



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

**Case reference** : **LON/00BK/OLR/2018/1591**

**Property** : **Flat 17, Clarion House, 4 St Anne's Court, Soho, London, W1F 0BA**

**Applicant** : **Soho Housing Association Limited**

**Representative** : **Miss Gibbons of Counsel**

**Respondent** : **Raymond Estates Limited**

**Representative** : **Mr Denehan of Counsel**

**Type of application** : **Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993**

**Tribunal members** : **Tribunal Judge I Mohabir  
Mrs S Redmond BSc (Econ), MRICS**

**Date of hearing** : **16 April 2019**

**Date of decision** : **16 December 2019**

---

**DECISION**

---

**Background**

1. This is an application made by the Applicant leaseholder pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the premium to be paid and the terms of the grant of a new lease of Flat 17, Clarion House, 4 St Anne's Court, Soho, London, 21F 0BA (the "property").
2. The Respondent is the freehold owner of the property and the competent landlord for the purpose of the application. The Applicant is

the tenant of the whole of Clarion House pursuant to a lease granted to it dated 23 September 1985 by Speyhawk Land and Estates Limited for a term of 125 years from 19 July 1985 (“the Existing Lease”)

3. The property is one of 22 flats in Clarion House included within the demise of the Existing Lease.
4. By a notice of a claim dated 10 May 2018 (“the notice”), served pursuant to section 42 of the Act, the Applicant exercised the right for the grant of a new lease in respect of the subject property.
5. At the time, the Applicant held the existing lease granted on 2 February 1967 for a term of 99 years from 29 September 1964 (“the lease”). The Applicant proposed to pay a premium of £10,200 for the new lease and, *inter alia*, that the terms of the new lease would be on the terms of the existing lease subject to those changes that are necessary to update the lease and are necessary to make the terms of the existing lease applicable to the demise of the existing flat.
6. On 13 July 2018, the Respondent served a counter-notice admitting the validity of the claim and counter-proposed a premium of £16,000 for the grant of a new lease.
7. The premium has been agreed at £13,000. Only the terms of the new lease remain in dispute.
8. The Applicant contends that the Existing Lease is a lease of the whole of Clarion House and the new lease will be a lease relating to one flat only. Therefore, the new lease would in effect be a new grant and is preferable to the one that incorporates the Existing Lease by reference.
9. Both parties then proffered their respective draft leases for agreement without success.
10. On 10 December 2018, the Applicant applied to the Tribunal for a determination of the premium.

### **The Law**

11. Section 56(1) of the Act provides:  
*“(1)Where a qualifying tenant of a flat has under this Chapter a right to acquire a new lease of the flat and gives notice of his claim in accordance with section 42, then except as provided by this Chapter the landlord shall be bound to grant to the tenant, and the tenant shall be bound to accept—*  
*(a) in substitution for the existing lease, and*

*(b) on payment of the premium payable under Schedule 13 in respect of the grant,*

*a new lease of the flat at a peppercorn rent for a term expiring 90 years after the term date of the existing lease”.*

12. *The grant of a new lease pursuant to section 56(1) is subject to the following provisos in section 57:*

*“(1) Subject to the provisions of this Chapter (and in particular to the provisions as to rent and duration contained in section 56(1)), the new lease to be granted to a tenant under section 56 shall be a lease on the same terms as those of the existing lease, as they apply on the relevant date, but with such modifications as may be required or appropriate to take account—*

*(a) of the omission from the new lease of property included in the existing lease but not comprised in the flat;*

*(b) of alterations made to the property demised since the grant of the existing lease; or*

*(c) in a case where the existing lease derives (in accordance with section 7(6) as it applies in accordance with section 39(3)) from more than one separate leases, of their combined effect and of the differences (if any) in their terms.*

*(2) Where during the continuance of the new lease the landlord will be under any obligation for the provision of services, or for repairs, maintenance or insurance—*

*(a) the new lease may require payments to be made by the tenant (whether as rent or otherwise) in consideration of those matters or in respect of the cost thereof to the landlord; and*

*(b) (if the terms of the existing lease do not include any provision for the making of any such payments by the tenant or include provision only for the payment of a fixed amount) the terms of the new lease shall make, as from the term date of the existing lease, such provision as may be just—*

*(i) for the making by the tenant of payments related to the cost from time to time to the landlord, and*

*(ii) for the tenant’s liability to make those payments to be enforceable by distress, re-entry or otherwise in like manner as if it were a liability for payment of rent.*

*(6) Subsections (1) to (5) shall have effect subject to any agreement between the landlord and tenant as to the terms of the new lease or any agreement collateral thereto; and either of them may require that for the purposes of the new lease any term of the existing lease shall be excluded or modified in so far as—*

*(a) it is necessary to do so in order to remedy a defect in the existing lease; or*

*(b) it would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease.*

### **The Hearing**

13. The hearing in this matter took place on 16 April 2019. The Applicant and Respondent were represented by Miss Gibbons and Mr Denehan of Counsel respectively.
14. Neither party asked the Tribunal to inspect the property and the Tribunal did not consider it necessary to carry out a physical inspection to make its determination.
15. Mr Denehan submitted that the starting point for the grant of the new lease was the Existing Lease in accordance with section 57(1) of the Act. In summary, Part I in the First Schedule sets out the demised premises. The rights granted are found in the Second Schedule with the exceptions and reservations in the Third Schedule. The tenant's covenants are contained in clause 2 and the landlord's covenants in clause 3 of the Existing Lease. It is not necessary to set out the detailed lease terms here, as they are self-evident.
16. The Respondent accepted that limited modifications are necessary to the Existing Lease to take account of the omission of the new lease from it in accordance with section 57(1). The Tribunal then heard submissions from Mr Denehan as to what amendments the Respondent considered are necessary to the Existing Lease.
17. Miss Gibbons also made submissions as to the more extensive amendments the Applicant considered are necessary, by particular reference to section 57(6)(b) of the Act, to ensure that the new lease contained all reasonable modifications. Mr Denehan submitted that these went far beyond what is required by section 57.
18. Both Counsel also made submissions on the judgement of the House of Lords in ***Howard de Walden Estates Ltd v Aggio*** [2008] UKHL 44 when guidance was given regarding the application of the Act when a new lease is to be granted in respect of part only of an existing demise, as is the case here.
19. What emerges from the judgement in ***Aggio*** is that the application of sections 57 of the Act generally is fact specific in each instance. In other words, the modification required, if any, to an existing lease is always a question of degree. Importantly in the context of this case, at paragraphs 47 and 48 of the judgement, the Court accepted as a proposition that "*considerable alternations would be likely to be*

*needed on translating the terms of a lease of a block of flats into a new lease of a flat. However, I do not accept the argument that such alterations would be outside the normal meaning of “modification”, either because they would involve additions or because they could be fairly radical.”*

20. Following the hearing, the Tribunal directed the parties to file a Scott Schedule setting out the rival amendments they contended for, which the Tribunal could use to conveniently set out its determination. However, somewhat unhelpfully, it seems that the parties had used the intervening period to carry on their highly contentious arguments as to what they considered to be the appropriate draft lease terms.
21. When the Tribunal reconvened on 6 June 2019 with a view to making its determination it was faced with a plethora of papers produced by both sides with separate Scott Schedules. The Tribunal was, therefore, unable to make any determination. Instead, it had to redirect the parties to prepare a joint Scott Schedule setting out their respective proposed amendments to the draft lease prepared by the Respondent. These were then considered when the Tribunal reconvened again on 29 July 2019. Unfortunately, the copy of the Scott Schedule provided to the Tribunal was incomplete and a complete copy was not forthcoming until 20 November 2019 when the Tribunal was able to conclude this decision.
22. It is apparent from the terms of the Existing Lease that it was granted by the landlord with the intention that the tenant would develop the site for 22 residential flats including the common parts built above a car park. Therefore, the landlord and tenant’s covenants together with the rights and reservations contained in the Existing Lease reflected that position. Accordingly, the terms of the new lease must equally reflect and take account of the continuing relationship between the landlord and the tenant, albeit without the existence of the Existing Lease.
23. The Tribunal’s determination is set out in the Scott Schedule annexed to this decision. For the avoidance of doubt, the Tribunal’s determination is based on it being satisfied that the requirements of section 57(1), (2) and (6) are variously satisfied for the reasons set out in paragraph 22 above.
24. On 26 November 2019 the Tribunal was informed by the Respondent’s solicitors that it had disposed of its interest in the property by granting an overriding lease for a term of 300 years so that the competent landlord is now Clarion Flats Limited.

**Name:** Tribunal Judge I Mohabir      **Date:** 16  
December  
2019

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

Case ref: NAT/LON/OOBK/OLR/2018/1591

**IN THE MATTER OF  
FLAT 17, CLARION HOUSE, 4 ST ANNE'S COURT, SOHO, LONDON W1F 0BA**

**B E T W E E N:**

**SOHO HOUSING ASSOCIATION LIMITED**

**Applicant**

**and**

**RAYMOND ESTATES LTD**

**Respondent**

---

**SCOTT SCHEDULE**

---

*Note: entirely new additions to the Landlord's draft lease are noted in italics*

| <b>Lease Term<br/>(altered or<br/>deleted from<br/>Original 1985<br/>Lease)<br/>(Clause Number<br/>in lease prepared<br/>pursuant to<br/>paragraph 6 of<br/>Directions dated<br/>6 June 2019)</b> | <b>Respondent's<br/>(Landlord's) Position</b> | <b>Applicant's (Tenant's)<br/>Position</b> | <b>Tribunal Decision</b> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|--------------------------------------------|--------------------------|
|                                                                                                                                                                                                   |                                               |                                            |                          |

|                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                    |
|----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Front page – Tenant Name</i>                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <i>Word “Limited” has been omitted. The Tenant’s full name is Soho Housing Association Limited.</i>                                                                                                                                                  | Applicant’s submission accepted as being correct.                                                                                                                                                                                                                  |
| <i>LR5.1 Prescribed Statement</i>                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <i>The Tenant is a charity so a reference to the charity clause required by HM Land Registry should be included.</i>                                                                                                                                 | Applicant’s submission accepted as being correct.                                                                                                                                                                                                                  |
| <i>Parties</i>                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <i>Albemarle is spelt incorrectly in the Landlord’s address. The typographical error has been corrected.</i>                                                                                                                                         | Applicant’s submission accepted as being correct.                                                                                                                                                                                                                  |
| 1.1 Definitions of ‘Building’, ‘Premises’ and ‘Retained Parts’ | <p>The Existing Lease demised the upper floors of the building resting on the car park deck, which includes 22 flats, passages and staircases, and defined the whole of those upper floors as the ‘Premises’ (page 59 of the Existing Lease).</p> <p>The new definition for ‘Premises’ is necessary to achieve a demise of flat 17 alone and to describe the extent of the enclosing fabric of the building which forms part of the new demise.</p> <p>The new definition for ‘Building’ (building is not a defined term in the Existing Lease) is included to create a definition for the sections of the building (including flat 17) which are demised by the Existing Lease. It is necessary to have a term which defines what is demised by the</p> | <p>The reference to the “Development” is a definition in the Existing Lease. Therefore this has been corrected to refer to the “1985 Lease”.</p> <p>This is agreed.</p> <p>See comment above in relation to use of “Development” and “Building”.</p> | <p>Applicant’s submission accepted as being correct. The grant of the new lease needs to make this distinction clear.</p> <p>Agreed.</p> <p>Applicant’s submission accepted as being correct. The grant of the new lease needs to make this distinction clear.</p> |

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                              |
|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p>Existing Lease, including Flat 17. The term 'Development' is used on page 50 of the Existing Lease to describe what was intended to be built (and was built by the Tenant/Applicant) on the Premises demised by the Existing Lease and is a convenient term to refer to.</p> <p>The new definition for 'Retained Parts' makes it clear that they are parts of the 'Building' which are not the flats in the Building.</p> <p>Each of these new definitions is a modification which is required or appropriate to take account of the omission from the new lease of property which is included in the Existing Lease because the new lease only includes Flat 17 and the later drafting prompts the need to differentiate between the demise, the building, and the retained or common parts of the building.</p> | <p>The Premises forms part of the Building and the Estate. In order for the future insurance and service charge provisions to work, reference to the Estate (as defined in the 1985 Lease) rather than the Building is required.</p> <p>Agreed, subject to the differences noted above.</p> | <p>Applicant's submission accepted as being correct. The grant of the new lease needs to make this distinction clear.</p> <p>See above for the Tribunal's determination on these points.</p> |
|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



|                          |                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                      |                                                                                                                 |
|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| <p><i>Clause 1.1</i></p> |                                                                                                                                                                                                     | <p><i>Definition of "Common Parts" has been added. This is the Landlord's definition of "Common Parts" as proposed in Schedule 1 of the Landlord's draft lease. However it should be moved to the main definitions clause as it is used in other parts of the document, not just Schedule 1.</i></p> | <p>Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent.</p> |
| <p><i>Clause 1.1</i></p> |                                                                                                                                                                                                     | <p><i>Definition of "Flats". This expression is used in the Tenant's proposed amendments to the insurance provisions (at Schedule 2). See further commentary below.</i></p>                                                                                                                          | <p>Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent.</p> |
| <p>Clause 1.1.1</p>      | <p>It is necessary to tweak the wording here to ensure the definition of 'Premises' in the new lease prevails over the definition of Premises in the Existing Lease for the reasons give above.</p> | <p>Agreed.</p>                                                                                                                                                                                                                                                                                       | <p>Agreed.</p>                                                                                                  |

|                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                 |                                                                                                                                                                                         |
|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Clause 1.1.3</p> | <p>The words added to clause 1.1.3 are added to clarify that the rights granted in 1985 when the Existing Lease was granted are only re-granted in 2019 so far as the Landlord is able to grant them (there may have been changes); to grant them subject to third party rights which may have come into existence (possibly created by the Applicant/Tenant); and significantly to negate the grant of rights over the 'Estate'.</p> <p>The 'Estate' is defined in the Existing Lease on page 51 and is shown edged blue on a plan attached to the Existing Lease. It includes within the blue edging two office buildings being 81 and 82 Dean St. 81 Dean St is not owned by the Landlord/Respondent. It cannot grant rights over land it does not own. Moreover Flat 17 does not benefit from or need any rights over two office buildings which are at a distance from it and the Tenant's building.</p> <p>These modifications are sought to take account of property which is to be omitted from the new lease and of alterations made to the property since the grant of the existing lease within paragraphs (a) and (b) of s.57(1).</p> | <p>Agreed.</p> <p>Agreed – however the Tenant believes it is clearer from a drafting perspective to define the Estate by reference to the existing plans but excluding those parts which are registered under separate titles and form the office premises.</p> | <p>Agreed.</p> <p>Applicant's submission accepted as being correct. This would provide greater clarity given that the Existing Lease refers to the other properties in Dean Street.</p> |
|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                                         |                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                          |
|---------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|
| <p>Clause 1.1<br/>Definition of<br/>Insurance Rent.</p> | <p>In the absence of information on the size of the flats, a one twenty second share of insuring the 'Building' is appropriate and reasonable (and does not convert into a percentage which provides for 100% recovery). If the Landlord/Applicant is to take over organising insurance of the building when the existing lease term ends it is reasonable for the lease to reserve an insurance rent.</p> | <p>Agreed, save that:</p> <p>The Tenant has referred to "any such management company" as "Management Company" is not defined.</p> <p>The Landlord will need to be responsible for insurance of the Estate, not just the Retained Parts. The insurance of the "Building" (i.e. the land demised under the Existing lease) and the "Car Park Building" (subject to landlord contributions) is the Tenant's responsibility under the Existing Lease; once that expires the Landlord will need to insure the whole of the Estate (i.e. the Landlord will insure the "Development" and the "Car Park Building" as referred to in the Existing Lease).</p> | <p>Applicant's submission accepted as being correct.</p> |
|---------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|

|                                                               |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                 |
|---------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| <p><i>Clause 1.1 New definition of Insured Risks</i></p>      |  | <p><i>This is a standard definition in modern leases and reflects the position of all risks insurance as one would expect to be implemented in relation to a building of this nature in central London.</i></p> <p><i>The definition of insured risks in the Existing Lease is not suitable for this lease, as it refers to exclusions of lifts in the premises and certain parts of the Car Park Building. This revised definition is more appropriate and should be uncontroversial.</i></p> | <p>Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent.</p> |
| <p><i>Clause 1.1 New definition of Reinstatement Cost</i></p> |  | <p><i>This is a standard definition of "reinstatement cost". In the Landlord's lease it is not defined – it is better to have certainty as to what this expression means in the event the premises is destroyed or damaged by insured risks.</i></p>                                                                                                                                                                                                                                           | <p>Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent.</p> |

|                                                                                            |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><i>Clause 1.1 New definition of Rent Payment Dates</i></p>                              |  | <p><i>As noted in previous versions of the lease and below, it is fair that the Landlord should be responsible for the repair and maintenance of the Estate following expiry of the Existing Lease – as it would be anyway absent the extension of this lease - and that the Tenant should pay a service charge. That is usual for a long lease of a residential flat in a building.</i></p> <p><i>It is usual and fair that the service charge be payable every 6 months.</i></p> | <p>Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent. This approach accords with current management commercial practice.</p> |
| <p><i>Clause 1.1 New definition of Service Charge</i></p>                                  |  | <p><i>It is agreed that a fixed proportion of 1/22 is payable in relation to the insurance rent. This should be mirrored in the service charge proportion.</i></p>                                                                                                                                                                                                                                                                                                                 | <p>Agreed.</p>                                                                                                                                                                     |
| <p><i>Clause 1.1 New definition of Service Charge Year, Service Costs and Services</i></p> |  | <p><i>This is a market standard definition to specify each accounting year for service charge purposes after expiry of the Existing Lease.</i></p> <p><i>In relation to the Service Costs and Services, please see discussion below.</i></p>                                                                                                                                                                                                                                       | <p>Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent.</p>                                                                    |

|                            |                                                                                                                                                                                                |                               |                               |
|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|-------------------------------|
| <p>Clauses 1.2 and 1.3</p> | <p>Clause 1.2 is consistent with the terms of the new lease being the same as the existing lease.</p> <p>Clause 1.3 is consistent with a modification to reflect paragraph (b) of s.57(1).</p> | <p>Agreed.</p> <p>Agreed.</p> | <p>Agreed.</p> <p>Agreed.</p> |
|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|-------------------------------|

|                                              |                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                              |
|----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Clause 2.1<br/>Additional<br/>Wording</p> | <p>The additional wording is added to reflect the reddendum in the existing Lease suitably amended to take account of modifications to the drafting elsewhere in the document to reflect paragraph (a) of s.57(1).</p> | <p>The Existing Lease and the new lease of the premises will exist side by side and cannot be assigned separately. Furthermore if one is forfeited, it is agreed that the other will terminate.</p> <p>Instead of specifying a smaller percentage contribution to the Car Park Building service charge, it is proposed that the Car Park Building service charge percentage continues to be paid at its existing level under the Existing Lease. Otherwise the percentage level will need to be amended in the 1985 Lease (and the Landlord was unwilling to consider a deed of surrender of part to include any necessary variations to the Existing Lease on the grant of the proposed lease). Furthermore, if the Tenant were to exercise its right to extend the Existing Lease in relation to any other flats in the building, the percentage payable in the Existing Lease will need to be varied again. If this is not done, then the Tenant's overall percentage to the contributions would increase (i.e. the existing service charge would remain payable under the Existing Lease plus any further percentages under any lease extensions).</p> | <p>Applicant's submission accepted as being correct and would overcome the difficulty of having to separately amend the Existing Lease contribution and would prevent the need to carry out yet another variation in the event that other leases are granted in relation to other flats.</p> |
|----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                  |                                                                                             |
|------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| <p>Clause 2.2<br/>Inserted wording<br/>and Clause 2.3.</p> | <p>An additional schedule of rights is required as the 1985 Lease granted rights outside the Building. Rights in schedule 1 of the new lease are appropriate to take account of the omission of property from the new lease of property in the existing lease. The grant that takes effect after 19th July 2110 reflects the fact that the term to be created by the new lease is longer than the term created by the Existing Lease and until that date the grant of rights in the building is in the gift of the Tenant under the existing Lease of the whole building and not the Landlord.</p> | <p>Clause 2.2 is agreed.<br/><br/>Clause 2.3 is agreed subject to the minor amendment to refer to “the expiry of the Existing Lease” as the Existing Lease could be brought to an end prior to 19 July 2110.</p> | <p>Agreed.<br/><br/>Applicant’s submission accepted as being correct. Otherwise agreed.</p> |
| <p>Clause 3.1</p>                                          | <p>Clause 2(25) of the existing lease contemplates use for 22 flats and the new wording is consistent with use as a single private residential flat to take account of the omission of the other flats from the new lease.</p>                                                                                                                                                                                                                                                                                                                                                                     | <p>Agreed.</p>                                                                                                                                                                                                   | <p>Agreed.</p>                                                                              |
| <p>Clause 3.2</p>                                          | <p>Clause 2.(28)(b) of the Existing Lease contains the tenant’s covenant to insure the Car Park Building. After the term date of the Existing Lease, that obligation falls away</p>                                                                                                                                                                                                                                                                                                                                                                                                                | <p>As above, this obligation to insure the Car Park Building remains under the Existing Lease alone, given that it will run simultaneously with the new lease.</p>                                               | <p>Applicant’s submission accepted as being correct.</p>                                    |



|                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                      |                                                                         |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| <p>Clause 3.3</p> | <p>Clause 3(5) of the Existing Lease is a qualified landlord's covenant against making alterations the Housing Deck and the supporting structure. As the demise effected by the new lease is of a single flat, this restriction is not necessary. As the Applicant will be the tenant of a single flat under the new lease, the restriction in clause 3(6) of the Existing Lease is inappropriate; it cannot be right that the Respondent's use of the Estate being subject to the opinion of a single tenant. The restriction still binds the Respondent/landlord as against the Applicant as tenant under the Existing Lease.</p> | <p>Agreed that clause 3(5) should be deleted.</p> <p>Clause 3(6) as amended should remain. It is agreed that the opinion of the tenant can be removed. The clause as amended is entirely reasonable.</p>                                                             | <p>Agreed.</p> <p>Applicant's submission accepted as being correct.</p> |
| <p>Clause 3.4</p> | <p>Clauses 4(2) and 4(3) are concerned with liability on the part of the landlord for accidents and regarding services, respectively, and they require modification to reflect the fact that the new lease will demise only Flat 17.</p>                                                                                                                                                                                                                                                                                                                                                                                            | <p>This clause should be amended so that the Landlord is not to be liable for any such damage within the Building during the existence of the 1985 Lease. Following expiry of the 1985 Lease the Landlord will be responsible for the remainder of the Building.</p> | <p>Applicant's submission accepted as being correct.</p>                |

|                       |                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                        |                                                                                                                                                                                                                                                                                       |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Clause 3.5            | Part II of the fifth schedule to the Existing Lease concerns the Service Charge relating to the Car Park Building. The tenant's service charge is 14.97% of the "total expenditure" incurred during an accounting period. The proposed 0.68% per annum is one twenty-second of 14.97%, and thus places a proportionate liability on the Applicant as tenant of one flat under the new lease | Please see the commentary above in relation to insurance percentage contributions, responsibility and insurance before and after expiry of the Existing Lease.         | Applicant's submission accepted as being correct and would overcome the difficulty of having to separately amend the Existing Lease contribution and would prevent the need to carry out yet another variation in the event that other leases are granted in relation to other flats. |
| Clause 3.6            | Paragraph 6 of the second schedule to the Existing Lease allows the tenant to carry out works to the Housing Deck if the landlord is in default for 21 days. Such a clause only works if the tenant is the tenant of the entire Premises, otherwise there would be competing repairers.                                                                                                     | Agreed.                                                                                                                                                                | Agreed.                                                                                                                                                                                                                                                                               |
| <i>New clause 3.7</i> |                                                                                                                                                                                                                                                                                                                                                                                             | <i>Clause 2(4) relates to development obligations to build the existing building and are inappropriate for this lease.</i>                                             | Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent.                                                                                                                                                                              |
| <i>New clause 3.8</i> |                                                                                                                                                                                                                                                                                                                                                                                             | <i>Clause 2(5)(b) relates to decoration of the exterior of the building; the demised premises under the new lease is an internal flat and therefore inappropriate.</i> | Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent.                                                                                                                                                                              |

|                        |  |                                                                                                                                                                                            |                                                                                                          |
|------------------------|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| <i>New clause 3.9</i>  |  | <i>References in clause 2.(11)(a) to erection of new buildings and alterations to roofs should be deleted; this is an internal unit so these provisions are not appropriate.</i>           | Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent. |
| <i>New clause 3.10</i> |  | <i>As in the preceding comment, the reference in clause 2.(11)(b) to erection of new buildings is not appropriate in a residential internal unit.</i>                                      | Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent. |
| <i>New clause 3.11</i> |  | <i>As in the preceding comment, the reference in clause 2.(16)(c) to obtaining consents for new buildings is not appropriate in a residential internal unit.</i>                           | Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent. |
| <i>New clause 3.12</i> |  | <i>As in the preceding comment, the reference in clause 2.(16)(f) to demolition of buildings erected in breach of planning consents is not appropriate in a residential internal unit.</i> | Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent. |

|                               |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                 |
|-------------------------------|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| <p><i>New clause 3.13</i></p> |  | <p><i>Clause 2.(26)(a) contains restrictions on disposals of the property demised under the Existing Lease during the development works referred to in clause 2.(4) of the Existing Lease. As noted above, the development obligations in clause 2.(4) are not appropriate for a lease of an internal unit – the relevant works have long been completed (in the 1980s).</i></p>                                                                                                                                            | <p>Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent.</p> |
| <p><i>New clause 3.15</i></p> |  | <p><i>This clause has been included to ensure that the Tenant may not assign the Existing Lease independently from the new lease (and vice versa).</i></p>                                                                                                                                                                                                                                                                                                                                                                  | <p>Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent.</p> |
| <p><i>New clause 3.16</i></p> |  | <p><i>Clause 2.(26)(c) is not appropriate or usual for a lease of a single unit as it would require landlord's consent for <b>any</b> underleases of whole, even assured shorthold tenancies, which given the length of the reversion) will be of no concern to the landlord. The existing drafting is clearly intended for use in relation to the building. It is fairer to provide that no underleases be permitted save for assured shorthold tenancies and other tenancy agreements with no security of tenure.</i></p> | <p>Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent.</p> |

|                                   |  |                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                 |
|-----------------------------------|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| <p><i>New clause 3.17</i></p>     |  | <p><i>Clause 2.(26)(e) of the Existing Lease is inappropriate for a lease of a single unit, as it refers to underletting of part in divisions of not less than one unit of accommodation and subject to a maximum of 22 underlettings. For a lease of a single flat, it is usual and fair to provide that underletting of part is prohibited.</i></p>    | <p>Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent.</p> |
| <p><i>New clause 3.18</i></p>     |  | <p><i>Clause 2.(27) of the Existing Lease does not require notification of the Landlord for sub-leases of part (i.e. individual units). As such notification should not be required for subleases of whole under the new lease. However, the Tenant accepts that it is fair to require notification for underleases of over two years in length.</i></p> | <p>Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent.</p> |
| <p><i>New clause 3.(1)(a)</i></p> |  | <p><i>This clause requires the landlord to contribute 85.031% of the premium for the insurance of the Car Park Building under the Existing Lease. This should remain in the Existing Lease otherwise the landlord will pay twice.</i></p>                                                                                                                | <p>Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent.</p> |

|                 |  |                                                                                                                                                                                                                   |                                                                                                          |
|-----------------|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| New clause 3.20 |  | <i>Clause 3(5) of the Existing Lease relates to the Tenant's consent being required for works to the housing deck and supporting structure of the building. Again, this is not appropriate for a single unit.</i> | Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent. |
| New clause 3.21 |  | <i>It is proposed that wording be included to state that if the Landlord forfeits the Existing Lease the Landlord may also forfeit the new lease.</i>                                                             | Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent. |
| New clause 3.22 |  | <i>The reference to the housing deck being a party wall is appropriate only in the Existing Lease so should not be included in the new lease.</i>                                                                 | Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent. |
| New clause 3.23 |  | <i>The reference to "any roof forming part of the Premises" in paragraph 2 of Schedule 6 to the Existing Lease is not applicable to a lease of a single internal flat, so should not be included.</i>             | Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent. |

|                               |                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                 |
|-------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| <p><i>New clause 3.24</i></p> |                                                                                                                                                                                                                                                                                                     | <p><i>As noted above, it is fair that the obligations to pay the service charge in respect of the Car Park Building remain unaltered in the Existing Lease, given the two leases will exist side by side. Once the Existing Lease expires, the tenant of the new lease will pay the its proportion of insurance for the whole Building as insurance rent, in the usual way.</i></p> <p><i>If Part II of the Fifth Schedule remains in the new lease, the Tenant would be required to pay the Car Park Building service charge twice.</i></p> | <p>Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent.</p> |
| <p>Clause 4</p>               | <p>These clauses have been added to take account of the provisions of the 1993 Act.</p>                                                                                                                                                                                                             | <p>Agreed.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <p>Agreed.</p>                                                                                                  |
| <p>Clause 5 and 6</p>         | <p>Added to take account of current law and practice and paragraph (a) of s.57(1).</p>                                                                                                                                                                                                              | <p>Agreed.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <p>Agreed.</p>                                                                                                  |
| <p>Clause 7.1</p>             | <p>This ensures that the landlord's liabilities under the new lease can only arise after the term date of the Existing Lease. The second element in this limitation ensures that no existing liability of the Applicant at the term date can be rolled over to the Respondent or its successors</p> | <p>Agreed, save that the reference to 19 July 2110 should be amended to the termination of the Existing Lease, as it could theoretically be surrendered early.</p>                                                                                                                                                                                                                                                                                                                                                                           | <p>Agreed. Applicant's submission accepted as being correct.</p>                                                |

|                        |                                                                                                                                                                                                                                    |                                                                                                                                                                   |                                                                           |
|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| Clause 7.2             | Clause 7.2 makes it clear that save where the landlord has an express obligation to provide amenities or facilities prior to the term date of the Existing Lease, it is not liable, and even then will only be liable upon notice  | See previous comment.                                                                                                                                             | See above.                                                                |
| Clause 7.3             | Clause 7.3 expressly provides that the Respondent's liability under the new lease as landlord only exists whilst the reversion is vested in the Respondent, and the same provisions apply to successors in title of the Respondent | The renewal lease is covered by the Landlord & Tenant (Covenants) Act 1995 and as such this wording is unnecessary and/or seeks to change the statutory position. | As a matter of law, the Applicant's submission accepted as being correct. |
| Clauses 8-13 inclusive | These clauses are sensible additions of a non-controversial nature.                                                                                                                                                                | All agreed.                                                                                                                                                       | Agreed.                                                                   |



|                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                       |
|---------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Schedule 1 (Additional Rights)</p> | <p>Schedule 1 provides additional rights for the tenant after the term date of the Existing Lease. The grant of rights in this schedule provides the tenant of Flat 17 with adequate rights of access through the premises (being the whole building demised by the Existing lease) once the Existing Lease has come to an end. The provisions of paragraphs 3, 4 and 5 of schedule 1 provide adequate rights in respect of the expressed subject matter.</p> <p>Significantly rights are given to the Tenant from the term date of the existing lease to inspect and repair the Retained Parts, which include the common passageways and other common areas of a the existing demised building. Thus a tenant can repair his own flat and such common parts.</p> <p>These rights take account of the omission from the property of property which is included in the Existing Lease pursuant to s57(1)(a).</p> | <p>The rights granted should commence from grant of the lease. As discussed above, such rights are only granted to the extent the Landlord is able and not if the relevant areas are demised to the Tenant under the Existing Lease.</p> <p>The definition of Common Parts is agreed, but as noted above, this should be moved to the interpretation clause of the new lease, as it is used elsewhere, not just in Schedule 1.</p> <p>Conditions for Entry: Agreed, save that the reference in sub-paragraph (e) should refer to Estate rather than Development, in order to be consistent with the remainder of the lease.</p> <p>Development: As noted above, it is more appropriate to be consistent across the whole of the new lease and therefore to refer to the Building (rather than the Development).</p> <p>Service Media: This definition is not needed – see comments below in relation to rights in relation to service media.</p> <p>Paragraph 2: This is agreed, save that the right access over the</p> | <p>Applicant's submission accepted as being correct.</p> <p>Applicant's submission accepted as being correct.</p> <p>Applicant's submission accepted as being correct.</p> <p>Applicant's submission accepted as being correct. The use of the word "Development" is no longer relevant.</p> <p>Applicant's submission accepted as being correct.</p> |
|---------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                        |
|------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Schedule 2<br/>Landlord<br/>insurance<br/>covenants</p> | <p>Schedule 2 makes provision for the landlord to insure the Retained Parts after the term date of the Existing Lease and to recover and apply insurance monies as described in paragraph 1.3. This change is desirable to that there is not an insurance vacuum following the expiry of the existing lease but at the same time is drafted in measured terms so as not to be too onerous from the Landlord's perspective (having regard to the terms of the existing lease which imposed responsibility for insurance on the Tenant/Applicant)-again to take account of s.57(1)(a).</p> | <p>Agreed, but the Tenant comments as follows in respect of the drafting:</p> <p>Paragraph 1.1: As above, the reference to 19 July 2110 should be replaced by a reference to the expiry of the Existing Lease, as this may terminate prior to that date (e.g. a surrender).</p> <p>Paragraph 1.2:</p> <ul style="list-style-type: none"> <li>• The Landlord's obligation to insure should not be to "use reasonable endeavours". The obligation should be absolute; there is already wording in the Landlord's proposed drafting to allow for exclusions and limitations and for the insurance being available on reasonable terms in the London insurance market. It is critical that the building and the estate as a whole be insured by the landlord. It is not acceptable for that obligation to be weakened any more than it already is.</li> <li>• The Landlord must also insure the Estate. It is highly unusual for a</li> </ul> | <p>Applicant's submission accepted as being correct.</p> <p>Applicant's submission accepted as being correct.</p> <p>Applicant's submission accepted as being correct.</p> <p>Applicant's submission accepted as being correct.</p> <p>Applicant's</p> |
|------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|  |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                       |
|--|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
|  |  | <p>Landlord to insure just the common parts but for the individual tenants to insure their units. This would be unworkable in practice.</p> <p><i>New paragraph 1.3: The wording here proposed by the Tenant is reasonable and market standard in a residential flat lease.</i></p> <p>Paragraph 1.4: This clause is agreed, save that: the reference to the Retained Parts should be replaced with the Estate (as discussed above); 19 July 2200 should be replaced with the termination of the Existing Lease (which may terminate sooner, as set out in a number of comments above); and the other amendments are market standard for provisions of this nature in residential leases.</p> <p><i>New paragraphs 1.5, 1.6 and 1.7: These are standard clauses in leases of residential flats. i.e. provisions for cesser of service charge and insurance rent payments if the premises cannot be used following damage/destruction by an Insured Risk; rights for the Landlord to</i></p> | <p>submission accepted as being correct.</p> <p>Applicant's submission accepted as being correct.</p> |
|--|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|

|                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                            |
|------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <p><i>terminate if reinstatement is impossible and for insurance proceeds to be held on trust and in proportion of the parties' respective interests; and a disputes clause. In particular, these provisions are necessary for most lenders (as set out in the UK Finance Mortgage Lenders' Handbook) so are essential for the future marketability of the unit.</i></p>                                                                                                                                                                                                             |                                                                                                                                                                            |
| <p>Schedule 3 Contribution Covenants</p> | <p>This schedule provides for the division of service charge contributions after the term date of the Existing Lease, and places on obligation on the landlord to contribute only in respect of those flats in the Premises of which it has possession.</p> <p>The Landlord/Respondent is wary of its title to the property being burdened with obligations to repair a building at the end of the term of the existing lease, being a building which was built and in the ownership of the Applicant for the previous 90 odd years. It is sceptical that it will come into possession of the flats given the statutory rights that are available for flat</p> | <p>The Landlord's proposal in Schedule 3 that after expiry of the Existing Lease, the repair and maintenance obligations in relation to the remainder of the Estate should lie with the tenant of one residential unit. That is very onerous and highly unusual – so far as the Tenant is aware, it would be unique in Central London.</p> <p>The Tenant's proposal is that the Landlord should take responsibility for the repair and maintenance of the Estate after expiry of the Existing Lease and recover the costs of doing so using a standard service charge mechanism.</p> | <p>Applicant's submission accepted as being correct.</p> <p>Applicant's submission accepted as being correct.</p> <p>Applicant's submission accepted as being correct.</p> |

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                        |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p>owners. The Tenant/Applicant is the owner of the other 21 flats and lease extensions for them cannot be ruled out. The Landlord contends that lease extensions should not be used to transfer responsibility for the building from the tenant to the Landlord.</p> <p>Paragraph 1.2 of Schedule 3 provides for the schedule to have effect if one or more flats comes into the possession of the landlord.</p> <p>Paragraph 1.3 contains wording which defines the amount of contributions correlating effectively to flat number ownership.</p> <p>Paragraph 1.4 contains a covenant on the part of the Landlord to contribute such a contribution to the tenant's costs of repairing areas outside its flat.</p> <p>Paragraph 1.5 contains a reciprocal covenant on the part of the Tenant should the landlord incur costs of maintenance.</p> <p>Paragraph 1.6 contains a fail safe for the Tenant the drafting of which balances a final resort solution with the objective that there will not be non</p> | <p>The Landlord seems to be unwilling to be under any obligation to repair the building at the end of the term. This is bizarre. If this lease extension were not sought, the Landlord would take possession and control of the building anyway. It would surely want to retain it in reasonable repair and condition.</p> <p>Further, the Landlord's proposal is not in the commercial interests of either party. Purchasers and/or lenders tend to be suspicious of unusual service charge and/or repairing arrangements. The Landlord's proposal would therefore harm future marketability and thereby the value of the respective interests of the Landlord and the Tenant.</p> <p>Yet further, from a drafting perspective the Landlord's proposal is unnecessarily complicated.</p> <p>The Tenant's proposed drafting is a common form of service charge mechanism with 'on account' payments and reconciliation payments/retentions at the end of each service charge year, which is a standard provision and easy to administer.</p> | <p>Applicant's submission accepted as being correct.</p> <p>Applicant's submission accepted as being correct.</p> <p>Applicant's submission accepted as being correct.</p> <p>This is an administrative matter and does not require determination by the Tribunal.</p> |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                                     |                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                    |                                                                                                                 |
|-----------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
|                                                     | <p>recoverability of tenant contributions.</p> <p>The modifications arising under Schedule 3 are an adequate and effective deviation from the terms of the existing lease, which is the starting point for the terms of the new lease. The terms in the Landlord's draft meet the requirement in paragraph (a) of s.57(1).</p> | <p>(The numbering in Schedule 3 will also need to be fixed, but this can be dealt with by the parties when the Tribunal has made its decision.)</p>                                                                |                                                                                                                 |
| <p><i>Schedule 4 Services and Service Costs</i></p> |                                                                                                                                                                                                                                                                                                                                | <p><i>The new Schedule 4 is a standard set of services and service costs. It is to the benefit of both parties to clarify what is to be provided and paid for, and the contents should be uncontroversial.</i></p> | <p>Applicant's submission accepted as being correct and does not appear to be challenged by the Respondent.</p> |

## **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).