

# **A Guide to Lease Extensions for the Barbican Estate**

Under the Leasehold and Urban Development Act 1993 (as amended) (“the Act”) Barbican Long Leaseholders may purchase a new Lease from the City of London Corporation (“the City”) which will extend the end date of the Lease by 90 years. Most Barbican Long Leases commenced in July 1981 and were granted for 125 year terms. Hence, as at the beginning of 2007 the standard Barbican Lease has 99 ½ years left to run. Exercising the right to extend the Lease will involve costs which are summarised below.

Whether to extend your Lease, and when to do so, must be a personal decision. The guidance given here is based upon the “standard” Barbican 125 year Lease. If your Lease is different in terms of its length or start date, the general principles will be the same, but the costs involved may be significantly different, and individual advice will be needed.

The Barbican Association has discussed with the City how best to organise the processing of requests for Lease Extensions to ensure that the process is efficient and saves costs where possible. The City has been receptive to these needs and has recognised a mutual benefit in managing matters efficiently. The standard process outlined below has been designed with efficiency and cost-saving in mind, but is entirely optional. Long Leaseholders wishing to manage the process entirely independently via their own solicitor from start to finish are free to do so.

**Although the information given is believed to be accurate at the time of publication, neither the Barbican Association nor the City can accept any legal responsibility for the content of this guidance and for any losses that might be caused as a result of reliance upon it. The City has been consulted in relation to the process outlined in this guidance, but the City's participation in such process (in so far as it goes beyond the requirements of the Act) is voluntary; the City is not legally bound to the process and reserves the right to withdraw from it or review the operation of the process and the way in which it deals with lease extension applications as it considers appropriate.**

## **A. How the Process Works**

The key stages of the process are as follows:

1. Inform the Leasehold Services Section (020 7029 3943) of the Estate Office that you wish to extend your Lease. You will in response be sent a blank section 42 Notice and an additional information form to complete together with an indicative current value of your Lease, the premium payment required for the new Lease (if available), and confirmation of the City’s anticipated costs of processing the elements of the transaction for which it is responsible. It is your responsibility to deal with any lender's requirements, with Stamp Duty Land Tax and with Registration of the new Lease with the Land Registry. Note that whilst the Estate Office will provide an indicative valuation if it has current information on values, leaseholders are strongly encouraged to obtain at the outset of the process their own valuation from Frank Harris & Co, which the Estate Office will be happy to accept for the purposes of calculating the premium. A fee of currently £117.50 (£100 plus VAT) will however be payable directly to Frank Harris & Co for providing such valuation. If the Estate Office provides a valuation and Leaseholders choose to use the Estate Office valuation they do so at their own risk.

2. If you agree the suggested premium payment required for the grant of the new Lease and the proposed costs, submit the formal section 42 notice applying for the new Lease inserting the suggested premium payment in the section 42 notice, together with the City's additional information form providing the information requested. Providing the information in the latter form is not mandatory, but assists the processing of the matter and is thus necessary to qualify for the reduced costs. By submitting the section 42 Notice, provided that it is accepted by the City (see below) you will then become bound by virtue of the Act to pay the City's costs for dealing with the Application, even if you subsequently withdraw the Application and do not proceed. The City anticipates that the standard costs notified initially will be applied in the vast majority of cases conducted under this process, but reserves the right to increase the costs in respect of any Application which proves unusually time-consuming.
3. The Application will then be processed and in due course (approximately two months) assuming the Application is in order, the City's formal counter-notice accepting the offer contained in your section 42 notice will be sent to you, together with the Deed granting the new Lease for signature. This must be signed by all property owners in the manner specified, and returned to the City Solicitor with the agreed costs and the premium, following which the new Lease will be executed by the City and returned to the Applicant.
4. Following the creation of the new Lease, there will be some post-completion formalities for the Applicant to attend to, essentially submitting a Stamp Duty form and registering the new Lease with the Land Registry. If there is a mortgage, the lender will at the very least require the new Lease to place it with the existing Deeds, and may have more onerous requirements (see below). Even if you do not propose to use a solicitor for the process prior to the final stage, you might consider asking a solicitor to deal with the Stamp Duty and Registration formalities.

**It must be understood that the City is only involved in steps 1 and 3. Carrying out steps 2 and 4 are the responsibility of the Applicant. Step 4 does not have to be undertaken by a solicitor, but Applicants should give serious consideration to instructing a solicitor to attend to the post-completion formalities.**

## **B. Lease Extension Criteria**

The criteria have been simplified by the Commonhold and Leasehold Reform Act of 2002. Now, it is only necessary for the applicant for the new Lease to have owned the Lease for a minimum of two years. Unfortunately the City does not have the power to waive the two year ownership requirement and therefore this must be strictly complied with. The applicant needs to be the owner of the Lease, and where there is more than one owner all owners need to apply, each of whom must meet the two year ownership requirement. This means that any modification of the ownership of the existing Lease reflecting, for example, a change of personal circumstances, will cause the two year waiting period to run again before a new Lease can be applied for, even where all except one of the joint owners has owned the Lease for at least two years.

The other requirements are to make an Application in the proper form, and to make the appropriate payment, the calculation of which will be explained below.

If you have a mortgage on your property, you should check whether your mortgage lender requires you to obtain its consent to the application. It is highly unlikely that there will be any objection from your lender, as the new Lease will improve the position of the lender, but

there may, for example, be a restriction on the title whereby the new Lease will not be capable of registration without the Lender's consent. Lenders' requirements do vary, and can be quite onerous, up to requiring the existing loan to be repaid and a new mortgage granted for the new Lease (and potentially triggering a penalty charge for early redemption). In many cases a simple Deed of Substituted Security should be sufficient for the lender, but you should check their requirements before proceeding with an Application.

#### A Note on Joint Ownership

Property may be jointly owned in two ways – as “joint tenants” or as “tenants in common”. The two forms of ownership have nothing to do with tenancies in the conventional sense; they apply also to jointly-owned freehold properties. If you currently own your Lease jointly with someone else, one of these two forms of joint ownership will therefore normally apply. Unless you wish to change the existing arrangements for joint ownership, you will need to determine which of the two forms of joint ownership is applicable to your existing Lease. Depending on your circumstances, there may be opportunities to consider the form of joint ownership in conjunction with inheritance tax planning. This note cannot address this issue.

The difference between the two forms of joint ownership is that with a joint tenancy, upon the death of an owner the person's “share” in the property passes automatically to the other owner or owners irrespective of the provisions in a will. With a tenancy in common, each owner owns a specific share which can be passed on according to the wishes of the owner in their will.

### **C. How Much Does it Cost?**

In addition to the valuation fee payable if you opt to obtain a valuation from Frank Harris & Co (please see A1 above), there are 3 cost elements:

1. A payment to compensate the City for the fact that Ground Rent is not payable under the new Lease.
2. A payment to compensate the City for the fact that its right to recover the property under the Lease is being postponed by 90 years.
3. A payment to cover the costs to the City of processing the application.

Each of these is considered in more detail below. It is essential to remember that each element of the costs discussed below may change in the future through legislation, or developments in case law. However, as at January 2007 the indicative figures are believed to be accurate and should reflect the approach of the Estate Office to the calculations involved. The Estate Office will confirm the position when you ask for the Form to use to apply for a new Lease.

#### **Ground Rent**

The existing Leases require annual £10.00 payments of ground rent. On the basis of 100 years unexpired, plus 90 additional years, the payments over the 190 remaining years amounts to £1,900. However, if the Lease were to run its term, the City would have to wait for 190 years before receiving the £1,900, but has the benefit of the annual contributions as they accrue. The consequence is that a compensation payment of much less than £1,900 is appropriate.

The approach used is to capitalise the value of the right to claim £10 per year for 190 years and to pay that sum as compensation. The key component of the calculation is the interest rate used, as the only other 'variable' in this calculation is the number of unexpired years, but based on 190 years the approximate sum currently payable is £135 (though this figure may be subject to review from time to time).

### **Compensation for the Deferment of the end date of the Lease**

This cost will represent the largest element of the total cost of a new Lease. Although the ground rent compensation cost will be the effectively the same regardless of the type of flat concerned, the compensation for deferment is proportional to the value of the flat concerned. All the other elements underpinning the calculation of the payment should be the same, so the deferment cost will increase in proportion with increases in the value of your flat. Therefore, a flat worth double the value of another will pay twice the amount for this aspect of the cost of the new Lease.

The calculation is based upon the value of the flat. Assuming a value of £400,000 at the time the notice to extend is served, the sum payable is the amount which, if invested at a compound rate of 5% pa (known as the deferment rate), would grow to the present value of the flat (£400,000 in this example) over the remaining term of the existing Lease (which is now just under 100 years). It can be appreciated that as the existing term shortens, the payment required will increase to compensate for the reduced period of years allowed for the fund to grow to the required figure, assuming all other relevant matters remain the same. To give some idea of how this affects the calculation of the sum payable under this head, by the time the unexpired term reduces to 90 years in 2016, approximately £1,240 would be payable per £100,000 of value.

It is also worth mentioning that for leases with 80 or fewer unexpired years, an additional element called "marriage value" also falls into the calculation. Marriage value reflects the increase in market value of the property concerned with the benefit of the new Lease and is shared between the freeholder and leaseholder, so the Leaseholder must pay 50% of the increase in value to the freeholder. For leases with more than 80 unexpired years, the marriage value is deemed to be zero.

Using the interest rate of 5% the approximate payment required per £100,000 of value is £800. Hence, in the case of a flat valued at £400,000 the payment for the deferment element of the cost of the new Lease would be around £3,200. A flat valued at £250,000 would require around £2,000 to be paid under this head.

**Please note that the above figures are provided for guidance only, they are approximate and indicative only, and are not binding on the City. Note that the deferment rate may be subject to change in future; relatively small changes in the deferment rate can substantially increase or decrease the premium payable. Leaseholders are therefore requested not to submit an Application for Lease Extension without first contacting the Estate Office and obtaining an up to date premium calculation.**

### **The Costs of Processing the Application**

Following discussions between David Graves, BA Chairman, and the City Solicitor agreement has been reached regarding standard costs that will be charged in be the typical case where:

1. There is agreement between the Applicant and the City as to the value of the Lease concerned and as to the compensation payments to be made for the loss of ground rent and for the deferment of the reversion, the City's standard form of Extended Lease (as approved by Maxwell Batley) is accepted, and the information required for the City to prepare and engross the new Lease is provided together with a valid section 42 Notice;
2. the Applicant agrees to take responsibility for the post completion formalities (see A.4 above) either by instructing a solicitor or personally;
3. the Applicant is the registered proprietor of the leasehold title to the flat, has satisfied the two year ownership requirement, and has been formally notified to the City as the owner of the flat as required by the Lease (this should have been done automatically by the Applicant's solicitors when the Applicant acquired the flat by providing to the City formal notice of assignment); and
4. given 1 and 2 above, the Applicant accepts that the City Solicitor is not in a position to give advice or guidance to the Applicant concerning the processes involved and will therefore not attempt to obtain such advice or guidance from the City Solicitor.

The costs referred to below have been negotiated explicitly on the basis of the above conditions, and consequently if the processing of the transaction results in additional effort/costs being incurred by the City Solicitor these will be charged to the Applicant in addition to the standard costs. The standard cost assumes that the transaction will simply involve the processing of the relevant paperwork necessary to grant the new Lease. It is important to remember that the Applicant and the City are on opposite sides of a property transaction having a significant value, and thus it is not possible for the City Solicitor to give advice or guidance to Applicants as their professional duty lies to the City not to Applicants.

The guidance provided in this document is intended to answer most of the typical questions in advance, so they are not asked repeatedly.

Subject to agreement to the standard conditions above, the charge for a "standard" transaction is **£381** (£375 plus costs of £6) reflecting the City Solicitor's input. This must be paid on completion of the new Lease in addition to the premium. The standard charges may be revised in the light of increases in costs generally or as a result of external developments, such as new legislation or case law.

Please note that the Estate Office previously charged a valuation/administration fee of £150 for lease extensions, to reflect input in relation to valuation and the calculation of sums of compensation payable for the new Lease. The Estate Office will continue to be involved, but in light of this guidance, it is now hoped that Applicants falling within the abovementioned criteria will require less assistance from the Estate Office than before, and therefore it has been agreed for now that the fee will normally be waived. It should be noted however that if any Applicant seeks further assistance or guidance from the Estate Office, they do so at their own risk, and any assistance or guidance from the Estate Office will be given without liability on the part of the City. In particular, Applicants rely on any valuations and premium calculations given by the Estate Office at their own risk, and are free to seek their own professional advice, though this is likely to increase the costs. As mentioned previously, the Estate Office encourages prospective Applicants to obtain their own valuation from Frank Harris & Co.

## D. Some Practical Matters

### The Application Form

This is the formal Notice by which you claim your right under section 42 of the Act to receive a new Lease with an extra 90 years to run. There is a form requiring additional information needed for the efficient progress of the transaction, which is not legally required under section 42 and is thus optional, but the reduced costs above are dependent on this form also being supplied.

### The Deed granting the New Lease

Although colloquially reference is made to an extended Lease, what actually happens is that the existing Lease is replaced with a new Lease which will exist for 90 years more than the original Lease. The way this is achieved is through a Deed which carries forward the terms of the original Lease into the new Lease with some necessary changes, in particular the extra 90 years and the removal of the obligation to pay ground rent. There are some other changes, consequent upon changes in the law since the Leases were first granted in 1981. The document does not need to recite all of the provisions of the existing Lease as these will continue to have effect subject to the changes referred to in the Deed granting the new Lease itself.

The BA has obtained independent legal advice regarding the Deed granting the new Lease and in the view of Messrs Maxwell Batley, solicitors, it is acceptable. It should accordingly not be necessary for legal advice on this issue to be sought by those applying for Lease extensions.

The Deed, once supplied by the City Solicitor, will need to be signed by all the property owners in the manner stated in the letter which will accompany the Deed.

## E. Post-Completion Formalities

### 1. Stamp Duty Land Tax ("SDLT")

**The legal advice from Maxwell Batley confirms that SDLT will not be payable on the grant of new Leases. It will nevertheless be necessary to submit a stamp duty land tax return to HM Revenue & Customs for inspection.**

The form required is called SDLT1 and is available:

via the HMRC Order line on 0845 302 1472; or

via the online order form at the following address

<http://www.hmrc.gov.uk/so/form1.htm>

A sample SDLT1 can be downloaded from the HMRC website as follows (but note this is a sample only and you will not be able to fill out the form):

[http://www.hmrc.gov.uk/so/sdlt\\_website.htm](http://www.hmrc.gov.uk/so/sdlt_website.htm)

**In addition to the form itself, document SDLT6 is the guidance booklet that accompanies the form. As it is not possible to set out all of the guidance given there**

**in this document, it is ESSENTIAL you obtain and use the booklet SDLT6 to help in the completion of the form. You will need SDLT6, for example, to know what codes to use for certain information that is required. The SDLT6 can be downloaded from the web address given immediately above or via the telephone order line.**

The deadline for submitting the form SDLT1 is 30 days from the effective date of the transaction, which will be the commencement date of the new Lease granted by the City Corporation. Submitting a correctly completed form will enable HMRC to send you a "Land Transaction Return Certificate", the original of which document you will need to produce to the Land Registry when you apply to the Land Registry to register the title to the new Lease. In addition, penalties are payable for the late submission of the forms.

Remember that all forms are read by machine, and therefore unless you are completing the form online, write clearly on the form using black ink and inside the boxes on the form using capital letters, use an "X" to indicate which of several possible boxes is applicable, and leave blank questions that you do not need to answer, unless you are told to insert "0". Do not, for example, strike through inapplicable questions or write "not applicable" on the form.

If you can complete the form online, that is probably best as all the rules concerning the correct completion of the form will be applied automatically. However, you may wish to complete a paper copy first, to make sure that you have all the necessary information to hand.

Much of the form can be completed without difficulty. However, the following questions in the form have less than obvious answers, so some suggestions for completing them are made below.

**Question 7: "Is any land exchanged or part-exchanged?"**

A surrender and re-grant will be treated as an exchange.

This might involve a real risk of a substantial SDLT liability arising, but for para 16 of Schedule 17 of the Finance Act 2003, which provides that:

"16 Where a lease is granted in consideration of the surrender of an existing lease between the same parties—

- (a) the grant of the new lease does not count as chargeable consideration for the surrender, and
- (b) the surrender does not count as chargeable consideration for the grant of the new lease."

**Question 13: "Is this transaction linked to any other(s)?"**

Bearing in mind the answer to Question 7, discussed above, although the logical answer would appear to be "Yes", that does not appear to be the case, and the more appropriate answer is "No". This is based upon the following:

"The Chief Secretary to the Treasury confirmed in Standing Committee that a simple exchange of properties will not be covered by the linked transactions rules". The notes in SDLT6 also appear to bear out this interpretation.

**Question 36:** "Vendor Company Name" Since only 28 characters are allowed put "The City of London Corporation".

## 2. Land Registration

The new Lease will need to be registered at the Land Registry using Form AP1 (with the appropriate fee). This is a relatively simple form, but before you can send it you will need to have obtained also the Land Transaction Return Certificate, discussed above. The website for the Land Registry is at:

[www.landregistry.gov.uk](http://www.landregistry.gov.uk)

Form AP1 can be downloaded (as a Word document or pdf) from the website (see the 'Forms' section).

The Harrow Land Registry Office covers the City of London. They can be contacted at:

Land Registry, Harrow Office  
Lyon House  
Lyon Road  
Harrow  
Middlesex  
HA1 2EU

Telephone: 020 8235 1181

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