

TANT Guide to Voluntary Extensions February 2022

Despite many of you lobbying your MPs over the matter of when leasehold legislation is due to be debated in Parliament we are no further forward with regards to a definitive date. Due to the extensive time that Parliament is taking over long lease legislation we are sadly becoming aware that there may be a number of you who can no longer wait and are considering putting your leases on the market. To make these leases more marketable lease extensions are required. With this in mind we have sought a meeting with the Trust to seek clarity on this matter and are able to provide the following information for those whose circumstances may be requiring them to put their leases on the market.

Introduction

TANT recommend that given the NT/TANT agreement that subject to the Law Commission reforms becoming law lease holders will be entitled to apply for a 990 year lease it is in their best interest to wait for the relevant legislation to be enacted by Parliament. For your information the latest position on the progress of the legislation is available here:

<https://commonslibrary.parliament.uk/leasehold-reform-in-england-and-wales/>

You can find more detail by clicking on the various links including Lord Greenhalgh's statement in the House of Lords in June 2021.

If due to their personal circumstances long leaseholders are no longer able to wait the following sets out TANT's current understanding of the Trust's position on voluntary extensions.

Statutory Extensions for leases governed by the Leasehold Reform Act 1967

As many of you will be aware subject to certain qualifications The Leasehold Reform Act 1967 entitles long leaseholders to a statutory extension of 50 years without paying a premium. The Act provides for a review of the ground rent payable during the course of the extension but fortunately through negotiations between the National Trust and TANT it has been formally agreed that this will not apply to Trust long leaseholders. TANT must emphasise that this form of extension is limited to those lease holders who meet the qualifying criteria. For those who are not sure whether their lease has had this statutory right already claimed or whether your lease terms qualify you for the statutory extension TANT recommends approaching the Trust for clarification of their situation.

Voluntary Extension

For those long leaseholders who have already claimed the Statutory Extension or do not qualify for this form of extension there are no further statutory rights to an extension. In these circumstances tenants are reliant on the Trust granting them a premium based voluntary extension. The Trust have stated that voluntary extensions are currently available to most long leaseholders with properties that are their main residence, are not business premises and are not open to the public. Those who qualified for the 990 year extension offer as set out in the joint TANT/NT letter sent by the Trust to long leaseholders in September 2019 will normally meet these criteria. It is emphasised that these extensions are granted at the Trust's discretion and cannot be guaranteed to be available in every case.

The extension will be given on the basis of the surrender of the existing lease and regrant of a new lease with the agreed term normally up to a maximum of 99 years. The new leases will be in modern legal language and incorporate any changes in relevant legislation. Although the Trust have stated they will try and keep the new terms as close as possible in spirit to the terms of the old lease TANT strongly recommends that long leaseholders take legal advice to check that the new lease does not remove existing terms beneficial to them. Rents should remain at peppercorn or nominal values.

Initial Approach

Long leaseholders are advised to make an initial approach to the Trust to determine what exactly is on offer and how the Trust may be able to help them before expending potentially large sums on professional advice. The Trust will explain the process and also highlight several areas in which it could help the tenant as detailed below.

The Trust has stated that it may provide ballpark valuations to tenants who are considering marketing their leases but are unsure of the financial consequences and how this will impact on them in the future. TANT must emphasise that these are not guaranteed, accurate valuations and neither the Trust nor the long leaseholder can be held to them.

TANT would advise that this is only an opening discussion and if you are interested in going further you should seek professional legal and valuation advice as soon as possible and before committing to any detailed financial or legal arrangements.

Back To Back Sale

For those long leaseholders who have been granted a voluntary extension who wish to sell their lease, the Trust will subject to contract allow them to market it with the offer of a full 99 year term with the premium being paid by the vendor on completion of the sale. Early discussions with the Trust before you want to sell your property are recommended so that the lease extension negotiations do not hold up your sale. It is important that you have an assessment of the possible premium prior to marketing your property. This offer will be particularly useful for tenants with cash flow issues and will avoid the difficulties of having to pay up front for the premium cost of a voluntary extension prior to marketing.

Buy Back by the Trust

As with the 990yr lease extension proposal the Trust may in some cases be willing to buy back the lease directly from its tenant at market value. This will be indicated during the initial approach. Unless your lease contains a buy back clause, there is no obligation on you to sell it to the Trust.

Premium Calculation

The calculation is initiated obtaining a valuation of the leased property on the assumption it was sold on a freehold basis. As shown in the example calculation below it is the most critical element in the calculation of premiums as the greater the assumed freehold value the greater the premium cost. The freehold value is derived by a valuer using the RICS valuation rules which require evidence of sales of comparable properties in the locality. Lease holders can challenge the Trust's valuation by employing their own professional valuer and TANT recommend that you do so at as early a stage in the process as possible.

Once the freehold value of the property has been agreed the premium is calculated using relativity graphs. The Trust use the graph published by Savills for un-enfranchiseable property. For an extension to 99 years the premium is calculated as the difference in value between a lease with 99 years unexpired and one with the actual unexpired term. The relevant graph can be found here:

<https://www.graphsofrelativity.co.uk/inputs/3/valDate/2021-09-20/unexpTerm/70/hiddens/null/checkeds/null>.

By way of example for a lease with 70 years unexpired and an agreed freehold value of £300000:

	Relative value % from relativity graph	Giving lease value of:
Value of lease with 99 year term	94.4%	0.944 X £300000 = £283200
Value of lease with 70 years unexpired	84.4%	0.844 X £300000 = £253200
Premium is difference in lease values		£283200 -£253200 = £30000

Given that the Trust use a particular relativity graph the calculation above emphasises the fundamental importance of the agreed freehold value. For example reducing the freehold value to £250000 would reduce the premium to £25000 a reduction of £5000.

For back to back sales the price obtained in the market will be used as the value of the lease at 99 years. The premium is then calculated by proportioning to establish the value the unexpired term and deducting that from the selling price.

Improvements

The agreed freehold value is significantly affected by consideration of any improvements to the property. Allowing for the influence of improvements on valuation is complex and is best undertaken by an experienced surveyor.

Points To Consider

TANT is providing these notes as guidance and they should not be construed as legal or valuation advice.

TANT recommends long leaseholders appoint suitably qualified solicitors and valuers experienced in residential long lease matters to represent their interests in any detailed negotiations.

We confirm that the successful completion of a voluntary extension will not exclude you or future leaseholders from the benefit of any future legislation regarding the proposed 990 year lease extension. The calculation of any new premium will depend on the provisions in the Act.