



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

**Case reference** : **BIR/47UB/LVT/2022/0001**

**Property** : **The leasehold properties listed in Part 1 the Schedule 1**

**Applicant** : **Bromsgrove District Housing Trust Limited**

**Representative** : **Birketts LLP**

**Respondent** : **The leaseholders listed in Part 2 of Schedule 1**

**Type of application** : **To vary two or more leases by a majority pursuant to section 37 of the Landlord and Tenant Act 1987 ("the 1987 Act").**

**Tribunal** : **Judge D Barlow**

**Date of Decision** : **14 December 2022**

**Date Decision issued** : **19 December 2022**

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**DECISION**

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## DECISION

The Tribunal orders that the leases listed in Part 1 of Schedule 1 hereto, held by the leaseholders listed in Parts 2 of Schedule 1 hereto, are varied in accordance with the terms of the Order accompanying this decision.

## REASONS

### The Application

1. The Applicant is the freeholder landlord of the 98 purpose-built flats listed in Part 1 of Schedule 1. The Respondent leaseholders listed in Part 2 of Schedule 1 are the current tenants of the flats, which they hold under their respective leases listed in Part 1 of Schedule 1 (“the leases”).
2. The Applicant seeks an order under s37 of the 1987 Act, varying the leases. The variation sought is straightforward. Due to a mistake on the grant of the original leases they were demised to the tenants for a term of 125 years from a specified date which was earlier than the date of the lease. Consequently, the unexpired term of the leases when granted, was less than the term of 125 years required by Schedule 6 Part III paragraph 12(1) of the Housing Act 1985 (the appropriate lease term under the right to buy scheme).
3. To correct the mistake the Applicant’s proposed variation is to delete reference to the term commencement date specified in Clause 1 of the leases and replace it with the words “*from the date of this lease*”. The effect of the variation will be to vary the unexpired term of the leases, so that all leases will have been granted for be for a term of 125 years from the date of the lease.

### Compliance with s37 of the 1987 Act

4. The relevant statutory provisions are set out in Schedule 2.
5. Notice of the application has been served on the leaseholders and interested parties. The Tribunal has not received any objections from the leaseholders.
6. The landlord states that prior to filing the application it balloted the leaseholders on the proposed variation. 81 leaseholders consented to the variation, the landlord has unsurprisingly consented to the variation, 17 did not return the ballot. 82 of the possible 99 participants have therefore consented to the proposed variation which is 82.83%. The 1987 Act requires that at least 75% of the relevant parties to have consented. There are no objectors.

### Decision and reasons

7. I am satisfied that the requirements of section 37(5) are met, namely that the application was not opposed by more than 10 per cent of the total number of relevant parties and at least 75 per cent of that number consented to it.
8. Can the object be achieved satisfactorily without all the leases being varied to the same effect? (s.37(3)) The object of the application is to correct a mistake made on grant of the leases concerning the term that should have been granted pursuant to the Schedule 12 of the Housing Act 1985. All leases contain an identical mistake. The objective of correcting the mistake can only be accomplished by varying all affected leases, which in this case means all the leases being varied to the same effect.
9. If an order varying the leases is made, should the Tribunal order a person to pay compensation to any other person (s.38(10)). The order corrects a mistake. The mistake did not confer any advantage on the leaseholders that could be prejudiced by its correction. There is therefore no loss or disadvantage that requires me to consider compensation.
10. I have considered the method by which the variations should be made. To order a formal written deed for each lease is disproportionately expensive and time consuming. It is also not practicable to order endorsement of the variation on the original and counterpart leases. The Applicant prepared a draft order for the approval of the Tribunal. It is on substantially the same terms as the Order which accompanies this decision. The Order should enable an application to be made to HM Land Registry for the variation to be noted on the register of each leasehold title and on each relevant reversionary title.
11. Within 21 days of this decision the Applicant shall file stamped addressed envelopes addressed to each leaseholder, (all 98), to enable the Tribunal to serve a copy of this Decision on the leaseholders (as required following the Upper Tribunal decision in *Hyslop v 38/41 CHG Residents Co Ltd* [2017] UKUT 0398 (LC)).

**Name:** Judge D Barlow

**Date:** 14 December 2022

## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case. The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

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.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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## **Schedule 1, Part 1**

<b>Freehold Title – WR86218</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR75722	Flat 24 Kempton Court, Aintree Close, B61 0LW
WR88000	Flat 14 Kempton Court, Aintree Close, B61 0LW
WR79257	Flat 17 Kempton Court, Aintree Close, B61 0LW
WR81334	Flat 31 Kempton Court, Aintree Close, B61 0LW
WR72297	58 Green Lane, Catshill, Bromsgrove, B61 0LD
WR74660	60 Green Lane, Catshill, Bromsgrove, B61 0LD
WR82229	16 Lingfield Walk, Catshill, Bromsgrove, B61 0LJ
WR90989	18 Lingfield Walk, Catshill, Bromsgrove, B61 0LJ
WR80104	14 Aintree Close, Catshill, Bromsgrove, B61 0LN
WR72775	16 Aintree Close, Catshill, Bromsgrove, B61 0LN

<b>Freehold Title – WR85930</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR60920	16 Vicarage Close, Bromsgrove, B60 2ED

<b>Freehold Title – WR85921</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR161359	Flat 1, Sunningdale, 28 New Road, B60 2JJ

<b>Freehold Title – WR86004</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR89557	55 Foxwalks Avenue, Rock Hill, B61 7NB
WR72406	109 Breakback Road, Bromsgrove, B61 7LT
WR82921	107 Breakback Road, Bromsgrove, B61 7LT

<b>Freehold Title – WR86807</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR163063	Flat 9, Grafton House, Burcot Lane, B60 1AQ
WR78601	Flat 6, Grafton House, Burcot Lane, B60 1AQ
WR90874	Flat 4, Grafton House, Burcot Lane, B60 1AQ
WR98917	Flat 5, Grafton House, Burcot Lane, B60 1AQ
WR94795	Flat 2, Birlingham House, Burcot Lane, B60 1AH
WR77874	Flat 4, Birlingham House, Burcot Lane, B60 1AH
WR73016	Flat 5 Crophorne House, Burcot Lane, B60 1AH
WR67783	Flat 12 Crophorne House, Burcot Lane, B60 1AH
WR109129	Flat 9, Burcot House, Burcot Lane, B60 1AQ

<b>Freehold Title – WR85881</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
N/A	Flat 23 Laurel Grove, Bromsgrove, B61 8LU
WR108234	Flat 25 Laurel Grove, Bromsgrove, B61 8LU
WR73780	Flat 19 Laurel Grove, Bromsgrove, B61 8LU
WR59372	Flat 17 Laurel Grove, Bromsgrove, B61 8LU

<b>Freehold Title – WR86556</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR108212	162 Austin Road, Charford, B60 3NS
WR72803	158 Austin Road, Charford, B60 3NS
WR80006	130 Austin Road, Charford, B60 3NS
WR82322	160 Austin Road, Charford, B60 3NS
WR72804	47 Crossley Walk, Bromsgrove, B60 3NT
WR56086	37 Crossley Walk, Bromsgrove, B60 3NT

<b>Freehold Title – WR86053</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR63488	258 Austin Road, Charford, B60 3PB
WR82272	204 Austin Road, Charford, B60 3NY
WR90530	9 Talbot Road, Bromsgrove, B60 3PA

<b>Freehold Title – WR86437</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR67157	17 Forest Way, Hollywood, Birmingham, B47 5JS
WR65255	23 Forest Way, Hollywood, Birmingham, B47 5JS
WR75340	21 Forest Way, Hollywood, Birmingham, B46 5JS
WR174754	37 Forest Way, Hollywood, Birmingham, B47 5JS
WR82226	9 Forest Way, Hollywood, Birmingham, B47 5JS
WR89468	19 Forest Way, Hollywood, Birmingham, B47 5JS

<b>Freehold Title – WR86249</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR57773	23 Milton Road, Catshill, B61 0NG
WR95124	85 Spenser Walk, Catshill, B61 0NE
WR76513	35 Spenser Walk, Catshill, B61 0NE
WR64308	12 Byron Way, Catshill, B61 0NB

<b>Freehold Title – WR86049</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR77856	36 Bishop Hall Crescent, Bromsgrove, B60 3JS
WR77663	38 Bishop Hall Crescent, Bromsgrove, B603JS

<b>Freehold Title – WR86461</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR85082	26 Shawfield, Hollywood, Birmingham, B47 5HP
WR70719	7 Shawfield, Hollywood, Birmingham, B47 5HP
WR107107	19 Shawfield, Hollywood, Birmingham, B47 5HP

<b>Freehold Title – WR86405</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR107182	27, Laburnum Trees, May Farm Close, B47 5DN
WR69749	49, Poplar Trees, May Farm Close, B47 5DN
WR59735	12, Oak Trees, May Farm Close, B47 5DN
WR99695	11, Oak Trees, May Farm Close, B47 5DN
WR98893	17, Laburnum Trees, May Farm Close, B47 5DN
WR74191	40, May Trees, May Farm Close, B47 5DN
WR51972	21, Laburnum Trees, May Farm Close, B47 5DN
WR58879	36, May Trees, May Farm Close, B47 5DN
WR70702	52, Poplar Trees, May Farm Close, B47 5DN
WR78744	28, Laburnum Trees, May Farm Close, B47 5DN

<b>Freehold Title – WR86097</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR70160	39 Maple Road, Rubery, Birmingham, B45 9EB
WR172066	5 Maple Road, Rubery, Birmingham, B45 9EB

<b>Freehold Title – WR129563</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR199604	9 Maple House, School Drive, Bromsgrove, B60 1GT

<b>Freehold Title – WR86152</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR65255	19 Tranter Avenue, Birmingham, B48 7PH
WR113255	18 Tranter Avenue, Birmingham, B48 7PH

<b>Freehold Title – WR85807</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR60751	9 Lincoln Road, Sidemoor, Bromsgrove, B61 8SE
WR88594	11 Lincoln Road, Sidemoor, Bromsgrove, B61 8SE
WR105592	22 Durham Close, Sidemoor, Bromsgrove, B61 8SD
WR94933	24 Durham Close, Sidemoor, Bromsgrove, B61 8SD
HW181660	21A York Road, Sidemoor, Bromsgrove, B61 8RZ

<b>Freehold Title – WR86055</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR78411	200 Lyttleton Avenue, Bromsgrove, B60 3LB
WR58463	272 Lyttleton Avenue, Bromsgrove, B60 3LB
WR96497	298 Lyttleton Avenue, Bromsgrove, B60 3LB
WR181018	274 Lyttleton Avenue, Bromsgrove, B60 3LB
WR62504	210 Lyttleton Avenue, Bromsgrove, B60 3LB

<b>Freehold Title – WR86637</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR70472	364 Lyttleton Avenue, Bromsgrove, B60 3LB
WR82016	53 Charford Road, Bromsgrove, B60 3NJ

<b>Freehold Title – WR86058</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR161269	344 Lyttleton Avenue, Bromsgrove, B60 3LB

<b>Freehold Title – WR86483</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR72805	17 Yew Tree Place, Halesowen, B62 0NX
WR78308	3 Yew Tree Place, Halesowen, B62 0NX
WR73996	28 Yew Tree Place, Halesowen, B62 0NX

<b>Freehold Title – WR85883</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR83003	27 Santridge Lane, Sidemoor, Bromsgrove, B61 8JZ
WR62243	29 Santridge Lane, Sidemoor, Bromsgrove, B61 8JZ
WR71686	41 Beech Road, Sidemoor, Bromsgrove, B61 8NF

<b>Freehold Title – WR86505</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR83620	58 Dark Lane, Romeley, Halesowen, B62 0PL
WR81978	52 Dark Lane, Romeley, Halesowen, B62 0PL

<b>Freehold Title – WR86484</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR152639	74 Waverley Crescent, Halesowen, B62 0NY
WR152639	76 Waverley Crescent, Halesowen, B62 0NY

<b>Freehold Title – WR86323</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR64241	67 Humphrey Avenue, Bromsgrove, B60 3JE

<b>Freehold Title – WR86176</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR55282	35 Swan Street, Alvechurch, Birmingham, B48 7RR

<b>Freehold Title – WR86479</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR51296	30 Mercia Close, Bromsgrove, B60 3HY
WR72544	38 Mercia Close, Bromsgrove, B60 3HY

<b>Freehold Title – WR85817</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR73778	17A Melbourne Road, Bromsgrove, B61 8PE

<b>Freehold Title – WR85810</b>	
<b>Leasehold Title</b>	<b>Leasehold Address</b>
WR63054	11 York Avenue, Bromsgrove, B61 8SA

## **Schedule 1, Part 2**

<b>Leaseholder Name</b>
Applebarns Investments LTD
Miss Amy Lewis
Miss Antionette Walters
Miss Charlotte Carol
Miss Donna Timms
Miss Isabelle Rose Loynes
Miss Jodie Elizabeth
Miss Maureen McNamara
Miss Nichola Warner
Miss Sally Price
Miss Sarah Withers
Miss Wendy Dediccoat
Mr Paul Broom
Mr Alan Hicks
Mr Alfred Charles Ball
Mr Andrew Hadley
Mr Anthony Collins
Mr Brett Taylor & Ms Clare Lamb
Mr Bruce Bowen
Mr Carl McGovern
Mr D Dennison
Mr Daniel Crane
Mr Darren Byang
Mr David Hope
Mr David Simmonds

Mr David Topham
Mr Desmond Thomas
Mr Elliot Murphy
Mr Gareth Jenkins
Mr Garry Nicholls
Mr Geoffery Knipe
Mr Glen Darby
Mr Ian Parkes
Mr Ivan Holder
Mr J Davies
Mr John Crisp
Mr K Kingsbury
Mr Liveleen Binning
Mr M Singleton
Mr Mark Bettis
Mr Mark Carpenter
Mr Mark Long
Mr Martin James
Mr Meurig James
Mr Nicholas Whitehouse
Mr Peter Gregory
Mr Peter Lowe
Mr R Phillips
Mr Richard Grimes
Mr Robert Jones
Mr Robert Price
Mr Roy Docker
Mr Russell Debar
Mr Scott Lacey
Mr Simon Parry
Mr Stephen Astley
Mr Stephen Gordon
Mr Stephen Vincent
Mr Steven Lambon
Mr Stuart Morgan
Mr Taghi Khajavi
Mr Wayne Mulhall
Mrs Cheryl Roberts
Mrs Helen Forbes
Mrs Janet Thompson
Mrs Joan Pickering
Mrs Joanne Garbett

Mrs Kym Beacham
Mrs L Hood
Mrs Lorna Goode
Mrs Natalie Sivell
Mrs Phyliss Coles
Mrs Samantha Dolan
Mrs Shula Witherford
Mrs Susan Turner
Mrs Yvonne Miller
Ms Anne Bottomley
Ms Deana Gaden
Ms Joanna Camfield
Ms Julie Chetland
Ms Kim Richardson
Ms Layla Rogers
Ms Lucy Fenn
Ms Sarah Jane Wilson
Ms Stephanie Hobbins
Paul Bromnick
Stephens Property Investments Ltd

**Schedule 2- the relevant Law**

**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) .....

(2) .....

(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).....

(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) .....

(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.

