



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

Case Reference : LON/00AC/OLR/2015/0881

Property : Ground Floor Flat, 57 Eversleigh Road,
Finchley, London N3 1HY

Applicant : Elizabeth Helen Constantinescu (nee
Barnes)

Representative : Ringley Legal Service LLP, solicitors

Respondent : Gordon Porter

Representatives : N/A

Type of Application : Leasehold Reform Housing and Urban
Development Act 1993: sections 50& 51
(missing landlord)

Tribunal : 1. Mr A Vance, Tribunal Judge
2. Ms M Krisko, FRICS

Date of Decision : 23 June 2015

DECISION

Decisions of the Tribunal

1. The Tribunal determines that the premium payable by the Applicants under Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) on the grant of a new lease of the subject property is **£36,828**. The reasons for the Tribunal’s decision are set out below.
2. The Tribunal approves the terms of the draft lease provided by the Applicant subject to the amendment referred to below.

Background

3. This is an application under sections 50 and 51 of the Leasehold Reform Housing and Urban Development Act 1993 (“the Act”) for determination of the terms of a new lease to be granted to the Applicant and for the determination of the premium and other sums (if any) to be paid to the Respondent.
4. Numbers appearing below in square brackets refer to pages in the hearing bundle provided by the Applicant.
5. Extracts of the key relevant legislation are at Appendix 2 of this decision.
6. Proceedings were originally issued in the Barnet County Court under claim no. B00BT203 [5]. The exact date of issue of the claim is unclear as the Tribunal has not been provided with a copy of the issued claim form. However, it appears to have been sent to the court on 6 February 2015 [3].
7. The claim was transferred to this Tribunal, by order of Deputy District Judge Shaw dated 16 April 2015 (the “County Court Order”) [67-69] for the Tribunal to determine :
 - 7.1. the terms of the new lease of the Applicants’ flat; and
 - 7.2. The amount of the premium payable under Schedule 13 of the 1993 Act by the Applicant to the Respondent.
8. The Applicant is the leasehold owner of Ground Floor Flat, 57 Eversleigh Road, Finchley, London N3 1HY (“the Flat”) whose interest was registered at HMLR under title number NGL342815 on 13 November 2000 [8]. She is entitled to a new lease of the Flat under Chapter II of the 1993 Act.
9. The freehold interest in the Flat is vested in the Respondent under title number MX287730 [11]. He was registered as freehold owner on 28

9. The freehold interest in the Flat is vested in the Respondent under title number MX287730 [11]. He was registered as freehold owner on 28 October 1976. It was the Applicant's asserted claim before the County Court that she had been unable to serve a notice to extend her lease on the Respondent because despite her best endeavours to trace him his whereabouts are unknown. This was accepted by the County Court and the County Court duly made a vesting order which is contained in the County Court Order.
10. On the making of that order the Applicant therefore became entitled to a new lease of the Flat for the residue of the term of her lease plus an additional 90 years, at a peppercorn rent, on such terms and on the payment of such a premium determined in accordance with Schedule 13 to the 1993 Act as this Tribunal may determine.

Lease

11. The following are particulars of the Applicant's leasehold interest:
 - (a) Date of lease: 15 December 1978
 - (b) Term of lease: 99 years commencing on 24 June 1977
 - (c) Ground rent: £35 per annum for the first 33 years, rising to £70 for the following 33 years and then to £100 for the remainder of the term.
12. There are no intermediate interests.

Inspection

13. The Applicants did not request that the Tribunal inspect the Property and the Tribunal did not consider it necessary or proportionate to do so.

The evidence before the Tribunal

14. The evidence before the Tribunal comprises the valuation report of Mr David Field, FRICS dated 1 June 2015. His report contains a formal Statement of Truth confirming that the facts and matters referred to in her report that are within his own knowledge are believed by him to be true and includes a statement of compliance confirming that he understands his duty to this Tribunal as an expert witness.
15. The Tribunal is satisfied that his report is impartial and objective and is broadly satisfied that the method he has adopted is appropriate to determine the premium payable for the new lease of the Flat. However,

the Tribunal carried out its own checks on the information and calculations provided by Mr Field.

The statutory basis of valuation

16. Schedule 13 to the Act provides that the premium to be paid by a tenant for the grant of a new lease shall be the aggregate: (a) of the diminution in the value of the landlord's interest in the tenant's flat; (b) the landlord's share of the marriage value; and (c) the amount of any compensation payable for other loss. An equivalent amount is also payable to any intermediate landlord in respect of their interest.
17. The value of the landlord's interests before and after the grant of the new lease is the amount which at the valuation date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) on the assumption that the tenant has no rights under the Act to acquire any interest in any Property containing the tenant's flat or to acquire any new lease.
18. Paragraph 4 of the Schedule, as amended, provides that the landlord's share of the marriage value is to be 50%, and that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil. Paragraph 5 provides for the payment of compensation for loss arising out of the grant of a new lease.
19. Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

Valuation

20. Mr Field inspected the Flat on 18 November 2014 and notes that it is a ground floor self-contained converted flat in a former semi-detached house built circa 1910 that has been converted into two flats. However, the Tribunal noted that the land registry freehold title indicates that there are three flats. We do not, however, consider that this impacts on valuation.
21. It is our understanding from Mr Field's report is that the Flat is reached by a communal entrance hall and has its own rear garden. Kerbside parking is available. The Flat comprises two bedrooms, a kitchen, bathroom and rear living room. He states that the net internal floor area is approximately 579 square feet. Gas central heating is present and he describes the building in which the Flat is located as being in fair condition with the interior of the Flat being dated and in need of modernisation and decoration.

22. He has valued the Flat on the assumption that it is good repair, well fitted and with a permanent source of heating. He makes no allowances for tenants improvements.
23. The valuation date prescribed by section 51(1) of the Act is the date of the Applicant's application to the Court. This date is unclear but the Tribunal is prepared to accept that the valuation date specified in Mr Field's report of 11 February 2015 is correct given that the evidence indicates that the claim was sent to the Court on 8 February 2015. The unexpired remainder of the term of the Lease is therefore 61.36 years.
24. In his report Mr Field refers to having arrived at his valuation by using an unexpired residue of the current Lease of 61.36 years, but in his valuation, attached to his report, he uses a figure of 61.37. In the Tribunal's view this discrepancy makes no significant difference to the valuation of the Flat.
25. An assessment of virtual freehold vacant possession value of the Property ("FHVP") as at the valuation date is required in order to value the Respondent's reversionary interest and the value of the long leasehold interest in the Property once extended.
26. Mr Field's assessment of the value of the FHVP is based on transactions relating to the sales of comparable two bedroom ground floor flats in the area of the Flat. He provides information concerning five such flats. Three of these transactions had completed and two are currently under offer.
27. In his view, the best comparables were: (a) 59A Eversleigh Road, a two bedroom ground floor flat, 634 sq ft, with a share of the freehold, including a garden, which sold for £400,000 on 14 April 2015. He calculates that this sold for £630 per square foot; and (b) 40 Elm Park Road, a two bedroom ground floor flat, 706 sq ft, with 160 years remaining on the lease, currently under offer at £420,000 (£457 per square foot).
28. By averaging the capital values per square foot he arrives at a figure of £612/sq ft, say £615, which produces a value of £356,000 which he rounds up to £360,000. In his view, given the good condition of 59A Eversleigh Road, a value of £360,000 for the subject Flat, with its more dated interior, is a fair valuation
29. In the Tribunal's view the best comparable is clearly 59A Eversleigh Road given the proximity of the completed sale to the valuation date and the likelihood that the sale was agreed even closer to the valuation date. In addition, it appears to be next door to the Flat and from the photographs of the sales particulars [94] it appears to be identical in frontage. Whilst the Tribunal cannot be certain, the floorplan attached to

the sales particulars, seems to indicate that the only significant difference in size between 59A Eversleigh Road and the Flat is the size of the rear living room which looks to be about 1 metre longer.

30. We also agree that the second best comparable is 40 Elm Park Road, even though the sale has not yet completed because it sounds to be a similar property to the Flat and as it is located in an adjoining road. It does, however, appear to have a significantly poorer layout than the Flat which is reflected in the lower value per square foot of the current offer (£594 per square foot).
31. On balance we are therefore satisfied with his approach to valuing the FHVP by averaging the capital values per square foot of these two comparable flats and applying the figure of £615/sq ft to the Flat. We also accept that his rounding up to £360,000 from £356,000 is reasonable.
32. Mr Field arrived at his valuation of the unexpired residue of the current lease, unimproved, by adjusting the extended lease value of £360,000 by a factor of 84.95%, arrived at by taking the average of four graphs of relativity. These were the, Beckett & Kay, Nesbitt & Co, Andrew Pridell Associates and John D Wood graphs. The average relativity figure was 84.95%. The Tribunal accepts that approach as legitimate in principle, given the lack of transactional evidence of sales with similar unexpired lease terms.
33. The Tribunal therefore adopts the figure of £305,820 for the short leasehold value, unimproved, of the Property.
34. The diminution in the value of the landlord's interest in the Property is represented first by the capitalised value of the grounds rent receivable under the lease which will be surrendered and replaced by a peppercorn rent under the terms of the Act. That income stream is capitalised by Mr Field at 7%, which the Tribunal accepts is appropriate in this case.
35. Next, the effect of the grant of the new lease will be to defer the landlord's freehold reversion for a further 90 years, thereby for practical purposes depriving the landlord of the current value of the freehold reversion indefinitely. The present value of the reversion is determined by applying a deferment rate to the FHVP of £360,000. The deferment rate appropriate for leasehold flats in Central London was authoritatively determined to be 5% in the case of *Earl Cadogan v Sportelli (2006) LRA/50/2005*. Mr Field has suggested a deferment rate of 5% which the Tribunal accepts.
36. Marriage value is the difference between (on the one hand) the aggregate value of the interests of the leaseholders, the landlord and the intermediate leaseholder before the new lease; and (on the other) the

aggregate value after the grant of the new lease. It is to be shared equally between the parties, as required by the Act.

37. The premium payable by the Applicants under Schedule 13 of the Act on the grant of a new lease of the Property is **£36,828** as per Mr Field's valuation

Lease terms

38. The Applicant's solicitors have prepared a draft lease which the Tribunal is invited to approve. The draft lease provides for the deemed surrender and re-grant of the Lease subject to and with the benefit of the new lease. It also provides for the grant of a new term of 189 years from and including 15 December 1978 in accordance with section 56(1) of the Act. The terms of the new lease are the same as those of the previous lease, which are incorporated by reference.
39. The Tribunal is satisfied that the terms proposed are appropriate for the new lease to be granted to the Applicant with the following amendment:
- (a) The reference to joint tenants should be removed in prescribed clause LR14.

APPENDIX 1

VALUATION OF MR FIELD, FRICS

VALUATION UNDER THE 1993 ACT (as amended)		Flat 1, 57 Eversleigh Road,	WITHOUT PREJUDICE		statutory rights (+ 90 years)	assuming share of freehold
Valuation Date:	11 February 2015	2015	Capitalisation Rate	7.00%	Unexpired term on leases	61.37 years
No. Flats in Building	3 Flats		Deferment Rate	5.00%	Schedule of Flat Values	151.37 years
No. Flats participating	1	<i>Note: affects the marriage value calculation as the value of the property will be improved by the assumed increase in market value of the flats of the participating leaseholders only.</i>	Relativity	84.95%	Flat 1	Freehold VP values
					Short Lease Values	Freehold VP values
					£305,820	£360,000
						£363,600

INPUT FIELDS CALCULATED CHECK FIELDS

Lease Type A	Lease start date	24/06/1977	1977	Start year
	Term (in years)		99	Term
	Lease expiry date	23/06/2076	2076	Expiry Year
	Review pattern (frequency in years)	33	(if fixed ground rent ENTER length of lease)	

No. years unexpired at valuation date 61.37 years

Initial ground rent	£35.00 pa
Ground rent 2nd period	£70.00 pa
Ground rent on 3rd period	£100.00 pa
Ground rent on 4th period	£0.00 pa
Ground rent on 5th period	£0.00 pa
Ground rent on 6th period	£0.00 pa

Total pattern of rent reviews due	Year of Rent Review falls	No. years rent at this level
	1977	0
	2010	28
	2043	33
	2076	0
No further review	2109	0
No further review	2142	0
Test cell No. years unexpired at valuation date		61 Years

FREEHOLDERS INTEREST IN THE PREMISES AS DETERMINED IN ACCORDANCE WITH PARA 3

TERM

Ground rent for underlease	0 years		£35 pa		
Years purchase on PASSING GROUND RENT	0 years	7.00%	x	0	£0
Ground rent for underlease	28 years	7.00%	£70 pa		
Years purchase RENT 2ND PERIOD	0 years	7.00%	x	12.13711125	
PV £1 deferred			X	1.000000	£850
Ground rent for underlease	33 years	7.00%	£100 pa		
Years purchase RENT 3RD PERIOD	28 years	7.00%	x	12.75379002	
PV £1 deferred			X	0.150402	£192
Ground rent for underlease	0 years	7.00%	£0 pa		
Years purchase RENT 4TH PERIOD	61 years	7.00%	x	0	
PV £1 deferred			X	0.016128	£0
Ground rent for underlease			£0 pa		

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Years purchase	RENT 5TH PERIOD	0 years	7.00%	x	0	
PV £1 deferred		0 years	7.00%	X	1.000000	£0
Ground rent for underlease						
Years purchase	RENT 6TH PERIOD	0 years	7.00%	x	0	
PV £1 deferred		0 years	7.00%	X	1.000000	£0
						£1,041

REVERSION

DIMINUTION IN THE VALUE OF THE FREEHOLDERS INTEREST

LOSS OF CURRENT REVERSION TO CAPITAL VALUE

Reversion to Capital (Sum of values - assuming Freehold shareholders)					£363,600	
Value	PV £1 in	0 at	61.37 years			
			5.00%	x	0.050082	
TOTAL REVERSIONARY LOSS TO FREEHOLDER					PRESENT REVERSION	£18,210

TOTAL DIMINUTION IN VALUE

TERM	Loss of ground rental income	£1,041
REVERSION	Present reversion	£18,210

DIMINUTION IN VALUE TO FREEHOLD INTEREST

£19,251

S F A Harrison

LANDLORD'S SHARE OF MARRIAGE VALUE AS DETERMINED IN ACCORDANCE WITH PARA 4

New 999 year lease at a peppercorn rents with vacant possession

NB: Do not enter values where leases are over 80 years

SUM OF VALUES OF PROPOSED INTERESTS

Present Value of Future Reversion to future Capital Value to Freeholder					£363,600	
	PV £1 in	0 at	151.37 years			
			5.00%	x	0.000620	
						£225.56
Improved value <u>all Notional 999 year lease</u>		£360,000				£360,000.00
<u>leases</u> Lease type A value						£360,226

LESS EXISTING INTERESTS

Value of Freeholder's interest		£19,251				
Existing lease value <u>Short lease value</u>		£305,820				£325,071

MARRIAGE VALUE

(Difference between sum of values of the proposed interests & sum of values of existing interests)

NOTES: for leases < 80 years unexpired marriage value is set in statute at NIL POUNDS

Marriage Value £35,154

Freeholder's Share of Marriage Value 50% of marriage value £17,577

PREMIUM DUE Premium due to Freeholder

Diminution in value of freehold interest	£19,251
Proportion of Landlord's share of Marriage Value	£17,577
	£36,828

Step 4 of 7

ELV (unimpaired)

Existing unimpaired

£36,828

We are therefore of the opinion that the premium payable in accordance with the requirements of the Leasehold Reform, Housing and Urban Development Act 1993 at the valuation date is

£36,828

£36,828

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APPENDIX 2

Leasehold Reform, Housing and Urban Development Act 1993

Section 50 - Applications where landlord cannot be found.

(1) Where—

- (a) a qualifying tenant of a flat desires to make a claim to exercise the right to acquire a new lease of his flat, but
- (b) the landlord cannot be found or his identity cannot be ascertained,

the court may, on the application of the tenant, make a vesting order under this subsection.

(2) Where—

- (a) a qualifying tenant of a flat desires to make such a claim as is mentioned in subsection (1), and
- (b) paragraph (b) of that subsection does not apply, but
- (c) a copy of a notice of that claim cannot be given in accordance with Part I of Schedule 11 to any person to whom it would otherwise be required to be so given because that person cannot be found or his identity cannot be ascertained,

the court may, on the application of the tenant, make an order dispensing with the need to give a copy of such a notice to that person.

(3)–(6) [.....]

Section 51 - Supplementary provisions relating to vesting orders under section 50(1).

- (1) A vesting order under section 50(1) is an order providing for the surrender of the tenant's lease of his flat and for the granting to him of a new lease of it on such terms as may be determined by a leasehold valuation tribunal to be appropriate with a view to the lease being granted to him in like manner (so far as the circumstances permit) as if he had, at the date of his application, given notice under section 42 of his claim to exercise the right to acquire a new lease of his flat.
- (2) If a leasehold valuation tribunal so determines in the case of a vesting order under section 50(1), the order shall have effect in relation to property which is less extensive than that specified in the application on which the order was made.
- (3) Where any lease is to be granted to a tenant by virtue of a vesting order under section 50(1), then on his paying into court the appropriate sum there shall be executed by such person as the court may designate a lease which—
 - (b) is in a form approved by a leasehold valuation tribunal, and
 - (c) contains such provisions as may be so approved for the purpose of giving effect so far as possible to section 56(1) and section 57 (as that section applies in accordance with subsections (7) and (8) below);and that lease shall be effective to vest in the person to whom it is granted the property expressed to be demised by it, subject to and in accordance with the terms of the lease.
- (4) In connection with the determination by a leasehold valuation tribunal of any question as to the property to be demised by any such lease, or as to the rights with or subject to which it is to be demised, it shall be assumed (unless the contrary is shown) that the landlord has no interest in property other than the property to be demised and, for the purpose of excepting them from the lease, any minerals underlying that property.
- (5) The appropriate sum to be paid into court in accordance with subsection (3) is the aggregate of—

- (a) such amount as may be determined by a leasehold valuation tribunal to be the premium which is payable under Schedule 13 in respect of the grant of the new lease;
 - (b) such other amount or amounts (if any) as may be determined by such a tribunal to be payable by virtue of that Schedule in connection with the grant of that lease; and
 - (c) any amounts or estimated amounts determined by such a tribunal as being, at the time of execution of that lease, due to the landlord from the tenant (whether due under or in respect of the tenant's lease of his flat or under or in respect of any agreement collateral thereto).
- (6) Where any lease is granted to a person in accordance with this section, the payment into court of the appropriate sum shall be taken to have satisfied any claims against the tenant, his personal representatives or assigns in respect of the premium and any other amounts payable as mentioned in subsection (5)(a) and (b).
- (7) Subject to subsection (8), the following provisions, namely—
- (a) sections 57 to 59, and
 - (b) section 61 and Schedule 14,
- shall, so far as capable of applying to a lease granted in accordance with this section, apply to such a lease as they apply to a lease granted under section 56; and subsections (6) and (7) of that section shall apply in relation to a lease granted in accordance with this section as they apply in relation to a lease granted under that section.
- (8) In its application to a lease granted in accordance with this section—
- (a) section 57 shall have effect as if—
 - (i) any reference to the relevant date were a reference to the date of the application under section 50(1) in pursuance of which the vesting order under that provision was made, and
 - (ii) in subsection (5) the reference to section 56(3)(a) were a reference to subsection (5)(c) above; and

(b) section 58 shall have effect as if—

- (i) in subsection (3) the second reference to the landlord were a reference to the person designated under subsection (3) above, and
- (ii) subsections (6)(a) and (7) were omitted.