



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

**Case Reference** : CHI/21UC/OLR/2018/0232

**Property** : Flat 3, 7 Elms Avenue, Eastbourne, East  
Sussex BN21 3DN

**Applicant** : Mr Barry Saltman

**Representative** : Sussex Law, Solicitors

**Respondent** : Mr Michael Dartnell - missing

**Representative** :

**Type of Application** : Leasehold Reform Housing and Urban  
Development Act 1993 (Missing Landlord)

**Tribunal Member** : Mr D Banfield FRICS

**Date of Decision** : 21 February 2019

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DECISION

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## **Summary of Decision**

- **The Tribunal has determined for the reasons set out below that the premium to be paid is £12,067**
- **The draft lease is approved**

## **Background**

1. The applicant is the lessee of Flat 3, 7 Elms Avenue, Eastbourne, East Sussex BN21 3DN and wishes to extend his lease. The freeholder could not be traced and on 22 June 2018 an application was made to the Court pursuant to s. 50 of the Leasehold Reform Housing and Urban Development Act 1993.
2. By an Order dated 14 October 2018 District Judge Beach sitting at the County Court at Hastings ordered that a vesting order under Section 50(1) of the Leasehold Reform and Urban Development Act 1993 be granted and the matter to be transferred to the Leasehold Valuation Tribunal.
3. Directions were made on 19 December 2018 indicating that the application would be dealt with on the papers unless an objection was received.
4. No objection has been received and the matter is therefore determined on the bundle provided by the applicant and a report dated 14 February 2019 from Gavin Lewis DipSurv MRICS C.Build E MCABE who values the premium to be paid as £10,300. The report does not contain the usual declaration that the report is to the Tribunal and not to the paying party neither does it include the declaration that the fee received is not dependent upon the outcome of the application. The Tribunal has nevertheless taken note of its contents.
5. The Tribunal has not inspected the property.

## **Evidence**

6. Mr Lewis's report describes the property as a converted top floor flat in a mid- terraced 3-storey late Victorian villa containing three flats. The flat is accessed at first floor off the common parts.
7. The accommodation comprises an entrance lobby on the 1<sup>st</sup> floor with stairs leading to a 2<sup>nd</sup> floor landing, living room 2 bedrooms, bathroom/WC and Kitchen. The approximate floor area is 63m<sup>2</sup>.
8. Tenant's improvements comprise;
  - a. Installation of PVCu windows and door
  - b. Gas fired central heating
  - c. New kitchen fittings

- d. Creation of a second bedroom from part of the living room
  - e. Creation of a small front balcony over an area of flat roof.(outside of the demise)
9. The property is held on a lease for a term of 99 years from 24 June 1985 at a ground rent of £50 for 33 years, £75 for the next 33 years and £150 for the last 33 years.
  10. Mr Lewis's valuation date of 17 October 2017 is incorrect not being 22 June 2018 the date of the application to the court.
  11. Mr Lewis adopts the "Sportelli" reversionary rate of 5%, an investment rate for the term of 6.5%, a relativity of 89% and a long lease value of £140,000.
  12. In arriving at his long lease value Mr Lewis appends details of 4 Eastbourne properties;
    - a. Flat 1, 17 Elms Avenue, 997 years unexpired, a one-bedroom garden flat in a Victorian House, 57m<sup>2</sup> and sold December 2018 for £170,000.
    - b. Flat 1, 10- Cavendish Place, 140 years unexpired, a two bedroom flat in a Victorian building, 87m<sup>2</sup>, Sold STC October 2018 for £140,000.
    - c. 4a Avenue Mansions Elms Avenue, 84 years unexpired, a two bedroom 1<sup>st</sup> . floor flat in a Victorian Building, 92m<sup>2</sup>, Sold March 2017 for £168,500
    - d. 3 Avenue Mansions, Elms Avenue, 997 years unexpired (assumed) 87m<sup>2</sup>, Sold STC £140,000 October 2018.
  13. The above sales are analysed to produce prices per m<sup>2</sup> of £3,204, £2600, £1,951 and £1,630 respectively.
  14. Mr Lewis employs a relativity of 89% which he says is based on a variety of published graphs.

### **Form of new lease**

15. A draft of the new lease is in the bundle at pages 45 to 49. The new lease incorporates the majority of the terms of the original save that the term now expires on 23 June 2174, the ground rent is a peppercorn and the balcony is included in the demise.

### **Decision**

16. At the valuation date of 22 June 2018 the unexpired term is 66 years.
17. The Tribunal accepts Mr Lewis's adoption of 5% for the deferment rate and 6.5% capitalization of the ground rent.

18. In the absence of any details as to how Mr Lewis arrives at his capital value of the existing lease the Tribunal must do the best it can with the sales evidence provided. Avenue Mansions is as the name infers a mansion block and as such somewhat different in nature to the subject flat which is one of only three in a converted Victorian House. 10 Cavendish Place whilst being a similar conversion is not in the same street and is somewhat larger. This leaves 17 Elms Avenue a slightly smaller flat five doors away and of identical style but with the benefit of a garden and sold some six months after the valuation date for £170,000.
19. Whilst with the benefit of the balcony the subject property may enjoy sea views not shared with number 17, the latter's garden is clearly of some benefit. Allowing for these differences and the standard of fixtures and fittings described the Tribunal takes as a starting point a value of £155,000.
20. Clause 4 of the lease imposes an obligation on the lessee to maintain the demised property in "good and tenantable repair and condition". With a property of this age it must be expected that some elements such as kitchens, bathroom fittings and windows may need replacement. Such replacement will be to a standard then current and as such are not considered to be "improvements". The creation of a small bedroom/workroom by sacrificing part of the living room may to some occupiers be of benefit whilst to others a disadvantage. As such the Tribunal place no value on it. Likewise, the creation of a balcony outside of the demise must be of insignificant value when such unauthorized alteration may need to be reversed..
21. Central heating is however considered to be an improvement for which the Tribunal makes a deduction of £3,000.
22. The Tribunal therefore places a value of £152,000 on the long leasehold value for the subject flat.
23. To arrive at the freehold value an addition of 1% is made giving a freehold value of £153,520.
24. Whilst the Tribunal would have found details of which graphs Mr Lewis had relied upon useful it does however consider that his relativity of 89% to be fair and as such the Tribunal takes £135,280 as the existing lease value.
25. **Using the above variables, the Tribunal value the premium to be paid at £12,067 as shown in the attached Valuation.**
26. Applying the above variables to be paid which I determine to be £14,400 in accordance with Mr Lewis's valuation appended to this decision.

27. The draft lease is approved subject to the Tenant, immediately after the execution thereof, lodging at the Land Registry an application for the registration of the new lease in order to give effect to the variation contained.

D Banfield FRICS

21 February 2019

### **PERMISSION TO APPEAL**

1. A person wishing to appeal the decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.



Sub-Total		£152,132	
Value of existing interests			
Freeholder	£7,546		
Leaseholder	£135,280		
Sub-total		£142,826	
Total marriage value		£9,307	
Landlord's share @ 50%			£4,653
<b>Lease premium</b>			<b>£12,067</b>