



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

**Case reference** : **LON/00BK/OLR/2021/0343**

**Property** : **3rd and 4th floor flat at 3 Upper  
Wimpole Street, London W1M 6LE**

**HMCTS code  
(paper, video,  
audio)** : **V: VIDEO CVP**

**Applicant** : **Ms Kay Georgiou**

**Representative** : **Mr Gary Cowen QC instructed by N C  
Morris & Co LLP**

**Respondent** : **Howard De Walden Estates Limited**

**Representative** : **Mr Sands, Enfranchisement Director**

**Type of application** : **Section 48 of the Leasehold Reform,  
Housing and Urban Development Act  
1993**

**Tribunal members** : **Judge N Hawkes  
Mrs S Redmond BSc (Econ) MRICS**

**Date of  
determination and  
venue** : **2 November 2021 Remote Hearing**

**Date of decision** : **30 November 2021**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVP HEARING REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal was

referred to are in a bundle of 367 pages (including index) and a Licence for Alterations dated 26.9.07 together with plans, the contents of which we have noted. The order made is described below.

### **Decision of the Tribunal**

The Tribunal determines that the new lease shall include the following term:

*“The Demised Premises shall include where applicable:*

*...*

*3 the plastered coverings and plaster work of the ceilings and the internal surfaces of the window frames fitted in such ceilings and the internal surfaces of the retractable glazed canopy giving access to the roof including the internal surfaces of glass fitted therein and of the glass fitted in such window frames and the surfaces of the floors including the whole of the floorboards and supporting joists (if any)”*

### **The application**

1. This is an application made by the Applicant leaseholder pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”) concerning the grant of a new lease of the 3rd and 4th floor flat at 3 Upper Wimpole Street, London W1M 7TD (“the Property”).

### **The hearing**

2. The hearing of this application took place by CVP video on 2 November 2021.
3. The Applicant was represented by Mr Cowen QC, instructed by N C Morris & Co LLP, and the Respondent was represented by Mr Sands, its Enfranchisement Director. The Applicant and Mr Paul Addington, a Solicitor at N C Morris & Co LLP, also attended the hearing.

### **The background**

4. The Respondent is the freehold owner of property which includes 3 Upper Wimpole Street and is registered at the Land Registry under Title No. NGL797566.
5. There is an intermediate leasehold interest of the whole of 3 Upper Wimpole Street and 3 Devonshire Mews South which is registered at the Land Registry under Title No. NGL604959.

6. The intermediate leasehold interest, which is for a term of 125 years from 29 September 1987, is held by Goalcrave Limited. The Tribunal was informed that Goalcrave Limited is a lessee run company.
7. The Applicant's leasehold interest in the Property is registered at the Land Registry under Title No. NGL708684. The Applicant holds under a lease dated 6 April 1993 and made between Kenneth Walter Pilkington and Susan Pilkington and Peters Securities Company Limited which demised the Property for a term of 120 years less one day from 29 September 1986.
8. On 13 August 2020, the Applicant served a notice pursuant to section 42 of the 1993 Act seeking a new lease of the Property. On 20 October 2020, the Respondent served a counternotice pursuant to section 45 of the 1993 Act admitting the Applicant's right to a new lease.
9. On 13 April 2021, the Applicant issued an application to the Tribunal for the determination of the premium and other terms of acquisition which remained in dispute. The Tribunal issued directions on 20 July 2021.
10. On 14 September 2021, the parties reached agreement that the premium to be paid for the new lease would be the sum of £39,000. Of this sum, £6,000 will be apportioned to the intermediate lessee.

### **The issues**

11. The issues narrowed during the course of the hearing. Mr Sands stated that the Respondent would agree the Applicant's proposed wording at page 1 paragraph (A) of the draft lease if the intermediate landlord's agreement was obtained. The Tribunal understands that the intermediate landlord's consent to this form of wording has now been obtained.
12. The only other issue in respect of which the Tribunal heard argument concerns whether the new lease shall contain a term at Part 1 of the First Schedule which provides:

*“The Demised Premises shall include where applicable:*

...

***3 the plastered coverings and plaster work of the ceilings and the window frames fitted in such ceilings and the retractable glazed canopy giving access to the roof including the glass fitted therein and the glass fitted in such window frames and the surfaces of the floors including the whole of the floorboards and supporting joists (if any)”***

13. The words in bold are contended for by the Applicant.

**The law**

14. Section 57 of the 1993 Act includes provision that (emphasis supplied):

*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.*

*(2) Where during the continuance of the new lease the landlord will be under any obligation for the provision of services, or for repairs, maintenance or insurance—*

*(a) the new lease may require payments to be made by the tenant (whether as rent or otherwise) in consideration of those matters or in respect of the cost thereof to the landlord; and*

*(b) (if the terms of the existing lease do not include any provision for the making of any such payments by the tenant or include provision only for the payment of a fixed amount) the terms of the new lease shall make, as from the term date of the existing lease, such provision as may be just—*

*(i) for the making by the tenant of payments related to the cost from time to time to the landlord, and*

*(ii) for the tenant's liability to make those payments to be enforceable by re-entry or otherwise (subject to section 85 of the Tribunals, Courts and Enforcement Act 2007) in like manner as if it were a liability for payment of rent.*

*(3) Subject to subsection (4), provision shall be made by the terms of the new lease or by an agreement collateral thereto for the continuance, with any suitable adaptations, of any agreement collateral to the existing lease.*

*(4) For the purposes of subsections (1) and (3) there shall be excluded from the new lease any term of the existing lease or of any agreement collateral thereto in so far as that term—*

*(a) provides for or relates to the renewal of the lease,*

*(b) confers any option to purchase or right of pre-emption in relation to the flat demised by the existing lease, or*

*(c) provides for the termination of the existing lease before its term date otherwise than in the event of a breach of its terms;*

*and there shall be made in the terms of the new lease or any agreement collateral thereto such modifications as may be required or appropriate to take account of the exclusion of any such term.*

*(5) Where the new lease is granted after the term date of the existing lease, then on the grant of the new lease there shall be payable by the tenant to the landlord, as an addition to the rent payable under the existing lease, any amount by which, for the period since the term date or the relevant date (whichever is the later), the sums payable to the landlord in respect of the flat (after making any necessary apportionment) for the matters referred to in subsection (2) fall short in total of the sums that would have been payable for such matters under the new lease if it had been granted on that date; and section 56(3)(a) shall apply accordingly.*

*(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.***

## The Tribunal's determination

15. The Applicant relies upon a Licence for Alterations dated 26 September 2007 ("the Licence") in support of the contention that the new lease should contain a term at Part 1 of the First Schedule which provides:

*"The Demised Premises shall include where applicable:*

...

*3 the plastered coverings and plaster work of the ceilings **and the window frames fitted in such ceilings and the retractable glazed canopy giving access to the roof including the glass fitted therein and the glass fitted in such window frames** and the surfaces of the floors including the whole of the floorboards and supporting joists (if any)"*

16. The Licence was not included in the hearing bundle but Mr Sands confirmed that he had no objection to its late production and, on this basis, it was admitted in evidence.
17. The Tribunal was informed that, pursuant to the Licence, the Applicant has installed rooflights fitted in the ceiling of the Property and a retractable glazed canopy.
18. In support of the Applicant's case, Mr Cowen QC places reliance upon clause 4(2) of the Licence which provides (emphasis supplied):

*"IT IS HEREBY FURTHER AGREED AND DECLARED between the parties hereto as follows:*

...

*(2) All the Tenant's and the Sub-Tenants covenants and conditions contained in the lease and in the Underlease which are now applicable to the demised premises and the sub-demised premises **shall continue to be applicable to the same in their altered state** in the same manner as the premises originally demised by the Lease."*

19. In this context, the Applicant's lease of the Property is the underlease. Mr Cowen QC submits that "altered state" is the altered state of demised premises and that, where the ceiling has been replaced by a glass canopy and rooflights, the glass canopy and rooflights ought to form part of the demise. Accordingly, he submits that the work undertaken by the Applicant is a change which has occurred since the date of commencement of the existing lease which affects the suitability on the

relevant date of the provisions of that lease within the meaning of section 57(6)(b) of the 1993 Act.

20. In the alternative, Mr Cowen QC submits that the internal surfaces of glass canopy and rooflights should be part of the demise because the internal surface of ceilings are part of the demise in the existing lease.
21. Mr Sands disputes the Applicant's primary case as a matter of interpretation, although he does not advance detailed submissions on this point. He also submits that the Applicant's primary case is not sustainable in light of the landlord's obligations under section 5 of the Landlord and Tenant Act 1987.
22. Part 1 of the First Schedule of the existing lease provides that:  
  
*"The Demised Premises shall include where applicable:*  
  
...  
  
*3 the plastered coverings and plaster work of the ceilings and the surfaces of the floors including the whole of the floorboards and supporting joists (if any)"*
23. Insofar as the demised premises have been altered by the Applicant at ceiling level in carrying out the work referred to above, only the internal surfaces of the ceilings can have been altered because only the internal surfaces fall within the demise.
24. The internal surfaces of the ceilings in their altered state are the internal surfaces of the glass canopy and rooflights. We are not satisfied that the demised premises in their altered state extend to the external surfaces or to anything other than the internal surfaces, the internal surfaces having been all that was originally demised. Accordingly, we are not satisfied that the new lease should provide that the entirety of the glass canopy and rooflights falls within the demise.
25. Having reached this conclusion, it is not necessary for the Tribunal to consider Mr Sands' submission based on section 5 of the Landlord and Tenant Act 1987.
26. It follows that we accept Mr Cowen QC's alternative case that, pursuant to section 57(6)(b) of the 1993 Act, the internal surfaces of canopy and rooflights should form part of the demise. Whilst not formally admitted by the Respondent, this assertion was not contested by Mr Sands.
27. Accordingly, the Tribunal finds that the new lease shall include a term at Part 1 of the First Schedule that:

*“The Demised Premises shall include where applicable:*

...

*3 the plastered coverings and plaster work of the ceilings **and the internal surfaces of the window frames fitted in such ceilings and the internal surfaces of the retractable glazed canopy giving access to the roof including the internal surfaces of glass fitted therein and of the glass fitted in such window frames** and the surfaces of the floors including the whole of the floorboards and supporting joists (if any)”*

28. If any issues remain in dispute which fall within the jurisdiction of the Tribunal but which were not addressed at the hearing, the parties may apply for further directions within 14 days of the date of this decision.

**Name:** Judge N Hawkes

**Date:** 30 November 2021

### **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.



If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).