



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

<b>Case Reference</b>	<b>: DD/LON/00AM/OLR/2019/0519</b>
<b>Property</b>	<b>: 10 Flats at Eton House, Eastway, London E9 6JA</b>
<b>Applicant</b>	<b>: Peabody Trust</b>
<b>Representative</b>	<b>: Ms Ziah</b>
<b>Respondent</b>	<b>: London Diocesan Fund</b>
<b>Representative</b>	<b>: Mr Gallagher</b>
<b>Type of Application</b>	<b>: Application for a determination as to the disputed terms of acquisition.</b>
<b>Tribunal Members</b>	<b>: Judge Shepherd Ian Holdsworth FRICS</b>
<b>Date of Decision</b>	<b>: 30<sup>th</sup> November 2021</b>

1. In this case the Applicant, Peabody Trust has made 10 applications before the Tribunal one for each of the 10 flats in Eton House, East Way, London E9 (“The premises”). The Respondents are the London Diocesan fund who are the freeholders of the premises. Each application is for a determination of the disputed terms of acquisition in respect of the 10 individual applications for statutory lease extensions under the lease extension provisions of the Leasehold Reform Housing and Urban Development Act 1993 (“The 1993 Act”). Each application is in the same terms. The premiums for the lease extensions have been agreed at an aggregate total of £75,000 in respect of all

10 flats. Accordingly, it is only the disputed terms which the tribunal needs to resolve.

## **Background**

2. Peabody is the head lessee of the the premises pursuant to a lease made on 2 February 1981 between the Respondents and Family Mosaic House (“The head lease”) for a term of 120 years from 1 September 1978. The unexpired term of the head lease was slightly in excess of 80 years when on 28 August 2018 the tenants’ notices of claim were served.
3. The London Diocesan Fund (of the respondent) is the freeholder owner of the premises and is Peabody's immediate landlord. On 28 August 2018 Peabody served notices of claim on the Respondents in respect of each of the 10 flats in the building pursuant to section 42 of the 1993 act. Each tenant’s notice proposed modifications to the existing lease such that it be in the form attached to the tenant’s notice with such modifications as are necessary in consequence of the existing lease demise in property other than the flat in question. The Respondents served counter notices on 6 November 2018 in which they admitted the right to the proposed lease extensions but disputed the proposed terms of acquisition.
4. The statutory right to a lease extension in the 1993 Act accrues to long leaseholders who hold under leases that demise more than the individual flat in question. (*Howard De Walden Estates Ltd v Aggio* [2009] 1 AC 39). The statutory entitlement in respect of each individual lease extension claimed is limited to an extended lease of the flat in question. Peabody's lease is the lease of the whole building and collectively the 10 individual lease extension claims seek lease extensions of all 10 of the flats in the building. The Tribunal was required to determine the disputed terms to be contained in the 10 new and extended leases of the individual flats. The leases are in identical form.

5. Unless the parties otherwise agree the default position is that the new lease is to be on the same terms as the existing lease (save for term and ground rent). However, this is subject to express exceptions, in particular (section 57 (1) (a)):

*Such modifications as may be required or appropriate to take account of the omission from the new lease of property included in the existing lease but not comprised in the flat.*

6. The Tribunal's power is to determine the terms of acquisition relating to any new lease to be granted to a tenant in pursuance of the 1993 Act. The terms of acquisition in respect of lease extensions are defined at section 48(8) of the Act.
7. The case of *Aggio* dealt with a similar situation to the present case and guidance was given by Lord Neuberger at paragraph 72. He stated that the applicable statutory provisions are expressed in relatively general terms so that they can be applied to the full range of circumstances that may appertain in the specific case with this latitude leaving much to the good sense, experience and expertise of the FTT.
8. The parties provided to the Tribunal a travelling draft lease of flat one. This was representative of all of the other leases in the application. The draft lease had proposed changes made on behalf of both parties. The main dispute between the parties related to the fact that Peabody sought to replicate the head lease as far as possible by seeking a demise of the structure and exterior of the building insofar as it relates to the individual flat. Currently the structure and exterior is under the control of the head lessee - Peabody. Following the change proposed by Peabody the head lease will be reduced to a

rump viz the common parts. It is the Applicant's case that this is the best way forward i.e. to demise the structure and exterior of the building to each individual flat in order to avoid difficulties should the parties be unable to agree an extra statutory head lease of the whole. The knock-on effect of the Peabody proposal is that the scope of the respective repairing covenants are altered.

9. For their part the Respondents seek new leases which demise internal parts of the relevant flat only with Peabody retaining responsibility for the structural exterior and common parts of the building under the head lease for the remainder of its term.

## **Determination**

10. The case of *Aggio* is instructive but it really only provides general guidance. It is for the Tribunal to determine the lease terms based on the facts before us. The Tribunal considers that the Respondents' concerns about the demise of the structure and exterior to the individual flats are well founded. They are right to identify the fact that if Peabody remain the leaseholder under all of the flat leases there will not be a problem with their proposal but there is no covenant against assignment proposed in the flat leases. Accordingly, it will be possible for Peabody to assign each of the flat leases to different parties who will in turn be responsible for maintaining repairing and insuring their share of the exterior and structural parts of the building. The respondents are entirely right to say this would result in an unattractive, unmanageable and difficult to enforce patchwork of repairing responsibilities.

11. The more favorable alternative will be a demise of the internal non-structural parts of the flats only to include the internal non-structural walls, the floor finishes, ceiling finishes plaster finishes and the glass in the windows. The tenant is responsible for the repair, maintenance and insurance of those parts

of the flat that are demised throughout the term of the flat lease (the corresponding obligations in the head lease ceasing to apply to those parts of the buildings demised). During the remaining term of the head lease Peabody would be responsible for the repair, maintenance and insurance of those parts of the premises not demised under the flat leases i.e. the structural and exterior parts. Following the term date the Respondents would be responsible for the repair maintenance and insurance of the retaining parts. The leaseholders of the flat leases would have a corresponding obligation to pay an appropriate service charge to the Respondents in respect of the costs of repairing and maintaining the retained parts. The Tribunal agrees with the Respondent that this is a practical and enforceable framework for the premises going forwards.

12. Accordingly, the Tribunal accepts and endorses the terms proposed by the Respondents in their Scott schedule which is annexed to this decision at Annex 2.

Jim Shepherd

30th November 2021

#### ANNEX 1 - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
3. 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.

4. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.