

**Lease Extensions**  
**A guide for Leaseholders**

June 2020

## Introduction

This leaflet is to provide information to Luton Council Leaseholders about lease extensions. It is not meant to give a full interpretation of the law. If you are in any doubt about your rights please seek legal advice.

Lease extension is an individual right for a long leaseholder to acquire a new lease on payment of a sum, otherwise known as a premium, providing they meet the qualifying criteria. The term of the new lease will be for 90 years plus the unexpired term of the existing lease at a “peppercorn rent” (this means rent-free) on payment of a premium to the landlord.

The right is set out in law, a long leaseholder/qualifying tenant can extend their lease subject to certain conditions. This is in the Leasehold Reform Housing and Urban Development Act 1993 (the 1993 Act”).

There is a lot of work to be completed before you start the formal procedure of serving the Notice on the Landlord.

## Some Basic Things To Consider

### Do I qualify for a Lease Extension?

You must have a long lease. This means you must have a lease which was originally granted for a term of 21 years or more, all of Luton’s residential leases fall into this category, and you need to have held your lease for a period of two years or more. There is no residence qualification so the right is open to all (both resident and non-resident) leaseholders.

### Why should I extend my lease?

The shorter the remaining term, or period, on a lease the less valuable the property will be and the higher the premium that will need to be paid to extend the lease.

When the unexpired portion of the lease has less than 80 years to run the cost of extending it becomes considerably more expensive. This is because the landlord is entitled to a 50 per cent share of the marriage value. (*See glossary for definitions explained*)

Marriage value is not payable where the lease has more than 80 years to run.

When the unexpired term is 70 years or less it becomes difficult to obtain a mortgage on normal terms. This in turn makes it difficult to sell the flat. An extension allows for the full value of the flat to be gained on sale. This is the main reason people extend their leases.

### How much will it cost?

The landlord is entitled to compensation for the loss they will experience for granting the lease extension. It is difficult to estimate accurately how much a lease extension would cost. The cost you pay may consist of three amounts, which are:

Compensation for the reduction in the value of the landlord’s interest in the flat (the loss of ground rent during the rest of the existing term of the lease and after the grant of the new 90 years lease).

Compensation for loss arising from the grant of the new lease where the lease is less than 80 years. (Marriage value is only applicable where the remaining term on the lease is less than 80 years).

Compensation to your landlord for severance or other losses.

- In addition, you will also pay the landlord’s legal and surveyor (undertaking an investigation of the right to a new lease, the cost of obtaining a valuation, the cost of the grant of a new lease) costs as well as your own costs.
- If you decide to withdraw your claim after the notice of claim is served on the landlord you will also have to pay the landlord’s costs up to that point in time.

### What will I get when I extend my lease?

It is important that you carry out your own independent valuation, making sure you meet the rules and guidelines set out under legislation. This is so you know what is being purchased and to confirm and record the exact areas that will be part of the new lease with the landlord.

In general a new lease will have:

An extension of 90 years added to your remaining term.

The terms of your new lease will generally be the same as your original or old lease

That you will no longer have to pay ground rent. Ground rent is reduced to zero for the entire term of the extended lease (this is also known as peppercorn rent).

## Basic Outline Of The Process

1. Check Eligibility (including identifying the “competent landlord”).
2. Select and Instruct professional advisors (solicitor and surveyor).
3. Assess the premium (value of the new lease, landlord costs and legal costs).
4. Establish the Finance.
5. Gather the information.
6. Prepare the Notice.
7. Prepare for subsequent procedures.

### Before you start – requesting information from the landlord

If you want, you may give your landlord a notice requiring them to provide information before deciding to apply for a new Lease. In the notice you can ask for information about the freeholder and any other intermediate landlords. This may help you to find out if:

the building satisfies the rules for an extension; and

you qualify to buy a new Lease

This notice does not commit you to buying a new lease. Your landlord must reply to this notice within 28 days.

*NB. With all Luton Council leasehold properties the Council is the only Landlord and the Freeholder.*

### How to begin the lease extension process – Giving notice to your landlord

The extension process starts when you give notice to the landlord of your flat. This notice must be in the form stipulated by S.42 of the Leasehold Reform, Housing and Urban Development Act 1993. It is recommended that you employ a Solicitor to draft this notice for you.

Your notice must contain certain information.

In the notice, you must:

give your full name and the address of your flat

give details of the lease you want to renew

show you satisfy the qualifying criteria (e.g. the two year ownership requirement)

give the price you propose to pay

if you think the new lease should have different terms to your old lease, you must give details of these

give the name of any agent, solicitor, acting for you

give a date, **at least two months ahead**, by which the landlord must give his counter-notice. Once you have given your notice your landlord or his agent may visit your flat at any reasonable time to value the landlord’s interest. Your landlord must give you **3 day’s** notice before doing this.

### Payment of Deposit

The landlord will request that you make the payment of a deposit any time after receipt of your notice. This may be 10% of the premium proposed in your notice or £250, whichever is the greater.

If you wish to withdraw your notice to buy a new lease you can request (written notice) a refund of the deposit.

**\*\* Please note that we will deduct our costs from the deposit\*\***

### Valuation

If we agree to your right for a lease extension then we will instruct our valuer to contact you or your advisors to gain access to the property for the purpose of valuing it to assess whether the price you have offered is correct.

## Landlord's Counter Notice

The landlord must give a counter notice by the date specified in your notice. In the counter notice your landlord must:

- agree that you have the right to a new lease and either accept your terms or suggest different ones
- give reasons for not agreeing that you have a right to a new lease; or
- tell you if they are applying to the court for an order to stop you extending the lease. This will be in they plan to redevelop all or most of the building. Your landlord can only do this if your lease is due to run out within 5 years of the date you give your notice and they will need possession of your flat.

## Negotiation (Agreeing Terms)

You have at least 2 months to negotiate with your landlord over the terms of the purchase. If the figures cannot be agreed then the valuation can be used as basis for the case to be taken to the First Tier Tribunal (Property Chamber), you (the leaseholder) will bear the cost of the tribunal. The tribunal will consider the matter and make a determination on the terms and price at which the purchase will have to take place.

## Frequently Asked Questions

Most residential flat owners have the right to extend their leases. This right is valuable and should be considered. Below are some answers to frequently asked questions.

Please note this is only for general guidance and you should get legal advice on your own circumstances.

### **Q. How long does the process take?**

**A.** It should take 6 months to complete the process of a lease extension. It can take longer if there is an application to the court or First Tier Tribunal.

### **Q. How long a lease extension will I get?**

**A.** 90 years in addition to the unexpired term of your lease.

### **Q. Can I propose any amount/premium to the Landlord?**

**A.** You must specify a realistic amount, or premium, that you wish to pay. The premium is negotiable but a realistic premium must be proposed, otherwise your notice will be invalid.

### **Q. What happens if my notice is invalid or is withdrawn?**

**A.** The 1993 Act imposes strict procedural steps which must be taken within strict time limits. If you notice is invalidated or withdrawn you will not be allowed to reapply for 12 months and we will charge for our costs of the failed extension. This is why we recommend that you get professional legal and valuation advice before you commence this process.

### **Q. Is the landlord entitled to a deposit?**

**A.** The landlord is entitled to request a deposit of 10% of the premium proposed in your notice of £250, whichever is the greater, any time after we have received your notice.

### **Q. What if the landlord fails to serve a Counter-Notice?**

**A.** If we fail to serve a counter notice within the period specified in your notice, you may make an application to the court for a vesting order to determine the terms of the purchase. This is provided you have the right to acquire a new lease. An application to the court must be made no later than 6 months of the date on which the counter notice was required.

### **Q. How is the new lease granted?**

**A.** Once your right to a new lease has been confirmed and the terms of the extension have been agreed, we will grant you a new lease on payment of the premium and any outstanding service charges and ground rent.

Once you have paid we will prepare a draft lease for you to approve. Once the final draft has been agreed, contracts are exchanged and completion takes place.

### **Q. Do I need a Valuer?**

**A.** We recommend that you get a formal valuation. A valuation is necessary for negotiations as you need to have an idea of how much you are likely to pay and you must state that price in your notice to the landlord. If the price is unrealistic this could lead to your notice being declared invalid.

**Q. Will I still have to pay ground rent?**

**A.** The ground rent should be reduced to a peppercorn rate, which means that no ground rent should be payable for the whole of the term (e.g. the 90 years plus the present unexpired term). This is because you have already made a lump sum payment, the premium. However you will continue to pay service charges.

**Q. What happens if the Landlord disputes my entitlement to claim or we cannot agree on the price?**

**A.** In a case where the terms or the price cannot be agreed then the matter can be referred to the First Tier Tribunal (Property Chamber). This can be a long and expensive process. Although you are required to pay the reasonable costs of the landlord, you are not liable for the costs of the landlord in respect of any proceedings before the FTT, except where the FTT determines that an application should be dismissed or one party has acted unreasonably in the proceedings.

## Definitions – The Jargon Explained

**CONVEYANCE:** it is signed when someone buys a property and documents change hands. Without the transfer taking place, a sale is not legally completed.

**EXECUTE:** to sign a document.

**FREEHOLD:** ownership of land and any buildings on that land (alternative to leasehold). The ownership period needs to be of an unknown duration.

**GROUND RENT:** a small amount of money you pay for the land your property sits on.

**INTERMEDIATE LANDLORD:** someone who has a lease between your lease and the freehold.

**LEASE:** a contract signed by tenants when a property or land is rented out.

**LEASE EXTENSION:** your legal right, in certain circumstances, to extend the lease on your flat by a further 90 years.

**LEASEHOLD:** property reverts back to owner when the lease expires so essentially you rent it for a period of time (99 to 125 extendable years).

**LEASEHOLDER:** person who resides or is in possession of a leasehold property or on the land which is under the lease.

**LEASE TERM:** the length of time that the lease is valid for before it will need to be renewed.

**LEGAL CHARGE:** a form of security (e.g. a mortgage) to ensure payment of a debt.

**MARRIAGE VALUE:** marriage value only applies when a participating lease has less than 80 years left. Marriage value is taken as the potential for increase in the value of the flat arising from the grant of the new lease and the Act requires that this “profit” shall be shared between both parties.

**PEPPERCORN RATE:** means that no ground rent should be payable for the whole of the remaining term.

**REGISTER:** this usually refers to the HM Land Registry who record property ownership details in England and Wales. If you want to buy a property then you will need to pay for a number of registry services to make sure that your mortgage company is happy to lend you the money you need.

**SEVERANCE COMPENSATION:** this may be added if you buying a new lease lowers the value of the landlord's other properties.

**TENURE:** land is held on a certain basis the most common basis being leasehold or freehold.

**VALUE OF INTEREST(S):** this is the loss of income from the ground rent for the remainder of the original term (as the whole term of the new lease will be at a peppercorn rent), plus the loss due to the additional 90 years wait for the reversion ( the surrender of the flat at the expiry of the term).

**VESTING ORDER:** this is an order allowing you to acquire the extension on the terms of the initial notice (including the premium proposed).