FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HN/OLR/2021/0170 & CHI/00HN/OLR/2021/ 0171
Property	**:**	Flats 10 & 28 The Pantechnicon, Seamoor Road, Westbourne, Bournemouth, BH4 9AN
Applicant	**:**	Bromarpeak Limited
Representative	**:**	Clarke & Son Solicitors Ltd
Respondent	**:**	Adriatic Land 3 Limited
Representative	**:**	Knights plc
Type of Application	**:**	Section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993
Tribunal Member(s)	**:**	Judge J. Dobson Mr M J F Donaldson FRICS
Date of Inspection	**:**	22nd July 2022
Date of Determination	**:**	29th July 2022
Date of Decision	**:**	12th September 2022

DECISION

Summary of the Decision

1. **The application for determination of a disputed term of acquisition of the leases of Flats 10 and 28 The Pantechnicon, Seamoor Road, Westbourne, Bournemouth, BH4 9AN in favour of the Applicant is refused.**

The application and the history of the case

2. The Applicant applied by applications dated 21st December 2021 for determination of the provisions (other than the premium) in proposed new leases ("the Proposed New Leases") of Flats 10 and 28, The Pantechnicon (collectively termed for the purpose of this Decision as "the Flats" or when referring to one singular "the Flat") pursuant to Section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("LRHUDA 1993").

3. The application records that the premium has been agreed and that the terms of the Proposed New Leases are to be the same as the existing leases save for any amendments required or allowed under Section 57 of LRHUDA 1993, in particular to provide for the demise of parking spaces used by the occupiers of the Properties ("the Parking Spaces" or individually "the Parking Space") and ancillary provisions.

4. The Tribunal gave Directions on 22nd February 2022. The Directions listed the steps to be taken by the parties in preparation for the determination of the dispute, including the provision of a bundle of relevant documents.

5. The Directions stated that the Tribunal would proceed by way of paper determination without a hearing pursuant to the Tribunal Procedure Rules 2013, unless any party objected. There has been no objection to determination of the application on the papers.

6. The Applicant subsequently asked the Tribunal to carry out an inspection of the Parking Spaces and their location, which the Tribunal agreed to. The Tribunal members inspected on 22nd July 2022- see further below.

7. This is the decision made following that paper determination and with the benefit of the inspection undertaken and consideration of the contents of the Bundle provided, which the Tribunal has read in full.

8. The Tribunal does not refer to every document in the bundle in detail in this Decision, it being unnecessary to do so. Where the Tribunal does not refer to documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left them out of account. The Tribunal does not refer to specific page numbers of the bundle in this Decision but rather makes reference to the documents.

Background

9. The Flats are situated within a block of flats ("the Building") all leased to the Lessees on long leases.

10. There is a right to manage company, Pantechnicon Right to Manage Company Ltd, although that company played no role in the application.

11. The premium to be paid for the Proposed New Leases has in each case been agreed at £12,940.

12. A copy of the freehold title of the Building has been provided, demonstrating that the Respondent acquired the freehold in 2019 and the right to manage company acquired that right in 2014. There are various rights and obligations involving third parties and various entries in the Charges Register but none of that affects the determinations to be made by the Tribunal. The schedule of leases reveals the large majority of those to have been granted for a term of 99 years from dates in 2005.

The Law

13. The right to a new lease is dealt with in Chapter II of the LRHUDA 1993.

14. Section 48(1) reads as follows:

> "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."

15. The remainder of section 48 explains the time limit for applying and powers of a court whether the terms of acquisition have been agreed or determined by a Tribunal, together with other related matters.

16. Section 48 (7) explains:

> "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."

17. Section 56 provides an obligation on the part of a landlord to grant a new lease where a valid notice has been served and on payment of the appropriate premium, with a peppercorn ground rent and for a term of 90 years.

18. Section 57 is a lengthy provision and addresses the terms on which a new lease is to be granted, including the following:

> (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).....
>
> (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.
>
> (7).....

19. The new lease is granted in substitution for the existing lease and takes effect immediately.

20. In respect of interpretation of a Lease, the Lease is to be construed applying the basic principles of construction of such leases as set out by the Supreme Court in *Arnold v Britton* [2015] UKSC 36 in the judgment of Lord Neuberger (paragraph 15):

> "When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties

at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions.

21. Context is therefore very important, although it is not everything. Lord Neuberger went on to emphasise (paragraph 17):

> "the reliance placed in some cases on commercial common sense and surrounding circumstances (e.g. in *Chartbrook* [2009] AC 1101, paras 16-26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most likely to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language that they use in a contract. And again save perhaps in a very unusual case, the parties must have been specifically focusing on the issue covered by the provision when agreeing the wording of that provision."

22. Whilst none of the parties have referred to that or any other caselaw and the Tribunal was mindful that it will commonly be appropriate to invite submissions on any caselaw considered relevant, in this instance, the caselaw identified is found in a judgment of the Supreme Court which is well- known and well- established. The contents as explained aboveare uncontroversial. The Tribunal is unable to identify what the parties could add in respect of the legal principles and the wide approach to be taken.

23. There are numerous examples of the application of the above approach. However, those apply the judgment to the facts of the particular cases. Both because the parties have not themselves relied on any caselaw and because the Tribunal does not consider that other cases in which *Arnold* has been applied to facts not the same as those in this case would assist, the Tribunal has not considered and does not refer to any other cases. The Tribunal adds that it cannot identify any matter in respect of which submissions as to caselaw or the application of it could identifiably have altered the end result.

The Leases

24. The existing Leases of the Properties are referred to collectively as "The Leases". The Leases of the two Flats are in the same or substantively the same terms. The Tribunal therefore refers specifically to the lease of Flat 10, termed below "the Lease".

25. The Lease is dated 18th February 2005 and made between the original parties, none of whom are the current ones. It is for the same 99- year terms as the leases of the other flats in Building, such term starting on 24th June 2002.

26. The Lease contains the usual sorts of provisions, the majority of which do not require setting out in detail for the purposes of this Decision. The relevant parts of the Lease for present purposes are found towards the

start of the Lease and thereafter in the Second Schedule and the Third Schedule.

27. The title page describes the document as follows:

"

LEASE

Relating to
Flat 10
The Pantechnicon
Seamoor Road
Westbourne
Bournemouth

"

28. The next page contains various "**PARTICULARS**", including the following:

"**3. Flat**	No. 10 on the Second Floor and Parking Space No. 14
4. Other Demised Premises	None"

29. Clause 2 of the Lease states:

"The Lessor **DEMISES** to The Lessee The Demised Premises **TOGETHER WITH** The Included Rights....."

30. The First Schedule is headed as "Definitions and Interpretation". Those include the following:

"(iii) "The Demised Premises" means the premises referred to in Paragraphs 3 and 4 of the Particulars and more particularly described in the Second Schedule.

(iv) "The Flat is The Demised Premises so described in the Second Schedule"

31. The Second Schedule describes the demised premises as follows:

"The Demised Premises

The Flat specified in Paragraph 3 of the Particulars shown coloured red on the plan numbered 1 on the plan annexed hereto".

32. The Third Schedule sets out the included rights, which include the following:

"5. The right in common with all other persons entitled to a like right to pass and repass for access and egress purposes only with or without vehicles (as appropriate) the access roads shown hatched black on the plan numbered 2 annexed hereto leading from the Property into

Seamoor Road and (on foot only) over the footpath within the boundaries of the Property

6. The right to park one private motor vehicle in the space if any shown coloured yellow on the plan annexed hereto or such other Parking Space within the Property as the Lessor may from time to time designate in substitution thereof"

33. After the various clauses and signatures, two plans are attached to the Lease.

34. The first, "Plan 1" as annotated on the plan, shows the position of the Flat on the second floor and the rooms within the Flat. The Flat is coloured red.

35. The second, "Plan 2" as annotated on the plan, shows the location of the Parking Space, which is coloured yellow (if fairly faintly on the copy in the bundle) and a hatched area between doors leading to the basement parking and Seamoor Road.

36. The Property Register within the register of title held for the Flat at the Land Registry describes the land and estate comprised in the title as follows:

"The Leasehold land shown edged with red on the plan of the above Title filed at the Registry and being Flat 10, The Pantechnicon, 2 Seamoor Road, Bournemouth and Parking Space (BH4 9AN).

NOTE 1: As to the part tinted blue on the title plan only the second floor is included in the title.

NOTE 2: As to the part tinted pink on the title plan only the ground floor parking space is included in the title."

37. There is a title plan in respect of the title. That shows the location of the Building and the location of areas coloured brown over which there are rights of access to reach the Building. More significantly it shows where, relative to the remainder of the Building, the Flat is situated and where the relevant Parking Space is situated, albeit on the particular floor stated.

The matters in dispute

38. The Applicant seeks in the application, in respect of the matters in dispute, provisions in the new Lease which involve a change of the terms of the current Leases.

39. The Applicant states at the start of setting out the terms in dispute the following:

"Notwithstanding apparent agreement by the Respondent by email from its solicitors of 8 November 2021 to the postion [sic] stated by the Applicant that the lease includes the Parking Space as it registered at the Land Registry and

that the renewal lease should reflect this, uncertainty has arisen as a consequence of the refusal by the Respondent to agree that terms had been agreed for the purposes of Section 48 (3) of LRHUDA 1993."

40. The changes sought by the Applicant are set out in the application as follows:

- In the Second Schedule the first paragraph shall have the wording 'and the Parking Space' after the wording 'on the plan numbered 1 annexed hereto
- At Clause 17 of the Ninth Schedule the following wording shall be deleted 'referred to in Paragraph 5 of the Third Schedule'
- At Clause 18 of the Ninth Schedule the following wording shall be deleted 'referred to in Paragraph 4 of the Third Schedule
- Clause 6 of the Third Schedule of the Previous Lease shall be deleted and replaced by 'A right to pass and repass for access and egress purposes over the forecourt forming part of The Property leading from Seamoor Road to the Demised Premises'
- Clause (xvii) First Schedule add "Parking Space" means the parking space included in the Demised Premise shown coloured yellow on Plan 2 and numbered 14'
- Clause (xviii) First Schedule add "Car Parking Spaces" means any parking spaces laid out as such on The Property'
- Clause (ix) First Schedule add "Other Common Parts" means all parts of The Property intended for common use including but not limited to the lift bin store area and cycle store area'
- Clause 10 Third Schedule add 'The right of the lessee and all persons authorised by him in common with the lessor and all others enjoying the like right at all times and for the intended purpose to access egress and use the Other Common Parts'

41. There were limited additional elements within the application submitted, including the ability to work from home. Nothing subsequent has been added about those and the Applicant's Summary of Principal Issues refers only to "The wording of the definition of the extent of the parking space included in the demise". The Tribunal perceives that any other elements have since been agreed. In any event, it is not suggested that a determination is required.

42. There was also reference to costs, which it is suggested is dealt with as a separate matter following this determination. The costs are not, in any event, one of the terms of acquisition, whether the landlord's costs in respect of the grant of a new lease or otherwise.

43. The Tribunal perceives that in the above list, the reference to clause 17 of the Ninth Schedule ought to have been to clause 16 and the reference to clause 18 of that Schedule ought to have been to clause 17. The references to the wording sought to be deleted reflects wording of clauses 16 and 17, rather than 17 and 18. In the event, nothing of substance turns on that.

44. A draft lease ("the Draft Lease") has been prepared which sets out, under a heading "Variations to the Previous Lease", a series of clauses which seek to vary various provisions of the Lease.

45. The Respondent's position is set out in very brief terms in a document titled "Draft Lease Flat 10 with amends & comments in track changes by Clarke & Son", which is laid out to show a column to the side of the text of the draft lease referred to in the preceding paragraph. Within that column are a series of comments about the amendments sought by the Applicant but in dispute.

46. In respect of the addition to the first paragraph of the Second Schedule sought by the Applicant of the Parking Space, it is said "This is not necessary and changes the registered demise which is not acceptable. The lease varies the position in that the lessee cannot alter the parking space, the freeholder is responsible for the maintenance and the original lease already excludes structural parts."

47. The clause in the "Draft Lease" has wording which has been crossed through and is shown in red. The specific words "and the Parking Space" are not within the words crossed out, which are instead words related to the depth of the area marked as a parking space.

48. There are certain other words in red and crossed out in another sub-clause where that sub- clause is otherwise shown in blue, albeit that the remainder of the text on the page is shown in black (unless red and crossed through). The comment says: "This is only applicable to 3.2 above and not 1(g)". 3.2 is the number of the preceding sub- clause: there is no 1(g) that the Tribunal can identify.

49. The next comment refers to the definition of the Parking Space and again has certain words in red and crossed through which relate to depth of the space but simply states "Not acceptable as above".

50. There are no more comments shown on the document. The same comments are made on the lease of Flat 28.

51. No reply to the comments on behalf of the Respondent has been provided on behalf of the Applicant.

52. There has been no suggestion of any issue with the Applicant's notices or with the date of applying for determination of the matters in dispute.

Consideration

53. It is important to make clear that the Tribunal has not attempted to reach any determination in respect of the contended refusal by the Respondent to agree that terms had been agreed. The question of whether the parties have already reached a concluded agreement in respect of the terms is not a matter on which the Tribunal has received any submissions. The Tribunal need not and does not consider the question of whether the Tribunal would have jurisdiction to determine such a dispute if raised before the Tribunal. The Tribunal does not consider that the brief comment on behalf of the Applicant within the application and referred

to above goes nearly far enough to amount to any appropriate submission.

54. The Tribunal proceeds on the footing that the terms were not all agreed by the parties in a concluded compromise and so determines matters accordingly. If it should in due course be decided that such a concluded compromise had been reached, that may impact on this Decision.

55. The Tribunal only treats as terms of acquisition which require determination the terms which relate to the Parking Spaces and commented on in the document "Draft Lease Flat 10 with amends & comments in track changes by Clarke & Son". The Respondent has offered no challenge or other comment in respect of the other matters listed in the application form, which the Tribunal therefore treats as agreed and hence not in need of determination or indeed able to be determined.

56. The Tribunal has carefully considered the existing wording of the Lease and the well- established caselaw referred to above, including the intentions of the contracting parties as indicated by the wording used. The Tribunal considers that in this instance that is a rather more complicated exercise than it ought to be. It is not difficult to understand why confusion may have arisen.

57. The wording of the Lease is far from being the clearest it could be. The definition of the Demised Premises is a somewhat circular one and different parts of the Lease refer to different others in respect of the Demised Premises and the Flat as defined in the Lease. The definition of Demised Premises refers to both clauses 3. and 4. of the Particulars and to the Second Schedule.

58. However, the Tribunal finds that most weight must be given to the Second Schedule. In respect of the Particulars, the definition of Demised Premises says the Demised Premises are "referred to" in them. In respect of the Second Schedule, it is said the Demised Premises are "more particularly described there".

59. Consequently, if one wishes to obtain precisely what the Demised Premises are, one must look to the Second Schedule.

60. The Second Schedule then states that the Demised Premises are:

> "The Flat specified in Paragraph 3 of the Particulars shown coloured red on the plan numbered 1"

61. The Tribunal has carefully noted the use of the word "specified" as opposed to say 'described' or 'indicated'. Paragraph 3 mentions both "No. 10 on the Second Floor" and also "Parking Space No. 14" as being the "Flat".

62. However, only Flat 10 itself (and similarly Flat 28 in respect of its Lease) is "shown coloured red on the plan numbered 1". The Flat for the purpose of

the Demised Premises is therefore defined by both the Particulars and the specific plan, where the Flat itself is shown on that plan and the Parking Space is not.

63. The Second Schedule does not say "The Flat specified in Paragraph 3 of the Particulars **insofar as** shown coloured red on the plan numbered 1", or "The Flat specified in Paragraph 3 of the Particulars **only to the extent** shown coloured red on the plan numbered 1".

64. Nevertheless, the Parking Space is shown on a different plan and marked yellow. There is also the Third Schedule with references to right to use the Parking Space.

65. The exercise of determining this dispute is also complicated a little by the fact that the Respondent's representatives have not provide a Word document or similar in which the Respondent's case is set out and so the Tribunal only has the matters shown on the document with "amends and comments". The complication arises from the consequent lack of clarity as to the Respondent's case.

66. It is, for example, not completely clear whether only words in red and crossed through are queried, irrespective of the effect of the other words and whether that accords with the general tenor of the comments made, or what, if any, significance the words in blue should be taken to have. At first blush, the words left in might suggest the Respondent to only disagree to granting the Parking Spaces to the Applicant to a certain depth, as opposed to the other elements of the disputed variation.

67. The lack of any reply from the Applicant makes it unclear what the Applicant regards the Respondent's position as being and prevents the Tribunal having from the Applicant any assertion as to whether a wider or narrower interpretation of the matters in dispute should be identified.

68. In the event, whilst the above is rather unsatisfactory, the effect of the power given to the Tribunal under the LRUDA 1993 and the nature and effect of the terms which the Applicant seeks in the new lease it wishes to acquire, nevertheless produce the outcome below.

69. The Tribunal understands that the Applicant's case, as set out in the words quoted in paragraph 25 above, is that the Lease did not simply grant rights to use and to access the Parking Space but rather demised the Parking Spaces, as part of the leasehold title. Further, that the Land Registry entries confirm that.

70. In contrast, it appears adequately clear from the Applicant's comments in the application form that the Respondent disagrees. The Tribunal accordingly interprets the comments on behalf of the Respondent in the "Draft Lease Flat 10 with amends & comments in track changes by Clarke & Son" document as intending to deny that the Parking Spaces were demised. That is rather than simply disagreeing about depth or similar,

a position which would on its own be difficult to understand the reasoning behind and so which appears unlikely.

71. The Tribunal determines that on the appropriate construction of the Lease, there is a lease solely of the Flat. There is no lease granted of the Parking Space, which is not part of the Demised Premises. There is a right granted to park a vehicle in a particular space. The ownership of the Parking Spaces remains with the freeholder, subject only to the right of the lessee to use the space for the parking a vehicle.

72. The Tribunal determines that the Second Schedule reveals the Demised premises to be the Flat alone. The Tribunal determines that the Parking space is not included as part of "The Demised Premises".

73. The Tribunal has concluded, having carefully read and weighed up the provisions in the Lease, that the Demised Premised demised by the Lease includes only that which is included on Plan 1 and shown in red. That is to say, the Flat.

74. In addition to the terms of the Lease, set out in detail above and so not repeated, the Tribunal has had regard to the fact that within the Lease, the Applicant is additionally granted a right to park a vehicle in a parking space in the Third Schedule, which sets out "The Included Rights". There are, understandably, related rights to access the given parking space with a vehicle and on foot to reach the vehicle. Various other rights are also identified in the Schedule which have no direct relevance to the Parking Spaces.

75. The Third Schedule is clear that there is the right to park, no more and no less. The ordinary meaning of the words used in the context of the remainder of this Lease cannot support any other conclusion.

76. The Tribunal finds that it would be illogical for there to be the grant of a right to use the Parking Space if there had been a demise of the Parking Space. The Applicant would then necessarily have the right to use the Parking Space, for the period of the Lease and subject only to any restrictions on the user provided for in the remainder of the Lease. There would be no purpose in granting a right to use as an Additional Right.

77. The Tribunal finds that it would be even more illogical for the contracting parties to have referred in the Lease to a different colour for the space which the Applicant can use to park, referred to under Additional Rights and with a specific plan shown within Additional Rights. All that suggests that some effort was taken to define the area involved in the additional right of being able to use the Parking Space. That makes little sense if the Parking Space was not intended to be the subject of an Additional Right but rather to form part of the Demised Premises.

78. Consequently, the Tribunal determines that the other clauses of the Lease support the construction placed by the Tribunal on the particular clauses which relate to the extent of the demise.

79. The addition of the words sought by the Applicant "and the Parking Space" to The Demised Premises in The Second Schedule, would turn the demise under the Lease into one of both the Flat and the Parking Space. There is perhaps little else which could have better supported the Parking Space not being part of the Demised Premises as the need to add words to the definition of The Demised Premises in order for it to include the Parking Space.

80. It is notable that the Applicant sought those additional words to be added after the existing words "on the plan numbered 1". Whilst the Tribunal has not based its decision on the Applicant doing so, it merits mention that the fact that the Applicant seeks those additional words after reference to the particular plan indicates that the Applicant also considers that the Demised Premises as defined reflects that which is shown on the plan, so that the Demised Premises as defined do not include the Parking Space. Hence, they can only include it if the Parking Space is specifically added.

81. It cannot therefore be concluded that any modification is necessary pursuant to section 57 (1) to take account of the omission from the new lease of property included in the Lease but not comprised in the Flat. The Parking Spaces are not such property included in the Lease in that context.

82. It may be that the Applicant in referring to the Parking Spaces and in referring to section 57 was seeking to indicate an argument was advanced on behalf of the Applicant that a modification is required pursuant to section 57 (6) or otherwise as being necessary to do so in order to remedy a defect in the existing lease. It may be that the lack of reference to the Parking Spaces as part of the demise and reference simply to rights to park and related is said by the Applicant to amount to a defect in the Lease. 'Necessary' shall, the Tribunal notes, be construed strictly and defect ought to be construed narrowly.

83. However, to any extent, if any, the Applicant's case may have intended to so argue, it does not do so in any terms discernible. The Tribunal does not consider it to be appropriate to seek to determine that issue where it cannot tell whether it is raised. The position differs from the rather unclear case of the Respondent because in that instance there was at least a set of relevant comments and a sensible basis on which to determine them to take one approach rather than another.

84. In any event, the Applicant has provided no evidence of a defect in the Lease. The effort which has been required to correctly construe the Lease does not make the Lease defective.

85. There is additionally no suggestion by either party that the has been any alteration in the property demised since the grant of the Lease. In other words, there has been no further lease or variation of the Lease to add the Parking Space and thereby to create anything beyond the right to park.

86. That begs the thorny question of what, if anything, should be made of the wording of the title and estate as stated in the Property Register. Neither party has addressed the point save for the Applicant's passing reference to the Property Register including the Parking Space in respect of each of the Flats, whether relying on any caselaw or otherwise.

87. The references in the Land Registry entries do not, the Tribunal determines, alter the proper construction of the Lease and so the appropriate terms of the new lease to be acquired. They did cause the need for careful thought and there may be matters to resolve in a different forum, as touched upon below.

88. The Land Registry entries, in the Property Register are very clear that for the purpose of the registration, the leasehold property is as follows:

> "The Leasehold land shown edged with red on the plan of the above Title filed at the Registry and being Flat 10, The Pantechnicon, 2 Seamoor Road, Bournemouth and Parking Space (BH4 9AN)."

89. The reference to "the Parking Space" need not be emphasised. It is unequivocal as it stands.

90. All that the entries otherwise refer to which might be relevant to support the Applicant's case is found within the notes and comprises the words "As to the part tinted pink on the title plan only the ground floor parking space is included in the title". The Tribunal finds the wording of that Note to flow from the reference to the demise and the inclusion in that of the Parking Space, so not to add anything of significance in itself.

91. The registration of the Applicant's title at the Land Registry necessarily followed the Applicant becoming the lessee. So too with the original lessee. The registration had not occurred at the time of the contracting parties agreeing the terms of the Lease and entering into the Lease.

92. The Respondent's assertion that the Draft Lease "changes the registered demise" is incorrect. The registered demise includes the Parking Space and does not simply record a right to use the Parking Space, so the Draft Lease accords with the demise that has been registered. The rather obvious and substantial difficulty is that the Tribunal determines that the Lease never did demise the Parking Space.

93. There is no application before the Tribunal in respect of the registered title. Any such application would be dealt with by a different division of the Property Chamber were it to be referred to the Tribunal. Unless or until the registered title is altered, it stands as set out in the Property Register.

94. Rather, the Tribunal is considering a dispute as to terms of acquisition of a new lease, which the Tribunal considers must be done in the context

of the provisions of the Lease and the rights and demises provided for in the Lease.

95. The Tribunal has considered whether the terms of the new lease to be acquired should reflect the Land Registry entries, despite those apparently contradicting the terms of the Lease. However, where, as explained above, the terms of the Lease pre-date those entries and the entry does not reflect those terms, the Tribunal does not consider such an approach would be appropriate.

96. Section 48 (1) of the LRHUDA 1993 does not give jurisdiction for the Tribunal to require the grant of any lease which extends the subject matter of the Lease to land which did not fall within the original demise, nor any other power to impose such a lease. There is also no mechanism to deal with any relevant premium or other terms in respect of the demise of additional land, quite understandably given that none is required.

97. Whilst there is therefore an apparent discrepancy between the property demised by the Lease and that registered at the Land Registry, which is at best unfortunate and is wont to cause difficulties, that does not entitle the Tribunal to seek to resolve it by terms of acquisition of the new lease.

98. The Tribunal does add that the discrepancy in respect of the Demised Premises in the Lease and the contents of the Property Register is not too difficult to understand where the Particulars in the Lease referred to the Parking Space next to the item "Flat". Assuming the application for registration to have reflected that, it may be understandable that the Land Registry did not seek to undertake the detailed analysis and construction of the Lease undertaken by this Tribunal.

99. For the avoidance of doubt, and perhaps unnecessarily as the continued right to use the Parking Space for the term of the new lease is not identified as being in dispute, the right to park is an appurtenance as referred to in the LRHUDA 1993, being enjoyed with the Flat, and so the claim for each new lease includes such appurtenance i.e. ongoing right to use the Parking Spaces.

Decision

100. It must necessarily follow from the Applicants seeking that which the Tribunal has determined to be an additional demise in relation to each Flat and Parking Space that the Tribunal does not have the power to grant, that the applications fail. They do so.

101. For the avoidance of doubt, the Applicant is not awarded the application fees paid to bring the applications. The applications have failed and no basis on which the Tribunal ought to order the Respondent to pay the fees in spite of that has been identified by the Applicant.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.ogv.uk

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.