



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

Case Reference : **LON/00AE/OLR/2018/0050**

Property : **First Floor Flat, 123b Rosebank Avenue, Wembley HA0 2TN**

Applicant : **Sona Hima Shah**

Representative : **Ronald Fletcher Baker LLP Solicitors**

Respondent : **Niel Dhanapriya Jayasinghe
Chandra Priyadarshanil
Jayasinghe**

Representative : **N/A**

Type of Application : **S50/51 Leasehold Reform Housing and Urban Development Act 1993, Missing Landlord**

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

Date and venue of Hearing : **Paper hearing on 20 February 2018
10 Alfred Place, London WC1E 7LR**

Date of Decision : **7 March 2018**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the premium payable on the grant of a new lease of the first floor flat at 123b Rosebank Avenue, Wembley HA0 2TN (the property) is the sum of £18,000.
- (2) The tribunal makes the determinations as set out under the various headings in this decision

The application

1. The applicant seeks a determination by the Tribunal pursuant to an order made under the provisions of S50(1) of the Leasehold Reform Housing and Urban Development Act 1993 (the Act) by Deputy District Judge Wicks sitting at the County Court at Uxbridge on 3 August 2017 of the premium to be paid into Court and other terms on the grant of a new lease of the property under the relevant provisions of the Act.
2. The order was made in response to a claim made to the Court on 4 April 2017 by Ronald Fletcher Baker LLP Solicitors on behalf of the applicant in which it was said that the applicant was 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 landlords because their whereabouts were unknown.

The hearing

3. In response to the tribunal's directions which provided for a determination on the papers to be submitted, the applicant's solicitors provided a bundle of documents including a valuation report dated 22 December 2017 for use in tribunal proceedings addressed to the tribunal and prepared by Mandip Jhita BSc (Hons) MRICS of Anderson Wilde and Harris Ltd, Chartered Surveyors. The report contained the requisite declarations required of a Surveyor acting as an expert witness.
4. The Tribunal considered the hearing bundle on 20 February 2018. No inspection of the property was deemed necessary given the description, plans and photographs included in the report.

The evidence

5. From Mr Jhita's description of the property it is a self-contained converted flat on the first and second floors of a terraced house built

circa 1930. It comprises three rooms, kitchen and bath/wc. The loft space has been converted to provide the second bedroom with a velux window providing natural light and ventilation. Windows are double glazed and there is gas fired central heating. Fittings are said to be of basic quality and there were no significant defects seen. Mr Jhita says the property has a gross internal area of 63.13 m² (680 sq ft) ignoring those parts of the loft conversion with less than 1.5 m headroom.

6. The property is held on a 99 year lease from 25 December 1989 subject, at the valuation date, to a ground rent payment of £50.00 per annum rising in 2022 to £100 per annum and in 2055 to £150 per annum.
7. At the Valuation Date, 4 April 2017 the lease had 71.72 years unexpired.
8. Mr Jhita provides market evidence for the extended lease value of the property as at the Valuation Date by reference to three transactions and one asking price involving similar properties at around that time the details of which are provided in the report. He suggests various adjustments should be made to the sale prices achieved by these properties to reflect the differences in size and condition. His best comparable he says is 1147-1149 Greenford Road which sold for £315,000 in March 2017. From this evidence he says the value of an extended lease in the subject property for a term of 161.72 years at a peppercorn ground rent and on the lease terms proposed is £315,000. He increases this by 1% to give a virtual freehold value of £318,182.
9. In valuing the property Mr Jhita has included the value of the second bedroom in the loft conversion. He has been advised that the existing lease does not clearly indicate that this space was included in the original demise though it will be included in the new lease.
10. 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 8% 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%.
11. To calculate the marriage value and the landlord's entitlement to 50% thereof he has assessed the value of the existing lease term in the property, disregarding the value of the rights conferred by the Act, by reference to what are generally referred to as graphs of relativity as he says there is no local sales' evidence for properties held on leases of such an unexpired term. He refers to five of the graphs relating to outer London/England which were published in an RICS report into graphs of relativity. Averaging these suggests to him that in a "no Act world" the existing lease term would have a value of 93.42% of the

freehold value. He does not however produce the graphs in his report.

12. His valuation attached to his report produces a premium of £14,150.

The decision

13. Mr Jhita's adoption of a capitalization rate of 8% looks low in the present case where there is a rising ground rent and a rate of 7% is more appropriate. In the absence of extensive evidence to the contrary, his adoption of the "Sportelli" deferment rate of 5% is accepted.
14. The comparable sales evidence provided appears to support an extended lease value of £315,000 and the 1% uplift to the virtual freehold value accords with the tribunal's experience of cases involving outer London properties where the extended lease will be for a term exceeding 150 years.
15. Mr Jhita's approach to the value of the existing lease is to take an average of the five graphs referred to at 11. but in the tribunal's experience all of these graphs have their flaws and averaging them does little to remove those flaws. The tribunal's experience in recent years has been that in any case where sales evidence of properties sold on leases with 60-75 years unexpired is produced lower relativities than those graphs result after making allowance for Act rights. Doing the best we can on what we have got as the Upper Chamber urges we determine a relativity of 91%. The tribunal's valuation is attached to this decision.
16. Deputy District Judge Wick's Order of 3 August 2017 required at 1(b) that the tribunal determines "the terms and the amounts payable under S51(5) ...". The tribunal has been provided with a draft of the deed of surrender and re-grant in the bundle. However there are errors in the draft documents. At LR5 of the Prescribed Clauses the word "not" has been included in error whilst at LR7 the premium to be entered will be that determined by the tribunal. At Clause 3 of the lease only limited title guarantee can be given and reference must be made, perhaps in a clause prior to Registration etc to the effect that the lease is made under S56 of the Act, that no long lease created immediately or derivatively by way of sub-demise under the new lease will confer on the sub-tenant any rights under Part II of the Act and that the landlord will have the rights conferred by S61 of the Act. The Hague on Leasehold Enfranchisement has examples to assist with drafting. The tribunal does however approve the amendment proposed at 3.3 of the demise to clearly include the loft space as this clearly falls within S57(1)(b) of the Act and is necessary to reflect the property as it now physically exists. A revised draft should be submitted to the tribunal for approval within 21 days of receipt of this

decision and only once approved should any reference back to the County Court be made.

17. As no ground rents or service charges have been lawfully demanded for at least six years no further sums, other than the premium are payable by the applicant.

Name: Patrick M J Casey

Date: 7 March 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

LON/00AE/OLR/2018/0050

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

S48 Leasehold Reform Housing and Urban Development Act 1993

**Determination of the premium payable for an extended lease of
First floor flat, 123b Rosebank Avenue, Wembley, HA0 2TN**

Valuation date: 4 April 2017 – Unexpired term 71.72 years

Diminution in Value of Freehold Interest

Capitalization of ground rent pa YP for 5.72 years @ 7%	£50 <u>4.6</u>		230
Capitalization of ground rent pa YP for 33 years deferred 5.72 years @ 7%	£100 <u>8.70</u>		870
Capitalization of ground rent pa YP for 33 years deferred 38.72 years @ 7%	£150 <u>0.9</u>		125
Reversion to F/H value with VP Deferred 71.72 years @ 5%	£318,182 <u>0.03</u>	£9,545	
Less value of F/H after grant of new lease Deferred 156.8 years @5%	£318,182 <u>0.00037</u>	£118	£9,427 <u>£10,652</u>

Marriage Value

After grant of new lease

Value of extended lease

Plus freehold value

£315,000
£118 £315,118

Before grant of new lease

Value of existing lease @ 91% f/h

Plus freehold value

£289,545
£10,770 £300,315
£14,803 £7,401

**50% share to Freeholder and
Intermediate Leaseholder**

£18,053

Premium Payable Say £18,000