



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

Case Reference : **MR LON/00AT/OLR/2015/0438**

Property : **Flat 3, 3 Grove Road, Brentford,
Middlesex TW8 9NT**

Applicant : **Mr Vatroslav Vlahovic**

Representative : **Mr Nicholas Plotnek LLB of Nick
Plotnek Associates**

Respondent : **Mr Ajay Kumar Anand**

Representative : **Mr K Kumar of Cheal Asset
Management Limited**

Type of Application : **Application under section 48 of the
Leasehold Reform, Housing and
Urban Development Act 1993**

Tribunal Members : **Mr Jeremy Donegan – Tribunal
Judge
Mrs Helen Bowers MRICS – Valuer
Member**

**Date and venue of
Paper Determination** : **17 June 2015
10 Alfred Place, London WC1E 7LR**

Date of Decision : **08 July 2015**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the premium payable under Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”), on the grant of a new lease of Flat 3, 3 Grove Road, Brentford, Middlesex TW8 9NT (“the Flat”) is £14,228 (fourteen thousand, two hundred and twenty eight pounds).
- (2) A schedule setting out the tribunal’s calculation of the premium is attached.
- (3) The tribunal makes determinations on the disputed terms of the lease, as set out at paragraph 65 of this decision.

The background

1. The Applicant is the leaseholder of the Flat. The Respondent is the freeholder of 3 Grove Road, Brentford, Middlesex TW8 9NT (“the Property”), which is a substantial, four-storey semi-detached house that has been converted into four flats. All four flats are held on long leases.
2. On 27 June 2014 the Applicant served a notice of claim on the Respondent pursuant to section 42 of the 1993 Act, seeking a new lease of the Flat. The notice proposed a premium of £12,000 for the new lease.
3. On 29 August 2014 the Respondent served a counter-notice in which he admitted that the Applicant’s entitlement to a new lease under the 1993 Act. The counter-notice proposed a premium of £26,100. Attached to the counter-notice were valuation calculations that were signed by “*Messrs PK & AK Associates*”. This did not identify the individual who had prepared the calculations.

The application

4. The Applicant seeks a determination of the premium to be paid for the new lease and other terms of acquisition, pursuant section 48 of the 1993 Act.
5. The application was received by the tribunal on 23 February 2015. Directions were issued and sent to the parties on 17 March 2015.
6. Paragraphs 2-9 of the directions are set out overleaf:

Lease terms

2. *The landlord must by **31 March 2015** submit a draft lease to the tenant for approval.*
3. *The tenant must by **14 April 2015** return the draft lease to the landlord with any amendments shown in red.*
4. *The landlord must by **21 April 2015** provide the tenant with a list of the terms of the draft lease that remain in dispute.*

Valuation

5. *The parties' valuers must by **31 March 2015** exchange valuation calculations and meet to clarify the issues in dispute.*
6. *The parties must by **5 May 2015** exchange statements of agreed facts and disputed issues and send copies to the tribunal.*
7. *The parties must exchange expert reports **at least two weeks before** the hearing date notified to them in accordance with the following directions.*

Listing and hearing

8. *Between **Monday 4 May and Friday 8 May 2015** each party must return to the tribunal the attached listing questionnaire showing the availability of the parties' expert witnesses and advocates during the period of **08 June 2015 to 15 July 2015**. Any representations relating to the listing of the case should be set out in the questionnaire.*
9. *Within **3 weeks** of receipt of the completed listing questionnaire the tribunal will list the case for hearing. The tribunal will immediately notify the parties of the hearing date.*
7. *The Application was subsequently listed for hearing on 16 and 17 June 2015 and notice of the hearing dates was sent to the parties on 13 May 2015. In the case of the Respondent both the directions and the hearing notice were sent to Cheal Asset Management Limited ("CAML") at Ground Floor, 28 Park Royal, London NW10 7JW, being the address for service given in the counter- notice.*
8. *In a letter to the Applicant's solicitors dated 15 April 2015, CAML stated that an amended draft lease had not been produced in accordance with*

the directions. It is clear from that letter, which was copied to the tribunal that CAML received the directions.

9. The relevant legal provisions are set out in the Appendix to this decision.
10. The relevant provisions of the existing lease and the draft lease are referred to below.

The leases

11. The existing lease of the Flat was granted by Peter Gillott ("Lessor") to Elizabeth Ann Wise and Fraser Gordon ("Lessee") on 18 February 1986 for a term of 99 years from 25 December 1985. The ground rents are £75 per annum for the first 33 years, £95 per annum for the next 33 years and £115 per annum for the remainder of the term.
12. The Lessee's covenants are set out in part 1 of the fifth schedule to the existing lease and include:

20 (a) Not to assign underlet share or part with possession of part only of The Demised Premises

(b) Not to assign underlet share or part with or share possession of the whole of The Demised Premises during the last seven years of The Term without The Lessor's consent in writing such consent not to be unreasonably withheld

(c) To procure that any underletting of the Demised Premises contains restrictions similar to those set out in the Ninth Schedule and does not contain terms inconsistent with the terms of this Lease or the Headlease (if any)

13. The Lessor's covenants are to be found in part 1 of the sixth schedule to the existing lease and include:

4. To keep The Property including The Demised Premises insured in its full reinstatement cost against loss or damage by fire and such other of the usual comprehensive risks as The Lessor may in its discretion determine and to produce to The Lessee on demand (and on payment of a proper fee for the production and copying thereof) the policy of insurance and the receipt for the last premium in respect thereof and in the case of destruction of or damage to The Property or any part thereof to cause all monies received in respect of such insurance to be paid out with all convenient speed in rebuilding repairing or otherwise reinstating The Property or the part thereof so destroyed or damaged but without prejudice to The

Lessee's liability to pay or contribute towards the costs such rebuilding repairing or reinstatement as hereinbefore provided PROVIDED THAT The Lessor shall be under no liability to The Lessee under this Clause to make good to The Lessee any deficiency of such insurance monies by reason of the premium for the insurance of The Property not having been increased on account of any thing or matter done or brought thereon of which notice shall not have been given by The Lessee to The Lessor in accordance with Clause 4 of Part II of the Fifth Schedule

14. The disputed clauses in the draft lease are set out below:

3.11.3 The Tenant can sublet the Flat but subject to the following conditions: -

3.11.3.1 The Tenant shall furnish to the Landlord in advance two references Until the Landlord has received with which he is reasonably satisfied one of which shall be a bank reference any subletting shall be unlawful

3.11.3.2 Following any subletting the word "Tenant" where it appears in this Lease shall include the sub-tenant

3.11.3.3 The sub-tenant shall covenant directly with the Landlord to perform the Tenant's obligations and covenants under this Lease

3.11.3.4 The Tenant shall pay the Landlord's all costs in connection with the sub-letting

3.11.3.5 The rent under such subletting shall not be less than the rent hereby reserved

3.12 To notify the Landlord's Solicitors or managing agents upon any assignment subletting or other parting with possession or change of ownership and within one month of the same occurring to produce to Lessor or their Solicitors or managing agents a certified copy of each the relevant documents for registration and to pay a reasonable registration fee of £0.5 per centum of total consideration paid or as per current market condition whichever is greater.

3.23 In the event of the Flat or any part of the Building being damaged or destroyed by fire at any time during the Term and the insurance money under any insurance against fire effected thereon being wholly or partially irrecoverable by reason solely or in part of any act or default of the Tenant then in every such case the Tenant will forthwith pay (in addition to

the Yearly Rent and other monies covenanted to be paid) to the Landlord the whole (or as the case may require) a fair proportion of the cost (or the balance of the cost) of completing rebuilding and reinstating the same and any dispute as to the proportion to be contributed by the Tenant or otherwise in respect of or arising out of this provision shall be referred to arbitration in accordance with the provisions of the Arbitration Acts 1950-1979 or any statutory modification or re-enactment thereof for the time being in force

The hearing

15. Mr Plotnek appeared before the tribunal on the morning of Tuesday 16 June 2016, on behalf of the Applicant. There was no appearance on behalf of the Respondent. The tribunal case officer telephoned CAML and spoke to Mr Kumar, who advised that he had just returned from a trip abroad and had not received notification of the hearing. In the light of this information the tribunal informed Mr Plotnek that it would postpone the hearing until 1pm on Wednesday 17 June 2015. The case officer then informed Mr Kumar of the time and date of the postponed hearing, by telephone.
16. During the course of the initial hearing on 16 June, Mr Plotnek supplied the tribunal with hearing bundles that had been prepared by the Applicant's solicitors. These contained copies of the application, directions, claim notice, counter-notice, Land Registry entries for the leasehold and freehold titles, existing lease, draft lease, Mr Plotnek's valuation report dated 09 June 2015 and a list of issues. Mr Plotnek explained that he had been unable to make contact with CAML or exchange valuation reports. For this reason he had been unable to agree any elements of the valuation.
17. The list of issues, which had been prepared by the Applicant's solicitors, identified the following issues to be determined by the tribunal:
 - (i) Premium to be paid by the Applicant;
 - (ii) Capitalisation rate;
 - (iii) Relativity rate;
 - (iv) Deferment rate;
 - (v) Freeholder's vacant possession value;
 - (vi) Whether clause 3.11.3 of the draft lease should be deleted;

- (vii) Whether clause 3.12 of the draft lease should be deleted;
- (viii) Whether clause 3.23 of the draft lease should be varied;
18. At the initial hearing, the tribunal asked that the Applicant's solicitors provide written submissions on the disputed clauses in the draft lease.
19. Both Mr Plotnek and Mr Kumar attended the postponed hearing on 17 June 2015. Mr Kumar apologised for failing to attend on the previous day and reiterated that he had not received the hearing notice. He also stated that this was the first occasion he had failed to attend a hearing before the tribunal.
20. Mr Plotnek supplied Mr Kumar with a hearing bundle and provided the tribunal and Mr Kumar with brief written submissions on the disputed clauses in the draft lease, as prepared by the Applicant's solicitors. The tribunal adjourned the hearing briefly to enable Mr Kumar to consider the hearing bundle and to give the representatives an opportunity to discuss the issues. Unfortunately they were unable to agree or narrow any of the issues and the tribunal then proceeded with the hearing.
21. Mr Kumar sought to rely on certain new documents that he had brought to the hearing and acknowledged that they should have been produced in advance of the hearing. The tribunal was unwilling to consider these documents, as they had not been disclosed previously and the Applicant would be prejudiced by their late production.
22. Mr Kumar informed the tribunal that the Respondent had decided not to incur the cost of obtaining a valuation report, notwithstanding the requirement in the directions for the parties to exchange valuation reports.
23. The tribunal then heard oral evidence and submissions from Mr Plotnek and Mr Kumar. Mr Plotnek verified the contents of his report dated 09 June 2015 and answered questions on the report from the tribunal. He was also cross-examined by Mr Kumar. Mr Kumar spoke to the Respondent's valuation calculations and also answered questions from the tribunal. He was briefly cross-examined by Mr Plotnek regarding his failure to attend a tribunal hearing on another case.
24. Mr Plotnek is the sole principal of Nick Plotnek Associates, a valuation practice in Birmingham. He specialises in valuations under the Leasehold Reform Act 1967 and the 1993 Act and has some 34 years' experience in this type of work, acting for both landlords and tenants. His report contained an expert's declaration and set out his expert opinion on the premium to be paid on the grant of a new lease. In his report, Mr Plotnek explained that he usually settles cases by negotiation but has appeared as a witness at the tribunal on many occasions.

25. There was no expert evidence for the Respondent. Rather Mr Kumar relied solely on the valuation calculations attached to the counter-notice and his oral evidence and submissions at the hearing. Mr Kumar informed the tribunal that CAML act as professional advisers to the Respondent and that he has appeared before the tribunal on several occasions. CAML's letterhead indicates that it provides "*ESTATE LEGAL & LITIGATION SERVICES*".
26. Neither Mr Plotnek nor Mr Kumar requested an inspection of the Flat. The tribunal did not consider an inspection was necessary or proportionate to the issues in dispute.
27. Having heard from Mr Plotnek and Mr Kumar and considered the various documents, the tribunal has made the determinations set out below.

Lease extension premium

Capitalisation rate

28. Mr Plotnek adopted a rate of 7.5%. In his report he accepted that the ground rent income is well secured but referred to the level of the rent, the modest rent increases on each review and the need to serve formal rent demands with associated, irrecoverable management costs. He considered that the hypothetical investor would look at this income flow as having a yield around 7.5%.
29. Mr Kumar argued for a rate of 6%, as used in the Respondent's valuation calculations, having regard to the returns that might be achieved on alternative secure investments. He pointed out that the base rate had been 0.5% for the last 6 years with little prospect of an imminent increase and that the return on Government bonds was approximately 2%.

The tribunal's decision

30. The tribunal determines that the appropriate capitalisation rate is 7.5%.

Reasons for the tribunal's decision

31. It is quite unusual for the tribunal to have to determine the capitalisation rate, as this is normally agreed. Based on the tribunal's own knowledge and experience, acquired from dealing with other similar cases, the rates normally agreed or determined are between 7 and 8%. The Respondent did not produce any evidence to justify a departure from this range.

32. The tribunal agrees with Mr Plotnek that an investor would be looking at a yield of approximately 7.5%, having regard to the modest rents specified in the existing lease, the comparatively poor growth in the rents over the lease term and the work involved in serving formal rent demands.

Relativity rate

33. Mr Plotnek adopted a rate of 92.8%, by taking a mean average of the rates for 70 and then 75 years unexpired in the relativity graphs for Greater London and England from Beckett & Kay, SE Leasehold, Nesbitt & Co, Austin Gray and Andrew Pridell. He has then taken a straight line between the two averages to arrive at the rate for an unexpired term of 70.49 years. Mr Plotnek's report included the figures taken from the various graphs.
34. The valuation calculations attached to the counter-notice used a rate of 88%. At the hearing, Mr Kumar conceded this was too low. He suggested that an appropriate rate would be 90.5-91%. Mr Kumar stated that he did not like using relativity graphs. Rather he had based his figures on real transactions involving properties belonging to the Respondent's family, for whom he had acted for the last 30 years. However there was no evidence, or even details, of these transactions.

The tribunal's decision

35. The tribunal determines that the appropriate relativity rate is 92.8%.

Reasons for the tribunal's decision

36. There was no evidence or information to support the figures put forward by Mr Kumar, which appear to have been plucked from thin air. Mr Plotnek took a more scientific approach and was based on an average of five relativity graphs. The tribunal much preferred his approach.

Deferment rate

37. Mr Plotnek contended that a rate of 5.75% was appropriate and this was an appropriate case to depart from the 5% rate generic rate for flats in Prime Central London ("PCL"), established in *Cadogan v Sportelli* [2007] 1 EGLR 153. He relied on the 6% rate allowed for Court in *Zuckerman & Others v The Trustees of the Calthorpe Estates* [2009] UKUT 235 (LC). The decision in Zuckerman concerned Kelton Court in Edgbaston, which consists of purpose-built, low rise blocks of flats.

38. Mr Plotnek added 0.25% from **Sportelli** for the “basic” additional management for flats, which is uncontroversial. He then added an additional 0.25% to reflect obsolescence and 0.5% to take account of the differential in real growth rates between this part of Brentford and PCL, based on the decision in **Zuckerman**.
39. In relation to obsolescence, Mr Plotnek acknowledged that the extended lease value of the flats at Kelton Court was far lower than that for the Flat. He also acknowledged that there were no special characteristics of the Flat and Property, such as construction that increased the risk of obsolescence. Rather his argument appeared to that the risk of obsolescence was the same in the Flat’s location as it is in Edgbaston.
40. In his report, Mr Plotnek provided details of the different growth rates in Kensington & Chelsea and Hounslow, based on Land Registry data going back to 1995. The rate for the former was 10.60% per annum compared with 7.45% for the latter, giving a difference of 3.15%.
41. A graph of these growth rates was appended to Mr Plotnek’s report, from which it can be seen the rates only started to diverge in April 2006. He accepted that the rates might narrow over time but was not convinced that rate in Hounslow will ever catch up with that in Kensington & Chelsea, given the large gap between the two.
42. Mr Plotnek acknowledged that growth rates in Hounslow were greater than those for Kelton Court. He also accepted the limitations of the Land Registry data, which only go back 19 years but described this as “*a fair length of time*”.
43. Mr Kumar argued for a rate of 5%, as established in **Sportelli** and used in the Respondent’s valuation calculations. He stated that he always used this rate.

The tribunal’s decision

44. The tribunal determines that the appropriate deferment rate is 5%.

Reasons for the tribunal’s decision

45. The tribunal concluded that there was insufficient evidence to justify a departure from the **Sportelli** rate of 5%.
46. When considering obsolescence, it is necessary to look at the specific property rather than the general location. At Kelton Court the risk of obsolescence/deterioration was high given the cost of repairs relative to the low value of the flats and the nature and construction of the blocks.

The Property is a very different proposition. The Land Registry entries for the freehold refer to a conveyance dated 02 February 1867. This suggests that it is already 150 years old. It is attractive and appears to be well maintained, based on a photograph produced by Mr Plotnek. Taking these factors into account and the value of the Flat, the risk of obsolescence is modest and will be much closer to the properties considered in *Sportelli* than those at Kelton Court.

47. Whilst there was some evidence of lower growth rates in Hounslow than those in PCL, the Land Registry data only spanned a period of 19 years which was insufficient to establish a long term differential. Further the graph relied on by Mr Plotnek revealed there had only been a divergence in the rates for approximately 9 years. The rate in Hounslow may well catch up with that in PCL in the long term.

Capital values

48. Mr Plotnek's starting point was to look at the most recent sale of the Flat on 18 September 2009 and to adjust the sale price of £160,000 for time. This gives a value of just under £208,000, before any adjustment for lease length. Mr Plotnek accepted that this figure was too low.
49. Mr Plotnek also provided details of five comparable properties in nearby roads, where sales have been agreed, as set out below:

6 York Road	1-bed FFF	£295,000	Share of freehold. Under offer February 2015.
34c Boston Park Road	1-bed FFF	£249,000	Period conversion. 125-year lease. Under offer April 2015
61a Mafeking Avenue	1-bed GFF	£289,900	Share of freehold. Under offer June 2015
18b Adelaide Terrace	1-bed 2FF	£250,000	Under offer June 2015. 999-year lease. Faces main road
5 Manor House	1-be GFF	£272,000	Under offer June 2015. No garden.

50. The mean average of these 5 agreed prices is £271,000. Mr Plotnek then adjusted this figure for time, to derive a long-lease value for the Flat of £264,000, as at the valuation date (27 June 2014). This equates to a figure of approximately £245,000, based on a lease term of 70.49 years and applying his adopted relativity rate of 92.8%.
51. In his oral evidence, Mr Plotnek explained that there was a dearth of evidence of completed sales of one-bedroom flats in the neighbourhood, close to the valuation date. For this reason he had relied upon details of agreed sales, obtained from local estate agents.
52. In cross-examination, Mr Plotnek explained that he first searched for details of comparable sales on Rightmove and Zoopla in September 2013, when he prepared his original valuation. He undertook further searches in mid-2014, shortly after the counter-notice was served and again at the start of June 2015 when he prepared his valuation report.
53. The Respondent's valuation calculations used a figure of £330,000 as the freehold vacant possession value of the Flat.
54. Mr Kumar challenged Mr Plotnek's figures and suggested that there was very little evidence to support the figures. He queried why Mr Plotnek had not disclosed sales particulars or the results of his searches on Rightmove and Zoopla. Mr Kumar had undertaken his own internet searches and obtained details of a sale of Flat 2 at the Property "*almost 7 years ago*". Mr Kumar stated that this flat sold at £160,000, which equated to £330,000 at today's prices. He advised that he had visited the Property on several occasions and Flat 2 was the "*same*" as the Flat.
55. The sale of Flat 2 was the only comparable relied upon by Mr Kumar. Details of this sale had not been disclosed to Mr Plotnek or the Applicant's solicitors in advance of the hearing. In answer to a question from the tribunal, Mr Kumar acknowledged that the failure to provide evidence of comparable sales was down to him. He reiterated that his client was unwilling to bear the cost of a formal valuation report.

The tribunal's decision

56. The tribunal determines that the long lease value of the Flat at the valuation date was £264,000 (two hundred and sixty four thousand pounds).

Reasons for the tribunal's decision

57. There was no reliable evidence before the tribunal to support the Respondent's figure of £330,000. The tribunal had no details for Mr Kumar's only comparable (Flat 2), such as the flat size, layout and lease

length. Further there was no documentary evidence of the sale, which was approximately 7 years ago. Time adjustments over long periods can be unsafe, as evidenced by Mr Plotnek's analysis of the sale of the Flat in 2009. Further it appears that £330,000 is the current guideline figure given on Zoopla, as opposed to the figure on the valuation date.

58. Given the absence of an expert's report or any reliable evidence from the Respondent, the tribunal accepts Mr Plotnek's figures. He relied on five external comparables, all with long leases or a share of freehold. Further he had reasonably disregarded the sale of the Flat in September 2009, as this gave an artificially low figure. The tribunal is satisfied with Mr Plotnek's valuation approach and that £264,000 represented the long lease value of the Flat on the valuation date.

Summary

59. Having determined the capitalisation, relativity and deferment rates at 7.5%, 92.8% and 5% respectively and the capital value of the Flat at £264,000, the tribunal determines that the lease extension premium is £14,228 (fourteen thousand, two hundred and twenty eight pounds). The tribunal's calculations are set out in the attached schedule.

Lease terms

60. As identified in the list of issues, the disputed terms in the draft lease were clauses 3.11.3, 3.12 and 3.23. It appears that all other terms were agreed and the tribunal only considered these three clauses.
61. Mr Plotnek relied on the written submissions prepared by the Applicant's solicitors. These can be summarised as follows:

Clause 3.11.3 – This should be deleted in its entirety, as it seeks to restrict sub-letting of the Flat. Such a restriction is extremely rare in long leases and there are no such provisions in the existing lease. Such a clause might not comply with the requirements of the Council of Mortgage Lenders ("CML").

Clause 3.12 – Again this should be deleted in its entirety, as it would be extremely unusual for a long lease to contain notification of subletting. Further the requirement to pay a registration fee is unreasonable and there are no such provisions in the existing lease. Again such a clause might not require with CML requirements.

Clause 3.23 – Again this should be deleted. The draft lease does not contain an express obligation on the landlord to insure/reinstate the Property and does not comply with CML requirements. The Applicant's solicitors suggested that this clause be replaced with a detailed insuring covenant.

62. Mr Kumar's starting point was that the terms of the lease had already been agreed and the Applicant had not disputed these clauses. However there was no evidence of any agreement. To the contrary, the list of issues and written submissions clearly identified that these clauses were disputed.
63. Mr Kumar suggested that the proposed restrictions on subletting in clauses 3.11.3 and 3.12 were necessary, due to changes in society since the existing lease was granted. The increase in terrorism meant that additional checks should be undertaken before the Flat is sublet, to ensure the subtenant is suitable. Mr Kumar argued that it was in interests of the other residents to introduce these checks.
64. Mr Kumar opposed the introduction of the Applicant's proposed insuring covenant. He pointed out that this was different to the insuring obligations in the other leases at the Property and argued that the insuring covenants should be the same for all four flats.

The tribunal's decision

65. The tribunal makes the following determinations in relation to the disputed terms of the draft lease:
- (a) Clauses 3.11.3 shall be deleted in its entirety and replaced with the following wording:
- 3.11.3 To procure that any underletting of the Flat contains restrictions similar to those set out in the Fourth Schedule and does not contain terms inconsistent with the terms of this Lease or the Headlease (if any)*
- (b) Clause 3.12 shall be deleted in its entirety.
- (c) Clause 3.23 shall be deleted in its entirety.
- (d) An insuring covenant shall be added at clause 6.6 reading:
- 6.6 To keep the Building including the Flat insured in its full reinstatement cost against loss or damage by fire and such other of the usual comprehensive risks as the Landlord may in its discretion determine and to produce to the Tenant on demand (and on payment of a proper fee for the production and copying thereof) the policy of insurance and the receipt for the last premium in respect thereof and in the case of destruction of or damage to the Building or any part thereof to cause all monies received in respect of such insurance to be paid out with all convenient speed in*

rebuilding repairing or otherwise reinstating The Property or the part thereof so destroyed or damaged but without prejudice to the Tenant's liability to pay or contribute towards the costs such rebuilding repairing or reinstatement as hereinbefore provided

Reasons for the tribunal's decision

66. The new lease is to be on the same terms as the existing lease but with such modifications as may be required or appropriate to take account of the matters listed in section 57(1) of the 1993 Act.
67. The restrictions at clause 3.11.3 and 3.12 of the draft lease are unduly onerous and unnecessary. They go well beyond the current alienation requirements at clause 20 of the existing lease and are contrary to section 56(5) of the 1993 Act. The new wording of clause 3.11.3 follows that at clause 20(c) of the existing lease.
68. Clause 3.23 of the draft lease is unduly onerous and there is no such provision in the existing lease. Further it does not come within any of the matters listed in section 57(1).
69. The existing lease contains an express obligation on the Respondent to insure the Property, at paragraph 4 of part 1 to the sixth schedule. The new lease is to be on the same terms as the existing lease and an express insuring covenant is required. The tribunal accepts Mr Kumar's argument that this should be in the same form as the covenants in the other leases, for the sake of consistency. The Applicant's solicitors did not identify any defects in the existing insuring covenant. Accordingly the new clause 6.6 follows the wording of the existing covenant save that the passage "*PROVIDED THAT*" to "*the Fifth Schedule*" has been deleted, as there is no requirement in the draft lease for the Applicant to give notice of any circumstance that might increase the insurance premiums.

Name: Tribunal Judge Donegan **Date:** 08 July 2015

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act 1993 (as amended)

Section 56

- (1) Where a qualifying tenant of a flat has under this Chapter a right to acquire a new lease of the flat and gives notice of his claim in accordance with section 42, then except as provided by this Chapter the landlord shall be bound to grant to the tenant, and the tenant shall be bound to accept –
- (a) in substitution for the existing lease; and
 - (b) on payment of the premium payable under Schedule 13 in respect of the grant,
- a new lease of the flat at a peppercorn rent for a term expiring 90 years after the term date of the existing lease

.....

- (5) No provision of any lease prohibiting, restricting or otherwise relating to a sub-demise by the tenant under the lease shall have effect with reference to the granting of any lease under this section

.....

Section 57

- (1) Subject to the provisions of this Chapter (and in particular to the provisions as to rent and duration contained in section 56(1)), the new lease to be granted to a tenant under section 56 shall be a lease on the same terms as those of the existing lease, as they apply on the relevant date, but with such modifications as may be required or appropriate to take account –
- (a) of the omission from the new lease of property included in the existing lease but not comprised in the flat;
 - (b) of alterations made to the property demised since the grant of the existing lease; or
 - (c) in a case where the existing lease derives (in accordance with section 7(6) as it applies in accordance with section 39(3) from more than one separate leases, of their combined effect and of the differences (if any) in their terms.

.....

Appendix 1
Flat 3, 3 Grove Road, Brentford
London, TW8 9NT

Valuation Date	27/06/2014
Capitalisation Rate	7.50%
Deferment Rate	5%
Long Lease Value	£264,000
Relativity	92.80%
Short Lease Value	£244,992

Term 1

Ground Rent	£75	
YP for 4.49 years @ 7.5%	<u>3.6969</u>	£277

Term 2

Ground Rent	£95	
YP for 33 years @ 7.5%	12.1074	
PV for 4.49 years @ 7.5%	<u>0.7227</u>	£831

Term 3

Ground Rent	£115	
YP for 33 years @ 7.5%	12.1074	
PV for 37.49 years @ 7.5%	<u>0.0664</u>	£92

Reversion

Freehold value	£264,000		<u>£1,200</u>
Deferred 70.49 years @ 5.0%	<u>0.0321</u>	£8,474	

less

Freehold value	£264,000		
Deferred 160.49 years @ 5.0%	<u>0.0004</u>	£106	
			<u>£8,368</u>

£9,568

Marriage value

Proposed			
Long Lease Value	£264,000		
less			
Existing			
Short Lease Value	£244,992		
Landlord's Interest	<u>£9,568</u>		
Marriage Value		<u>£9,440</u>	

50:50 division £4,720

£4,720

Total Premium Payable

£14,228