



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

Case Reference	:	LON/00BF/OLR/2017/0408
Address	:	Flat 1, 26 Mill Green Road, CR4 4HY
Applicant	:	Terena Helen Phillpot
Representative	:	Ms England (Counsel) instructed by C.L. Clemo & Co Solicitors
Respondents	:	Gray's Inn Capital Limited
Representative	:	Not present at hearing Stevenson's solicitors
Type of Application	:	Grant of new lease (Section 48 Leasehold Reform, Housing and Urban Development Act 1993)
Tribunal Members	:	Mr M Martyński (Tribunal Judge) Ms Marina Krisko BSc (ESTMAN) FRICS Ms R Wayte (Tribunal Judge)
Date and venue of Hearing	:	11 July 2017 10 Alfred Place, London WC1E 7LR
Date of Decision	:	12 July 2017

DECISION

Decision summary

1. The terms of the new lease are those proposed by the Applicant save that references to the 'Midland Bank Plc' shall be changed to 'The Bank of England'.

Background

2. The Applicant holds the long leasehold interest in the subject property.
3. The freehold interest in the subject property is held by the Respondent Company.
4. By a Claim Notice (undated in the papers supplied to the tribunal) the Applicant claimed the right to a new lease of the subject property pursuant to the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act'). By Counter Notice dated 20 September 2016, the right was admitted but the premium and terms offered were disputed.
5. By the time the matter was set down for determination by the tribunal, the premium had been agreed but various lease terms remained in dispute.
6. Only the Applicant (by her representatives) attended the final hearing before the tribunal. Beyond having the lease terms as proposed by the Respondent before us, we had no further representations from the Respondent.

The relevant law relating to lease terms in a new lease

7. Our decisions on the disputed lease terms and the reasons for those decisions are set out below.
8. The relevant statutory provision is section 57 of the Act. The relevant parts of section 57 read as follows:-

57. Terms on which new lease is to be granted

(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.

.....

(6) Subsections (1) to (5) shall have effect subject to any agreement between the landlord and tenant as to the terms of the new lease or any agreement collateral thereto; and either of them may require that for the purposes of the new lease any term of the existing lease shall be excluded or modified in so far as—

- (a) it is necessary to do so in order to remedy a defect in the existing lease; or
- (b) it would be unreasonable in the circumstances to include, or 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 of that lease.

9. During the course of the hearing we were referred to the Upper Tribunal decision in *Gordon v Church Commissioners for England*¹. The main principle that we have taken from this decision is that the starting point in considering the terms of a new lease to be granted under the Act is based in the terms of the existing lease, those terms are not to be departed from save in the circumstances described in section 57 of the Act.

Description of premises

- 10. The Respondent proposed a new description of the premises in the new lease.
- 11. The lease was drafted at a time when the development in which the subject flat is situated was in the course of being constructed, the lease itself refers to this construction. The current lease refers to the subject flat as 'Number 49, 24/26 Mill Green Road'. The finalised address of the flat (presumably on completion of the development) is 'Flat 1, 26 Mill Green Road'. The lease goes on to give further definition to exactly what is being demised.
- 12. There is no evidence that the difference between the lease address and the finalised address is of particular concern. We note from the Land Registry entries supplied that the subject flat is registered as 'Flat 1, 26 Mill Green Road'. There is no evidence that there is anything wrong in the further particularisation of the subject flat as set out in the original lease
- 13. It does not appear to us therefore that it would be unreasonable to include without modification, the address as per the original lease taking into changes occurring since the date of commencement of that lease because the suitability on the relevant date of the provisions of that lease are not compromised by the retention of the existing address and the description of the premises which comes from that.

Assignment and underletting terms

- 14. The existing lease at subparagraphs 2(17) & (18) contains some standard provisions regarding subletting and assignment, allowing for a fee (not under £10) to be paid on registration of those dispositions. The draft terms of the new lease from the Respondent changes these terms.

¹ LRA/110/2006 Re: Flat 27, 1 Hyde Park Square, London W2 2JZ

15. There does not appear to us to be any compelling reason for these changes. It is not suggested that the original terms are defective or that it would be unreasonable not to modify those terms.

Solicitors/Agents

16. A further proposed amendment to the existing lease terms was the insertion of 'agents' for or in addition to 'solicitors' in the lease. Again, there does not appear to us to be any compelling reason for these changes. It is not suggested that the original terms are defective or that it would be unreasonable not to modify those terms.

Modifications to reflect the Act

16. We agree that draft clauses 7.1 -7.3 of the Respondent's proposed lease should be in the new lease but these are better set out as per the Applicant's draft lease provisions – those being a neater and less intrusive suggestion.

Midland Bank

17. The current lease refers, for the purposes of calculation of interest, to the current rate of the Midland Bank. That bank of course no longer exists. There is a potential for future problems and confusion if this term is left in the lease unmodified. In our view it would be unreasonable to include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease (i.e. the demise of the Midland Bank) and accordingly, as proposed by the Respondent, that clause should be amended to refer to the Bank of England as opposed to the Midland Bank.

Restriction

18. We agree with the Applicant that there appears to be no need for the modification of the current lease clause 8. Whilst the draft change proposed by the Respondent may be an improvement on the current term, the current term is not defective and it would not be unreasonable in the circumstances to maintain the current term without modification with regard to the suitability on the relevant date of the provisions of the current lease.

Mark Martyński, Tribunal Judge
12 July 2017