FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/00HN/OLR/2019/0265
Property:	32 Cranleigh Road, Bournemouth, Dorset BH6 5JH
Applicant:	George Henry William Crofts
Representative:	In Person
Respondent:	Nadia Eve Mehson
Representative:	Laing Law
Type of Application:	Section 48 Leasehold Reform, Housing and Urban Development Act 1993 (New Lease: Matters in Dispute) Sections 60 and 91 Leasehold Reform Housing and Urban Development Act 1993
Tribunal Members:	Judge A Cresswell (Chairman) Mr S Hodges FRICS
Date and venue of Hearing:	19 May 2021 by Video
Date of Decision:	21 May 2021

DECISION

The Application

1. The Applicant is the tenant of the property. The Respondent is the landlord and freeholder.
2. By written notice dated 13 March 2019, the Applicant claimed to exercise the right to acquire a new lease of the property, pursuant to Section 42 Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"). The notice was served by the previous leaseholder Sandra O'Sullivan; the notice was assigned to the Applicant by an Assignment of Benefit dated 15 March 2019.
3. The Respondent's counter notice, pursuant to Section 45 of the 1993 Act, is dated 14 June 2019.
4. The Applicant referred the dispute as to the terms to the Tribunal by written notice of 2 December 2019.

Summary Decision

5. The Tribunal finds that none of the modifications suggested by the Applicant are required as no defects have been shown to exist and it would not be unreasonable in the circumstances to include, or include without modification, the terms in question.

Inspection and Description of Property

6. The Tribunal did not inspect the property, but looked at it on Google maps. The property is the ground floor flat of a detached 2-storey house, which house has subsequently been extended by a rear 1-storey extension to form a third flat, together with a garden.

Directions and Hearing

7. Directions were issued on various dates.
8. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
9. This determination is made in the light of the documentation submitted in response to those directions and the evidence and submissions at the hearing.
10. At the end of the hearing, the parties confirmed that they had had an opportunity to say all that they wished.

The Law

11. The relevant law is set out in section 48 and in the statutory assumptions set out in Schedule 13 of the 1993 Act.
12. Section 91(1) of the Act states that *"any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by a leasehold valuation tribunal."*
13. Section 91(2) sets out the list of those matters, including *"the terms of acquisition relating to…any new lease to be granted to a tenant in pursuance of Chapter 11."*
14. There is guidance from caselaw:

> ***Gordon v Church Commissioners for England*** (LRA/110/2006), His Honour Judge Huskinson:
>
> 39. The 1993 Act provides in section 57(1) that, subject to certain matters, 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", subject to certain potential departures from these existing terms as provided for in section 57. Thus the starting point is firmly based in the terms of the existing lease.

41.In contrast to the approach where subparagraphs (a) to (c) of section 57(1) apply, the words in section 57(6) contemplate the parties having open on the table before them the terms of the existing lease and identifying one or more of those terms as being a term which, by reason of the matters in paragraphs (a) or (b), should either be excluded from the new lease or should be modified in the new lease. In my judgment there is no power under section 57(6) for a party to require that there is added into the new lease a new provision which is not to be found in the old lease. There is nothing illogical or unfair in this because, apart from the grant of the new lease, the parties would have continued to be bound by the terms of the old lease for the next X years where X may be a substantial period (over 50 years in the present case). It is one thing to exclude or modify a term or terms of the existing lease where a good reason (ie within paragraph (a) or (b) of section 57(6)) can be shown. It is another thing to permit a party to seek a rewriting of the lease by the introduction of new provisions.

47. In the light of the foregoing it is first necessary to consider section 57(6)(a) and to do so on the assumption (contrary to my first finding) that there is power under that provision to require the introduction into the new lease of the Proposed Clause. Under section 57(6)(a) the Appellant can require the old lease to be modified insofar as it is necessary to do so in order to remedy a defect in the existing lease.
I conclude that a lease can only properly be described as containing a defect (in the sense of shortcoming, fault, flaw or, perhaps even, imperfection) if it can objectively be said to contain such a defect when reasonably viewed from the standpoint of both a reasonable landlord and a reasonable tenant. It may be noted that once a defect is shown to exist in the existing lease then a party 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 it is necessary to do so in order to remedy the defect. This mandatory language indicates that the concept of a defect is a shortcoming below an objectively measured satisfactory standard. It is not sufficient for a provision to be a defect only when viewed from the standpoint of one or other party.

49. Turning to section 57(6)(b) I accept that changes in conveyancing practice are capable of amounting to changes within paragraph (b) of section 57(6). However in the light of the matters in paragraph 46 above I am unable to conclude that there have occurred any changes in conveyancing practice which affect the suitability of the terms of the old lease (in particular old Clause 4) such as to make it unreasonable in the circumstances not to include the Proposed Clause in place of old Clause 4.

Earl Cadogan v 26 Cadogan Square Ltd and Howard De Walden Estates Ltd v Aggio (2008) UKHL 44, Lord Neuberger (with whom the other 4 Law Lords agreed):

48. 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.

62. However, while I believe that what I have suggested in para 60 above would generally be the right course, there could no doubt be circumstances where the freeholder was prepared, or even keen, to take on immediate repairing obligations under the new lease, or where, because of special facts, the LVT considered it appropriate that the new lease contained such obligations on the part of the freeholder. As I have already mentioned, the factual circumstances which can arise in relation to claims under the 1993 Act are multifarious and unpredictable, and LVT members have proved themselves expert and adept at dealing with those problems. A wide discretion has been accorded to the LVT by the legislature under provisions such as section 57, and .....

72. The obviously sensible course, which has been adopted by the legislature, is to leave the

sort of issues with which section 57 is concerned to the good sense of the LVT.....

15. ***Rossman v The Crown Estate Commissioners*** **[2015] UKUT 288 (LC**: Section 57(6) of the 1993 Act provided the opportunity to ensure that defects in the existing lease were remedied when a new lease was granted, *Howard de Walden Estates Ltd v Aggio [2008] UKHL 44, [2009] 1 A.C. 39, [2008] 6 WLUK 612* followed. However, the general presumption in s.57(1) was that a new lease would be in the same terms as the existing lease. It was implicit in s.57(6) that it was for the party seeking change to show the need for the exclusion or modification of the disputed term; there was no burden on the other party to show the contrary. The task of the First-tier Tribunal under s.57(6)(a) was to establish whether there was a proper basis for regarding the disputed term as defective. The party seeking change also had to show that the exclusion or modification argued for would cure, and not merely ameliorate, the defect.
"Hague comments (at paragraph 32-10(a)) that "[the] word "defect" is not defined, but given the use of the word "necessary" a strict or narrow interpretation seems the proper one", and therefore that "the use of [section 57(6)(a)] to attempt to modernise the terms generally in the face of opposition from the other party would not be permissible."
"The concept of necessity here is a demanding one. I agree with what the Leasehold Valuation Tribunal said to that effect in *Waitt v Morris* [1994] 2 E.G.L.R. 224 – where the tenant failed in his request for a term requiring the landlord to give his, the tenant's, mortgagee 21 days' notice of forfeiture proceedings. The Leasehold Valuation Tribunal said (at p.226C) that the proposed term "may be "convenient" but it is not "necessary" to remedy a defect in the existing lease ...". The distinction between convenience and necessity is important. It is emphasized in Hague (at paragraph 32-10(a)). The crucial question is not whether it is necessary to remedy the defect in the existing lease, but whether, given that there is a defect which must be remedied, it is necessary to make the exclusion or modification to achieve that."
This is not the kind of situation envisaged by the Tribunal (Martin Rodger Q.C., Deputy President) in *Burchell v Raj Properties Ltd.* [2013] UKUT 0443 (LC) (at paragraph 43): the existence of "a "defect" in the sense of a mistake which neither party can have intended to be included in the Lease as originally granted".

Park v Morgan [2019] UKUT 20 (LC)
49. Section 57(6)(a) permits a modification of the terms of the existing lease only where it is "necessary to do so in order to remedy a defect". The leading authority on the scope of the FTT's power to correct defects is the Lands Tribunal's decision in *Gordon v Church Commissioners for England* (2007) LRA/110/2006. As the FTT in this case reminded itself, it is not sufficient that the proposed variation may be convenient or consistent with current practice. It must be necessary to correct a defect, which, as the Lands Tribunal explained in *Gordon* , means:
"... a shortcoming below an objectively measured satisfactory standard. It is not sufficient for a provision to be a defect only when viewed from the standpoint of one or other party."
50. In *Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 WLR 896* , 913 Lord Hoffmann, with whom the other members of the House of Lords agreed, emphasised that "we do not easily accept that people have made linguistic mistakes, particularly in formal documents". Any tribunal which is asked to find that a lease contains a defect capable of being remedied under section 57(6) should therefore proceed with caution.

The guidance can be distilled as:

- The general presumption in s.57(1) was that a new lease would be in the same terms as the existing lease.
- There is no power under section 57(6) for a party to require that there is added into the new lease a new provision which is not to be found in the old lease.

- It was implicit in s.57(6) that it was for the party seeking change to show the need for the exclusion or modification of the disputed term; there was no burden on the other party to show the contrary.
- A lease can only properly be described as containing a defect (in the sense of shortcoming, fault, flaw or, perhaps even, imperfection) if it can objectively be said to contain such a defect when reasonably viewed from the standpoint of both a reasonable landlord and a reasonable tenant.
- "Defect" is not defined, but given the use of the word "necessary" a strict or narrow interpretation seems the proper one", and therefore that "the use of [section 57(6)(a)] to attempt to modernise the terms generally in the face of opposition from the other party would not be permissible."
- The distinction between convenience and necessity is important.
- A defect is a shortcoming below an objectively measured satisfactory standard.
- A defect is a mistake which neither party can have intended to be included in the Lease as originally granted.
- The crucial question is not whether it is necessary to remedy the defect in the existing lease, but whether, given that there is a defect which must be remedied, it is necessary to make the exclusion or modification to achieve that."
- A tribunal which is asked to find that a lease contains a defect capable of being remedied under section 57(6) should proceed with caution.
- Where a modification is necessary in accordance with Section 57(6), it can involve additions and can be fairly radical.

The Lease

16. The Applicant holds this Ground Floor Flat under the terms of a lease dated 12 July 2003, which was made between Salim Mehson as lessor and Salmore Property Limited as lessee. There is a deed of variation between those parties dated 28 November 2003.

Agreed Matters

17. The parties informed the Tribunal that the premium had been agreed on the basis of the existing lease and that the only issue for resolution remained the terms of the new lease.

Disputed Items

18. The items disputed are listed in the Appendix below together with the arguments raised by the parties in advance of the hearing.

General Comments

19. The Applicant appeared to the Tribunal to have sought more than the Tribunal's jurisdiction would allow it to do. Whilst he might be unhappy with some of the terms of the new lease and is using Section 57(6) of the 1993 Act as a vehicle to address those concerns, it is only in relation to matters covered by that section that the Tribunal has jurisdiction.

20. The Applicant is entitled to a new lease in the terms of the existing lease.

21. He is not entitled to ask the Tribunal generally to modernize the terms of the existing lease.

22. He is not entitled to ask the Tribunal to "polish" the terms of the lease where the circumstances catered for by Section 57(6) do not apply.

23. He is not entitled to ask the Tribunal to review the new lease so as to see whether it passes tests applied by the Land Registry's Practice Guides. In that context, the Applicant raised a new argument (as distinct from the written arguments shown in the Appendix) and wished to rely upon Practice Guide 64: prescribed clauses leases. No copy of this guidance was provided either to the Respondent or the Tribunal at the hearing; the Applicant provided a link to the paper in an email during the hearing. No reference was made by him to Practice Guide 27: the leasehold reform legislation. The Tribunal has not studied the guidance after the hearing as it sees it as no part of its jurisdiction to do so.

LR4 "As demised by the Old Lease"

The Applicant

24. The Applicant's arguments as shown in the document in the Appendix:
This wording is needed to give effect to the document. The demise is described in the Old Lease and in case of a conflict between this clause and the remainder of the lease, this clause prevails. This clause must refer to the Old Lease otherwise the demise is not accurate described.

25. The Applicant argued that the words were a requirement of paragraph 5.4 of the Land Registry Practice Guide. He said that the terms of the existing lease detail the property including the garden. The address is not a proper description; it does not refer specifically to the description of the property. LR4 is what the Land Registry will take as the description of the property.

26. It does not refer to the Title Register.

The Respondent

27. The Respondent's arguments as shown in the document in the Appendix: This is not required here. Recital 1 of the deed specifically refers to the Old Lease as varied by a Deed of Variation and that the property detailed in LR4 was thereby demised

28. The Respondent said that the property title details the property in the property register by reference to the plan, and the title number is included at LR1 of the new lease. The address is a full description as that is how the Land Registry describes it.

The Tribunal

29. The Tribunal agrees with the Respondent, for the reasons she gives, that the addition of these words adds nothing to the lease and, accordingly, finds against their inclusion. This was clearly a drafting point relating to the Land Registry's Practice Guides and not properly an issue within the Tribunal's jurisdiction.

30. There is no defect in the existing lease and nor did the Applicant argue that there was a defect in that lease.

LR 11.1 and LR 11.2 "Clause 1 of this Lease and as per the"

The Applicant

31. The Applicant's arguments as shown in the document in the Appendix:
LR 11.1 and LR 11.2 can only refer to rights granted or reserved by this lease. The rights granted and reserved are as per Clause 1 of this lease which includes, by reference, those rights granted and reserved in the Old Lease.

32. The Applicant again referred to the Land Registry Practice Guide and to paragraph 5.11. Mr Crofts argued that it was defective to refer to the old lease.

The Respondent

33. The Respondent's arguments as shown in the document in the Appendix:
This is not required. Clause 1 specifically states the Tenant is to hold the Property "upon the same terms and subject to the same covenants conditions and stipulations in all respects as those contained in the Old Lease." These rights are thereby granted.
34. The Respondent said that by Recital 4, a certified copy of the old lease is annexed to the deed and, therefore, it is included in the new lease. No additional wording is required.

The Tribunal

35. The Tribunal agrees with the Respondent, for the reasons she gives, that the addition of these words adds nothing to the lease and, accordingly, finds against their inclusion. This was clearly a drafting point relating to the Land Registry's Practice Guides and not properly an issue within the Tribunal's jurisdiction.
36. There is no defect in the existing lease and nor did the Applicant argue that there was a defect in that lease.

Recital 1 "("the Deed of Variation")"

The Applicant

37. The Applicant's arguments are shown in the document in the Appendix.
38. The Applicant withdrew this application after hearing from Mr Miller that the existing lease and deed of variation would be annexed to the new lease and submitted to the Land Registry.

The Tribunal

39. The Tribunal notes the withdrawal.

Clause 1 "rights and reservations"

The Applicant

40. The Applicant's arguments as shown in the document in the Appendix:
S 57 (1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") requires that 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. That necessarily includes easements granted and reserved by the Old Lease. This wording is needed so that the rights and reservations contained in the Old Lease apply to this lease.
41. The Applicant argued that without the specific words, no rights were granted. The lease lists specifically what is included and it is more perfect to include "rights and reservations".

The Respondent

42. The Respondent's arguments as shown in the document in the Appendix:
This is not required. Clause 1 specifically states the Tenant is to hold the Property "upon the same terms and subject to the same covenants conditions and stipulations in all respects as those contained in the Old Lease" These rights are thereby granted
43. The Respondent said that the words were not needed as the lease refers to the same terms in all respects.

The Tribunal

44. The Tribunal agrees with the Respondent, for the reasons she gives, that the addition of these words adds nothing to the lease and, accordingly, finds against their inclusion.

45. Clause 1 specifically states the Tenant is to hold the Property "upon the same terms and subject to the same covenants conditions and stipulations in all respects as those contained in the Old Lease". That means that the terms of the existing lease are continued.
46. The Tribunal finds that there is no defect in the existing lease and nor did the Applicant argue that there was a defect in that lease.

Clause 1 "as varied by the Deed of Variation and together with the benefit of all consents licenses waivers concessions and agreements granted by the Landlord under and in connection with the Old Lease"

The Applicant

47. The Applicant's arguments as shown in the document in the Appendix:
This modification is needed because 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 as per S57 (6) (b) of the Act. It would be unreasonable for any licenses or consents granted in connection with the Old Lease not to apply to this lease. The same reasoning applies to the Deed of Variation; that deed acts as a change occurring that makes the original terms of the lease unsuitable.
48. The Applicant withdrew this application in so far as it referred to the deed of variation after hearing from Mr Miller that the existing lease and deed of variation would be annexed to the new lease and submitted to the Land Registry.
49. He continued, however, to pursue the requirement for the addition of the words **and together with the benefit of all consents licenses waivers concessions and agreements granted by the Landlord under and in connection with the Old Lease.**
50. He gave an example of a consent which had been given by the landlord, upon payment of a fee, for the replacement of carpet with hard wood flooring, which could be lost if there was no specific reference in the new lease. No deed had been drawn up or anything collateral to the lease.

The Respondent

51. The Respondent's arguments as shown in the document in the Appendix:
This is not agreed and forms an addition to the Old Lease. The Old Lease comprises the lease dated the 12 July 2003 and made between (1) Salim Mehson and (2) Salmore Property Limited as varied by the deed of variation referred to above. There are no other documents and the new lease must be on the same terms as the Old Lease (as varied). There have been no changes occurring since the date of the commencement of the existing lease (as defined in the new lease), accordingly no further variations are to be allowed.
52. The Respondent said that the new lease was under the same terms, so all of what the Applicant desired would be included within the same terms. A consent is merged into the lease; the terms of the lease are changed by the consent.

The Tribunal

53. The Tribunal notes the wording of Section 57(6)(b) as being: 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 Applicant is, however, concerned not about a provision of the

existing lease, but the effect of a lease extension upon the reliance he can place upon a consent under the existing lease.

54. He has not shown by any argument or evidence that the extension of the lease could have any effect upon the reliance he can place upon the consent, particularly so in circumstances where the new lease is to be on identical terms to the existing lease. That being so, the Tribunal cannot agree with him that it would be unreasonable in the circumstances to include, or include without modification, the term in question.

The Second Schedule paragraph 4 "Paragraph 9 to the first schedule of the Old Lease to be deleted"

The Applicant

55. The Applicant's arguments as shown in the document in the Appendix:
Paragraph 9 to the first schedule of the Old Lease is a prohibition on decorating the exterior of the Premises. The Applicant proposes that this restriction be removed. This modification is needed because 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 as per S57 (6) (b) of the Act. The Lessee has always decorated the exterior of the Premises (eg the exterior face of the fence that bounds the Garden Area). Those areas are not maintained by the Landlord via the service charge and if the Tenant is not able to repair and redecorate the same, they will fall into disrepair.
56. The Applicant told the Tribunal that the fence was erected by the Respondent or a predecessor in title and maintained by them. It had been painted when the lease was first granted, but was no longer maintained. No work had been done by the freeholder since the Applicant took over the lease on 15 March 2019.
57. Someone had painted over graffiti, but there was nothing in the service charge for the last 5 years for maintenance of the fence.
58. A section of the fence is wholly within the garden area and the rest is along the boundary.
59. It is his understanding that the freeholder has never maintained the fence and it makes sense to maintain the status quo. He appreciated that he would only have to pay 1/3 of the maintenance cost via the service charge if the work was completed by the landlord.
60. He maintained that a change had occurred by reason of a failure to meet the covenant of maintenance within the existing lease.
61. The change is the assumption of responsibility by the lessee and the lessor allowing that to happen.

The Respondent

62. The Respondent's arguments as shown in the document in the Appendix:
This is not a defect in the Old Lease. The Old Lease contains covenants on behalf of the landlord to carry out such work in clauses 6.3 and 6.4.
63. The Respondent pointed out that Clause 6.4 of the existing lease requires the maintenance of fences by the landlord.
64. There are, within the lease, clear covenants enforceable against the lessor by the lessee. If there has been a change in circumstances, there has not been one which warrants such an amendment.
65. If the clause was deleted, the matter goes wider and the lessee could undertake all sorts of decorations outside.

The Tribunal

66. The Tribunal could see no change here which affects the suitability of the existing provisions. Paragraph 9 of Schedule 1 provides that the Applicant is NOT to decorate the exterior of the Premises.
67. The duty falls on the landlord under clause 6.3 to decorate the fence (and the exterior of the building). If she does not do so, the Applicant has, as he accepted, an action for breach of contract. The existing provisions appear to the Tribunal to be entirely suitable, notwithstanding a failure by the landlord to meet its obligation of redecoration under the terms of the lease.
68. That being so, the Tribunal cannot agree with the Applicant that it would be unreasonable in the circumstances to include, or include without modification, the term in question.

The Second Schedule paragraph 5 "Clause 5.2.6 of the Old Lease to be amended so that the words "or Building" appears after the word "Premises"."

The Applicant

69. The Applicant's arguments as shown in the document in the Appendix:
The Building is in disrepair and the Landlord has failed to maintain the same (for whatever reason; the Lessee understands that this may be because of a service charge dispute with other lessees but the cause is irrelevant). The Lessee should have the ability to make structural alterations and repairs to the Building if these are not undertaken by the Landlord (with the Landlord's consent as per the existing wording of Clause 5.2.6). As such, this amendment is required and permitted under S57 (6) (b) of the Act as 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 (Landlord's failure to keep property in repair). Lease should provide for no alterations to the Building; does the Landlord want alterations to the building not take place without their consent? As such, the amendment is permissible under S57 (6) (a) of the Act.
Further, the lack of this wording can also be viewed as a defect in the Lease.
70. The Applicant said that the same arguments as above in relation to the fence applied to the building.
71. The building is in disrepair. The change is the freeholder's failure to carry out repairs. The building has not been maintained. It has never been inspected and works have not been done by the landlord.
72. The change is that the lease envisaged works would have been done.
73. The requirement of the consent of the freeholder provides a check and balance to the inclusion of the building.

The Respondent

74. The Respondent's arguments as shown in the document in the Appendix:
This is not a defect in the Old Lease. The Old Lease contains covenants on behalf of the landlord to carry out such work in clauses 6.3 and 6.4
The Tenant cannot carry out any work to the Building, only to the demised premises. If any work was carried out to the Building without the consent of the Landlord that would constitute an actionable trespass.
75. The Respondent argued that lack of action by a freeholder, where the freeholder was covenanted to act, was not a change.
76. Any leaseholder can take action against the landlord in respect of a breach of covenant.

77. Paragraph 5.2.6 of the Second Schedule refers, in any event, to structural alterations. The Applicant was referring to a lack of repairs, but there is no mention in the clause of repairs.

The Tribunal

78. Clause 5.2.6 says as follows: Not to make any structural alterations or structural additions to the Premises or any part thereof or remove any of the Landlord's fixtures without the previous consent in writing of the Landlord.
79. The Tribunal could see no change here, which affects the suitability of the existing provisions.
80. The Applicant complains about a lack of repairs and maintenance, but this clause is concerned solely with structural alterations and additions.
81. The Premises form part of the Building. The landlord is required to maintain the building under clause 6.3. If she does not do so, the Applicant has, as he accepted, an action for breach of contract. The existing provisions appear to the Tribunal to be entirely suitable, notwithstanding any failure by the landlord to meet its obligation of maintenance under the terms of the lease.
82. That being so, the Tribunal cannot agree with the Applicant that it would be unreasonable in the circumstances to include, or include without modification, the term in question.
83. The Tribunal could see no way in which the current provision's lack of reference to the building could be seen as a defect.

The Second Schedule paragraph 6 "Paragraph 15 to the first schedule of the Old Lease to be amended so that the wording "save where: the decision is based upon immaterial or incorrect facts or the Lessee disagrees with the Landlord's decision on the grounds of manifest unfairness and in which case the dispute may be referred to arbitration by a single arbitrator under the provision of the Arbitration Act 1996 or any statutory re- enactment or modification thereof for the time being in force" shall be included after the wording "decision shall be binding upon all parties". "

The Applicant

84. The Applicant's arguments as shown in the document in the Appendix:
A Landlord's unfettered right to decide all disputes between lessees is a defect in the lease that needs to be rectified as provided for by S57 (6) (a) of the Act. The Applicant argued that a landlord's unfettered right to decide was not reasonable. It was not acceptable to a reasonable tenant and it was unreasonable both to the tenant for the landlord to be final arbiter and for a landlord to have to take that role upon itself.
85. It was a shortcoming or fault or imperfection that is not acceptable.
86. He was not aware of any examples of a clause such as this having been removed from a lease. He relied on paragraphs 48 and 49 of Aggio.

The Respondent

87. The Respondent's arguments as shown in the document in the Appendix:
This is not a defect and is found in many leases.
88. The Respondent argued that if the Applicant had found the clause to be unacceptable, then he would have taken up the point at the time of purchase.

The Tribunal

89. The Tribunal can see that the Applicant might not like this provision, which reads as follows: ANY complaints which may arise between the tenants of the other flat in the Building in relation to the above stipulations or otherwise may be submitted to

the Landlord who may if he thinks fit determine the same and in that event his decision shall be binding upon all parties

90. The provision does not, however, require the Applicant to submit any complaints about other tenants to the landlord, but rather enables him to do so, should he so wish. The provision cannot act as an ouster of any statutory rights and does not prevent the Applicant from seeking alternative remedies.
91. It is, it appears to the Tribunal, a poorly drafted provision, if taken literally, as the complaint has to "arise between the tenants of the other flat". In any event, the complaint in question is unlikely to be at all serious because clause 6.5 is a covenant by the landlord as follows: That (if so required by the Tenant) the Landlord will enforce the covenants entered into or to be entered into by the lessee of the other flat comprised in the Building on the Tenant indemnifying the Landlord against all costs and expenses in respect of such enforcement as the Landlord may reasonably require
92. The Tribunal is not persuaded that the provision is a defect in the lease, which necessitates exclusion or modification.

The Second Schedule paragraph 7 "Paragraph 2 to the second schedule to the Old Lease shall be amended so that the wording "telecommunications (including but not limited to a telephone line and internet connection) is included between the words "gas" and "and"."

The Applicant

93. The Applicant's arguments as shown in the document in the Appendix:
A telephone line and internet connection currently supply the property. If these services supplied the property at the start of the Old Lease, the failure to provide for these rights is an omission of property included in the existing lease but not comprised in the flat and the amendment is, therefore, permissible under S57 (1) (a) of the Act. In the alternative, these services may have been installed after the grant of the Old Lease. In this case, this amounts to alterations made to the property demised since the grant of the existing lease and the amendment is, therefore, justified under S57 (1) (b) of the Act.
Further, given that these services already supply the Premises, it would be unreasonable 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 as per S57 (6) (b) of the Act. The change referred to is the connection of these supplies.
94. The Applicant contended that a change had occurred in that there is now a telephone line.
95. Further there is a defect if the lease does not allow connection to a telephone line.

The Respondent

96. The Respondent's arguments as shown in the document in the Appendix:
This is not a defect. These rights are already in the Old Lease and come under the definition of "electricity" being one of the rights granted in Paragraph 2 of the Second Schedule to the Old Lease and which is incorporated into the new lease.
97. The Respondent said that the lease was granted in 2003. Interpretation would allow inclusion of telephone and internet under the definition of electricity. Electricity is involved in the delivery of telephone and internet signals as is accepted by the coverage of dishonest telephone usage by the offence of dishonest use of electricity.
98. Interpretation would follow events in just the same way as a stable can now be seen as referring to a garage.

99. Adding these terms could impose upon the landlord an obligation to put them in.
100. Section 62 Law of Property Act 1925 comes into play, such that all rights pertinent to the property are included in the demise.

The Tribunal

101. The Tribunal notes the wording of Section 57(6)(b) as being: 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 Applicant says that the change is the installation of a telephone line. The Tribunal is aware from common knowledge that a telephone operates as a result of electricity passing along its line.
102. The Applicant has not shown by any argument or evidence that the extension of the lease could have any effect upon the reliance he can place upon the terms of the existing lease for the presence of the telephone line, particularly so in circumstances where the new lease is to be on identical terms to the existing lease and because of the effect of Section 62 of the 1925 Act. That being so, the Tribunal cannot agree with him that it would be unreasonable in the circumstances to include, or include without modification, the term in question.
103. The Tribunal is not persuaded that the provision is a defect in the lease, which necessitates exclusion or modification.

The Second Schedule paragraph 8 "The plans to the Old Lease be replaced with the plans annexed hereto."

The Applicant

104. The Applicant withdrew this application on the basis of an agreement between the parties, which the Tribunal here records. Mr Miller agreed that the plans to be submitted to the Land Registry would be the certified copy of same attached to the Counterpart Lease if they were coloured; otherwise the coloured plans at pages 44 and 45 of the bundle would be submitted.

The Tribunal

105. The Tribunal records the above agreement.

Conclusion

106. The Tribunal finds that none of the modifications suggested by the Applicant are required as no defects have been shown to exist and it would not be unreasonable in the circumstances to include, or include without modification, the terms in question.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX

LIST OF THE TERMS OF THE REMAINING IN DISPUTE AND OTHER LEGAL ISSUES

Clause or Wording in Dispute Applicant Comment Respondent Issue Comment

LR 4	"As demised by the Old Lease"	This wording is needed to give effect to the document. The demise is described in the Old Lease and in case of a conflict between this clause and the remainder of the lease, this clause prevails. This clause must refer to the Old Lease otherwise the demise is not accurate described.	This is not required here. Recital 1 of the deed specifically refers to the Old lease as varied by a Deed of Variation and that the property detailed in LR4 was thereby demised
LR 11.1 and LR 11.2	"Clause 1 of this Lease and as per the"	LR 11.1 and LR 11.2 can only refer to rights granted or reserved by this lease. The rights granted and reserved are as per Clause 1 of this lease which includes, by reference,	This is not required. Clause 1 specifically states the Tenant is to

		those rights granted and reserved in the Old Lease.	hold the Property "upon the same terms and subject to the same covenants conditions and stipulations in all respects as those contained in the Old Lease" These rights are thereby granted
Recital 1	"("the Deed of Variation")"	This definition is needed because the Deed of Variation is referred to elsewhere in the document.	The Deed of Variation is not referred to elsewhere in the document. (The amendment which inserts this wording is not agreed – see later)
Clause 1	"rights and reservations"	S57 (1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") requires that 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. That necessarily includes easements granted and reserved by the Old Lease. This wording is needed so that the rights and reservations contained in the Old Lease apply to this lease.	This is not required. Clause 1 specifically states the Tenant is to hold the Property "upon the same terms and subject to the same covenants conditions and stipulations in all respects as those contained in the Old Lease" These rights are thereby granted

Clause 1	"as varied by the Deed of Variation and together with the benefit of all consents licenses waivers concessions and agreements granted by the Landlord under and in connection with the Old Lease"	This modification is needed because 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 as per S57 (6) (b) of the Act. It would be unreasonable for any licenses or consents granted in connection with the Old Lease not to apply to this lease. The same reasoning applies to the Deed of Variation; that deed acts as a change occurring that makes the original terms of the lease unsuitable.	This is not agreed and forms an addition to the Old Lease. The Old Lease comprises the lease dated the 12 July 2003and made between (1) Salim Mehson and (2) Salmore Property Limited as varied by the deed of variation referred to above. There are no other documents and the new lease must be on the same terms as the Old Lease (as varied). There have been no changes occurring since the date of the commencemen t of the existing lease (as defined in the new lease) accordingly no further variations are to be allowed
The Second Schedule paragraph 4	"Paragraph 9 to the first schedule of the Old Lease to be deleted"	Paragraph 9 to the first schedule of the Old Lease is a prohibition on decorating the exterior of the Premises. The applicant proposes that this restriction be removed. This modification is needed because it would be unreasonable in the	This is not a defect in the Old Lease. The Old Lease contains covenants on behalf of the landlord to

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		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 as per S57 (6) (b) of the Act. The Lessee has always decorated the exterior of the Premises (e.g the exterior face of the fence that bounds the Garden Area). Those areas are not maintained by the Landlord via the service charge and if the Tenant is not able to repair and redecorate the same, they will fall into disrepair.	carry out such work in clauses 6.3 and 6.4
The Second Schedule paragraph 5	"Clause 5.2.6 of the Old Lease to be amended so that the words "or Building" appears after the word "Premises"."	The Building is in disrepair and the Landlord has failed to maintain the same (for whatever reason; the Lessee understands that this may be because of a service charge dispute with other lessees but the cause is irrelevant). The Lessee should have the ability to make structural alterations and repairs to the Building if these are not undertaken by the Landlord (with the Landlord's consent as per the existing wording of Clause 5.2.6). As such, this amendment is required and permitted under S57 (6) (b) of the Act as 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 (Landlord's failure to keep property in repair). Further, the lack of this wording can also be viewed as a defect in the Lease. The	This is not a defect in the Old Lease. The Old Lease contains covenants on behalf of the landlord to carry out such work in clauses 6.3 and 6.4 The Tenant cannot carry out any work to the Building, only to the demised premises. If any work was carried out to the Building without the consent of the Landlord that would constitute an actionable trespass.

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		Lease should provide for no alterations to the Building; does the Landlord want alterations to the building not take place without their consent? As such, the amendment is permissible under S57 (6) (a) of the Act.	
The Second Schedule paragraph 6	"Paragraph 15 to the first schedule of the Old Lease to be amended so that the wording "save where: the decision is based upon immaterial or incorrect facts or the Lessee disagrees with the Landlord's decision on the grounds of manifest unfairness and in which case the dispute may be referred to arbitration by a single arbitrator under the provision of the Arbitration Act 1996 or any statutory re- enactment or modification thereof for the time being in force" shall be included after the wording "decision shall be binding upon all parties". "	A Landlord's unfettered right to decide all disputes between lessees is a defect in the lease that needs to be rectified as provided for by S57 (6) (a) of the Act.	This is not a defect and is found in many leases
The Second Schedule paragraph 7	"Paragraph 2 to the second schedule to the Old Lease shall be amended so that the wording "telecommunication s (including but not limited to a telephone line and internet connection) is included between	A telephone line and internet connection currently supply the property. If these services supplied the property at the start of the Old Lease, the failure to provide for these rights is an omission of property included in the existing lease but not	This is not a defect. These rights are already in the Old Lease and come under the definition of "electricity" being one of

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	the words "gas" and "and"."	comprised in the flat and the amendment is, therefore, permissible under S57 (1) (a) of the Act.	the rights granted in Paragraph 2 of the Second Schedule to the Old Lease and which is incorporated into the new

		In the alternative, these servicers may have been installed after the grant of the Old Lease. In this case, this amounts to alterations made to the property demised since the grant of the existing lease and the amendment is, therefore, justified under S57 (1) (b) of the Act. Further, given that these services already supply the Premises, it would be unreasonable 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 as per S57 (6) (b) of the Act. The change referred to is the connection of these supplies.	lease.
The Second Schedule paragraph 8	"The plans to the Old Lease be replaced with the plans annexed hereto."	The plans to the Old Lease are not registered with the Land Registry in colour. This amendment is, therefore, needed to remedy a defect in the existing lease as per S57 (6) (a) of the Act.	What plan is being proposed?
Scope of amendment s permissible under the Act		In the first instance, I do not believe that you are correctly applying the ratio of Gordon v Church Commissioners for England LRA/110/2006 to the facts of this case. In that case, the only aspect of the LVT's decision which was the subject of the appeal was the inclusion of a backing clause. I would distinguish our current case on this fact alone. I	There is a line of cases starting with Gordon v Church Commissioner s for England LRA/110/2006 which show you are not entitled to have anything new in the new

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am not arguing for the inclusion of backing clause. The case you referred to has, therefore, no bearing. When considering this matter further, you may also like to bear in mind that the decision reached in	lease to be granted to you. The effect of section 57(6) was considered by the Tribunal (His Honour Judge Huskinson) in

Gordon relied heavily on the wording of the prevailing lease in that matter which expressly provided that "nothing in these presents shall be construed as entitling the lessee to require that any such covenants or provisions as are contained herein shall be imposed upon or enforced in respect of any adjoining or neighbouring premises". In the context, that the prevailing terms of the lease provided expressly against mutual enforceability, it was held that the Tribunal may not write into the lease a new term providing for the same. You must also be aware of the shift away from the strict approach taken in Gordon. See, for example, the comments of Lord Neuberger at paragraph 49 in Howard de Walden Estates v Aggio [2008] and the Tribunal decision in PJ/LON/00AW/OLR/2010/129 7. Further, and as you say, the Tribunal held that there was no power under section 57(6) to add an entirely new provisions into the lease. That is not the intention or effect of my proposed amendments. My amendments seek to either exclude or modify terms of the existing lease only.	Gordon v Church Commissioner s for England LRA/110/2006 where it concluded that there was no power under the sub-section to add an entirely new provision which is not to be found in the original lease. The power conferred by the statute was to exclude or modify a term of the existing lease only. Judge Huskinson explained in paragraph 41 of his decision that: “There is nothing illogical or unfair in this because, apart from the grant of the new lease, the parties would

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Please can you come back to me with your specific comments on each of my proposed amendments to your draft lease? I find it inconceivable that, for example, your client disagrees that the Deed of Variation should be referred to at clause 1. Equally, how does your client justify their view that previous consents should not apply to this new lease? With regards to the request for coloured plans to be attached to the lease, how does that prejudice your client and how can this be seen as anything but remedying a defect in the registered lease?	have continued to be bound by the terms of the old lease for the next X years where X may be a substantial period (over 50 years in the present case). It is one thing to exclude or modify a term or terms of the existing lease where a good reason (i.e. within paragraph (a) or (b) of section 56(6)) can be shown. It is another thing to permit a party to seek a rewriting of the lease by the introduction of new provisions.” This therefore precludes your requirement for additional wording to be inserted into the new lease as requested in paragraphs 4 to 9 inclusive in the schedule to your S42 Notice

THE LAW

Leasehold Reform Housing and Urban Development Act 1993

48 Applications where terms in dispute or failure to enter into new lease.
(1) Where the landlord has given the tenant—

(a)a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or

(b)a further counter-notice required by or by virtue of section 46(4) or section 47(4) or (5),

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice or further counter-notice was so given, **[F1**the appropriate tribunal**]** may, on the application of either the tenant or the landlord, determine the matters in dispute.

(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the tenant.

(3) Where—

(a)the landlord has given the tenant such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and

(b)all the terms of acquisition have been either agreed between those persons or determined by **[F2**the appropriate tribunal**]** under subsection (1),

but a new lease has not been entered into in pursuance of the tenant's notice by the end of the appropriate period specified in subsection (6), the court may, on the application of either the tenant or the landlord, make such order as it thinks fit with respect to the performance or discharge of any obligations arising out of that notice.

(4) Any such order may provide for the tenant's notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6).

(5) Any application for an order under subsection (3) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).

(6) For the purposes of this section the appropriate period is—

(a)where all of the terms of acquisition have been agreed between the tenant and the landlord, the period of two months beginning with the date when those terms were finally so agreed; or

(b)where all or any of those terms have been determined by **[F3**the appropriate tribunal**]** under subsection (1)—

(i)the period of two months beginning with the date when the decision of the tribunal under subsection (1) becomes final, or

(ii)such other period as may have been fixed by the tribunal when making its determination.

(7) In this Chapter "the terms of acquisition", in relation to a claim by a tenant under this Chapter, means the terms on which the tenant is to acquire a new lease of his flat, whether

they relate to the terms to be contained in the lease or to the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of the lease, or otherwise.

Section 57 Terms on which new lease is to be granted.
(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 **[F1**re-entry or otherwise (subject to section 85 of the Tribunals, Courts and Enforcement Act 2007)**]** in like manner as if it were a liability for payment of rent.

(3) Subject to subsection (4), provision shall be made by the terms of the new lease or by an agreement collateral thereto for the continuance, with any suitable adaptations, of any agreement collateral to the existing lease.

(4) For the purposes of subsections (1) and (3) there shall be excluded from the new lease any term of the existing lease or of any agreement collateral thereto in so far as that term—

(a)provides for or relates to the renewal of the lease,

(b)confers any option to purchase or right of pre-emption in relation to the flat demised by the existing lease, or

(c)provides for the termination of the existing lease before its term date otherwise than in the event of a breach of its terms;

and there shall be made in the terms of the new lease or any agreement collateral thereto such modifications as may be required or appropriate to take account of the exclusion of any such term.

(5) Where the new lease is granted after the term date of the existing lease, then on the grant of the new lease there shall be payable by the tenant to the landlord, as an addition to the rent payable under the existing lease, any amount by which, for the period since the term date or the relevant date (whichever is the later), the sums payable to the landlord in respect of the flat (after making any necessary apportionment) for the matters referred to in subsection (2) fall short in total of the sums that would have been payable for such matters under the new lease if it had been granted on that date; and section 56(3)(a) shall apply accordingly.

(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.

(7) The terms of the new lease shall—

(a)make provision in accordance with section 59(3); and

(b)reserve to the person who is for the time being the tenant's immediate landlord the right to obtain possession of the flat in question in accordance with section 61.

(8) In granting the new lease the landlord shall not be bound to enter into any covenant for title beyond—

(a)those implied from the grant, and

(b)those implied under Part I of the Law of Property (Miscellaneous Provisions) Act 1994 in a case where a disposition is expressed to be made with limited title guarantee, but not including (in the case of an underlease) the covenant in section 4(1)(b) of that Act (compliance with terms of lease);

and in the absence of agreement to the contrary the landlord shall be entitled to be indemnified by the tenant in respect of any costs incurred by him in complying with the covenant implied by virtue of section 2(1)(b) of that Act (covenant for further assurance).

(8A) A person entering into any covenant required of him as landlord (under subsection (8) or otherwise) shall be entitled to limit his personal liability to breaches of that covenant for which he is responsible.**]**

(9) Where any person—

(a)is a third party to the existing lease, or

(b)(not being the landlord or tenant) is a party to any agreement collateral thereto,

then (subject to any agreement between him and the landlord and the tenant) he shall be made a party to the new lease or (as the case may be) to an agreement collateral thereto, and shall accordingly join in its execution; but nothing in this section has effect so as to require the new lease or (as the case may be) any such collateral agreement to provide for him to discharge any function at any time after the term date of the existing lease.

(10) Where—

(a)any such person ("the third party") is in accordance with subsection (9) to discharge any function down to the term date of the existing lease, but

(b)it is necessary or expedient in connection with the proper enjoyment by the tenant of the property demised by the new lease for provision to be made for the continued discharge of that function after that date,

the new lease or an agreement collateral thereto shall make provision for that function to be discharged after that date (whether by the third party or by some other person).

(11) The new lease shall contain a statement that it is a lease granted under section 56; and any such statement shall comply with such requirements as may be prescribed by **[F3**land registration rules under the Land Registration Act 2002**]**.

91 Jurisdiction of . . . tribunals

(1) . . . Any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by [the appropriate tribunal].

(2) Those matters are—

(a) the terms of acquisition relating to—

(i) any interest which is to be acquired by a *nominee purchaser* [RTE company] in pursuance of Chapter I, or
(ii) any new lease which is to be granted to a tenant in pursuance of Chapter II,

including in particular any matter which needs to be determined for the purposes of any provision of Schedule 6 or 13;

(b) the terms of any lease which is to be granted in accordance with section 36 and Schedule 9;

(c) the amount of any payment falling to be made by virtue of section 18(2);

[(ca) the amount of any compensation payable under section 37A;]

[(cb) the amount of any compensation payable under section 61A;]

(d) the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which section 33(1) or 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs; and

(e) the apportionment between two or more persons of any amount (whether of costs or otherwise) payable by virtue of any such provision.

(9) [The appropriate tribunal] may, when determining the property in which any interest is to be acquired in pursuance of a notice under section 13 or 42, specify in its determination property which is less extensive than that specified in that notice.

(11) In this section—

"the nominee purchaser" and "the participating tenants" have ["RTE company" has] the same meaning as in Chapter I;
"the terms of acquisition" shall be construed in accordance with section 24(8) or section 48(7), as appropriate;

[(12) For the purposes of this section, "appropriate tribunal" means—

(a) in relation to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) in relation to property in Wales, a leasehold valuation tribunal.]

Law of Property Act 1925

62 General words implied in conveyances.
(1) A conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, water-courses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or, at the time of conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

(2) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses, or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or, at the time of conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses, or other buildings conveyed, or any of them, or any part thereof.

(3) A conveyance of a manor shall be deemed to include and shall by virtue of this Act operate to convey, with the manor, all pastures, feedings, wastes, warrens, commons, mines, minerals, quarries, furzes, trees, woods, underwoods, coppices, and the ground and soil thereof, fishings, fisheries, fowlings, courts leet, courts baron, and other courts, view of frankpledge and all that to view of frankpledge doth belong, mills, mulctures, customs, tolls, duties, reliefs, heriots, fines, sums of money, amerciaments, waifs, estrays, chief-rents, quitrents, rentscharge, rents seck, rents of assize, fee farm rents, services, royalties jurisdictions, franchises, liberties, privileges, easements, profits, advantages, rights, emoluments, and hereditaments whatsoever, to the manor appertaining or reputed to appertain, or, at the time of conveyance, demised, occupied, or enjoyed with the same, or reputed or known as part, parcel, or member thereof.

For the purposes of this subsection the right to compensation for manorial incidents on the extinguishment thereof shall be deemed to be a right appertaining to the manor.

(4) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and has effect subject to the terms of the conveyance and to the provisions therein contained.

(5) This section shall not be construed as giving to any person a better title to any property, right, or thing in this section mentioned than the title which the conveyance gives to him to

the land or manor expressed to be conveyed, or as conveying to him any property, right, or thing in this section mentioned, further or otherwise than as the same could have been conveyed to him by the conveying parties.

(6) This section applies to conveyances made after the thirty-first day of December, eighteen hundred and eighty-one.