



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

Case Reference : **BIR/00CU/LVL/2018/0002**

Properties : **7 – 43 (odd) Compton Drive, Sutton Coldfield,
B74 2DA**

Applicant : **Linecroft Limited**

Representative : **Estates and Management Limited**

Respondents 1 : **The Leaseholders of 7 – 43 (odd) Compton Drive**

Type of Applications : **Applications under sections 35 (2) (f) and 40 (1)
of the Landlord and Tenant Act 1987 for a variation
of leases.**

Tribunal Members : **Vernon Ward BSc (Hons) FRICS
Paul Hawksworth Lawyer**

Date of Decision : **19 March 2019**

DECISION

Background

1. On 12 November 2018, the Applicant applied to the Tribunal under section 35(2)(f) of the Landlord and Tenant Act 1987 for variation of the leases of 11 -43 Compton Drive. The grounds of the application are that the leases fail to make satisfactory provision for the computation of service charges payable. The Applicant further applies under section 40(1) of the 1987 Act, in respect of 7 – 15 Compton Drive because the leases fail to make satisfactory provision for the recovery of sums payable for insurance. The Applicant is the landlord of the development whilst the Respondents are the leasehold owners of the properties that make up the same.
2. The Applicant also sought to rectify a slight discrepancy in the definition of “*the building(s)*” in the leases of numbers 7 to 15 Compton Drive. The definition of “*the building(s)*” within the leases of 7 to 9 includes the houses and maisonettes whilst the definition in the leases of numbers 11 to 15 includes only maisonettes. The Applicant seeks to add the words “*and houses*” to the 11 to 15 lease definitions to align with that in the leases of 7 to 9.
3. By Directions dated 16 November 2018, the Applicant was directed by no later than 30 November 2018, to serve on all Respondent leaseholders a copy of those Directions, the Application Form and Schedule. The Applicant confirmed on 27 November 2018 that this had been done.
4. By Directions dated 16 November 2018, the Applicant was directed by no later than 30 November 2018, to prepare and serve a Statement of Case setting out in full the grounds for its application for Variation of Leases exhibiting all relevant documents on each of the Respondents and at the same time send 3 copies to the Tribunal. The Applicant confirmed on 13 December 2018 that this had been done.
5. Any Respondent who objected to the application were invited to notify the Tribunal by 11 January 2019 subsequently extended to 15 February 2019, setting out the grounds of objection.
6. The Applicant requested an oral hearing in respect of this matter.

The Inspection

7. The Tribunal carried out an inspection of the development on 26 February 2019. A representative of the managing agent, First Port, Mr Jason Maxwell, Property Manager, accompanied the Tribunal on its inspection of the internal and external communal areas of the development.
8. The development of 18 properties is arranged in three blocks as follows:

Numbers 7 to 15 (NB there is no number 13)

Formed of 2 houses and 2 maisonettes. Arranged over two storeys. No internal communal areas.

Numbers 17 to 31

Formed of 2 duplex flats, 2 one bedroom flats, 2 two bedroom flats and 2 studio flats. Arranged over three storeys. An internal communal hallway and staircase provides access to the properties.

Numbers 33 to 43

Formed of 6 studio flats. Arranged over two storeys. An internal communal hallway and staircase provides access to the properties.

The properties appear to be constructed of cavity brickwork with pitched tiled roofs. Block 33 to 43 is part rendered.

9. The development fronts onto Compton Drive whilst access to the rear car parking bays is via a driveway adjacent to numbers 7 to 15 and also via a second driveway off Matchlock Close. The Tribunal understands that there is an allocation of one car parking space per property with five visitor spaces. The shared grounds are laid principally to grass.

The Hearing

10. A Hearing was held later that same day at the Tribunal's Offices, 13 Floor, Centre City Tower, 5 – 7 Hill Street, Birmingham. Present at the hearing were Mr Milton McIntosh and Ms Georgia O'Connor both of Estates and Management Ltd, the Applicant's representative, and also Mr Daren Mewis owner of 17 Compton Drive.

The submissions of the parties both in writing and at the Hearing were as follows.

The Applicant

11. Initially, Mr McIntosh outlined the reason behind the applications.
12. The sixth schedule of the leases of the Properties requires the Applicant to provide various services to the Respondents including insurance and repairs and maintenance of common parts. The seventh schedule specifies the proportions payable by each of the Respondents to the Applicant for the provision of the services.

13. Unfortunately, due to errors and inconsistencies in drafting, the leases have never allowed the Applicant to recover 100% of the costs of the services. Deeds of Variation in respect of some of the leases were executed to try and address this error but without success.
14. A summary of the relevant sections of each type of property lease was then presented to the Tribunal this is, briefly, as follows:

No 7 – House

The maintenance expenses were divided into:

Part A expenses essentially for external costs relating to the maintenance of the grounds and paths/roadways etc.

Part B expenses included the costs relating to management and administration of the development including preparation of accounts and insurance.

In this particular lease, the percentage to be recovered under these heads had been varied from 1.1% to 5.4%.

No 11 – Maisonette

The maintenance expenses were divided into:

Part A expenses essentially for external costs relating to the maintenance of the grounds and paths/roadways etc.

Part B expenses included the costs relating to management and administration of the development including preparation of accounts.

Part C was concerned with the costs of insurance.

In this particular lease, the percentage to be recovered under heads A and B was 1.1% and 0.0% for head C.

No 27 – Flat

The maintenance expenses were divided into:

Part A expenses essentially for external costs relating to the maintenance of the grounds and paths/roadways etc.

Part B expenses included the costs relating to management and administration of the development including preparation of accounts and insurance.

In this particular lease, the percentage to be recovered under A was 1.1% and B 2.28%.

No 33 – Studio Flat

The maintenance expenses were divided into:

Part A expenses essentially for external costs relating to the maintenance of the grounds and paths/roadways etc.

Part B expenses included the costs relating to management and administration of the development including preparation of accounts and insurance.

In this particular lease, the percentage to be recovered had been varied with the results that the current proportions recoverable were, under A was 3.4% and B 4.35%.

15. The Tribunal notes that the Applicant is currently only able to recover the following amounts:

75.69% of the cost of the services to the estate

10.8% of the costs of insuring 7 to 9 Compton Drive

0.0% of the cost of insuring 11 to 15 Compton Drive

71.37% of the cost of the services provided to 17 to 43 Compton Drive

16. The effect of these shortfalls is illustrated by the fact that for the service charge accounts year ending 30 June 2018, the Applicant had to contribute £5,839.61 to make good the deficit.
17. From the Applicant's viewpoint the shortfalls clearly needed to be remedied and hence the next point considered was the best way to achieve this. To this end they commissioned a report on the development and the best way of service charge and insurance apportionment by Pennycuick Collins, Chartered Surveyors and Property Managers of Birmingham.
18. The report prepared by Peter Denning FRICS of Pennycuick Collins considered several different methods of apportionment which are summarised as follows:

Equally. Each property would contribute equally to the total cost irrespective of size.

By Bedroom. In this method the number of bedrooms is used to apportion the costs. Studio flats would be given a factor of 1, a 1 bedroom unit would have a factor of 2 and a 2 bedroom unit a factor of 3.

Floor area. A building surveyor carried out a sample measurement of each property type within the development. A schedule was then produced of all units showing the respective floor areas. Each property would then contribute a share based the floor area of the individual property in relation to the total floor area of all properties.

Rateable value. Not used in modern leases but the proportion appropriate to each property would be calculated by reference to its rateable value to the total rateable values for the development.

19. The report concluded that the floor area method should be adopted for establishing the correct apportionment of costs.
20. The Applicant therefore sought to adjust the percentages payable by numbers 11 to 43 (the maisonettes and flats) for all charging heads to that as shown in Appendix A under section 35(2)(f) of the Act.
21. The Applicant also sought to adjust the percentages payable by numbers 7 to 9 (the housing) for insurance costs to that as shown below, under section 40(1) of the 1987 Act:

Property	Current	Proposed
7 Compton Drive	5.4%	24.8027%
9 Compton Drive	5.4%	24.1535%

22. The Applicant had applied their proposed changes to the current annual charges paid by the Respondents. This is shown in the table in Appendix B. Three Respondents benefitted from a small reduction in their overall charge whilst the charge for the other Respondents all rose by various amounts from £3.99 to £968.18 per annum.
23. The Applicant then moved to consider the legal justification for the changes sought. In this respect, Mr McIntosh referred the Tribunal to a decision of the London Rent Assessment Panel (Case references LON/LVL/2011/0013, LON/LVL/2012/0008, LON/LVL/2012/0010) regarding 3 and 4 Whitehall Court London SW1A 2EP; *Rossman and other lessees of flats within Whitehall Court v The Crown Estate Commissioners and others* (“Rossman”) dated February 2013.

24. Within *Rossman*, five questions were identified which are summarised below together with the Applicant's comments:

Question 1 – Are the Applicant's entitled to vary the leases under section 35 (1)?

Applicant – The Applicant is the freeholder so is so entitled

Question 2 – If so, has the Applicant made out a ground under section 35(2)?

Applicant – The Applicant relies on ground 35 (2) (f) as the service charge proportions do not total 100%.

Question 3 – If so, should the Tribunal exercise it's discretion?

Applicant – The Tribunal should exercise it's discretion to rectify a clearly inequitable situation.

Question 4 – If so, should the variation be the one specified by the Applicant or some other under section 38 (4)?

Applicant – The Applicant had taken the advice from a firm of Chartered Surveyors and had adopted their recommendations.

Question 5 – If so, are their special reasons for not making the variation under section 38 (6)?

Applicant – The Applicant could not identify any special reason why the Tribunal should not use it's discretion to make the variations proposed.

25. The Applicant stated that the alteration to the building definition in the leases of 11 to 15, referred to in paragraph 2. above, was to achieve consistency.

The Respondents

26. The submissions of the Respondents were as follows.
27. *9 Compton Drive*. Submissions were received from Michelle Rolfe. These can be summarised relevant to these applications to the effect that the arrangement proposed by Pennycuick Collins based on floor area was her preferred option. Ms Rolfe also indicated that her father had previously maintained the gardens around the block numbers 7 to 15 and if the variations were implemented would expect this arrangement to come to an end.

28. *33 Compton Drive*. Submissions were received from Nicholas Moxon acting as Court appointed Deputy to Sandra Bench. These can be summarised to the effect that the Respondent was neutral to the application but that the Applicant must satisfy the Tribunal of the merits of its case.
29. *17 Compton Drive*. Mr Daren Mewis provided written submissions to Tribunal and also appeared at the hearing. Effectively, Mr Mewis agreed that the lease required variation to allow 100% recovery of the service charge but objected to the proposed method of apportionment. His objection was based on the level of service charges which were currently £202 per calendar month. The effect of the service charge at this level was that his property was unsaleable and he produced evidence from an estate agent to support this. He had also provided a summary of the service charges payable in respect of other developments all of which were lower, in some cases significantly, than the charge for the subject development. He proposed two alternative methods of calculation:
- Method 1*. Part A Estate Costs should be split equally between all properties. In respect of Part B costs these should be apportioned on a floor area basis but on a block by block basis.
- Method 2*. Part A Estate Costs should be split equally between all properties. In respect of Part B costs for flats these should be apportioned equally.
30. The Respondents made no comment in relation to the proposed alteration to the building definition to the leases of 11 to 15, referred to in paragraph 2. above.

The Law

31. The relevant sections of the Landlord and Tenant Act 1987 are as follows:

Applications relating to flats

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 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

(d) 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 and Tribunal Procedure Rules 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.

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.

40 Application for variation of insurance provisions of lease of dwelling other than a flat.

(1) Any party to a long lease of a dwelling may make an application to the appropriate tribunal for an order varying the lease, in such manner as is specified in the application, on the grounds that the lease fails to make satisfactory provision with respect to any matter relating to the insurance of the dwelling, including the recovery of the costs of such insurance.

(2) Sections 36 and 38 shall apply to an application under subsection (1) subject to the modifications specified in subsection (3).

(3) Those modifications are as follows—

(a) in section 36—

(i) in subsection (1), the reference to section 35 shall be read as a reference to subsection (1) above, and

(ii) in subsection (2), any reference to a flat shall be read as a reference to a dwelling; and

(b) in section 38—

(i) any reference to an application under section 35 shall be read as a reference to an application under subsection (1) above, and

(ii) any reference to an application under section 36 shall be read as a reference to an application under section 36 as applied by subsection (2) above.

(4) For the purpose of this section, a long lease shall not be regarded as a long lease of a dwelling if—

(a) the demised premises consist of three or more dwellings; or

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

(4A) Without prejudice to subsection (4), an application under subsection (1) may not be made by a person who is a tenant under a long lease of a dwelling if, by virtue of that lease and one or more other long leases of dwellings, he is also a tenant from the same landlord of at least two other dwellings.

(4B) For the purposes of subsection (4A), any tenant of a dwelling who is a body corporate shall be treated as a tenant of any other dwelling held from the same landlord which is let under a long lease to an associated company, as defined in section 20(1).

(5) In this section “dwelling” means a dwelling other than a flat.

(6) For the purposes of subsection (1), “appropriate tribunal” means—

(a) if one or more of the dwellings concerned is 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 dwellings concerned is in Wales, a leasehold valuation tribunal.

Determination

32. The Tribunal must first consider whether the grounds for the application are met.
33. Initially considering this in relation to the flats and maisonettes under section 35 of the Act, the Tribunal notes the following; the Applicant is a party to the lease (35 (1)) and the leases fail to make satisfactory provision for the computation of the service charge (35 (2) (f)). The Upper Tribunal decision in *Morgan and Morgan v Fletcher and others* [2009] UKUT 186 (LC) indicated that in 35 (4) the word “if” should be construed as “only if” to the effect that the application should meet all of the four criteria. Paragraph (4) (a) is met as the leases provide for a charge to be made, (b) is also met as there is an obligation for the leaseholders to pay a charge, (c) is also met as the amount payable is by reference to the costs incurred by the landlord, and finally (d) is also met as the amount recovered is significantly less than 100%, (d).
34. The Tribunal then considered the application in relation to numbers 7 and 9, the houses under section 40 of the Act. The leases of the houses fail to make satisfactory provision for the recovery of the insurance provision therefore 40 (1) is met.
35. The Tribunal having determined that the applications are well made, must then consider the most appropriate method of apportionment.
36. Firstly, considering the Proposals by Mr Mewis. Utilising his Method 1, Part A Estate costs would be split equally between all properties and Part B costs these would be apportioned on a floor area basis but on a block by block basis. It is

reasonable to assume that larger dwellings would have a greater number of occupants than smaller dwellings and hence would utilise the communal grounds to a greater degree save for the fact that each dwelling benefits from one car parking space. The Tribunal therefore considers it reasonable that the Part A Estate cost charges be apportioned on a floor area basis. In respect of Part B costs, an apportionment on a block by block basis would involve the Tribunal inserting additional service charge provisions into the leases which it is not inclined to do as it considered unnecessary.

37. Utilising his Method 2, Part A Estate Costs would be split equally between all properties whilst Part B costs for flats should be apportioned equally. The Tribunal's view on this method of apportionment for Part A costs is given above. There is no justification for an equal split on the Part B and C buildings and insurance costs. Most of those costs relate to the size of the properties; for instance, an insurance rebuilding cost (and therefore the premium relating thereto) is directly related to the size of the property. It would be inequitable to split these costs equally between all dwellings.
38. The Tribunal, therefore, declines to accept the methods put forward by Mr Mewis whose concerns were in essence related to the level of the service charge rather than the method of apportionment. The Tribunal notes that in any event under the Applicant's proposals, Mr Mewis is one of the few beneficiaries in that his charge will fall relative to that of his neighbours.
39. The Tribunal then considers the Applicant's proposals which are essentially for the costs to be split on a floor area basis with the exception that the estate costs for numbers 7, and 9, the houses, cannot be varied and remain at 5.4%. The Tribunal considers the report by Pennycuick Collins to be very persuasive. The authors are respected Chartered Surveyors and Property Managers who considered various options and decided that the floor area method was the most appropriate. Were the Tribunal to reject the Pennycuick suggestions in favour of those submitted by Mr Mewis, it would be, in effect, preferring the opinion of a lay party to those of a highly experienced firm of chartered surveyors with extensive property management experience. Whilst Mr Mewis presented his views very capably, no expert evidence on the question of apportionment was adduced by or on behalf of the Respondents and the Tribunal accepts the evidence and reasoning of the Pennycuick Collins report. Moreover, the Tribunal, is an expert Tribunal and using its own skill, knowledge and experience and whilst accepting that there are drawbacks in whichever method of apportionment is adopted, determines that the floor area method advocated by the Applicant is the best method in this case.
40. The Tribunal therefore accepts the proportions the Applicant proposes as laid out in Appendix A. The parties should note that for consistency the Tribunal

has adjusted the proposed Part A proportion in respect of 23 Compton Drive from 7.36% (as drafted in the Applicant's schedule) to 7.3566%.

41. The Tribunal further accepts the alteration to the building definition to the leases of 11 to 15, as laid out in paragraph 2. above, as this is considered reasonable to achieve consistency.
42. The Tribunal so orders the variations to be made and attaches the Order.

Compensation

43. In this decision the Tribunal has not dealt with compensation under section 38 (10) of the Act. Within 21 days of the date of this decision, any Respondent leaseholder may make representations to the Tribunal (three copies) and the Applicant (one copy) in respect of whether the Tribunal should make an Order for Compensation under section 38 (10) of the Act. If representations are received, the Tribunal will issue further directions and a supplementary decision accordingly.
44. In making its Determination, the Tribunal had regard to its inspection, the submissions of the parties, the relevant law and its knowledge and experience as an expert Tribunal, but not to any special or secret knowledge.

Appeal

45. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

V WARD

APPENDIX A - VARIATIONS SOUGHT

Property	Type	Floor Area Sq M	Part A Proportions (Estate)		Part B/C (Insurance only)		Part B (Building Costs)	
			Existing	Proposed	Existing	Proposed	Existing	Proposed
7	House	38.97	5.40%	5.4000%	5.40%	24.8027%	-	-
9	House	37.95	5.40%	5.4000%	5.40%	24.1535%	-	-
11	Mais	40.77	5.36%	5.7612%	0.00%	25.9483%	-	-
15	Mais	39.43	5.36%	5.5718%	0.00%	25.0955%	-	-
17	Flat	70.08	10.30%	9.9029%	-	-	13.10%	12.7178%
19	Flat	70.08	2.16%	9.9029%	-	-	3.16%	12.7178%
21	Flat	38.79	1.10%	5.4814%	-	-	1.68%	7.0394%
23	Flat	52.06	7.47%	7.3566%	-	-	9.5%	9.4476%
25	Flat	38.79	5.50%	5.4814%	-	-	7.00%	7.0394%
27	Flat	52.06	1.10%	7.3566%	-	-	2.28%	9.4476%
29	Flat	34.26	4.80%	4.8413%	-	-	6.12%	6.2173%
31	Flat	47.20	6.74%	6.6698%	-	-	8.58%	8.5656%
33	Flat	24.81	3.40%	3.5059%	-	-	4.35%	4.5024%
35	Flat	24.81	3.40%	3.5059%	-	-	4.35%	4.5024%
37	Flat	24.24	0.70%	3.4253%	-	-	1.50%	4.3990%
39	Flat	24.81	0.70%	3.5059%	-	-	1.05%	4.5024%
41	Flat	24.81	3.40%	3.5059%	-	-	4.35%	4.5024%
43	Flat	24.24	3.40%	3.4253%	-	-	4.35%	4.3990%
TOTALS		708.16	75.69%	100.0001%	10.80%	100.0000%	71.37%	100.0001%
Shortfall			-24.3100%		-89.2000%		-28.6300%	

ORDER

FIRST-TIER TRIBUNAL PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

IN THE MATTER of sections 35 (2) (f) and 40(1) of The Landlord and Tenant Act
1987

AND IN THE MATTER of 7-43 (odd) Compton Drive Sutton Coldfield B74 2DA

BETWEEN

LINECROFT LIMITED

(Applicant)

And

THE LESSEES OF 7 - 43 (ODD) COMPTON DRIVE SUTTON COLDFIELD

B74 2DA

(Respondents)

UPON HEARING the representative of the Applicant and UPON HEARING oral and written representations from Mr D Mewis and written representations from or on behalf of Michelle Rolfe and Sandra Bench (acting by her Deputy) IT IS ORDERED AS FOLLOWS:

1. That the Leases of 7-43 Compton Drive Sutton Coldfield B74 2DA as recorded on the title registers of the properties concerned at The Land Registry be varied as contained in the Schedule set out below.
2. The Tribunal will consider the question of whether any compensation should be ordered under Section 38 (10) The Landlord and Tenant Act 1987 after receiving further representations on the point from the parties as directed in its decision ordering the above variations.

Dated this 18 day of March 2019

V Ward

Deputy Regional Valuer

First – tier Tribunal (Property Chamber) (Residential Property)

Midlands Region

SCHEDULE OF VARIATIONS

<u>Property</u>	<u>Type</u>	<u>The Lease</u>	<u>Relevant Clauses</u>	<u>Draft of Variation Sought</u>	<u>Grounds</u>
7 Compton Drive Parkview B74 2DA	House	Lease dated 15 June 1984 for a term of 99 years from 25 March 1984 and varied by deed dated 25 March 1985	Paragraph 1 of the Seventh Schedule	At end of paragraph 1 of the Seventh Schedule after the words "the said Schedule" be inserted the following: "(save that in respect of the matters mentioned in paragraph 15 of Part "B" of the Sixth Schedule hereto (namely insuring the Buildings) the Lessees proportion shall mean a 24.8027% part)"	Section 40(1) LTA 1987
9 Compton Drive Park View B74 2DA	House	Lease dated 31 December 1984 for a term of 99 years from 25 March 1984 and varied by deed dated 30 May 1985	Paragraph 1 of the Seventh Schedule	At end of paragraph 1 of the Seventh Schedule after the words "the said Schedule" be inserted the following: "(save that in respect of the matters mentioned in paragraph 15 of Part "B" of the Sixth Schedule hereto (namely insuring the Buildings) the Lessees proportion shall mean a 24.1535% part)"	Section 40(1) LTA 1987

<p>11 Compton Drive Park View B74 2DA</p>	<p>Maisonette</p>	<p>Lease dated 18 June 1984 for a term of 99 years from 25 March 1984 and varied by deed dated 12 August 1985</p>	<p>i) Clause 1(f) "The Building(s)" ii) Paragraph 1(a) of the Seventh Schedule iii) Paragraph 1(b) of the Seventh Schedule</p>	<p>i) At clause 1(f), the words "<i>and houses</i>" to be added after the words "<i>several maisonettes</i>" ii) At paragraph 1(a) of the Seventh Schedule, the figure of "5.36%" to be deleted and replaced with the figure "5.7612%" iii) At paragraph 1(b) of the Seventh Schedule, the figure of "25.9483%" to be inserted</p>	<p>Section 35(2)(f) LTA 1987 & Section 40(1) LTA 1987</p>
<p>15 Compton Drive Park View B74 2DA</p>	<p>Maisonette</p>	<p>Lease dated 15 June 1984 for a term of 99 years from 25 March 1984 and varied by deed dated 20 February 1985</p>	<p>i) Clause 1(f) "The Building(s)" ii) Paragraph 1(a) of the Seventh Schedule iii) Paragraph 1(b) of the Seventh Schedule</p>	<p>i) At clause 1(f), the words "<i>and houses</i>" to be added after the words "<i>several maisonettes</i>" ii) At paragraph 1(a) of the Seventh Schedule, the figure of "5.36%" to be deleted and replaced with the figure "5.5718%" iii) At paragraph 1(b) of the Seventh Schedule, the figure of "25.0955%" to be inserted</p>	<p>Section 35(2)(f) LTA 1987 & Section 40(1) LTA 1987</p>

17 Compton Drive Park View B74 2DA	GF/FF Flat	Lease dated 05 August 1985 for a term of 99 years from 25 March 1984	i) Paragraph 1(a) of the Seventh Schedule the figure of "10.30%" to be deleted and replaced with the figure "9.9029%" ii) Paragraph 1(b) of the Seventh Schedule the figure of "13.10%" to be deleted and replaced with the figure "12.7178%"	i) At paragraph 1(a) of the Seventh Schedule, the figure of "10.30%" to be deleted and replaced with the figure "9.9029%" ii) At paragraph 1(b) of the Seventh Schedule, the figure of "13.10%" to be deleted and replaced with the figure "12.7178%"	Section 35(2)(f) LTA 1987
19 Compton Drive Park View B74 2DA	GF/FF Flat	Lease dated 1 September 2014 for a term of 125 years from 01 September 2014	i) Paragraph 1(a) of the Seventh Schedule ii) Paragraph 1(b) of the Seventh Schedule	i) At paragraph 1(a) of the Seventh Schedule, the figure of "2.16%" to be deleted and replaced with the figure "9.9029%" ii) At paragraph 1(b) of the Seventh Schedule, the figure of "3.16%" to be deleted and replaced with the figure "12.7178%"	Section 35(2)(f) LTA 1987
21 Compton Drive Park View B74 2DA	GF Flat	Lease dated 13 July 1984 for a term of 99 years from 25 March 1984	i) Paragraph 1(a) of the Seventh Schedule ii) Paragraph 1(b) of the Seventh Schedule	i) At paragraph 1(a) of the Seventh Schedule, the figure of "1.10%" to be deleted and replaced with the figure "5.4814%" ii) At paragraph 1(b) of the Seventh Schedule, the figure of "1.68%" to be deleted and replaced with the figure "7.0394%"	Section 35(2)(f) LTA 1987
23 Compton Drive Park View B74 2DA	GF Flat	Lease dated 07 September 1984 for a term of 99 years from 25 March 1984 and varied by deed dated 18 January 1985	i) Paragraph 1(a) of the Seventh Schedule ii) Paragraph 1(b) of the Seventh Schedule	i) At paragraph 1(a) of the Seventh Schedule, the figure of "7.47%" to be deleted and replaced with the figure "7.3566%" ii) At paragraph 1(b) of the Seventh Schedule, the figure of "9.5%" to be deleted and replaced with the figure "9.4476%"	Section 35(2)(f) LTA 1987

25 Compton Drive Park View B74 2DA	FF Flat	Lease dated 22 April 1985 for a term of 99 years from 25 March 1984	i) Paragraph 1(a) of the Seventh Schedule ii) Paragraph 1(b) of the Seventh Schedule	i) At paragraph 1(a) of the Seventh Schedule, the figure of "5.50%" to be deleted and replaced with the figure "5.4814%" ii) At paragraph 1(b) of the Seventh Schedule, the figure of "7.0%" to be deleted and replaced with the figure "7.0394%"	Section 35(2)(f) LTA 1987
27 Compton Drive Park View B74 2DA	FF Flat	Lease dated 28 June 1984 for a term of 99 years from 25 March 1984	i) Paragraph 1(a) of the Seventh Schedule ii) Paragraph 1(b) of the Seventh Schedule	i) At paragraph 1(a) of the Seventh Schedule, the figure of "1.10%" to be deleted and replaced with the figure "7.3566%" ii) At paragraph 1(b) of the Seventh Schedule, the figure of "2.28%" to be deleted and replaced with the figure "9.4476%"	Section 35(2)(f) LTA 1987
29 Compton Drive Park View B74 2DA	Studio	Lease dated 12 August 1985 for a term of 99 years from 25 March 1984	i) Paragraph 1(a) of the Seventh Schedule ii) Paragraph 1(b) of the Seventh Schedule	i) At paragraph 1(a) of the Seventh Schedule, the figure of "4.80%" to be deleted and replaced with the figure "4.8413%" ii) At paragraph 1(b) of the Seventh Schedule, the figure of "6.12%" to be deleted and replaced with the figure "6.2173%"	Section 35(2)(f) LTA 1987
31 Compton Drive Park View B74 2DA	Studio	Lease dated 02 May 1985 for a term of 99 years from 25 March 1984	i) Paragraph 1(a) of the Seventh Schedule ii) Paragraph 1(b) of the Seventh Schedule	i) At paragraph 1(a) of the Seventh Schedule, the figure of "6.74%" to be deleted and replaced with the figure "6.6698%" ii) At paragraph 1(b) of the Seventh Schedule, the figure of "8.58%" to be deleted and replaced with the figure "8.5656%"	Section 35(2)(f) LTA 1987

33 Compton Drive Park View B74 2DA	Studio	Lease dated 29 June 1984 for a term of 99 years from 25 March 1984 and varied by deed dated 29 March 1985	i) Paragraph 1(a) of the Seventh Schedule ii) Paragraph 1(b) of the Seventh Schedule	i) At paragraph 1(a) of the Seventh Schedule, the figure of "3.40%" to be deleted and replaced with the figure "3.5059%" ii) At paragraph 1(b) of the Seventh Schedule, the figure of "4.35%" to be deleted and replaced with the figure "4.5024%"	Section 35(2)(f) LTA 1987
35 Compton Drive Park View B74 2DA	Studio	Lease dated 28 September 1984 for a term of 99 years from 25 March 1984 and varied by deed dated 17 April 1985	i) Paragraph 1(a) of the Seventh Schedule ii) Paragraph 1(b) of the Seventh Schedule	i) At paragraph 1(a) of the Seventh Schedule, the figure of "3.40%" to be deleted and replaced with the figure "3.5059%" ii) At paragraph 1(b) of the Seventh Schedule, the figure of "4.35%" to be deleted and replaced with the figure "4.5024%"	Section 35(2)(f) LTA 1987
37 Compton Drive Park View B74 2DA	Studio	Lease dated 22 June 1984 for a term of 99 years from 25 March 1984	i) Paragraph 1(a) of the Seventh Schedule ii) Paragraph 1(b) of the Seventh Schedule	i) At paragraph 1(a) of the Seventh Schedule, the figure of "0.70%" to be deleted and replaced with the figure "3.4253%" ii) At paragraph 1(b) of the Seventh Schedule, the figure of "1.50%" to be deleted and replaced with the figure "4.3990%"	Section 35(2)(f) LTA 1987

39 Compton Drive Park View B74 2DA	Studio	Lease dated 09 November 1984 for a term of 99 years from 25 March 1984	i) Paragraph 1(a) of the Seventh Schedule the Seventh Schedule ii) Paragraph 1(b) of the Seventh Schedule	i) At paragraph 1(a) of the Seventh Schedule, the figure of "0.70%" to be deleted and replaced with the figure "3.5059%" ii) At paragraph 1(b) of the Seventh Schedule, the figure of "1.05%" to be deleted and replaced with the figure "4.5024%"	Section 35(2)(f) LTA 1987
41 Compton Drive Park View B74 2DA	Studio	Lease dated 27 September 1984 for a term of 99 years from 25 March 1984 and varied by deed dated 31 January 1985	i) Paragraph 1(a) of the Seventh Schedule ii) Paragraph 1(b) of the Seventh Schedule	i) At paragraph 1(a) of the Seventh Schedule, the figure of "3.40%" to be deleted and replaced with the figure "3.5059%" ii) At paragraph 1(b) of the Seventh Schedule, the figure of "4.35%" to be deleted and replaced with the figure "4.5024%"	Section 35(2)(f) LTA 1987
43 Compton Drive Park View B74 2DA	Studio	Lease dated 03 September 2015 for a term of 99 years from 03 September 2015	i) Paragraph 1(a) of the Seventh Schedule ii) Paragraph 1(b) of the Seventh Schedule	i) At paragraph 1(a) of the Seventh Schedule, the figure of "3.40%" to be deleted and replaced with the figure "3.4253%" ii) At paragraph 1(b) of the Seventh Schedule, the figure of "4.35%" to be deleted and replaced with the figure "4.3990%"	Section 35(2)(f) LTA 1987