FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00KA/OLR/2025/0016**
Property	**:**	**2 Hyde House** **Crescent Rise** **Luton LU2 0AU**
Applicant	**:**	**Rebecca Anita Freckleton**
Representative	**:**	**Linda Ball, Adcocks Solicitors**
Respondents	**:**	**1. Tanya Louise Whetstone** **2. Laura Emily Whetstone**
Representative	**:**	**Woodfords Solicitors LLP**
Type of application	**:**	**Section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal members	**:**	**Judge David Wyatt** **Mrs M Hardman FRICS IRRV (Hons)**
Date of decision	**:**	**11 September 2025**

DECISION

<u>Decision</u>

The terms of acquisition (the terms on which the Applicant may acquire a new lease of their flat) are:

(a) a premium of £4,000; and

(b) the other terms set out in the draft new lease at pages numbered 129-143 of the bundle (including the lease term of 210 years from 1 September 1989) but amended as set out in **bold text** in paragraphs 14 to 30 below.

The reasons for this decision are explained below. This decision disposes of the case in the tribunal (save for any costs application pursuant to the following directions).

<u>Directions in relation to any costs application</u>

1. The tribunal should not be taken to be encouraging any application in respect of the costs of these proceedings. This is generally not a cost-shifting jurisdiction and the documents from both parties could have been prepared with more care. The parties may wish to refer to <u>Lea and Ors v Ilfracombe Management Co Ltd</u> [2024] EWCA Civ 1241 and the other authorities referred to in that decision, particularly <u>Willow Court</u>.

2. However, the Applicant has repeatedly said that they wish to make an application in respect of costs and requested directions for this. If any party wishes to make any application in respect of the costs of these proceedings, they must make their application within 28 days of the date this decision was sent to them (see rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013). Any such application must be made with a statement signed by an appropriate named individual with a statement of truth setting out: (a) the reasons for the order sought, with any legal submissions; (b) the costs being claimed, in sufficient detail to enable summary assessment; and (c) details of any relevant documentation relied on with copies attached, including copies of receipted invoices for all sums claimed.

3. If any such application is made:

    a. the Respondents must by **7 November 2025** send a statement in response setting out: (i) the reasons for opposing the application, with any legal submissions; (ii) any challenge to the amount of the costs being claimed, with full reasons for such challenge and any alternative costs; and (iii) details of any relevant documentation relied on with copies attached;

    b. the application will be decided without a hearing unless by **7 November 2025** any party requests a hearing, or the tribunal directs a hearing;

    c. the Applicant must prepare a full bundle of all documents the tribunal will need for the determination and shall by **21 November 2025** send one hard copy to the other party and send one hard copy to the tribunal. The bundle shall contain copies of this decision, any subsequent directions, and all documents produced by the parties pursuant to these directions; and

    d. if the Applicant fails to comply with these directions, such application may be struck out without further warning. If the Respondents fail to comply with these directions, they may be barred from further participation and matters may be determined against them summarily without further warning.

Reasons

1. This decision follows an application under section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (the "**Act**") for a determination of the terms on which the Applicant may acquire a new lease of their flat.

Background

2. The Respondents' freehold title to Hyde House is registered under title number BD148099. The Applicant's lease of 2 Hyde House is registered under title number BD170378. It is dated 10 September 1991 and was made between (1) Berkshire Limited as lessor and (2) John McGuire as lessee for a term of 120 years from 1 September 1989.

3. By a claim notice dated 19 June 2024 under section 42 of the Act, the Applicant sought a new lease for a term of 210 years from 1 September 1989 at a peppercorn rent for a premium of £4,100, with changes to the other terms of the existing lease. By a counter notice dated 6 August 2024 and signed by Woodfords Solicitors LLP on their behalf, the Respondents admitted the claim and accepted the new proposed lease term. They counter-proposed a premium of £8,000 and no other changes to the terms of the existing lease.

4. In their application to the tribunal dated 17 January 2025, the Applicant explained that unsuccessful attempts had been made by their surveyor and solicitors to negotiate a premium. It was said (in essence) that the Respondents had declined to instruct a valuer and no explanation had been given for their insistence on a premium of £8,000.

5. On 29 May 2025, the tribunal gave case management directions, requiring the Respondents to produce title documents and a draft new lease by 12 June 2025. The directions gave the usual warnings about the potential consequences of non-compliance. They provided for the Applicant to respond and gave permission for expert evidence if produced in accordance with the directions. The directions provided that the matter would be decided on the papers, without a hearing, unless a hearing was requested by 10 July 2025.

6. The Respondents failed to comply with the directions, so the Applicant applied to the tribunal. On 19 June 2025, the tribunal gave further directions. The Respondents were required to produce their draft new lease by 26 June 2025 and given a specific warning. The subsequent timetable was extended, with all documents relied upon to be produced by 17 July 2025 and the paper determination deferred until on or after 4 September 2025.

7. On 8 July 2025, since the Respondents had still failed to produce the requisite draft lease, the Applicant produced a draft new lease. On 10 July 2025, the Respondents' solicitors then sent an e-mail with a draft new lease in similar but incomplete terms. They said this had taken "*…some time to prepare as we were establishing the position with the management company and understand that the company referred to in the lease does not exist and there is no tenant company.*"

8. On 31 July 2025, the Applicant produced a determination bundle, but this was incomplete. On 14 August 2025, the bundle was referred to me and I gave final directions requiring a replacement bundle. These directions warned that as matters stood the tribunal could determine the premium at the figure proposed by the Applicant's valuer and the other terms set out in the draft proposed by the Applicant's solicitors, or otherwise determine the matter on paper based only on the materials in the Applicant's bundle without further warning. The directions required that any application from the Respondents to rely on anything further, including any submissions about the precise terms sought in the Applicant's draft lease and their reasons for seeking these, be made by 22 August 2025. No such application was made and I understand there was no request for a hearing. We are satisfied that it is appropriate to proceed to decide this matter on paper, as requested by the Applicant.

Premium

9. The Applicant produced the report of their valuer, Geoffrey Robert Bates BA FRICS, as directed, on 8 July 2025. No report was produced for the Respondents. In his report, Mr Bates opines that the premium payable should be £4,000, based on the valuation as at 19 June 2024 set out in Appendix 2 to his report.

10. The report explains his valuation of £1,551 of the existing right to receive the ground rent (currently £50, then £100 from September 2029 and then £200 from September 2069), using a capitalisation rate of 6% which he says is appropriate in view of the increases in the ground rent during the term.

11. The report describes the property, a one-bedroom flat with living room, kitchen, bathroom, separate WC and the right to park one private car. Appendix 3 to the report gives photographs of the exterior of the building and the interior of the flat. No tenant's improvements were relied upon. Mr Bates values the property with the extended lease (~175 years unexpired) at £153,000, by reference to his table of 12 comparable properties, and the freehold value at 1% more (~£154,500). There is no marriage value, because the current lease had more than 80 (~85) years left to run. Appendix 2 to his report explains his valuation of the diminution caused by the deferral of the reversion at £2,441, adopting the usual deferment rate of 5%. That together with the £1,551 for the loss of the ground rent totals £3,992, which he rounds to £4,000 (slightly less than the £4,100 proposed in the claim notice).

12. We might not adopt quite the same methodology as Mr Bates, but we accept his undisputed evidence as to the basic components and the result. Using the same figures and rates with more conventional methodology indicates only a slightly lower figure. We are satisfied that the premium payable for the new lease is £4,000.

Other terms

13. Save as considered below, the terms of the competing draft leases are substantially the same (other than minor parts/headings which the Respondents did not finalise, or seem inappropriate but unexplained, in their draft) and the Applicant's draft is a better starting point. Accordingly, we will adopt the Applicant's draft subject to the amendments made below, but we have compared and considered the relevant differences in both drafts.

<u>General terms</u>

14. **In LR3, the wording under "Other parties" should be "None", as in the Respondents' draft.**

15. The current lease defines the "*Management Company*" as "*Hyde House Management Company Luton Limited…*". It anticipated that a lease of the of the common parts would be granted to that management company, of which the lessees would be the shareholders. However, that company was not expressed to be a party to the current lease. The parties seem to agree that it does not exist and probably never did. There is no indication that it was ever incorporated or any other management company is involved with the building. The only company shown on the register at Companies House with a similar name (Hyde House Management Limited) appears to be involved with a different property named in Hyde House (in Warwickshire). Similarly, there is no indication that any lease of the common parts was actually granted.

16. **In LR4 "*and paragraph 3 of the particulars,*" should be deleted**, since it seems to be a mistake or it is not clear what this is referring to.

17. **In LR7, the premium should be as determined above.**

18. **In recital (F), in both places the words "*has agreed*" should be replaced with "*is*".**

19. **In clause 1.1:**

    (a) **the definition of "Plan…" should be deleted entirely, since this does not seem to be used in the new lease; and**

    (b) **the definition of "Premium" should be as determined above.**

20. **In clause 8.2, “NGL9437” shall be deleted and replaced with “BD148099”.** This seems to be a mistaken reference to the wrong title number.

21. In paragraphs 3 and 4 of Schedule 1 to their draft new lease, the Applicant proposed substantive changes to the lease terms. No changes under section 57(1) of the Act were indicated or relied upon. The Applicant relied on section 57(6) of the Act, recognising that the tribunal can only modify or exclude the terms of the current lease in so far as:

(a) this is necessary to remedy a defect in the existing lease; or

(b) it would be unreasonable in the circumstances to 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 in that lease.

<u>Step-in provisions</u>

22. In paragraph 3 of Schedule 1 to the new lease, the Applicant proposed step-in provisions as a new clause 9(f). These seem largely to use wording from a template, so that if the management company was never incorporated or is dissolved (or the like), or if a management company exists and is given notice but fails to maintain the property or provide “Services”, the landlord is obliged to step in (themselves or through an alternative management company) to the “role” of and to carry out the “Services” to be undertaken by the management company, with provision for cost recovery and limitation of liability.

23. However, these provisions bear no relation to the terms of the current lease, which does not seem to include any obligations on or “Services” to be performed by a management company. Instead, the current lease provides for the landlord to perform the covenants in the Third Schedule (without personal liability for breaches after the landlord has leased or transferred the reversion to the Management Company). The Third Schedule seems to include or incorporate the only relevant insurance, repairing and accounting obligations.

24. Since it appears and the parties seem to agree that the reversion has not been leased or transferred to a management company, I am not satisfied that the provisions are needed to remedy a defect or that it would be unreasonable not to include these provisions. The Applicant has not identified any problem with provision of services under the current terms of the lease. Their proposed additions do not appear to fit with the terms of the current lease (such as the apparent responsibilities of the landlord, clause 9(e), the definition of “Services” in the current lease (which means service media, so has a different meaning to that which the Applicant seems to be assuming)). They might cause more harm than good, even apart from the typographical error(s) in the Applicant’s proposed wording.

25. **Accordingly, the wording at paragraph 3 of Schedule 1 to the draft lease in the bundle shall not be included in the new lease.**

Mortgagee protection

26. The wording at paragraph 4 of Schedule 1 to the Applicant's draft new lease appears to be template wording for the protection of mortgagees before forfeiture action is taken. Save for the drafting errors corrected below, it seems to be in normal balanced terms, replacing the existing clause 10 (a simple forfeiture clause) with similar terms but adding provision for the landlord to:

(a) give notice before forfeiture to any mortgagee of the lease of whom the landlord has received written notice;

(b) wait 28 days for the mortgagee to confirm whether they wish to remedy and, if they do, allow them 60 days (or such longer time as may be reasonable in view of the nature of the breach) to remedy the breach.

27. The Applicant says that this mortgagee protection is now required by many high street lenders in the UK (in their Part 2 requirements under the UK Finance Mortgage Lenders' Handbook for Conveyancers), so it would be unreasonable not to include this.

28. The Respondent has not disputed this, given any reasons why this change should not be made or proposed any alteration to the Applicant's proposed wording. Hague on Leasehold Enfranchisement (7^{th} Edition) confirms at 32-10 that "changes" for the purposes of section 57(6)(b) above is not defined, has been held to include changes in the law and would appear to include changes in acceptable conveyancing practice.

29. Given the lack of any dispute about this, I am satisfied that it would be unreasonable to include clause 10 without appropriate mortgagee protection wording in view of the change in the lending requirements of many mortgage lenders and/or conveyancing practice since the current lease was granted in 1991.

30. Accordingly, the wording at **paragraph 4 of Schedule 1 to the draft lease in the bundle shall be re-numbered paragraph 3 and included in the new lease provided that:**

(a) **"*relevant to the provision of Services or otherwise*" shall be deleted (for the same reason as noted above and because these words do not seem necessary);**

(b) **"*Landlord*" shall be deleted and replaced with "*Lessor*";**

(c) **after "*if the mortgagee confirms in writing to*", the word "*the*" shall be inserted; and**

(d) **after "*reasonable*" and before "*view*", the word "*in*" shall be inserted.**

Conclusion

31. Our determination is as set out at the start of this decision. Under the current law, no application can be made to the tribunal for an order requiring the Respondent(s) to enter into the new lease or authorising anyone to sign that lease on behalf of the Respondent(s). Any such application would need to be made to the County Court, not the tribunal. The tribunal cannot advise, but refers the parties to section 48(3), (5) and (6) of the Act. The parties may wish to take legal advice and ensure that the new lease is now entered into promptly, since it appears any party seeking to enforce entry into the new lease would have little time in which to prepare and issue proceedings in the County Court.

Judge David Wyatt **11 September 2025**

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.