



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00AY/OLR/2014/0719**

Property : **Ground Floor Flat, 83 Hopton
Road, London SW16 2EL**

Applicant : **Arnaud Loic Anger and Katriona
John**

Representative : **Tolhurst Fisher LLP**

Respondent : **Charles Ocansey (Deceased)**

Representative : **N/A**

Type of Application : **Missing Landlord**

Tribunal Members : **P M J Casey MRICS**

**Date and venue of
Hearing** : **Paper hearing on 27 August 2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **10 September 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the premium payable on the grant of a new lease of the Ground Floor Flat 83, Hopton Road, SW16 2EL (“the property”) is the sum of £22,500
- (2) The tribunal makes the determinations as set out under the various headings in this decision

The application

1. The applicants seek a determination by the Tribunal pursuant to a vesting order made under the provisions of S50(1) of the Leasehold Reform Housing and Urban Development Act 1993 (“the Act”) by District Judge Hugman sitting at the County Court at Wandsworth on 16 June 2014 of the premium payable on the grant of a new lease of “the property” under the relevant provisions of “the Act”.
2. The vesting order was made in response to a claim made to the Court on 16 April 2014 by Tolhurst Fisher LLP on behalf of the applicants in which it was said that the applicants were entitled to acquire a new lease of “the property” under the provisions of “the Act” but had been unable to exercise the right by serving the requisite notice under S42 on the landlord, Charles Ocansey, because he died on 25 April 2002 and no grant had been taken out in respect of the estate.

The hearing

3. In response to the Tribunal’s directions, which provided for a determination on the papers to be submitted, the applicants’ solicitors provided a bundle of documents including a valuation report dated 20 August 2014 addressed to the Tribunal and prepared by Mike Stapleton FRICS. The report contained the requisite declarations required of a Chartered Surveyor acting as an expert witness.
4. The Tribunal considered the hearing bundle on 27 August 2014. No inspection of “the property” was deemed necessary.

The evidence

5. From Mr Stapleton’s description of “the property” it is a two bedroomed converted flat on the ground floor of an end of terrace house originally built around 1910. It has been modernized and maintained to a reasonable standard including gas fired central heating but no tenants’ improvements are claimed.

6. The property is held on a 99 year lease from 25 March 1984 subject to an annual ground rent payment of £50.00.
7. At the Valuation Date, 16 April 2014, the lease had 68.94 years unexpired.
8. "The property" has recently been sold with completion on 20 August 2014 for £399,950, the transfer being of the existing lease but with the benefit of the vesting order. It is said that the parties to the transaction have allowed out of this sum £25,000 to cover the probable premium payable for the extended lease.

9. This transaction provides strong market evidence for the extended lease value of "the property" as at the Valuation Date supported as it is by three sales of similar properties at around that time the details of which are provided in the report as follows:

59 Harborough Road SW16 2XP sold on 3 March 2014 on a long lease for £425,000, and is said to be a first floor flat with larger accommodation than "the property";

28 Fernwood Avenue SW16 1RD sold on 9 April 2014 on a long lease for £410,000 and is a ground floor flat with direct access to a garden; and

107 Babbington Road SW16 6AN sold on 4 June 2014 for £435,055 again on a long lease but with accommodation on two floors.

10. From this evidence Mr Stapleton says the value of an extended lease in the subject property for a term of 158.94 years at a peppercorn ground rent and on the lease terms proposed is £400,000. He then uplifts this figure by 2½% to give a virtual freehold value of £410,000.
11. To capitalise the ground rent income for the unexpired term of the existing lease in his valuation of the existing freehold interest in "the property" he adopts a rate of 7% based on settlements he has reached in similar cases whilst to arrive at the present value of the freeholder's right to possession on the expiration of the existing lease term he adopts the "Sportelli" deferment rate of 5%.
12. For the calculation of the marriage value payable in addition to the diminution in value of the freehold which results from the extension of the lease term, he says that he has been unable to find any comparable open market sales' evidence on which to base a valuation of the existing leasehold interest. In the circumstances he has, as so many other practitioners in this field do, had resort to the guidance provided by various "graphs of relativity" published by several firms undertaking this type of work. These graphs express the value of unexpired lease terms of varying lengths as a percentage of freehold value.

Mr Stapleton refers to six such graphs five of which average out at a relativity for a lease with 69 years unexpired of 91.9% of freehold value. The sixth which is based solely on Tribunal decisions including properties in both outer and prime inner London areas suggests 89%. Because this included prime locations Mr Stapleton thought it produced a somewhat low figure for an outer London location such as that of the property but still opted for a figure a little below the average of the other five, all outer London based, graphs at 91.5% of freehold value.

13. His valuation attached to his report produces a premium of £24,900.

The decision

14. The agreement between the parties to the sale of "the property" as to the £25,000 allowance to cover the likely premium payable does not assist the Tribunal in any way or does it suggest a value of the existing lease in a "no Act world" of £375,000 as it is a real world transaction which will result in the purchaser acquiring an extended lease and reflects how the parties are prepared to split the tenants' share of marriage value.
15. Whilst settlement evidence has been much criticised by Courts and Tribunals over the years Mr Stapleton's adoption of a capitalization rate of 7% based on such evidence cannot in the present case be faulted where there is a relatively low fixed ground rent and again, in the absence of extensive evidence to the contrary, his adoption of the "Sportelli" deferment rate of 5% is accepted.
16. The sale of "the property" and the comparable sales evidence provided fully support an extended lease value of £400,000 but Mr Stapleton offers no support at all for his proposed 2½% uplift to the virtual freehold value. In the Tribunal's experience of cases involving outer London properties where the extended lease will be for a term exceeding 150 years the most that is ever suggested as the difference between the value of a lease of that length and the virtual freehold is 1%. The virtual freehold is accordingly determined at a value of £404,000.
17. In the absence of better evidence relativity graphs have a long history of use in Tribunal proceedings and despite much concern over their reliability have been widely accepted. In the circumstances of this case the relativity proposed of 91.5% would give an existing lease value of £369,660 which rounded down to £369,500 is just about acceptable as the "no Act world" value of the existing lease with some 69 years to run.

18. The Tribunal's valuation in accordance with the provisions of Schedule 13 to "the Act" is attached showing the premium payable on the grant of the new lease in the sum of £22,500.

19. A draft of the Deed of Surrender and Grant of New Lease was forwarded to the Tribunal. Whilst the lease does contain the required statement that it is granted under S56 of "the Act" it fails to either "make provision" in accordance with S59(3) or to reserve to the landlord the right to obtain possession on the grounds of redevelopment under S61. Hague on Leasehold Enfranchisement makes clear both are required and helpfully gives at pages 516/517 (fourth edition) suitable wording. The statutory references on page 2 at LR5.2 are not understood. The draft lease when revised as above and completed with the entry of the premium payable and the tenant's name, presumably Alex Monaco the new owner of the property, should be referred to the Court for execution.

Name: Patrick M J Casey

Date: 10 September 2014

CASE REFERENCE LON/00AY/OLR/2014/0719

**First Tier Tribunal
Property Chamber (Residential Property)**

**Valuation under Schedule 13 of the Leasehold Reform Housing and
Urban Development Act 1993**

Premium payable for extended leasehold interests in Ground Floor Flat, 83 Hopton Road,
London SW16 2EL

Valuation date: 16 April 2014

**1. Freeholder's existing
interest**

Term Ground Rent	£50	
Years Purchase 68.94 years @ 7%	14.1511	£707
Reversion to freehold value	£404,000	
Deferred 68.94 years @5%	0.0346	£14,078
		<hr/> £14,785

2. LESS Value of landlord's proposed interest

Ground Rent		
Reversion	£404,000	
Deferred 158.94years @ 5%	0.0004274	£173
		<hr/> £173

3. Diminution in value of freehold on grant of new lease £14,612

4. Marriage value calculation

Landlord's proposed interest	£173	
Tenant's proposed interest	£400,000	£400,173
Less		
Landlord's existing interest	£14,785	
Tenant's existing interest at a relativity of 91.5%	£369,500	£384,285
		£15,888
Landlord's share of marriage value	50%	<hr/> £7,944

5. Premium payable £22,556

Say **£22,500**