operating the passenger lifts"

22) Proposed Variation – Lease Type Two relating to the properties shown in Schedule B attached to this decision

1. Deletion of existing clauses

1.1. Clause 6.2.3 of the Leases shall be deleted.

1.2. Clause 6.4 of the Leases shall be deleted.

1.3. Any and all reference in the offer notices attached to the Leases (if any) to any communal heating and / or any district heating scheme shall be deleted.

2. Addition of new clauses

2.1. The following shall be added to the Leases as a new clause 1.30:

"1.30 "the Boiler" means the boiler installed within and solely serving the Premises from time to time."

2.2. The following shall be added to the Leases as a new clause 4.11:

"4.11. Maintenance and Repair of the Boiler

4.11.1 Throughout the Term and at the Tenant's sole cost to keep the Boiler well and substantially repaired, maintained and (where reasonably required) renewed and / or replaced.

4.11.2 The Tenant shall ensure that the Boiler is serviced by an appropriately qualified professional at such regular intervals as shall be reasonably necessary."

2.3. The following shall be added to the Leases as a new clause 7.12:

"7.12 For the avoidance of doubt, the Landlord shall have no responsibility for any form of heating within the Building or the Premises."

3. Replacement of existing clauses

3.1. Clause 1.3.2 of the Leases shall be deleted and replaced by the following clause;
"1.3.2. communal lighting cleaning refuse collection and removal"

3.2. Clause 1.3.8 of the Leases shall be deleted and replaced by the following clause;

"1.3.8. other matters specified in the Offer Notice as being in the nature of a management or maintenance service but excluding;

1.3.8.1 repairs or improvements; and

1.3.8.2 any matters relating to any communal heating and / or any district heating scheme. "

3.3. The First Schedule of the Leases shall be deleted and replaced by the following Schedule;

"First Schedule

The Premises include the surface of the floors above the joist or other supporting floor structure and the surface of the floor of the balcony (if any) and the ceiling of the Flat up to but excluding the joists or other supporting floor structure or beams to which the ceiling is attached and all walls save the exterior walls and walls dividing it from any other flat or from the common halls staircase landings steps and passages in the Building (but including the surfaces of such walls within the Flat and the door and door frames window frames and the glass in them and all wires pipes cables conduits sewers and other conducting media serving exclusively the Flat) together with the Private Garden (if any) and the Boiler and together with the Landlord's fixtures and fittings sanitary apparatus and appurtenances installed in the Flat or affixed to the Flat."

3.4. Paragraph 2 of the Fifth Schedule of the Leases shall be deleted and replaced by the following paragraph;

"2. The costs of periodically inspecting maintaining overhauling repairing and where necessary replacing the whole of the gas electricity and water pipes and cables serving the Building and the lifts lift shafts and machinery (if any)"

3.5. Paragraph 3 of the Fifth Schedule of the Leases shall be deleted and replaced by the following paragraph;

"3. The cost (if any) of the electric current for operating the passenger lifts"

The Law

23) Sections 37 & 38 of the Landlord and Tenant Act 1987 are attached to this decision.

Decision and Reasons

24) The Tribunal first considered the issues identified above.

a) What is the object to be achieved by the proposed variation? Can the object be achieved satisfactorily without all the leases being varied to the same effect?

In order to achieve the aim of the Applicant to remove the DHS it is necessary to vary all the leases. It would clearly be impractical to leave the DHS to serve some properties whilst some allowing others to benefit from their own conventional heating system. This would produce an inequitable solution; either the reduced number of properties served by the DHS would suffer increased charges relating to the system or properties that no longer benefitted from the same had to pay for a service they did not receive. The Tribunal is therefore satisfied that the object to be achieved by the Applicant, namely the removal of the DHS, cannot be satisfactorily achieved unless all leases are varied to the same effect.

b) Is the proposed variation within the contemplation of sections 37 and 38 of the 1987 Act?

The application satisfies paragraphs (2) and (3) of section 37 and the Applicant is the landlord, paragraph (4). The application meets (5) (b) – see below.

The proposal will benefit individual leaseholders to the effect that they will have a new gas fired boiler installed to their property free of charge. They will be responsible for the maintenance of the same subsequently however this is likely to be significantly lower than the costs for the maintenance and the renewal of the DHS. The Tribunal does not consider therefore that any Respondent, or person not a party to this application, is likely to be substantially prejudiced (38 (6)).

Accordingly, in the opinion of the Tribunal, the proposed variations are within the contemplation of sections 37 and 38 of the 1987 Act.

c) Is there is a sufficient majority for an application under section 37 of the 1987 Act?

The Applicant stated that, at the time of their application, they had received 52 responses agreeing to the variation, which is 77.61 % of the 67 properties with no objections. No Respondent has contacted the Tribunal in connection with this application although they have had ample opportunity to do so. The requirement in section 37 (5) (b) is therefore met.

d) If it does make an order varying the leases, should the Tribunal order a person to pay compensation to any other person? (see section 38(10) of the 1987 Act).

No Respondent has made submissions to the Tribunal that compensation is required to compensate them for the proposed alterations. The Applicant is completely funding the works proposed and is also paying the legal fees of each Respondent to document the variations. The Tribunal considers that the new heating system will, as stated above, have lower annual costs than the service charge costs of maintaining and renewing the DHS. The Tribunal also considers it likely that value and saleability of the properties concerned may be enhanced due to the fact that they will benefit from a modern conventional heating system rather than being connected to a central system.

It is therefore not considered appropriate for any compensation to be awarded to any person.

- 25) Pursuant to section 38(3) of the Act we make an order in the terms as set out in the order accompanying this decision, varying all the leases of the properties given in the attached schedules, with effect from the date of this order, as set out in paragraphs 21 and 22 above.
- 26) Pursuant to section 38(9) of the Act it is ordered that the Chief Land Registrar shall make such entries on the registers relating to the titles hereby affected for the purpose of recording and giving effect to the terms of this Order.

APPEAL

- 27) Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Name: Vernon Ward

Date: 5 June 2020



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

Case Reference : **BIR/00CM/LVT/2020/0002**

HMCTS (paper, video, audio) : **P: PAPERREMOTE**

Properties : **Various Properties as shown on Schedule A attached to this Order**

Applicant : **Gentoo Group Limited**

Representative : **Ward Hadaway Solicitors**

Respondent : **The leaseholders as shown on Schedule A attached to these Directions**

Type of Application : **An application under section 37 of the Landlord and Tenant Act 1987**

Tribunal Members : **V Ward BSc Hons FRICS – Regional Surveyor
Judge D Barlow**

Date of Order : **5 June 2020**

ORDER

UPON the application dated 12 December 2019 and the Tribunal's decision dated 5 June 2020

IT IS ORDERED THAT:

- 1) Pursuant to section 38(3) of the Landlord and Tenant Act 1987 Act all the residential long leases as shown on Schedule A attached to this Order, are varied, with effect from the date of this Order, as follows:

1. Deletion of existing clauses

- 1.1. Clause 6.2.3 of the Leases shall be deleted.
- 1.2. Clause 6.4 of the Leases shall be deleted.
- 1.3. Any and all reference in the offer notices attached to the Leases (if any) to any communal heating and/ or any district heating scheme shall be deleted.

2. Addition of new clauses

- 2.1. The following shall be added to the Leases as a new clause 1.30:

"1.30 "the Boiler" means the boiler installed within and solely serving the Premises from time to time.

- 2.2. The following shall be added to the Leases as a new clause 4.9:

"4.9. Maintenance and Repair of the Boiler

4.9.1 Throughout the Term and at the Tenant's sole cost to keep the Boiler well and substantially repaired, maintained and (where reasonably required) renewed and / or replaced.

4.9.2 The Tenant shall ensure that the Boiler is serviced by an appropriately qualified professional at such regular intervals as shall be reasonably necessary."

- 2.3. The following shall be added to the Leases as a new clause 7.10:

"7.10 For the avoidance of doubt, the Landlord shall have no responsibility for any form of heating within the Building or the Premises."

3. Replacement of existing clauses

- 3.1. Clause 1.21.2 of the Leases shall be deleted and replaced by the following clause;

"1.21.2. communal lighting cleaning refuse collection and removal"

3.2. Clause 1.21.8 of the Leases shall be deleted and replaced by the following clause;

"1.21.8. other matters specified in the Offer Notice as being in the nature of a management or maintenance service but excluding:

1.21.8.1 repairs or improvements; and

1.21.8.2 any matters relating to any communal heating and / or any district heating scheme"

3.3. The First Schedule of the Leases shall be deleted and replaced by the following Schedule;

"First Schedule

The Premises include the surface of the floors above the joist or other supporting floor structure and the surface of the floor of the balcony (if any) and the ceiling of the Flat up to but excluding the joists or other supporting floor structure or beams to which the ceiling is attached and all walls save the exterior walls and walls dividing it from any other flat or from the common halls staircase landings steps and passages in the Building (but including the surfaces of such walls within the Flat and the door and door frames window frames and the glass in them and all wires pipes cables conduits sewers and other conducting media serving exclusively the Flat) together with the Private Garden (if any) and the Boiler and together with the Landlord's fixtures and fittings sanitary apparatus and appurtenances installed in the Flat or affixed to the Flat."

3.4. Paragraph 2 of the Fifth Schedule of the Leases shall be deleted and replaced by the following paragraph;

"2. The costs of periodically inspecting maintaining overhauling repairing and where necessary replacing the whole of the gas electricity and water pipes and cables serving the Building and the lifts lift shafts and machinery (if any)"

3.5. Paragraph 3 of the Fifth Schedule of the Leases shall be deleted and replaced by the following paragraph;

"3. The cost (if any) of the electric current for operating the passenger lifts"

- 2) Pursuant to section 38(9) of the Act it is ordered that the Chief Land Registrar shall make such entries on the registers relating to the titles hereby affected for the purpose of recording and giving effect to the terms of this Order.

Name: Vernon Ward

Date: 5 June 2020



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

Case Reference : **BIR/00CM/LVT/2020/0002**

HMCTS (paper, video, audio) : **P: PAPERREMOTE**

Properties : **Various Properties as shown on Schedule B attached to this Order**

Applicant : **Gentoo Group Limited**

Representative : **Ward Hadaway Solicitors**

Respondent : **The leaseholders as shown on Schedule B attached to these Directions**

Type of Application : **An application under section 37 of the Landlord and Tenant Act 1987**

Tribunal Members : **V Ward BSc Hons FRICS – Regional Surveyor
Judge D Barlow**

Date of Order : **5 June 2020**

Date of Correction : **1 July 2020**

ORDER

CORRECTION

By way of a letter dated 1 July 2020, the Applicant advised the Tribunal that the decision and orders of 5 June 2020 had neglected to include the Respondent identified below, within Schedule B.

Address: 10 Dunstanburgh Close, Washington, NE38 0JE
Lease Date: 05/12/2005
Owner name/Respondent: Mr P L McIntosh

The Applicant confirmed that these details had been provided to the Tribunal as part of application.

The Tribunal notes that this party was noted as a Respondent throughout the determination and the omission was accidental.

Accordingly, the Tribunal corrects this error under Rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and amends Schedule B of the decision and orders accordingly. The substantive elements of the decision are unchanged.

UPON the application dated 12 December 2019 and the Tribunal's decision dated 5 June 2020

IT IS ORDERED THAT:

- 1) Pursuant to section 38(3) of the Landlord and Tenant Act 1987 Act all the residential long leases as shown on Schedule B attached to this Order, are varied, with effect from the date of this Order, as follows:

1. Deletion of existing clauses

- 1.1. Clause 6.2.3 of the Leases shall be deleted.
- 1.2. Clause 6.4 of the Leases shall be deleted.
- 1.3. Any and all reference in the offer notices attached to the Leases (if any) to any communal heating and / or any district heating scheme shall be deleted.

2. Addition of new clauses

- 2.1. The following shall be added to the Leases as a new clause 1.30:
"1.30 "the Boiler" means the boiler installed within and solely serving the Premises from time to time."
- 2.2. The following shall be added to the Leases as a new clause 4.11:

"4.11. Maintenance and Repair of the Boiler

4.11.1 Throughout the Term and at the Tenant's sole cost to keep the Boiler well and substantially repaired, maintained and (where reasonably required) renewed and / or replaced.

4.11.2 The Tenant shall ensure that the Boiler is serviced by an appropriately qualified professional at such regular intervals as shall be reasonably necessary."

2.3. The following shall be added to the Leases as a new clause 7.12:

"7.12 For the avoidance of doubt, the Landlord shall have no responsibility for any form of heating within the Building or the Premises."

3. Replacement of existing clauses

3.1. Clause 1.3.2 of the Leases shall be deleted and replaced by the following clause;
"1.3.2. communal lighting cleaning refuse collection and removal"

3.2. Clause 1.3.8 of the Leases shall be deleted and replaced by the following clause;

"1.3.8. other matters specified in the Offer Notice as being in the nature of a management or maintenance service but excluding;

1.3.8.1 repairs or improvements; and

1.3.8.2 any matters relating to any communal heating and / or any district heating scheme. "

3.3. The First Schedule of the Leases shall be deleted and replaced by the following Schedule;

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The Premises include the surface of the floors above the joist or other supporting floor structure and the surface of the floor of the balcony (if any) and the ceiling of the Flat up to but excluding the joists or other supporting floor structure or beams to which the ceiling is attached and all walls save the exterior walls and walls dividing it from any other flat or from the common halls staircase landings steps and passages in the Building (but including the surfaces of such walls within the Flat and the door and door frames window frames and the glass in them and all wires pipes cables conduits sewers and other conducting media serving exclusively the Flat) together with the Private Garden (if any) and the Boiler and together with the Landlord's fixtures and fittings sanitary apparatus and appurtenances installed in the Flat or affixed to the Flat."

3.4. Paragraph 2 of the Fifth Schedule of the Leases shall be deleted and replaced by the following paragraph;

"2. The costs of periodically inspecting maintaining overhauling repairing and where necessary replacing the whole of the gas electricity and water pipes and cables serving the Building and the lifts lift shafts and machinery (if any)"

3.5. Paragraph 3 of the Fifth Schedule of the Leases shall be deleted and replaced by the following paragraph;

"3. The cost (if any) of the electric current for operating the passenger lifts"

- 2) Pursuant to section 38(9) of the Act it is ordered that the Chief Land Registrar shall make such entries on the registers relating to the titles hereby affected for the purpose of recording and giving effect to the terms of this Order.

Name: Vernon Ward

Date: 5 June 2020

Schedule A
Lease Type One

Address	Lease Date	Owner name/Respondent
28 Hylton Court, Washington, NE38 oHU	14/09/1992	Ms Naittaice Helen Chator Allan
81 Dunstanburgh Close, Washington, NE38 oJG	07/02/1983	Mrs M E Usher
100 Bamburgh Close, Washington NE38 oHR	29/07/1991	Mr P Wood
28 Bamburgh Close, Washington, NE38 oHN	17/05/1993	Mr T & Mrs J Hall
70 Bamburgh Close, Washington, NE38 oHP	02/04/1990	Mr D Murton
14 Chilham Court, Washington, NE38 oJP	21/10/1991	Mr A Smith
94 Dunstanburgh Close, Washington NE38 oJG	16/08/1982	Peter Fergusson Properties Limited
40 Warkworth Close, Washington NE38 oJN	18/12/1995	Mr Peter Fergusson
20 Witton Court, Washington NE38 oJH	27/09/1993	Ms C M Davis
98 Bamburgh Close, Washington NE38 oHR	29/07/1991	Jacek Miroslaw Hejniak & Magdalena Domaranczyk
129 Dunstanburgh Close, Washington NE38 oJQ	18/03/1996	Mr T & Mrs J Hall
1 Bamburgh Close, Washington NE38 oHN	28/04/1997	Mr Greame & Lisa Green
13 Witton Court, Washington NE38 oJH	29/09/1997	Mrs C Gent
48 Warkworth Close, Washington NE38 oJN	03/11/1997	Mr Richard Robinson
57 Arklecrag, Washington NE37 1RB	17/08/1998	Mr Stuart Potter
59 Arklecrag, Washington NE37 1RB	20/12/1999	Mr Gary McMann

48 Arklecrag, Washington NE37 1RB	05/06/2000	Ms Janice Dawn Humphrey
8 Wildbriar, Washington NE38 8SN	16/06/2000	Mr A Naisbett
33 Arklecrag, Washington NE37 1RB	10/07/2000	Ms S Rogerson & Mr M J Hobson
34 Arklecrag, Washington NE37 1RB	27/11/2000	Mr Michael Butters
26 Langley Close, Washington NE38 oJR	26/02/2001	Mr D Pattison
7 Dunstanburgh Close, Washington NE38 oJE	21/01/1991	Miss S E Fraser
19 Witton Court, Washington NE38 oJH	27/09/1993	Mr Lee James Nevitt
31 Lumley Close, Washington NE38 oHX	09/08/1982	Mr Sebastian Pawlak
17 Witton Court, Washington NE38 oJH	27/09/1993	Mr Eiraj Zarezadeh
35 Lumley Close, Washington NE38 oHX	09/08/1982	Mr R S M & Mrs B L Scotto Di Perta
47 Arklecrag, Washington NE37 1RB	18/12/2000	Executors of Ms A Wallhead

Schedule B
Lease Type Two

Address	Lease Date	Owner name/Respondent
41 Arklecrag, Washington NE37 1RB	11/06/2001	Mr Alan Stewart Speirs
5 Mapledene, Washington NE38 8SP	29/10/2001	Mrs Olga Egorova
9 Hollyhock, Washington NE38 8ST	10/12/2001	Mr Kevin Allen
6 Dunstanburgh Close, Washington NE38 0JE	17/12/2001	Mr C Herbertson & Ms M Hind
8 Lumley Close, Washington NE38 0HX	11/03/2002	Mr N J Dunn
2 Witton Court, Washington NE38 0JH	25/03/2002	Mr D M Pattison
21 Warkworth Close, Washington NE38 0JL	13/05/2002	Looprevil (North East) Ltd of Burnside
25 Langley Close, Washington NE38 0JR	20/05/2002	Mr G & Mrs C Close
67 Bamburgh Close, Washington NE38 0HP	22/07/2002	Mr Vernon Murray
44 Arklecrag, Washington NE37 1RB	21/10/2002	Mr J & Mrs P Barker
74 Bamburgh Close, Washington NE38 0HP	27/01/2003	Miss S Cairns
113 Dunstanburgh Close, Washington NE38 0JQ	11/08/2003	Mr D E & Mrs J M Stephenson
109 Dunstanburgh Close, Washington NE38 0JG	18/08/2003	Harraton Properties Limited
104 Arklecrag, Washington NE37 1RD	29/03/2003	Mr A Richardson
34 Hylton Court, Washington	27/10/2003	Mr & Mrs G Close

NE38 oHU		
84 Arklecrag, Washington NE37 1RD	11/11/2003	Mr S Boffey
43 Lumley Close, Washington NE38 oHX	22/12/2003	Mr B G & Mrs K A McGillion
69 Bamburgh Close, Washington NE38 oHP	08/03/2004	Mr L & S Stacey
63 Lumley Close, Washington NE38 oHY	27/01/2005	Mr A G Lamb
5 Birchfield, Washington NE38 8SW	17/01/2005	Mr I & Mr D Ryan
105 Dunstanburgh Close, Washington NE38 oJG	18/04/2005	Mr D Weldon
14 Alnwick Court, Washington NE38 oHS	09/07/1990	Harraton Properties Ltd C.O Mr A Fergusson
87 Dunstanburgh Close, Washington NE38 oJG	21/11/2005	Miss H L Walton
40 Dunstanburgh Close, Washington NE38 oJG	19/12/2005	Mr N Tindle
27 Langley Close, Washington NE38 oJR	20/03/2006	Mr N G & Mrs S Bartell
97 Bamburgh Close, Washington NE38 oHR	16/01/2012	Karen Louise Boulter
25 Hylton Court, Washington NE38 oHU	17/12/2012	Mr D J Blackburn
8 Dunstanburgh Close, Washington NE38 oJE	28/04/2014	Miss Donna Louise Scott and Mr Steven John Kirby
60 Dunstanburgh Close, Washington NE37 oJF	09/06/2014	Mr Stuart McCafferty
50 Warkworth Close, Washington NE38 oJN	08/12/2014	Mr Pawel & Mrs Katarzyna Krystyniuk
91 Bamburgh Close, Washington NE38 oHR	17/12/2001	Mr Kenneth Williamson
92 Bamburgh Close,	17/12/2001	Mr R J Golightly & Mr N W R

Washington NE38 oHR		Cameron
62 Warkworth Close, Washington NE38 oJN	10/06/2002	Mr Gary Purvis
10 Hollyhock, Washington NE38 8ST	05/08/2002	Mr P A Neville
40 Arklecrag, Washington NE37 1RB	24/03/2003	Mr S Bell
107 Dunstanburgh Close, Washington NE38 oJG	15/09/2003	AM Property Development Limited
94 Warkworth Close, Washington NE38 oJW	13/09/2004	Mr Andrew William Bain
121 Dunstanburgh Close, Washington NE38 oJQ	07/02/2005	Mr L J Nevitt
39 Arklecrag, Washington NE37 1RB	10/10/2005	Mr M Dixon
10 Dunstanburgh Close, Washington, NE38 oJE	05/12/2005	Mr P L McIntosh

Sections 37 & 38 of the Landlord and Tenant Act 1987

37.— Application by majority of parties for variation of leases.

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

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

(3) The grounds on which an application may be made under this section are that the object to be achieved by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect.

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

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

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

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

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

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

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

38.— Orders varying leases.

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

(2) If—

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

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

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

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

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

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

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

- (a) that the variation would be likely substantially to prejudice—
 - (i) any respondent to the application, or
 - (ii) any person who is not a party to the application,and that an award under subsection (10) would not afford him adequate compensation, or
- (b) that for any other reason it would not be reasonable in the circumstances for the variation to be effected.

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

- (a) which terminates any existing right of the landlord under its terms to nominate an insurer for insurance purposes; or
- (b) which requires the landlord to nominate a number of insurers from which the tenant would be entitled to select an insurer for those purposes; or
- (c) which, in a case where the lease requires the tenant to effect insurance with a specified insurer, requires the tenant to effect insurance otherwise than with another specified insurer.

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

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

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