

## **DOCUMENT BR3**

### **Lease comparison for Beverley Robinson**

#### **Introduction**

This paper compares BR's current lease (lease [C] attached hereto as Annex C) with the lease BR was shown when discussing a flat in the new Camberwell Fields development by Notting Hill Housing Trust (NHHT) (lease [A] and Deed of Variation - attached hereto as Annex A).

Occasional reference is made to the specimen lease set out in Appendix 10 to the Development Partnership Agreement dated April 2014 between NHHT and Southwark Council (lease[B] not annexed hereto). [B] is to apply to shared equity leases of flats within the Aylesbury redevelopment.

#### **General**

[C] is a standard Right to Buy lease dated 28 Feb 2005, providing for a 100% equity interest, under the Housing Act 1985. It runs to 22 pages including schedules, double spaced.

[A] is a NHHT shared ownership lease running to 49 pages including schedules, one-and-a-half spacing. Neither are readily comprehensible to a non-lawyer, [A] much less so.

#### **Ground Rent**

[C] sets ground rent at £10 pa for the whole term. [A] sets ground rent for a 2-bed flat at £300 pa at commencement, rising by stages to £2400 pa in the last years of the term. [B] makes no reference to ground rent.

#### **Gross rent**

This is required to be calculated and reviewed annually for purposes of setting the rent payable on the unowned portion (the "Specified Rent"). Schedule 5 of [A] sets out the method – upward only; by 0.5% pa or RPI whichever is

greater. Thus, compared with renters in other sectors, shared ownership leaseholders could suffer significant disadvantage.

### **Full title guarantee, and letting provisos**

More restricted in [A] clause 2 than in [C] clause 1, eg [A] is subject to a superior lease granted by Southwark to NHHT. There is no mention of a superior lease in [B] nor, obviously, in [C].

### **Leaseholder's covenants**

Generally more onerous in [A] than in [C] eg

1 structural alterations to the interior of the flat permitted in [C], clause 3.7, with landlord's consent – prohibited in [A]

2 Underletting and assignment: permitted in [C] of the whole or part. In [A] prohibited in respect of part. In respect of the whole, effectively prohibited until final staircasing has been accomplished.

3 [A] requires assignee to sign up to a Heating Services Agreement. Schedule 9 of [A] deals further with heating services – para 2.1 gives landlord or Heating Facilities Manager the unconditional option to instal a pre-payment meter. None of this is in [C], though clause 3(8) of [C] prohibits disconnection from district heating system without landlord's consent.

4 Schedule 2.13 of [A] prohibits lessee from doing anything which "may tend to lessen or depreciate the value of the Premises or the Building or the Estate or other property in the neighbourhood.". This covenant is not in [C] and does not apply to the landlord.

5 Keeping a pet in the flat: banned in [C], clause 3(6), only if the landlord "considers it to be dangerous, injurious to health or a nuisance". In [A], Schedule 2.5, only allowed with "previous written permission of the landlord which permission may be revoked at any time without reason being given"

### **Landlord's covenants**

Clause 5.5.2 of [A] permits landlord to "diminish, modify or alter" any service if "in the opinion of the landlord" the change is "reasonably necessary or

desirable in the interests of good estate management or for the benefit of the occupiers of the building". This is not in [C].

### **Car parking**

Clause 3 (11) of [C] refers to car parking rights "as authorised by this lease or by the council". Current Aylesbury leaseholders enjoy on-estate car parking rights. Clause 6.10.1 of [A] states that there is no parking available for leaseholders in the Camberwell Fields development. Clause 6.10.2 states that owners and occupiers are not eligible for on-street parking permits.

### **Pre-emption Provisions**

[italics represent opinion of or commentary by the writer of this paper]

*These are a seriously bad aspect of shared ownership/shared equity leases, and do not apply to 100% equity RTB leases.*

Attached to [A] is an Appendix 3, described as "a brief guide for leaseholders (i.e. shared owners) of the key provisions of the Shared Ownership Lease". Para 5 of the Appendix is headed "Landlord's Right of First Refusal" and states "With a view to ensuring that the property remains in the ownership of people in need of shared ownership units there are restrictions on the transfer, assignment and sub-letting of the property. The restrictions apply from the date that the lease is granted up to the expiry of the period of 21 years from the date that the leaseholder staircases to 100%."

*It is not understood why these restrictions should apply to a leaseholder displaced by compulsory purchase whose only hope of retaining some element of home ownership is, because of the affordability gap, a shared equity deal. If the acquiring authority were to offer an interest-free loan (secured on the property and repayable on on-sale or death) to enable the purchase of 100% equity the disadvantages of the pre-emption provisions would be avoided. BR put this suggestion, along with others, to Southwark's Chief Executive on 12 September 2017: the CE said the idea would be examined but nothing has*

*been heard since. Alternatively, the provisions could simply be dropped from shared equity or shared ownership leases for CPO displacees.*

The operation of the pre-emption provisions is in accordance with clause 3.19 and Schedules 7 and 8 of [A]. All that need be stated for the purposes of this paper is that they introduce burdens and delays which represent for the leaseholder major loss of convenience and freedom in dealing with his/her property, and risk of loss of value also, arising from the delays inherent in the procedures, and other factors limiting marketability.

For example, the following detail should be noted: Clause 3.19.5 disapplies the provisions in the event of an assignment “under a will or intestacy” or arising from specified events under legislation relating to matrimonial causes, the Children Act and the like; however the proviso at the end of 3.19.5 states that this disapplication does not operate in the case of the Original Leaseholder. This means that the leaseholder displaced by the CPO is even more disadvantaged than a later leaseholder – for example the property could transfer from the latter under a will without triggering the pre-emption provisions, whereas for the former they would be triggered. This means in turn that, unless the spouse is expressly named as one of the Original Leaseholders at the commencement of the lease, he/she would not be able to inherit without risk of having to leave the property. It is even unclear to the writer of this paper, not being a property lawyer, whether that risk could be avoided by the spouse staircasing to 100%, should he/she have the resources. It should be noted that [B] uses different wording in this respect which appears to protect the spouse.

In summary shared ownership leases offer severely restricted property rights, and the NHHT lease as displayed to BR is a confusing and unsatisfactory document. It is not even clear whether the application of the pre-emption for 21 years after staircasing to 100% is in fact reflected in the detailed wording of the lease.

### **Conversion of shared ownership to shared equity**

According to what was shown to BR, this is effected by a short Deed of Variation which replaces the "Specified Rent" as defined in the lease (which in the absence of the Deed would be payable on the unowned portion) with a "Concessionary Specified Rent" of one peppercorn per month (if demanded) i.e zero. The concession is for the benefit of the Original Leaseholder only. It does not apply to successors in title, and expires on the earliest of

- assignment of the lease
- when the leaseholder ceases to occupy the property as his/her main residence
- six months after the death of the leaseholder.

As has been noted, in addition to the zero rent ceasing, the leaseholder is required in the above circumstances to offer the property to the landlord under the pre-emption provisions.