

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

London RENT ASSESSMENT PANEL

10 Alfred Place, London, WC1E 7LR
Telephone: 020 7446 7700
Facsimile: 020 7637 1250
E-mail: london.rap@hmcts.gsi.gov.uk
DX: 134205 Tottenham Court Road 2

Direct Line: 0207 446 7807

Mr Micheal Elliot and Mr Barry James Powell Your ref:

7 Mercers Place

Our ref: TW/LON/00BK/LVT/2013/0001

London

W6 7BZ

Date: 08 May 2013

Dear Mr Elliot and Mr Powell

RE: Landlord & Tenant Act 1987 - Section 37(1)

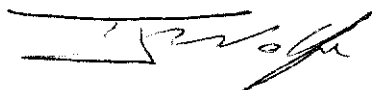
**PREMISES: Flats 1-27 and Flats 75-93 Ashworth Mansions, Elgin Avenue,
Grantully Road, London, W9 1LJ**

The Tribunal has made its determination in respect of the above application(s) and a copy of the document recording its decision is enclosed. A copy of the document is being sent to all other parties to the proceedings.

Any application from a party for leave to appeal to the Lands Tribunal must normally be made to the Leasehold Valuation Tribunal within 21 days of the date of this letter. If the Leasehold Valuation Tribunal refuses leave to appeal you have the right to seek leave from the Lands Tribunal itself.

If you are considering appealing, you are advised to read the note attached to this letter.

Yours sincerely



Mr Tom Wolfe
Case Officer

GUIDANCE NOTE ON APPEAL FROM THE LEASEHOLD VALUATION TRIBUNAL

Introduction

1. The decision of the Leasehold Valuation Tribunal (LVT) is final and there is no power for the LVT to revisit or reconsider that decision. If you are dissatisfied with the decision of an LVT, the statutory remedy is to appeal to the Upper Tribunal (Lands Chamber).¹
2. The LVT will provide written reasons for its decision. A decision and reasons may be issued together. Alternatively, a decision may be issued and a reasons document sent at a later stage.

Permission to appeal

3. In order to appeal, you must obtain permission to do so. Application for permission must first be made to the LVT. If the LVT refuses permission you may ask the Upper Tribunal (Lands Chamber) for permission to appeal.² (See paragraph 8 below for details).
4. The general rule is that your application for permission from the LVT must be made within the period of 21 days starting with the date on which the reasons for decision document was sent to you.³ (Note that the last mentioned date might differ from the dated reasons document). Notwithstanding the general rule, the LVT has power to extend that 21 day period.⁴ However, the LVT is only required to consider your application for an extension if that application is made before the 21 day period expires.⁵
5. Your application for permission to appeal should normally be made in writing. It should signed by you or your representative and
 - a. state the name and address of you and any representative;
 - b. identify the decision and the tribunal to which the request for permission relates and
 - c. state the grounds on which you intend to rely in the appeal.

An application form is available for this purpose and obtainable from the LVT.

6. On receipt of your application for permission the LVT will serve a copy on every other party to the decision to be appealed. To facilitate the process it would assist if sufficient copies were provided with your application. The LVT will give you and every other party written notification of its decision.

¹ Commonhold and Leasehold Reform Act 2002, s 175.

² Commonhold and Leasehold Reform Act 2002, s 175.

³ Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003 (SI 2003/2099), reg. 20.

⁴ SI 2003/2099, reg.24(1).

⁵ SI 2003/2099, reg.24(2).

7. If permission to appeal to the Upper Tribunal (Lands Chamber) is granted by the LVT your notice of intention to appeal must be sent to the registrar of the Upper Tribunal (Lands Chamber) so that it is received by the registrar within one month after the date that the LVT sent you notice of that permission.⁶
8. If the LVT refuses to give permission to appeal, you may renew your application for permission to the Upper Tribunal (Lands Chamber). Your application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the LVT sent you notice of its refusal of permission to appeal.⁷ (Details as to the power of the Upper Tribunal (Lands Chamber) to permit a notice of appeal or application for permission to appeal to be made outside the relevant time limit are given in the Upper Tribunal (Lands Chamber) "Explanatory Leaflet: A Guide for Users" obtainable from the Upper Tribunal (Lands Chamber)).

The Upper Tribunal (Lands Chamber) may be contacted at:

Upper Tribunal (Lands Chamber)
43-45 Bedford Square
London
WC1B 3DN

DX : 149065 Bloomsbury 9

Tel: 020 7612 9710

Fax: 020 7612 9723

Email: lands@tribunals.gsi.gov.uk

Website: www.landstribunal.gov.uk

Typetalk: 18001 020 7612 9710

June 2011

⁶ The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 (No. 2600 (L.15) rule 24 .

⁷ The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010, rule 21.



HM Courts
& Tribunals
Service



Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 37
OF THE LANDLORD AND TENANT ACT 1987**

Case Reference:	LON/00BK/LVT/2013/0001
Premises:	Flats 1-27 and 75-93 Ashworth Mansions, Elgin Avenue, Grantully Road, London W9
Applicant:	Ashworth Mansions Ltd
Representative:	Forsters LLP
Respondents:	Various lessees of Ashworth Mansions (as per schedule attached to the application)
Date of hearing:	25 th April 2013
Appearance for Applicant:	Mr C Heather, counsel
Appearance for Respondents:	Mrs S Murphy Mr Murphy
Leasehold Valuation Tribunal:	Mr NK Nicol Mr TN Johnson FRICS Mrs LL Hart
Date of decision:	7 th May 2013

Decision of the Tribunal

The Tribunal has determined, for the reasons set out further below, that the 54 leases which are the subject of this application should be varied in the form and on the terms set out in the Appendix to this decision.

The application

1. The Applicant is a company which owns the freehold to two buildings at Ashworth Mansions, Elgin Avenue, Grantully Road, London W9 and is in turn owned by the lessees of the flats in those buildings. The Applicant has applied to vary 54 of those leases under the following sections 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 a leasehold valuation 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.

S38 Orders varying leases.

- (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.
- (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.

(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.

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

2. The 54 flats in question are supplied by a communal heating and hot water system. Their leases oblige the Applicant to maintain the system so that the flats may continue to benefit from it. However, the boilers for the heating and the pipework for both heating and hot water are coming to the end of their lives. The hot water system was replaced in 2011 and the additional pressure has caused leaks from the ageing pipes, some of which have resulted in an increased number of claims against the buildings insurance for resulting damage.
3. The Applicant was faced with the imminent possibility of having to replace the boilers and the pipework. The expense would be borne by the lessees through the service charge and there would be substantial disruption caused to all residents by the relevant works. The Applicant commissioned an expert, Peter Ellis, to advise on their options. He concluded in a report dated 26th August 2011 that it would be cheaper for the lessees, both in terms of the cost of works and in ongoing running expenses, to remove the communal heating system and allow each lessee to install their own independent heating and hot water systems.
4. The Applicant sought to consult with the affected lessees and the majority accepted Mr Ellis's recommendation. However, the Applicant understood that this would not be possible to implement without removing from all leases their obligation to continue providing the communal system. Therefore, they made the current application.

5. 41 of the affected lessees indicated in writing that they supported the application. At the time the application was made, none of the lessees indicated any opposition. However, the Tribunal directed that any who did oppose the application should provide written representations. Only the lessees of one flat, Farim Kurji and Andre Darius Jumabhoy, complied with the directions by sending in a written response. Mrs Murphy and her son, Mr Murphy, attended the hearing on 25th April 2013 to express their opposition but had not provided anything in writing.

The criteria

6. Counsel for the Applicant, Mr Heather, provided a skeleton argument which the Tribunal accepts correctly set out a number of criteria for this application to be successful. The first issue, as set out in s.37 of the Act, is whether there is sufficient support for the application amongst those affected. In this case, 41 lessees and the Applicant itself support the application, exceeding the 75% threshold.
7. Further, there were no lessees positively opposing the application at the time it was issued. Apparently, one of the lessees who had not expressed themselves either way, Daejan Properties, who hold four of the leases, have verbally indicated that they do not oppose the application. One of the others who have not expressed themselves is one of that minority who already has an independent heating and hot water system. Even if Mr Kurji, Mr Jumabhoy and the Murphys were regarded as opposing the application for the purposes of the Act, they would constitute substantially less than the 10% threshold. Therefore, s.37 is satisfied in this respect.
8. Mr Heather derived the remaining criteria from the interpretation of s.37 given in two Upper Tribunal cases: *Shellpoint Trustees Ltd v Barnett* [2012] UKUT 375 and *Thirlaway v Masculet* [2012] UKUT 302. The first question is what the object is to be achieved by the proposed variations to the leases (see s.37(3)). In this case, the object is to facilitate the removal of the existing heating and hot water system and its replacement with independent systems for each flat.
9. The second question is whether this object can be satisfactorily achieved by the proposed variation without varying all the leases (see s.37(3)). In this case, the answer is clearly not. If even one lease retained the obligation to maintain the existing communal system, the Applicant would be obliged to do so.
10. The third question is whether the proposed variations would be likely substantially to prejudice those not supporting the application such that they cannot be adequately compensated by an award under s.38(10) (see s.38(6)(a)). In their written submissions, Mr Kurji and Mr Jumabhoy alleged that they would be prejudiced in a number of ways.
11. Mr Kurji and Mr Jumabhoy alleged that the Applicant had failed to provide any evidence of the costs involved in the replacement of the communal heating

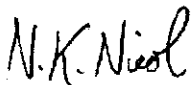
and hot water system and that a full cost/benefit analysis was required. In fact, Mr Ellis had provided just such an analysis.

12. Mr Ellis's report contained his estimate of the costs of one option of continuing with the existing system, replacing the outdated parts, and another option of removing the existing system and installing independent systems in each flat instead. In a table comparing the two options, he estimated the former at £1,713,600, or £32,332 per flat. In relation to the latter option, he estimated the cost at between £508,000 and £1,590,000 (£9,600-£30,000 per flat) depending on the cost of the individual system chosen by each lessee on a range of £5,000 to £22,000. Mrs Malik, a director of the Applicant company who gave evidence to the Tribunal, said she had obtained a quote of £6,000 plus VAT while the existing system contractors, Quotehedge, had quoted £9,350 plus VAT per flat, which would suggest that the upper end of Mr Ellis's range was higher than is realistic.
13. The estimates necessarily covered a range of possibilities. As well as the range of possible costs of installing an independent system, it is possible Mr Ellis overestimated the cost of the second option because it has since been discovered that many more of the existing lessees are already connected to the gas supply than had been thought.
14. Mr Kurji and Mr Jumabhoy objected that they are contractually obliged to supply heating and hot water to their tenants and the removal of the existing system would necessarily result in their being in breach of contract. This seems unlikely as they would be able to install their own system.
15. They then objected that, if they had to install their own system, this would involve substantial disturbance to their tenants. In the Tribunal's opinion, this suggests they are not making the correct comparison. The choice is not between the new independent systems and doing nothing at all. Keeping the existing system would require extensive works to replace the existing pipework which would almost certainly be as disruptive.
16. Mr Kurji and Mr Jumabhoy live abroad and pointed out they would have difficulty supervising the works. This objection makes little sense. Since they live abroad, someone must be managing the property for them and supervising anything which needs supervising.
17. They also objected that installing their own system would have to be funded in advance whereas service charges are staggered over time. This misunderstands the system of service charge payments used on behalf of the Applicant. Service charges are already recovered in advance. There is no particular advantage in cash flow terms to either option.
18. Mrs Murphy and her son were clearly concerned at the Applicant's proposals but Mrs Murphy said her main objection was that the communal heating and hot water system used to be run much better, with the involvement of a porter

who knew enough about it to make sure any problems were addressed. She alleged that the Applicant had not maintained the boiler properly. However, she presented no evidence of this. The application is based in part on the fact that the boiler is coming to the end of its normal life and so its past maintenance has little relevance.

19. In summary, the Tribunal is satisfied that there is no prejudice to any lessee, including Mr Kurji, Mr Jumabhoy and the Murphys. Rather, the Applicant's proposals would seem to have substantial advantages for everyone affected. There is certainly no case for paying compensation to any of the lessees.
20. The next question is whether there is any other reason why it would not be reasonable in the circumstances for the leases to be varied as proposed. Nothing has been suggested which has not already been addressed above.
21. The last question is whether, in all the circumstances, the Tribunal should exercise its discretion and make the order requested to vary the leases. For the reasons already given above, the Tribunal is satisfied that it is appropriate to make the order.
22. The Tribunal's order is attached as an Appendix to this decision. It is substantially in the same form as that proposed by the Applicant. The Tribunal deleted the terms proposed at sub-paragraphs d. and e. of paragraph 5 in Schedule 4. Those terms suggested that the Applicant was entitled to re-charge their legal costs to the service charge but the Tribunal could not identify any clause in the sample lease included in the trial bundle which would allow them to do so.

Chairman:



NK Nicol

Date:

7th May 2013

APPENDIX TO DECISION

ORDER

Definitions

In this order the following words and expressions have the following meanings:

"the 1987 Act"	the Landlord and Tenant Act 1987
"the Tribunal"	the Leasehold Valuation Tribunal
"the Lessor"	Ashworth Mansions Limited
"the Building"	Ashworth Mansions, Elgin Avenue, Grantully Road, London W9
"the Communal Flats"	Flats 1 – 27 and flats 75 – 93 of the Building as listed in Schedule 5 to this Order
"the Communal Leaseholders"	the leasehold owners of the Communal System Flats and their successors in title
"the Communal Leases"	the long leases of the Communal Flats
"the Communal System"	the existing systems for the communal provision of heating and domestic hot water at the Building
"the Respondents"	those of the Communal Leaseholders that did not consent to the Application listed in Schedule 1 to this Order
"the Objectors"	those of the Communal Leaseholders opposed to the Application who filed a statement in reply in accordance with the Tribunal's directions made on 22 nd February 2013 listed in Schedule 2 to this Order
"the Conditions Precedent"	the conditions precedent set out in Schedule 4 to this Order

- "the Transitional Provisions" the transitional provisions set out in Schedule 4 to this Order
- "the Enabling Works" the provision of such (if any) rising gas pipework and such ancillary works as may be necessary or desirable in order to facilitate connection of the individual boiler systems in the Communal Flats: such works (if any) to be undertaken by the Lessor or a third party such as (but not limited to) a utility company as may prove appropriate provided that the scope of any such works (if any) shall be determined by the Lessor's technical advisers set out in paragraph 4 of Schedule 4 to this Order
- "the Statutory Consents " such planning permission, building regulations and any other statutory consents (if any) as may be required for the Enabling Works or for the Communal Leaseholders to install the boiler flues
- "the Cut-off Date" as defined by paragraph 2 of Schedule 4 to this Order

Recitals

UPON the Application of the Lessor made pursuant to section 37 of the 1987 Act for the variation of all of the Communal Leases

IT IS ORDERED THAT

The Variation of the Leases

1. Pursuant to the power conferred on the Tribunal by section 38(1) of the 1987 Act, each of the Communal Leases shall be and, by virtue of this Order, is varied in accordance with the deletions and substitutions set out in Schedule 3 of this Order.

2. For the avoidance of doubt it is stated that, in accordance with the Conditions Precedent and the Transitional Provisions set out in Schedule 4 of this Order, the said variations to the Communal Leases shall not take effect until the Cut-Off Date.

Protection of the Variation by Registration at the Land Registry

3. The variation of the Communal Leases made by paragraph 1 of this Order shall be protected by the entry of agreed notices in the registers at the HM Land Registry appertaining to the respective Communal Leases, for which purpose the Lessor shall as soon as practicable apply under rule 81 of the Land Registration Rules 2003 for the entry of agreed notices in the registers appertaining to the respective Communal Leases that give proper notice of the variations to the Communal Leases that are made by virtue of paragraph 1 of this Order. The said applications to the Land Registry shall be
 - a. made in Land Registry Form ANI; and
 - b. accompanied by a certified copy of this Order together with copies of the Tribunal's written determination.

Upon such application by the Lessor the Chief Land Registrar and/or his delegates are requested by the Tribunal to accept the certified copy of this Order and the copies of the Tribunal's written determination as:

- a. providing, for the purposes of sub-rule 81(1)(b) of the Land Registration Rules 2003, sufficient details of the interest claimed by the Lessor to satisfy the Chief Land Registrar of the nature of the Lessor's claim being its claim for the entry of the proposed agreed notices; and
- b. providing sufficient evidence for the purposes of sub-rule 81(1)(c)(ii) of the Land Registration Rules 2003 of the validity of the Lessor's claim for the entry of the proposed agreed notices.

For the avoidance of doubt the Chief Land Registrar and/or his delegates are requested by the Tribunal, on the application to be made by the Lessor to the HM Land Registry, to enter the proposed agreed notices notwithstanding that:

- a. the Lessor is not entitled to be registered as the proprietor of the respective registered leasehold estates which shall be affected by the proposed agreed notices; and
- b. the application to be made by the Lessor shall not necessarily be made with the consent of the proprietors of the respective registered leasehold estates which shall be affected by the proposed agreed notices but shall be reliant upon the binding nature of this order.

Compensation

4. For the avoidance of doubt it is expressly ordered and declared that none of the Communal Leaseholders shall be entitled to any compensatory payment whatsoever in consequence of the variation of their leases under this Order, nor shall any of the Communal Leaseholders be entitled to make any application for compensation.

Permission to Apply

5. The Lessor shall have permission to apply to the Tribunal for further directions for the purposes of bringing this Order into effect.

SCHEDULE 1

THE COMMUNAL LEASEHOLDERS NOT CONSENTING TO THE APPLICATION

Address	Registered Proprietor
Flat 1 Ashworth Mansions, Elgin Avenue, London, W9 1JL	(1) Mr Ivan Alexander Stuart and (2) Mrs Shu Yee Yin
Flat 1a Ashworth Mansions, Elgin Avenue, London, W9 1JL	Ruth Johnson
Flat 2, Ashworth Mansions, Elgin Avenue, London, W9 1JL	Daejan Properties Limited

Flat 20, Ashworth Mansions, Elgin Avenue, London, W9 1JP Flat 22, Ashworth Mansions, Elgin Avenue, London, W9 1JP Flat 86, Ashworth Mansions, Grantully Road, London, W9 1LN	
Flat 2A Ashworth Mansions, Elgin Avenue, London, W9 1JL	Crispin Peter Tristram
Flat 17 Ashworth Mansions, Elgin Avenue, London, W9 1JL	(1) Fatim Kurji and (2) Andre Darius Jumabhoy
Flat 18 Ashworth Mansions, Elgin Avenue, London, W9 1JL	Ghazwan Ojeh
Flat 87 Ashworth Mansions, Grantully Road, London, W9 1LN	(1) Shirley Anne Murphy and (2) Shaun Robert John Murphy
Flat 90 Ashworth Mansions, Grantully Road, London, W9 1LN	Hugh Ambrose Auger
Flat 92 Ashworth Mansions, Grantully Road, London, W9 1LN	Graham Charles Miller
Flat 93 Ashworth Mansions, Grantully Road, London, W9 1LN	Mr Francis Ferdinand Kyle

SCHEDULE 2**THE COMMUNAL LEASEHOLDERS OBJECTING TO THE APPLICATION**

Address	Registered Proprietor
Flat 17 Ashworth Mansions, Elgin Avenue, London, W9 1JL	(1) Fatim Kurji and (2) Andre Darius Jumabhoy
Flat 87 Ashworth Mansions, Grantully Road, London, W9 1LN	(1) Shirley Anne Murphy and (2) Shaun Robert John Murphy

SCHEDULE 3

VARIATIONS TO THE COMMUNAL LEASES

By virtue of this Order of the Leasehold Valuation Tribunal all of the Communal Leases are varied by:-

1. the deletion of the pre-existing covenants relevant to the provision of hot water and heating ("the Pre-Existing Covenants"); and
2. their substitution with the new covenants ("the New Covenants")

The Pre-existing Covenants are set out in Part 1 of this Schedule and the New Covenants are set out in Part 2 of this Schedule.

Part 1 – the Pre-Existing Covenants to be deleted

(As the paragraph numbering of the Pre-existing Covenants may vary between the Communal Leases, the paragraphs that are deleted are to be those in substantially the same terms as the Pre-existing Covenants that are set out herein below whether or not the paragraph numbering corresponds)

2(8) From time to time and at all times well and substantially to repair cleanse maintain and keep the Flat (other than the parts comprised in and referred to in paragraph (2) of Clause 5 hereof) and the fixtures and thereon and the surfaces of walls the pipes cables wires and appurtenances thereof with all necessary reparations cleansings and amendments whatsoever (damage by the insured risks not due to any neglect or default of the Lessee causing the insurance policy to be vitiated or payment of the insurance monies to be refused only excepted)

2(12) To permit the Lessor and its surveyors or agents with or without workmen and others after reasonable notice in writing (except in case of emergency) at all reasonable times to enter into and upon the Flat or any part thereof for the purpose of making repairing maintaining rebuilding

cleansing lighting and keeping in order and good condition all sewers drains pipes cables water- courses gutters wires party structures or other conveniences belonging to or serving or used for the Building and also for the purpose of laying down maintaining repairing and testing drainage gas and water pipes and electric wires and cables for similar purposes the Lessor making good any damages thereby caused and also for the purpose of cutting off the supply of water to the Flat or any other premises in the said Building in respect whereof the Lessee or the occupier of such other flat as the case may be shall have made default in paying his share of the water rate

- 5(2) *Subject to the payment by the Lessee of the rents and the service charge to maintain repair redecorate renew amend clean repoint paint grain varnish whiten and colour (a) the structure of the Building and in particular but without prejudice to the generality thereof the roofs foundations external and internal walls (but not the interior faces of such parts of external or internal walls as bound the Premises or the rooms therein) and timbers (including the timbers joists and beams of the floors and ceilings thereof) chimney stacks gutters and rain-water and soil pipes thereof (b) the sewers drains channels watercourses gas and water pipes electric cables and wires and supply lines in under and upon the said Building (c) the boilers and heating and hot water apparatus (if any) in the said Building save and except such (if any) heating apparatus as may be now or hereafter installed in the Flat serving exclusively the Flat and not comprising part of a general heating system serving the entire (d) the communal television radio aerials serving the Building (if any) and the passages landings and staircases and other parts of the Building enjoyed or used by the Lessee in common with others and (e) the boundary walls and fences of and in the curtilage of the Building PROVIDED that the Lessor shall not be liable to the Lessee for any defect or want of repair hereinbefore mentioned unless the Lessor has notice thereof*

- 5(3) *Subject as aforesaid and unless prevented by mechanical or other breakdown or failure of fuel supply or other cause beyond the control of the Lessor provide and maintain a good and sufficient and constant supply of hot and cold water to the Flat where this is at the date hereof supplied and also an adequate supply of hot water to the existing radiators (if any) in the Flat in the cold season between the dates to be determined by the Lessor but in any event between the 15th October and 15th March in each year and to remedy any mechanical breakdown as soon as may be possible in the hot water and central heating systems*
- 5(6) *To keep the Building insured in some insurance office of repute and through an agency to be nominated by the Lessor against loss or damage by fire storm tempest and (if possible) aircraft and explosion and such other risks as the Lessor shall from time to time determine in such sum as shall be the full replacement value thereof also Architects' and other professional fees and 3 years loss of rent and to effect such insurance on the boilers and lifts and their operation as the Lessor deems necessary and with all convenient speed to rebuild repair or otherwise reinstate the Building or the part thereof (or the boilers or lifts) so destroyed or damaged but without prejudice to the Lessee's liability to pay or contribute towards the cost of such rebuilding repairing or reinstatement as hereinbefore provided in the event of the insurance money being wholly or partially irrecoverable by reason of any act or default of the Lessee*

THE FOURTH SCHEDULE above referred to

Costs Expenses and Outgoings and Matters in respect of which the Lessee is to make a contribution

PART II

1. *The cost of periodically inspecting maintaining overhauling repairing and where necessary replacing the whole of the heating and domestic hot*

water systems serving the Building and the lifts lift shafts and machinery therein

2. *The cost of the oil electricity or other fuel required for the boiler or boilers supplying the heating and domestic hot water systems serving the Building*

**Part 2 – the New Covenants to be included
in substitution of the Pre-Existing Covenants**

(The paragraph numbering to conform to the individual number system in each of the Communal Leases and all underlining to be removed and all struck through text to be deleted, these being included in the Order for the purpose of identification only)

2(8) From time to time and at all times well and substantially to repair cleanse maintain and keep the Flat (other than the parts comprised in and referred to in paragraph (2) of Clause 5 hereof) and the fixtures and fittings thereon and additions thereto including the individual boilers, flues, radiators, pipework and connections and heaters exclusively serving the Flat and the surfaces of walls the pipes cables wires and appurtenances thereof with all necessary reparations cleansings and amendments whatsoever (damage by the insured risks not due to any neglect or default of the Lessee causing the insurance policy to be vitiated or payment of the insurance monies to be refused only excepted)

2(12) To permit the Lessor and its surveyors or agents with or without workmen and others after reasonable notice in writing (except in case of emergency) at all reasonable times to enter into and upon the Flat or any part thereof for the purpose of making repairing maintaining rebuilding cleansing lighting and keeping in order and good condition all sewers drains pipes cables water- courses gutters external flues wires party structures or other conveniences belonging to or serving or used for the Building and also for the purpose of laying down maintaining repairing and testing drainage gas and water pipes radiators and electric wires and

cables for similar purposes and as agent for the Lessee, for the purpose of removing existing pipes and radiators and installing an individual heating and hot water system for the Flat to include a boiler pipes and radiators the cost of removal of existing pipes and radiators and installation of the new hot water system to be at the sole expense of the Lessee and thereafter on its own account for the purpose of inspecting the individual and hot water system in the Flat Provided that except for the works undertaken to (a) remove existing radiators and pipes and (b) install the said individual heating and hot water system the Lessor making good any damages thereby caused and also for the purpose of cutting off the supply of water to the Flat or any other premises in the said Building in respect whereof the Lessee or the occupier of such other flat as the case may be shall have made default in paying his share of the water rate

- 5(2) Subject to the payment by the Lessee of the rents and the service charge to maintain repair redecorate renew amend clean repaint paint grain varnish whiten and colour (a) the structure of the Building and in particular but without prejudice to the generality thereof the roofs foundations external and internal walls (but not the interior faces of such parts of external or internal walls as bound the Premises or the rooms therein) and timbers (including the timbers joists and beams of the floors and ceilings thereof) chimney stacks gutters and rain-water and soil pipes thereof (b) the sewers drains channels watercourses gas and water pipes electric cables and wires and supply lines in under and upon the said Building save and except such (if any) as may be now or hereafter installed serving exclusively the Flat (c) the boilers and heating and hot water apparatus (if any) in the said Building save and except such (if any) heating apparatus as may be now or hereafter installed in the Flat serving exclusively the Flat ~~and not comprising part of a general heating system serving the entire~~ (d) the communal television radio aerials serving the Building (if any) and the passages landings and staircases and other parts of the Building enjoyed or used by the Lessee in common with others and (e) the

*boundary walls and fences of and in the curtilage of the Building
PROVIDED that the Lessor shall not be liable to the Lessee for any defect
or want of repair hereinbefore mentioned unless the Lessor has notice
thereof*

- 5(6) *To keep the Building insured in some insurance office of repute and through an agency to be nominated by the Lessor against loss or damage by fire storm tempest and (if possible) aircraft and explosion and such other risks as the Lessor shall from time to time determine in such sum as shall be the full replacement value thereof also Architects' and other professional fees and 3 years loss of rent and to effect such insurance on the ~~boilers and lifts~~ and their operation as the Lessor deems necessary and with all convenient speed to rebuild repair or otherwise reinstate the Building or the part thereof (~~or the boilers or lifts~~) so destroyed or damaged but without prejudice to the Lessee's liability to pay or contribute towards the cost of such rebuilding repairing or reinstatement as hereinbefore provided in the event of the insurance money being wholly or partially irrecoverable by reason of any act or default of the Lessee*

SCHEDULE 4

CONDITIONS PRECEDENT AND TRANSITIONAL PROVISIONS

1. The Lessor's covenants under the Communal Leases to supply heating and hot water to individual flats, namely:
 - a. the Lessor's covenant to provide and maintain a good and sufficient and constant supply of hot and cold water to the Communal Flats and also an adequate supply of hot water to the existing radiators (if any) in the Communal Flats in the cold season between 15th October and 15th March in each year and to remedy any mechanical breakdown as soon as may

be possible in the hot water and central heating systems (clause 5(3) in the existing Communal Leases); and

- b. such other of the provisions in the Communal Leases to the extent that they relate to the Lessor's said obligation to supply hot water and heating to individual flats;

shall remain in force until the Cut-off Date.

2. The Cut-off Date shall be such date as the Lessor shall specify by written notice to the Communal Leaseholders being not less than 4 months after the Statutory Consents have been obtained PROVIDED THAT the Cut-Off Date may be deferred for as long as reasonably necessary by the Lessor giving written notice to the Communal Leaseholders in the event that late completion of the Enabling Works (should there be any Enabling Works) makes it impractical in the reasonable opinion of the Lessor's technical advisers for the Communal Leaseholders' individual boiler systems to be connected and commissioned prior to the Cut-Off Date.
3. The installation of the individual boilers, flues, radiators, pipework and connections to existing sanitary appliances, sinks, basins, baths and showers, cookers and heaters and the like within each of the Communal Flats will (apart from the said Enabling Works) be the responsibility of the respective leaseholders and the following provisions shall apply to their installation:
 - a. individual leaseholders shall be responsible for the installation of new gas supplies and meter boxes to each flat requiring a supply, in readiness for installation of a meter by the tenant's preferred gas shipper;
 - b. individual leaseholders shall be responsible for engaging their own properly qualified contractors to undertake the installation of boilers within their respective flats;
 - c. only contractors who are Gas Safe Registered Engineers within the meaning of the Gas Safety (Installation and Use) Regulations 1998 and/or an NICEIC registered electrician (as applicable) shall be engaged;

- d. the contractor will be responsible for the design, provision, installation, testing, commissioning and setting to work of any new individual combination boiler systems to provide heating and hot water supplies within the flat demise;
 - e. the contractor shall run a new gas supply to the boiler within each flat demise;
 - f. all boiler installations shall conform to the performance specifications that shall be prepared by the Lessor's technical advisers (paragraph 4.a. below); and
 - g. The Lessor reserves the right to inspect and approve the installation before the individual boiler is commissioned and the Communal Leaseholders shall provide access to their respective flats to the Lessor's technical advisers for this purpose. There will be a maximum charge of £250 plus VAT levied on the leaseholder for each such inspection and any other re-inspections that prove necessary until such time as the installation is deemed to comply with the technical specification and the appropriate safety standards provided that no such charge shall be levied if the leaseholder delivers up to the Lessor within 28 days of installation a gas safe certificate issued by a registered Gas Safe contractor and/or an electrical installation certificate issued by NICEIC registered electrician.
4. For the purposes of promoting the orderly and safe installation of individual boilers within the Communal Flats, the Lessor shall:
- a. direct its technical advisers to prepare and supply all Communal Leaseholders with:
 - i. advice, as and when reasonably requested, as to the suitability of their proposed contractor to undertake the works; and
 - ii. an appropriate performance specification for the individual boilers to be installed within the Communal Flats;

- b. provide on-site personnel familiar with the Communal System to assist tenants' contractors when required;
 - c. temporarily shut down and drain off of the Communal System as and when absolutely necessary if there is no means of isolating the existing incoming hot water services (during change-over from central to individual systems) and the pipes cannot be "frozen" in situ by specialist pipe freezing equipment;
 - d. provide scaffolding and similar installations for safe working access as required for the installation of new external vertical gas supplies and boiler flues;
 - e. remove all scaffolding provided for the Communal Leaseholders' works; and
 - f. switch off, disconnect and decommission the Communal System and, at a future date, remove the plant and such other elements of the Communal System as the Lessor deems necessary.
5. For the avoidance of doubt it is stated that the Lessor shall be entitled to re-charge as service charge:
- a. its costs of supplying heating and hot water to individual flats up-to and including the Cut-off Date to the full extent permitted by the Communal Leases in their existing form;
 - b. its costs of carrying out the Enabling Works and those actions referred to in paragraph 4 of this Schedule; and
 - c. its costs of supervising the Enabling Works and, to the extent necessary, the works within the Communal Flats.
6. For the further avoidance of doubt it is stated that nothing in this order in any way limits the operation and application of the applicable service charge consultation requirements pursuant to section 20 of the Landlord & Tenant Act 1985.

SCHEDULE 5**THE COMMUNAL FLATS**

	Address of Flat
1.	Flat 1 Ashworth Mansions, Elgin Avenue, London W9 1JL
2.	Flat 1a Ashworth Mansions, Elgin Avenue, London W9 1JL
3.	Flat 1b Ashworth Mansions, Elgin Avenue, London W9 1JL
4.	Flat 2 Ashworth Mansions, Elgin Avenue, London W9 1JL
5.	Flat 2A Ashworth Mansions, Elgin Avenue, London W9 1JL
6.	Flat 3 Ashworth Mansions, Elgin Avenue, London W9 1JL
7.	Flat 4 Ashworth Mansions, Elgin Avenue, London W9 1JL
8.	Flat 4a Ashworth Mansions, Elgin Avenue, London W9 1JL
9.	Flat 5 Ashworth Mansions, Elgin Avenue, London W9 1JL
10.	Flat 6 Ashworth Mansions, Elgin Avenue, London W9 1JL
11.	Flat 6a Ashworth Mansions, Elgin Avenue, London W9 1JL
12.	Flat 7 Ashworth Mansions, Elgin Avenue, London W9 1JL
13.	Flat 8 Ashworth Mansions, Elgin Avenue, London W9 1JL
14.	Flat 8a Ashworth Mansions, Elgin Avenue, London W9 1JL
15.	Flat 9 Ashworth Mansions, Elgin Avenue, London W9 1JL
16.	Flat 10 Ashworth Mansions, Elgin Avenue, London W9 1JL
17.	Flat 10a Ashworth Mansions, Elgin Avenue, London W9 1JL
18.	Flat 11 Ashworth Mansions, Elgin Avenue, London W9 1JL
19.	Flat 12 Ashworth Mansions, Elgin Avenue, London W9 1JL
20.	Flat 13 Ashworth Mansions, Elgin Avenue, London W9 1JL
21.	Flat 14 Ashworth Mansions, Elgin Avenue, London W9 1JL

22.	Flat 15 Ashworth Mansions, Elgin Avenue, London W9 1JL
23.	Flat 16 Ashworth Mansions, Elgin Avenue, London W9 1JL
24.	Flat 17 Ashworth Mansions, Elgin Avenue, London W9 1JL
25.	Flat 18 Ashworth Mansions, Elgin Avenue, London W9 1JL
26.	Flat 19 Ashworth Mansions, Elgin Avenue, London W9 1JP
27.	Flat 20 Ashworth Mansions, Elgin Avenue, London W9 1JP
28.	Flat 21 Ashworth Mansions, Elgin Avenue, London W9 1JP
29.	Flat 22 Ashworth Mansions, Elgin Avenue, London W9 1JP
30.	Flat 23 Ashworth Mansions, Elgin Avenue, London W9 1JP
31.	Flat 24 Ashworth Mansions, Elgin Avenue, London W9 1JP
32.	Flat 25 Ashworth Mansions, Elgin Avenue, London W9 1JP
33.	Flat 26 Ashworth Mansions, Elgin Avenue, London W9 1JP
34.	Flat 27 Ashworth Mansions, Elgin Avenue, London W9 1JP
35.	Flat 75 Ashworth Mansions, Grantully Road, London W9 1LN
36.	Flat 75a Ashworth Mansions, Grantully Road, London W9 1JN
37.	Flat 76 Ashworth Mansions, Grantully Road, London W9 1LN
38.	Flat 77 Ashworth Mansions, Grantully Road, London W9 1LN
39.	Flat 78 Ashworth Mansions, Grantully Road, London W9 1LN
40.	Flat 79 Ashworth Mansions, Grantully Road, London W9 1LN
41.	Flat 80 Ashworth Mansions, Grantully Road, London W9 1LN
42.	Flat 81 Ashworth Mansions, Grantully Road, London W9 1LN
43.	Flat 82 Ashworth Mansions, Grantully Road, London W9 1LN
44.	Flat 83 Ashworth Mansions, Grantully Road, London W9 1LN
45.	Flat 84 Ashworth Mansions, Grantully Road, London W9 1LN

46.	Flat 85 Ashworth Mansions, Grantully Road, London W9 1LN
47.	Flat 86 Ashworth Mansions, Grantully Road, London W9 1LN
48.	Flat 87 Ashworth Mansions, Grantully Road, London W9 1LN
49.	Flat 88 Ashworth Mansions, Grantully Road, London W9 1LN
50.	Flat 89 Ashworth Mansions, Grantully Road, London W9 1LN
51.	Flat 90 Ashworth Mansions, Grantully Road, London W9 1LN
52.	Flat 91 Ashworth Mansions, Grantully Road, London W9 1LN
53.	Flat 92 Ashworth Mansions, Grantully Road, London W9 1LN
54.	Flat 93 Ashworth Mansions, Grantully Road, London W9 1LN