



**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION  
UNDER SECTION 48 OF THE LEASEHOLD REFORM, HOUSING AND URBAN  
DEVELOPMENT ACT 1993**

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**Ref: LON/NL/4393/05**

**Property:** 19 Cheshire Gardens, Chessington, Surrey, KT9 1PR

**Applicant:** Mr P E G Whitehead (Tenant)

**Respondents:** Mr A Matthey and Mr A R Barnett (Freeholders)

**Paper hearing date:** 29 September 2006

**Members of the Leasehold Valuation Tribunal:**

Mrs J S L Goulden JP  
Mr P Tobin FRICS MCI Arb

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**BACKGROUND**

1. The Applicant, Mr P E G Whitehead, tenant of the lower flat known as 19 Cheshire Gardens, Chessington, Surrey, KT9 2PL (hereinafter referred to as "the property") had made an application to the Leasehold Valuation Tribunal dated 6 October 2005 to determine the premium payable for an extension of his lease under Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (hereinafter referred to as "the Act").
2. The hearing took place on 31 May 2006. At the hearing the Applicant, Mr P E G Whitehead attended with his wife and was represented by Ms G Higgins of Counsel and Mr M Perrott MRICS of James Flynn Ltd. The Respondents, Mr A Matthey and Mr A R Barnett, did not appear and were represented by Mr L A Nesbitt BSc FRICS MCI Arb of Nesbitt & Co.
3. During the hearing, the Tribunal was advised that the parties had reached agreement on the premium at £32,500 and the only issue outstanding was in respect of the new lease terms. Directions were issued by the Tribunal on the same date and were agreed by the parties attending.
4. The Tribunal was advised in due course, and in accordance with those Directions, that the new lease terms could not be agreed. The Tribunal is therefore dealing with this one issue by way of a paper determination as agreed by the parties at the hearing on 31 May 2006. Written submissions were received from Ms G Higgins, Counsel for the Applicant and Ms A Sandler, in-house solicitors for the Alan Matthey Group.
5. It is noted that the greater part of the lease had been agreed and the Tribunal's determination is limited to the amendment of two clauses and the suggested introduction by the Applicant of one new clause.
6. The draft lease is attached as the Appendix to this Decision.
7. Ms A Higgins, in her written submissions on behalf of the Applicant, set out the history as follows:-

*"At present the terms of the lease must be gleaned in part from the Underlease dated 24 September 1947 of the Property and the maisonette above, in part from the Headlease dated 18 December 1945 of most of Cheshire Gardens, and in part from the assignment of part, namely 19 Cheshire Gardens alone, dated 15 August 1957."*

### **Statutory Requirements**

8. The obligation to grant a new lease is contained in Section 56 of the Act. Section 56(1) of the Act states:-

**Where a qualifying tenant of a flat has under this Chapter a right to acquire a new lease of the flat and gives notice of his claim in accordance with Section 42, then except as provided by this Chapter the landlord shall be bound to grant to the tenant, and the tenant shall be bound to accept –**

- (a) in substitution for the existing lease, and**
- (b) on payment of the premium payable under Schedule 13 in respect of the grant,**

**a new lease of the flat at a peppercorn rent for a term expiring 90 years after the term date of the existing lease.**

9. The terms on which the new lease is to be granted is contained in Section 57 of the Act.

10. Section 57(1) states:-

**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.**

11. Section 57(6) of the Act states:-

**Subsections (1) and (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.

### **CLAUSES IN DISPUTE**

- 12. The clauses in dispute are the amendments to Clauses 2(3) and 2(6). Originally Clause 2(11) was also in dispute but had subsequently been agreed between the parties. The proposed new clause is 3(2).
- 13. The Tribunal sets out each disputed clause together with salient points from the written submissions and the Tribunal's Determination under each head.

#### **Clause 2(3)**

- 14. The Applicant's suggested Clauses 2(3) is set out in the draft lease as follows:-

**"To repair and keep the Property and every part thereof together with all other buildings and erections which at any time during the said term may be upon any part of the Property in tenantable repair throughout the term hereby granted"**

- 15. The Respondents' suggested Clause 2(3) is as follows:-

**"from time to time and at all times during the said term well and substantially to repair uphold support cleanse maintain drain amend and keep the premises hereby demised and in particular the rafters or other the support for the floor of the upper maisonette and all new buildings which may at any time during the and term be erected on and all additions made to the demised premises and the fixtures therein and all party and other walls and fences sewers drains pathways passageways easements and appurtenances thereof with all necessary separations cleansing and amendments whatsoever"**

- 16. In the Applicant's written submissions it was stated that the proposed wording was that of the existing lease, underlease and headlease and the Respondent sought to substitute wording which either increased the Applicant's obligations or had no effect. Ms Higgins stated:-

*"If it has no effect, then it cannot be required or appropriate whether under Section 57(1) or Section 57(6) to modify the wording. If it increases the Applicant's obligations, then the modification is nonetheless neither required nor appropriate and should therefore be rejected. It cannot be justified under any part of Section 57. The omission of 17 Cheshire Gardens from the new lease has not effect on*

*the words of repair required. Nor does it have any effect on the required subject matter of the obligation; the fact that the obligation is to repair "the Property" is sufficient. Section 57(1)(b) and (c) do not apply. The present wording does not appear to be defective within the meaning of Section 57(6)(a). The Applicant knows of no changes within the meaning of Section 57(6)(b).*

*If, contrary to the Applicant's submissions, the Tribunal does consider that the Respondent is able to justify the amendment, the Applicant asks the Tribunal to note that the requirement for the Applicant to repair the 'rafters' (a term usually used in respect of support for a roof) or other the support for the floor of the Upper Maisonette directly conflicts with the fact that the joists and main timbers on which the Upper Maisonette rests are expressly demised to and to be maintained and repaired by the lessee of 17 Cheshire Gardens (bundle p123); this part of the wording should be excluded in any event. The Applicant also asks the Tribunal to note that there is no other provision concerning party walls or providing for any walls to be a shared responsibility. This part of the wording should also be excluded in any event, and any future disputes dealt with under the Party Wall Act 1996, which would be necessary in any event."*

17. In the Respondents' written submissions it was stated:-

*"As stated in our counter-Notice, other than in respect of the term to be granted and the rent to be payable under the new Lease, the form of the new Lease shall be exactly the same as the existing Lease. The proposed new wording is more limited in scope than the repairing obligations contained in the original Lease. Section 57 of the 1993 Act only permits variations to the form of Lease where such are required to remedy a defect."*

18. In the view of the Tribunal, the document described as an Assignment dated 15 August 1957 is in effect a sub underlease. It is the first document which deals solely with the property and the repairing clause in that document is clearly set out in the Third Schedule. Although Ms Higgins relied on the wording in the lease dated 24 September 1947, this lease included the other flat and it is felt that the repairing covenant to cover the present situation must be more specific. In addition, the 1945 lease clearly imposes a covenant to repair etc "well and substantially".
19. The Tribunal finds that there has been a change within the meaning of Section 57(6)(b) in that the 1947 lease (which itself related to an earlier lease granted in 1945) demised two properties, namely the upper and lower maisonettes known as 17 and 19 Cheshire Gardens respectively, and was modified by the Grant of the 1957 Deed.
20. The Tribunal determines that Clause 2(3) should be amended so that the obligation on the tenant is to repair and keep in good and substantial repair and this covenant should include the main walls and roof timbers (if any).

### **Clause 2(6)**

21. The Applicant's suggest Clause 2(6) is set out in the draft lease as follows:-

**"Within four weeks after every such notice as aforesaid to do all structural repairs and make good all such defects decays and wants to reparation to the said Property as the Tenant is liable to do under the covenants hereinbefore contained."**

22. The Respondents' suggested Clause 2(6) deletes the words "*the Tenant is liable to do under the covenants hereinbefore contained and substitutes the words "detailed in every such Notice".*

23. In the Applicant's written submissions, it was stated:-

*"The Applicant's proposed wording is that of the existing lease ... the Underlease and ... the Headlease. It requires the Applicant only to carry out repairs if he is liable to do so under the repairing (and perhaps decorating) covenants of the lease. The Respondent wishes to modify the existing terms to require the Applicant to carry out all works specified in any notice served by the Landlord. If the Landlord serves a notice under clause 2(5), it ought to specify only works which the Tenant is liable to do under the covenants in the lease. But frequent litigation shows that this is not always the case. If the works specified in any notice are works which the Applicant is liable to do under the other covenants, the existing wording will cover them. If they are not, then there is no justification for requiring the Applicant to do them. The proposed change is neither required nor appropriate and cannot be justified under any parts of s.57."*

24. In the Respondents' written submissions it is stated:-

*"As stated in our counter-Notice, other than in respect of the terms to be granted and the rent to be payable under the new Lease, the form of the new Lease shall be exactly the same as the existing Lease. The proposed new wording would result in a lesser liability on the part of the lessee. Section 57 of the 1993 Act only permits variations to the form of Lease where such are required to remedy a defect."*

25. The only part of Clause 2(6) in issue between the parties is as above. The Applicant has conceded Section 57(1)(b) and (c) do not apply. The Tribunal does not accept that there is a defect under Section 57(6)(a) or that it would be unreasonable to include the modification under Section 57(6)(b). In the Tribunal's view the Applicant's suggested wording does not take the position any further and the Respondents would be limited in any valid notice to the matters specifically referred to in the lease.

26. The lease remains as drawn without the amendments suggested by either side. The parties are of course at liberty to agree any modifications by way of clarification.

### **Clause 3(2)**

27. The Applicant's suggested Clause 3(2) is set out in the draft lease as follows:-

**"That if so required in writing by the Tenant (or his mortgagee) and upon the terms that the Tenant shall provide to the Landlord an indemnity against all costs and expenses of such enforcement and shall provide to the Landlord such security for costs and expenses as the Landlord may reasonably require that the Landlord will enforce all the covenants entered into by any lessee of the Upper Maisonette or of any other adjoining or adjacent property comprised in the Landlord's freehold title a breach of which adversely affects the use and enjoyment of the Property."**

28. The Respondents' view is that this clause should be omitted.

29. In the Applicant's written submissions, the Applicant relied on Section 57(1)(a) (referred to above). Ms Higgins said, inter alia:-

*"The Underlease was of 17 and 19 Cheshire Gardens, that is to say the Upper and Lower flats in a semi-detached house. The new lease will be of 19 Cheshire Gardens only, as 17 Cheshire Gardens is not comprised in the Applicant's flat."*

*In the original Underlease, one tenant was responsible for complying with the tenant covenants in relation to both flats. That position changed in 1957, when the two flats were assigned separately (ie in the term of the underlease was severed). But the assignments created mutual rights and obligations in relation to tenant covenants, in particular those relating to repairs: ...*

*By contrast, under the new lease, the tenant of 19 Cheshire Gardens will not have the right to directly enforce the covenants in the lease of 17 Cheshire Gardens, unless the facts are such as to allow a claim in nuisance or negligence.*

*The tenant of 17 Cheshire Gardens similarly has no right to directly enforce the covenants in the lease of 19 Cheshire Gardens, but he does have the benefit of a mutual enforceability clause ... clause 8 of the lease granted on 11 August 2004 by the Respondents themselves; cf the similar clause ... proviso (ii) of the lease dated 13 September 1988 which the 11 August 2004 lease replaced.*

*The property, two flats in a semi-detached house, or four flats in the entire building, should be contrasted with a large block with a large number of flats, where mutual enforceability clauses would be more onerous. The lease, putting the responsibility for structural repairs on the lessees, should also be contrasted with leases of large blocks where the landlord repairs and recovers the cost through a service charge, and can be compelled to do so if he fails; it is vital for the tenant of 19 Cheshire Gardens to be able to ensure that the tenant of*

*17 Cheshire Gardens can be compelled, for example, to comply with his covenant to repair the roof.*

*In the circumstances, it is required, or if not required then at least appropriate, to insert a mutual enforceability clause to take account of the omission of 17 Cheshire Gardens which was included in the Underlease but is not comprised in the flat.*

*As an alternative, the Applicant contends that the lack of a mutual enforceability covenant is a defect which needs to be remedied in accordance with Section 57(6)(a) of the 1993 Act."*

30. In the Respondents' written submission it was stated:-

*"Clause 3(2) – As stated in our counter-Notice, other than in respect of the term to be granted and the rent to be payable under the new Lease, the form of the new Lease shall be exactly the same as the existing Lease. We do not believe that we are obliged to accept amendments proposed by a lessee, particularly where these involve us, as landlord, in assuming additional obligations to those contained in the original Lease. Section 57 of the 1993 Act only permits variations to the form of Lease where such are required to remedy a defect and not merely where variations are sought to render the form of Lease more desirable for a lessee."*

31. The Tribunal is persuaded by the Applicants' arguments both under Section 57(1)(a) and 57(6)(a) and (b) of the Act and agrees Clause 3(2) as inserted in the draft lease.

CHAIRMAN ..... 

DATE 11<sup>th</sup> October 2006

JG



Dated

2006

**ALEXANDER RAE BARNETT AND  
THE EXECUTORS OF THE LATE ALAN MATTEY**

**AND**

**PETER ERNEST GEORGE WHITEHEAD**

LEASE OF 19 CHESHIRE GARDENS  
CHESSINGTON SURREY KT9 2PR

## **PRESCRIBED CLAUSES**

**LR1. Date of lease**

2006

**LR2. Title number(s)**

**LR2.1 Landlord's Title number(s)**

SGL619621

**LR2.2 Other title numbers**

**SGL657693 *{The Title Numbers of 13 and 15 Cheshire Gardens to be added}***

**LR3. Parties to this lease**

**Landlord**

ALEXANDER RAE BARNETT AND  
STEVEN MATTEY, ALEXANDER RAE  
BARNETT, ROBERT ADAM DAVIS  
AND DAVID JONATHAN BERKLEY as  
Executors of the late Alan Matthey of  
Lawrence House, Goodwyn Avenue,  
London NW7 3RH

**Tenant**

PETER ERNEST GEORGE WHITEHEAD  
of 19 Cheshire Gardens Chessington Surrey  
KT9 2PR

**Other parties**

None

**LR4. Property**

19 Cheshire Gardens as described in clause  
1 of this lease

**In the case of a conflict between this  
clause and the remainder of this lease**

then, for the purposes of registration, this clause shall prevail

**LR5. Prescribed statements etc.**

*LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (lease under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003*

This lease is granted under section 56 of the Leasehold Reform, Housing and Urban Development Act 1993

*LR5.2 This lease is made under, or by reference to, provisions of:*

Not applicable

**LR6. Term for which the Property is leased**

The term is as follows: from the date hereof expiring on the twenty eighth of September 2134

**LR7. Premium**

£32,500

**LR8. Prohibitions or restrictions on disposing of this lease**

This lease does not contain a provision that prohibits or restricts dispositions

**LR9. Rights of acquisition etc.**

**LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property or to acquire an interest in any other land**

None

**LR9.2 Tenant's covenant to (or offer to) surrender this lease**

None

**LR9.3 Landlord's contractual rights to acquire this lease**

None

**LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property**

None

**LR11. Easements**

**LR11.1 Easements granted by this lease  
for the benefit of the Property**

As set out in and the First Schedule

**LR11.2 Easements granted or reserved by  
this lease over the Property for the benefit  
of other property**

As set out in the Second Schedule

**LR12. Estate rentcharge burdening the Property**

None

**H.M. LAND REGISTRY**  
**LAND REGISTRATION ACTS 1925-2002**

Administration Area	Kingston Upon Thames
Title Number	Freehold      SGL619621
	Leasehold      SY187064
Property	19 Cheshire Gardens Chessington KT9 2PR

THIS SURRENDER AND LEASE is made the            day of            2006  
**BETWEEN ALEXANDER RAE L BARNETT, AND STEVEN MATTEY,**  
**ALEXANDER RAE L BARNETT, ROBERT ADAM DAVIS AND DAVID**  
**JONATHAN BERKLEY as Executors of the late Alan Mattey** of Lawrence  
House, Goodwyn Avenue, London NW7 3RH (hereinafter called “the Landlord”  
which expression shall where the context so admits include the person or persons for  
the time being entitled to the reversion immediately expectant on the determination  
of the term hereby created) of the one part and **PETER ERNEST GEORGE**  
**WHITEHEAD** of 19 Cheshire Gardens Chessington Surrey (hereinafter called “the  
Tenant” which expression shall where the context so admits include his successors  
in title) of the other part

**WHEREAS:-**

- (1) By a lease (hereinafter called “the Headlease”) dated 18 December 1945 and  
made between John Herbert Noel Gower of the first part George Percival Ellard  
of the second part and Bedrock Investments Limited of the third part the property  
known as 17 and 19 Cheshire Gardens and other land was demised to Bedrock  
Investments Limited
- (2) By an underlease (hereinafter called “the Underlease”) dated 24 September 1947  
and made between Bedrock Investments Limited and Edward Meysey Turton the

property known as 17 and 19 Cheshire Gardens was demised to Edward Meysey Turton for a term expiring on 28 September 2044

- (3) By an assignment dated 15 August 1957 between Edward Meysey Turton and Keith Brian White part of the property demised by the Underlease being the Property defined below was assigned to Keith Brian White
- (4) The Headlease has merged in the freehold title
- (5) The reversion immediately expectant on the determination of the Underlease is vested in the Landlord and registered at HM Land Registry under title number SGL619621
- (6) The residue of the term granted by the Underlease in respect of the Property is vested in the Tenant and registered at HM Land Registry under title number SY187064
- (7) The Tenant in exercise of his rights under Chapter II of Part I of the Leasehold Reform Housing & Urban Development Act 1993 (as amended) ("the Act") has required the Landlord to grant to him a new lease of the Property for an extended term under the Act in substitution for the term granted by the Underlease which the Landlord has agreed to do on the terms set out below
- (8) This lease is granted pursuant to Section 56 of the Act being a new lease made in substitution for the Underlease and any modifications thereto
- (9) This is a new lease for the purposes of Section 1 of the Landlord and Tenant (Covenants) Act 1995

**NOW THIS DEED WITNESSETH** as follows:-

**1. In consideration** of the sum of £32,500 paid by the Tenant to the Landlord (the receipt whereof is hereby acknowledged) and of the covenants on the part of the Tenant hereinafter contained the Landlord with limited title guarantee hereby demises unto the Tenant ALL THOSE pieces or parcels of land situate in the London Borough of Surbiton fronting on the road known as Cheshire Gardens and known as 19 Cheshire Gardens and being the lower floor or ground floor maisonette or flat up to but not including the joists and main timbers upon which the property known as 17 Cheshire Gardens (hereinafter referred to as "the Upper Maisonette") rest together with the land coloured pink and brown on the plan annexed hereto ALL which said pieces or parcels of land are more particularly delineated for the purposes of identification only on the plan annexed hereto and edged red **TOGETHER** with such of the rights and easements and **SUBJECT TO** such of the exceptions and reservations unto the Landlord and their mortgagees according to their respective interests in the dominant properties and their respective successors in title for all their respective estate from time to time in the adjoining and adjacent properties Numbers 1 to 16 inclusive Number 18 and Numbers 20 to 24 inclusive in Cheshire Gardens aforesaid or such of the said properties as remain vested in them set out in Part 1 of the First Schedule and Part 1 of the Second Schedule hereto respectively as are applicable and relate to or affect the property hereby demised **AND TOGETHER** with the rights set out in Part 2 of the First Schedule hereto but **SUBJECT TO** the rights in favour of the owner or occupier of the Upper Maisonette set out in Part 2 of the Second Schedule hereto (all which is herein referred to as "the Property") **TO HOLD** the same



unto the Tenant for a term of years from the date hereof expiring on the twenty eighth of September 2134 **YIELDING AND PAYING THEREFOR** a yearly ground rent of one peppercorn (if demanded)

**2. The Tenant hereby covenants with the Landlord :-**

- (1). To pay the rents hereby reserved on the days and in manner aforesaid
- (2). To pay all rates taxes assessments and outgoings whatsoever (whether parliamentary local or otherwise) now or hereafter during the said term imposed or charged upon or in respect of the Property or any part thereof or on the Landlord or Tenant in respect thereof respectively (except the Landlord's Property Tax)
- (3). **To repair and keep the Property and every part thereof together with all other buildings and erections which at any time during the said term may be upon any part of the said Property in tenantable repair throughout the term hereby granted**
- (4). To paint with two coats of good oil paint in a workmanlike manner all the wood iron and other parts of the Property heretofore or usually painted as to the external work in every fifth year and as to the internal work in every seventh year of the said term (and in each case the painting to be done in the last year of the term as well) and after every external painting to grain varnish and colour the external parts of the Property usually so dealt with and after every internal painting to grain varnish distemper wash stop whiten and colour all such parts as are usually so dealt with and to repaper the parts usually papered with suitable paper

**Comment:** The Applicant proposes the clause as in the text. The Respondent proposes to delete this clause and substitute "from time to time and at all times during the said term well and substantially to repair uphold support cleanse maintain drain amend and keep the premises hereby demised and in particular the rafters or other the support for the floor of the upper maisonette and all new buildings which may at any time during the said term be erected on and all additional (sic) made to the demised premises and the fixtures therein and all party and other walls and fences sewers drains pathways passageways easements and appurtenances thereof with all necessary repairs cleansing and amendments whatsoever"

(5). To permit the Landlord and the surveyor or agents of the Landlord with or without workmen twice in every year during the said term at reasonable times in the day time to enter upon the said Property and every part thereof to examine the state and condition of the same and thereupon the Landlord may serve upon the Tenant notice in writing specifying any repairs necessary to be done

(6). Within four weeks after every such notice as aforesaid to do all structural repairs and to make good all such defects decays and wants to reparation to the said Property as **the Tenant is liable to do under the covenants hereinbefore contained**

**Comment:** The Applicant proposes the clause as in the text. The Respondent proposes to delete the words in bold and substitute "detailed in every such notice"

(7). Not to make any alterations in the demised premises or erect any new buildings thereon without the approval in writing of the Landlord to the plans and specifications thereof and to make all such alterations in conformity with such plans and specifications

(8). To perform and observe all the obligations which the Landlord as owner or Landlord of the Property may be liable to perform or observe during the said term by virtue of any Act of Parliament or of any direction or requirement of any public or local authority and all the obligations binding on the Landlord as such owner by virtue of the restrictive and other covenants to which the Property is subject created by certain Deeds dated the Seventh of April One thousand nine hundred and thirty-eight and the Ninth of June One thousand nine hundred and thirty-nine insofar as they remain enforceable short particulars of which are set out in the Third Schedule hereto

(9). Forthwith to insure and keep insured all buildings on the Property against loss or damage by fire in the full value thereof (to be ascertained by arbitration in default of agreement) in a first class Insurance Company in England to be approved by the Landlord such approval not to be withheld without good cause shown and to make all payments

necessary for that purpose within seven days after the same shall respectively become payable and upon reasonable notice to produce to the Landlord the policy or policies of such insurance and the receipt for every such payment

(10). As often as any buildings on the Property or any part thereof shall be destroyed or damaged as aforesaid forthwith to cause all money received by virtue of such insurance to be laid out in rebuilding and reinstating the same in accordance with plans elevations sections and specifications as approved by and to the reasonable satisfaction of the surveyor for the time being of the Landlord and in accordance with the then existing bye-laws regulations and planning requirements of the local authority having authority in the district where the Property is situate and in case the same shall be insufficient for that purpose then to make up the deficiency out of their own monies

(11). Within **two months** after every assignment assent or transfer of the interest of the Tenant in the Property to give notice thereof in writing with particulars thereof to the Landlord or the Solicitors for the time being of the Landlord and produce to them such assignment assent or transfer or in the case of a devolution of the interest of the Tenant not perfected by an assent within twelve months after the happening thereof to produce to the Landlord or the said solicitors the probate of the Will or Letters of Administration or other Order under which such devolution arises and to pay to them a reasonable registration fee in respect of each such assignment transfer or devolution

**Comment:** The Applicant originally proposed two months. The Respondent wishes to reduce this to twenty-one days. The Applicant is willing to compromise at one month

(12). At the determination of the term to yield up the Property and all additions thereto and all fittings and fixtures therein to the Landlord in accordance with the Lessee's obligations herein contained

**3. The Landlord** hereby covenants with the Tenant:-

(1) That the Tenant paying the rent hereby reserved and performing and observing the covenants on the part of the Tenant contained herein so far as the same are applicable to the Property hereby demised shall peaceably hold and enjoy such last mentioned property during the term hereby created without any interruption by the Landlord or any person rightfully claiming under or in trust for the Landlord

(2) **That if so required in writing by the Tenant (or his mortgagee) and upon the terms that the Tenant shall provide to the Landlord an indemnity against all costs and expenses of such enforcement and shall provide to the Landlord such security for costs and expenses as the Landlord may reasonably require that the Landlord will enforce all the covenants entered into by any lessee of the Upper Maisonette or of any other adjoining or adjacent property comprised in the Landlord's freehold title a breach of which adversely affects the use and enjoyment of the Property.**

**Comment:** The Applicant proposes to include this clause. The Respondent wishes to delete it.

**4. If the rent** hereby reserved or any part thereof shall remain unpaid for twenty one days after the same shall have become payable whether formally demanded or not or if any covenant on the part of the Tenant herein contained shall not be performed or observed it shall be lawful for the Landlord at any time thereafter to re-enter upon the premises hereby demised or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to the right of action of the Landlord in respect of any breach by the Tenant of any covenant binding on him by virtue of this Deed

**5. It is hereby certified** that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or aggregate amount or value of the consideration exceeds £125,000

**6.1 This Lease** is granted under section 56 of the Act

6.2 Any long lease granted by way of sublease out of this Lease shall not confer on the Lessee (as against the Lessor) any right to acquire a new lease under Chapter II of Part I of the Act (and for this purpose "long lease" shall be construed in accordance with section 7 of the Act)

6.3 The Landlord hereby reserves the right to obtain possession of the Premises in accordance with section 61 of the Act

IN WITNESS whereof the Landlord and Tenant have hereunto set their hands the day and year first above written

**THE FIRST SCHEDULE above referred to**

**RIGHTS GRANTED**

**PART 1**

The several rights in the nature of easements appurtenant to the said Property as now in fact arranged and enjoyed and in particular those specified in this part of this schedule.

The easements specified in Column 1 of this Schedule are appurtenant to the property hereby demised (in this Schedule referred to as "the Dominant Property") and are

exercisable in common with other persons like entitled over the properties specified in Column 2 hereof (in this Schedule referred to as "the servient properties")

Column 1	Column 2
1. The full and free right of way with or without vehicles so far as the same can pass thereover over the strip of land coloured purple in the said plan	13, Cheshire Gardens 15, Cheshire Gardens
2. The full and free right of support of the dwellinghouse on the dominant property by the dwellinghouse on the servient properties	21, Cheshire Gardens 23, Cheshire Gardens
3. The full and free right to the use for domestic purposes of the combined drain laid through the servient properties and leading thence into the main drain	9, Cheshire Gardens 11, Cheshire Gardens 13, Cheshire Gardens 15, Cheshire Gardens
4. The full and free right to the use of the gutters downpipes surface water drains in the servient properties	21, Cheshire Gardens 23, Cheshire Gardens

## **PART 2**

1. The right to pass and repass on foot only over the footpath coloured yellow on the said plan the owners or occupiers for the time being of the Property paying a fair proportion of the cost of maintaining and repairing the footpath over the same
2. The right of protection from all parts of the Upper Maisonette so far as they protect the same
3. The right of passage of gas electricity water and soil from and to the Property through the pipes drains wires and conduits which are now in or under the Upper Maisonette and which lead to the Property so far as may be reasonably necessary for the beneficial occupation thereof
4. The right to enter from time to time upon the Upper Maisonette for the purpose of repairing so far as may be necessary any such pipes drains wires and conduits as aforesaid
5. The right for the Tenant or his workmen to enter the Upper Maisonette for the purpose of repairing the Property or painting the exterior thereof or repairing renewing or replacing any pipes or wires leading through the Upper Maisonette to the said Property the Tenant as aforesaid making good any damage thereby caused

**THE SECOND SCHEDULE above referred to**

**RIGHTS RESERVED**

**PART I**

ALL THOSE rights in the nature of easements for the benefit of the adjoining and adjacent properties Numbers 1 to 16 inclusive Number 18 and Numbers 20 to 24 inclusive in Cheshire Gardens aforesaid or such of the said properties as remain vested in the Landlord or their successors in title and appurtenant thereto as now in fact arranged and enjoyed over the Property hereby demised and in particular those specified in this part of this schedule.

The easements specified in Column 1 of this Schedule are appurtenant to the properties specified in Column 2 hereof (in this Schedule referred to as "the dominant properties") over the property hereby demised (in this Schedule referred to as "the servient property")

**Column 1**

**Column 2**

1. The similar full and free right of way over  
the strip of land coloured brown on the said plan

13, Cheshire Gardens

15, Cheshire Gardens

2. The full and free right of support of the  
dwellinghouse on the dominant properties  
by the dwellinghouse on the servient property

21, Cheshire Gardens

23, Cheshire Gardens



- |  |  |
|--|--|
| 3 .The full and free right to the use for domestic purposes of the combined drain laid through the servient property | 21, Cheshire Gardens<br>23, Cheshire Gardens |
| 4. The full and free right to the use of the gutters downpipes surface water drains in the servient properties       | 21, Cheshire Gardens<br>23, Cheshire Gardens |

## PART 2

1. The right to pass and repass for all purposes on foot only over and along the footpath coloured brown on the said plan the owners or occupiers for the time being of the Upper Maisonette paying a fair proportion of the cost of maintaining and repairing the same
2. The right of support for the Upper Maisonette by all other parts of the Property so far as the same is now enjoyed
3. The right of passage of gas electricity water and soil from and to the Upper Maisonette through the pipes drains wires and conduits in other parts of the Property so far as may be reasonably necessary for the beneficial occupation thereof
4. The right to enter from time to time upon the Property for the purpose of repairing so far as may be necessary any such pipes drains wires and conduits as aforesaid

**THE THIRD SCHEDULE above referred to**

**Particulars of the covenants contained in a Deed dated the 7th April 1938**

1. Nothing shall be erected on the land or any excavation made therefor until a plan and elevation of all houses or buildings to be erected shall have been submitted to and approved in writing by the Surveyor for the time being of the Vendor's predecessor in title and Purchaser shall upon submitting such plans and elevations pay to the said Surveyor his reasonable fees for the approval of the same. The said plans shall be submitted in duplicate at the Purchaser's expense and one copy thereof shall be retained by the Vendor's predecessor's Surveyor. All buildings shall be erected strictly in accordance with the approved plan and elevation. In addition drawings and sections of any proposed road shall be submitted in like manner to the said Surveyor

2. Not to use the property for the purposes of a shop business premises a petroleum filling station or place of assembly or for industrial building as at present defined in the draft Surbiton Town Planning Scheme

3. No building or erection now or hereafter erected on the land shall be used for the purpose of an advertisement hoarding or as a bill posting station or for the display of advertisements posters advertising signs and the like

4. No lime kiln brick kiln or place for the manufacture of lime or brick or other similar articles shall be permitted upon the land and no sand earth or gravel shall be dug out or removed therefrom except for the purpose of levelling the same or laying foundations or drains or for use in the erection of any house or building by these stipulations permitted to be erected on the land

5. The land and all present and future buildings thereon shall not nor shall any part thereof at any time hereafter be used for the purpose of the sale of ale beer wines and spirits or other intoxicating liquors or for any club or institution at which such liquors or any of them are sold consumed or distributed

6. That the Purchaser will cause all new roads and sewers to be constructed on the said land to be carried up to the boundaries of the said land and if called upon to do so by the Vendor or the Surbiton Borough Council will permit the purchaser of any adjoining land to continue such road and to make connections with the sewers or with any gas water or electricity mains laid under the said roads And will grant the purchaser of such adjoining land free of expense to him such rights of way and drainage as shall be necessary for the development of the adjoining land of such Purchaser provided always that the purchaser of such adjoining land shall make good any damage caused by making any such connections as aforesaid

**Particulars of the covenant contained in a Deed dated the 9th June 1939**

COVENANT by John Herbert Noel Gower the Purchaser therein named with Alfred Harold Carter the Vendor therein named that he the Purchaser would maintain full and sufficient fences to the satisfaction of the Vendor *on* the boundaries of the property marked "T" *on* the plan attached thereto the same being similarly marked in the plan attached hereto

Signed as deed by the said etc.



Ground Floor