



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

Case Reference : **CAM/00KF/OLR/2020/00100**

Property : **Flat 4, 1 Santanita Road
Westcliff on Sea
Essex SSo 8DD**

Applicant : **Richard Adrian Joe Gibbs**

Representative : **Drysdales Solicitors LLP
(Solicitors)**

Respondent : **Pace Estate Agency Ltd.**

Representative ; **Tolhurst Fisher LLP**

Tribunal : **Mr N Martindale BSc MSc FRICS**

Date of Decision : **9 November 2022**

Application	:	Determination of the terms for a lease extension, under S. 48 LRHUDAct 1993
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DECISION

Decision

The parties having already agreed the premium to be paid for the lease extension, sought the Tribunal's determination of the terms of the new lease which had not been settled. The Tribunal approves the landlord's original lease draft form and content as appears at Section 3 to the bundle in its entirely unmarked form.

Background

1. This is an application made under Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the premium and other terms to be paid, for the acquisition of an extension to the leasehold interest in the Property. The relevant legal provisions are set out in Appendix to this decision.
2. The Property is a small flat on the first floor with access to the ground floor via a shared internal staircase. It forms part of a former Edwardian semi-detached house converted into 4 flats in the early 1980's. The house had a rear garden with access from the rear of the house ground floor and a side pedestrian access leading from the former front garden and on to the street.
3. On the ground it appears that on conversion the open spaces front and rear had also been changed in form. They also became partly shared by and partly subdivided between, the four flats on completion of the works of conversion. The rear garden was formed substantially into 2 parallel garden plots. The front garden roughly concreted over entirely and formed into 3 car spaces.
4. The front concreted area was used to form a path from public road to the front shared entrance door. To its side were three unmarked narrow car spaces each perhaps 2m wide by about 4.5m long judging from the Google Earth Streetview photograph (at November 2020). There was no fourth car space. The entrance door to the interior of the Property and the path to it from the pavement are seen to the right hand side of the frontage, when viewed from the road. The parking spaces are seen to the left hand side of the frontage when viewed from the road. Finally to the left of the house is a concreted pathway leading to the rear garden. In summary from right to left across the frontage: A path; 3 narrow car spaces.
5. Beyond the left hand boundary of the house is the back garden, now a roughly concreted large yard to the end house in the adjoining road. There are no fences between these properties. Vehicle access to this large adjoining yard is wide and comes of Satanita Road adjacent to the forecourt at No.1. Together they have the appearance of an open area of land used in practice for parking vehicles.

6. In the registered leasehold title, the applicant is currently the long leaseholder of the Property. He holds his interest under the terms of a lease dated 4 November 1982, registered under title number EX268930. That lease was granted by Roger Thomas Barnes to the tenants Paul Hughes and Karen Hughes. That lease was assigned to the applicant on 31 October 1997. The title plan shows a red outlined demise within the building. There are no marked areas outside this to front, side or rear of the building.
7. In the registered freehold title the respondents purchased number EX255795 on 30 June 2011, subject to various leases, this being one of them. There were 4 leases. Flats 1, 2, 3, 4. The building is marked as area 1. The Property is entirely within this.
8. The registered freehold shows a title plan which highlights the boundary to the freehold. It also contains 4 lightly marked areas of the open space. Two of these are within the rear garden, two are within the former front garden. The registered freehold title shows the front garden, these areas are labelled No.6 (the right hand side car space), and No.3 (the middle car space) and No.2 (the left hand car space). In the rear, these areas are labelled No.5 (garden to the right hand side) and No.4 (garden to the left hand side). The remainder of the rear garden and front yard appear to be retained subject to shared rights of use and way as set out in each flat lease.
9. The registered freehold title describes in the schedule, the 4 flats. *“Flat 4 ...(First floor flat)... Flat 2... (Ground floor flat) garden ground and parking space... Flat 1 (ground floor flat) garden ground and parking space... Flat 3 (first floor flat) and parking space.* None of the faint marked external areas are ascribed to the Property. Instead areas 4 & 5 go with Flat 2, areas 5 & 6 go with Flat 1 and area 2 goes with Flat 3. There are 2 rear garden areas and 3 front yard parking areas. Flat 4 is ascribed no garden and no specific parking space other than space No.4, which does not exist on any plan.
10. In the lease of the Property the demise describes: *“ALL THAT rear First Floor Flat situate at and know as Flat 4 1 Satanita Road Westcliff...as the same is shown on the plan annexed hereto and thereon edged red...TOGETHER with the parking space numbered 4 and edged red on the plan annexed.”*
11. On reference to the lease plans attached, the first shows the site. It does not show any area marked by No.4 nor is any external area edged red. Instead the plan shows 3 narrow parking spaces edged 1, 2, and 3 in the former front garden. The building in the lease shows the front part of the first floor edged red as the Property. The First Schedule to the lease sets out the accompanying rights with the demise. They do not include a shared right to park a vehicle anywhere on the Property.

Directions

12. The Tribunal considered the issue on the papers submitted by the parties, without a hearing, in accordance with directions issued on 5 August 2022. The case was to be determined on or after 9 November 2022. Shortly before this date the parties confirmed that the premium had been agreed but that the final form of the lease had not.

Applicant's and Respondent's cases

13. There no witness statements from the applicant regarding their past and continuing use of land in front of the former house. They rely on two emails between parties representatives only. The applicant's representatives Drysdale in their email of 13 October 2022 to the landlord's representatives Tolhurst Fisher states "*Obviously it seems from the wording of the Lease that it was intended that this was to be demised although it was not shown on the Plan. In practice I understand my client simply parks in whatever space is available. My suggested solution is tat we remove the parking space from the demise and simply add a right to park "in such space as may be reasonably allocated by the Landlord from time to time"*".
14. On 14 October 2022 the landlord's representatives declined to agree the proposal. They stated: "*The 3 parking spaces on the front of forecourt are all demised to the other tenants. There is no space for a fourth car one the forecourt. My client is not in a position to amend the lease to provide for a fourth space. As it was not included on the lease plan at that time it appears that this was an error in the body of the lease.*"

Decision

15. Dealing with the parking space first: The applicant seeks to expand on the reference to the fourth parking space as it appears in the lease. However, such a space does not exist in: the lease site plan; the leasehold title plan; the freehold title plan; or in reality on the site. The right still exists in theory for the applicant to park in a space No.4, but, no such space exists. There is simply no physical room for a fourth space.
16. In addition there is no reference to any rights retained by the landlord to allocate or reallocate use of the 3 spaces to any of the leaseholders or others. The solution proposed by the applicant is not within the power of the landlord to effect or for the Tribunal to direct. On the evidence it would require changes to one or more other leases to the detriment of those leaseholder's interests.
17. It is outwith the powers of this Tribunal to change the freehold title or other leasehold titles at this address. The Tribunal therefore makes no

change to the wording in the new lease or any plan within it, of this Property regarding the demised fourth space, nor can it introduce any new right to park a vehicle anywhere on the freehold demise.

18. Turning to the other changes sought by the applicant to the draft lease from the landlord, the application form at page 8 referenced a number of other disputed terms. However from what is apparently the latest draft of the lease at Section 3 to the bundle, most of these are now settled or dropped by the applicant leaving only the points marked in red with and without red underlining in what appeared to be the latest draft of the lease.
19. In any event the applicant made no representations as to why these changes to the landlord's draft were required or justifiable. The Tribunal therefore approves the original version of the new draft as produced by the landlord in the form but, entirely unmarked, as it appears in Section 3 to the bundle.

Name: Neil Martindale
BSc MSc FRICS

Date: 9 November 2022

Appendix

Leasehold Reform, Housing and Urban Development Act 1993

S. 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, [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 [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 [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.