



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

- Case Reference** : **MAN/00BY/OLR/2022/0026-33**
- Property** : **Flats 15-22 Fishguard Close, Liverpool  
L6 2WE**
- Applicant** : **Mr K Henry (represented by Mr Byrne of  
Counsel)**
- Respondents** : **Liverpool City Council (1)  
Proxima GR Properties Limited (2)**
- Type of  
Application** : **Application for lease extension: Section  
48(1) Leasehold reform and Urban  
Development Act 1993**
- Tribunal  
Members** : **Mr J R Rimmer  
Mr I James**
- Date of Decision** : **17<sup>th</sup> March 2023**
- Decision** : **(1) the terms of the new lease are those  
determined at paragraphs 11-14, herein,  
(2) the premium payable to the Second  
Respondent in respect of each flat is  
£1,603.00.  
(3) The reasonable costs of the First  
Respondent are those set out in  
paragraph 20, herein.**

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## **Preliminary**

1 This application concerns 8 flats, being all the flats which together comprise a two storey apartment block situated on Fishguard Close in the Anfield district of Liverpool. The Tribunal had the advantage of inspecting one of the flats on the morning of 7<sup>th</sup> March 2023, prior to the commencement of the hearing of this matter later that day.

2 There are 4 downstairs flats and a further four on the first floor. There are a number of different internal layouts within a standard floor plan so as to encompass a living area, sleeping area, kitchen area and bathroom. There is a common entrance, hallways and stairways and a small communal external area to the rear.

3 They are situated within a short distance of limited local amenities, with more substantial facilities further away, either in the City Centre, or the local district centre.

4 The Applicant now holds the various sub-leases to the flats for periods of 120 years from 25<sup>th</sup> March 1981 and now seeks a 90 year extension under the provisions of Section 48(1) leasehold Reform and Urban Development Act 1993 (“The Act”). The notices in respect of each flat given by the Applicant are dated 27<sup>th</sup> October 2021 which fixes that date as the relevant date for effecting valuations required by the provisions of the Act.

5 The original leases vary slightly in the dates of their creation, depending on when original sales took place, but all are stated to be between Liverpool City Council (1) Barratt (Chester) Limited (2) and the relevant lessee (3). They make provision for an initial rent of £20.00 per year with reviews taking place on the 21<sup>st</sup>, 42<sup>nd</sup> 63<sup>rd</sup>, etc anniversaries of 25<sup>th</sup> March 1981. The 2022 review was the subject of extensive litigation and did not take effect. The next review is due shortly.

6 There is an intervening headlease which was made between Liverpool City Council (1) and O.M.Limited (2) for a term of 120 years from 25<sup>th</sup> March 1981 at a rent of £1.00 per year. The Second Respondent is the successor in title to O.M.Limited and would have the obligation to manage the building in which the eight subject flats are situated under the terms of this headlease, but for that obligation now being in the hands of a separate right to manage company.

7 The issue that remained for the Tribunal to determine at the time of the hearing of this matter were:

- (1) The terms of the new lease insofar as the sole disagreement in respect of those terms is the inclusion, or otherwise, of the Second Respondent as a party.
- (2) The valuation of the interest of the Second Respondent at the valuation date upon which no agreement had been reached between the parties. (the matter of the premium payable to the First Respondent having been agreed)
- (3) The costs of the First Respondent which were being claimed in an amount of £1,000.00 for legal costs in respect of each lease/flat and an amount of £550.00 for surveyor's fees for each lease/flat.

### **Evidence and submissions**

8 The Tribunal was presented with a significant amount of documents by the parties in three separate bundles much of which was effectively duplication of material as it related to 8 individual leases of 8 flats. The Tribunal was nevertheless able to ascertain the position of the parties, not just in respect of the two more straightforward issues of the parties to the lease and the costs of Liverpool City Council, but also the more complex issue of the valuation of the interest of the Second Respondent under its headlease. To assist in this regard the Tribunal had the benefit of two differing valuations, one from Mr Henry on his own behalf and the other from Mr Plotnek on behalf of the Second Respondent.

9 Thereafter the Tribunal was further assisted by those who attended the hearing, the Applicant, Mr Byrne and Mr Plotnek, being able to agree the differing elements of the valuation calculation sufficient for them to foresee agreement as to the valuation of the Second Respondent's interest without the intervention of the Tribunal exercising its own expert powers. That issue was therefore stood down for the parties to agree that calculation, to be made first by Mr Plotnek and then considered by Mr Henry and thereafter submit to the Tribunal the following week.

10. The Tribunal was therefore able to concentrate with those present upon the two remaining issues to be determined. There being no other representative of the Second Respondent, other than Mr Plotnek, a valuer, the Tribunal relied on the Applicant and Mr Byrne, together with the written submissions on behalf of the Second Respondent.

### **The terms of the new lease**

11 The issue is this: Proxima GR Properties Limited play no active role in the management and occupancy of the flats. There is a right to manage company inserted to effect management of the building for Mr Henry who sublets the 8 flats. The Applicant regards the Second Respondent as redundant and with no part to play in the new lease. The Second Respondent wishes to remain a party. There is a prospect, however remote in reality that may be, that in the event of management, in its current form, failing the headlessee would be required to take up that duty.

If there is no agreement upon the matter it is for the Tribunal to make a determination.

12 It is accepted by Proxima GR Properties Limited that they have no part to play in the current management of the flats and there is disagreement as to the situation, if any, that might exist if the current management were to fail and the obligation be resumed by Proxima.

13 In such a situation Section 57(1) and(9) of The Act provides assistance:

(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 (subject to exceptions that have no application in this case)

(9) Where any person-

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

(b) ...

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

14 Whilst the Tribunal notes that under the terms of the existing leases the Second Respondent has no function at all, other than to execute the deed and receive the purchase monies, that section requires that they be a party to the new lease in the absence of agreement to the contrary.

### **The costs of the First Respondent**

15 The First Respondent, the City Council, sets its costs on a fixed basis for lease renewals under the Act. They are currently legal costs of £1,000.00 and £550.00 surveyor's cost per lease. This policy has the advantage of simplicity and effects an evening out of the possible range of costs that would be incurred if calculated on the time spent by the appropriate staff.

16 The Applicant does not accept that basis, particularly taking into account that the transactions taking place, with or without the assistance of the Tribunal, which are 8 substantially identical leases (see the original leases in the bundles) of 8 substantially identical properties in one building sharing common facilities.

He also challenges the traditional view of costs properly incurred by the legal department of a public body as to time spent and chargeable hours taken in the legal work. He suggests the Tribunal considers the salaries of those directly involved in the provision of the legal service to the Council and adopts a reasonable assessment of the appropriate proportion of that cost for the time spent on these cases. The surveyor's costs can be similarly assessed for what is an essentially a "table-top exercise" for the valuations carried out.

17 The Tribunal would respectfully disagree with that manner of assessing legal or other professional costs for those engaged in such work by public bodies. It is confirmed in this view by the different approach taken by Mr Byrne at the hearing. To adopt a fixed basis is not, of itself unreasonable, but it should bear some relation to the time that will be required to be spent and the complexity thereof. Here the Tribunal is, however dealing with matters to which Mr Henry has, quite correctly, drawn the attention of the Tribunal.

18 Although it is dealing with 8 separate applications relating to 8 new leases the work is substantially repetitive and although individually the costs might properly reflect the skill of the fee earner, the complexity of the legal or valuation issues and the risk of prejudice any error might create they are substantially lessened by repetition. There is also the issue of proportionality when those total costs (£8,000.00 legal and £4,400.00 surveyor's fees) are weighed against the premiums assessed.

19 This is a position with which the Tribunal has more sympathy. If it commits itself to the principle that an initial fixed cost of £1,000.00 for legal costs and £550.00 are reasonable there is then an unfairness to Mr Henry, as a single Applicant in the current situation, in applying that a further 7 times. There ought to be a substantial reduction for work which is repeated, The Tribunal would reduce the legal costs in this case to £500.00 and the surveyor's costs (which the Tribunal views as somewhat different when assessing the nature and value of each flat, even if the results are found to be the same) of £350.00 for the remaining 7 flats.

20 The total costs assessed on that basis are £4,500.00 for legal costs and £3,000.00 for surveyor's fees. To the Tribunal's mind they represent both adequate recompense for work carried out and are proportional to the values under consideration and the complexities of both assessing the Applicant's entitlement and the complexities of the new leases required.

### **The valuation**

21 The Tribunal received from the parties a schedule of agreed matters negotiated between the parties, on the one hand Mr Plotnek for the second Respondent and on the other Mr Henry himself, assisted by Mr Byrne.

22. Agreement, as presented to the Tribunal related to the following:

- Valuation date 27<sup>th</sup> October 2021
- Lease expiry date 24<sup>th</sup> March 2101
- Unexpired term 79.40 years
- Current ground rent £20.00 per annum
- Next review date 25<sup>th</sup> March 2023
- Capitalisation rate 5.0%
- Extended lease value £39,999.00

- Relativity 89.66%
- Deferment rate 5.0%
- Uplift to freehold valuation price 1.0%
- Marriage value division 50/50%

23 Thereafter the parties indicated a willingness to permit Mr Plotnek to provide a calculation of the purchase price based upon the above parameters and Mr Henry to provide a view thereon within the week.

24 Within that timescale the calculation and comments were duly received. The Tribunal in such circumstances finds the calculation provided by Mr Plotnek entirely satisfactory for the purposes of assessing the value of the Second Respondent's interest in the flats at Fishguard court, they adopt the agreed matters listed at paragraph 22. The calculation is annexed hereto.

25 The Applicant raised a number of issues in relation to the calculation in his response which the tribunal should address.

- (1) The calculation relates only to the valuation as between the Applicant and the Second Respondent. It has no bearing upon the agreement reached between the Applicant and Liverpool City Council as to the valuation of the Council's interests. The workings of Mr Plotnek merely illustrate the difference had the Council adopted the matters now agreed between the Applicant and the Second Respondent.
- (2) The Second Respondent has agreed through Mr Plotnek certain matters where values are different from those previously adopted on behalf of the Second Respondent. Such differences are merely elements of positions adopted for the purposes of either negotiation or evidence. They have been further negotiated for the purpose of reaching the agreement subsequently presented to the Tribunal.
- (3) The Tribunal is aware that the negotiations took some time, during which the Applicant was assisted by Counsel well versed in proceedings of this nature and is satisfied that those matters were fully agreed between the parties.
- (4) The Tribunal is satisfied that in the circumstances of this case there would have been, and it is therefore proper to take into account, a rent review in respect of the headlease with effect from 25<sup>th</sup> March 2023, particularly given the circumstances surrounding the failed review in 2002. Mr Plotnek has provided a reasoned assessment of that likely new rent. The Applicant has not provided an alternative.

**J R RIMMER (Tribunal Judge)**