

2794



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

**Case Reference** : LON/00AL/OLR/2013/1506

**Property** : 103a Footscray Road, London SE9  
2SY

**Applicant** : Sylvia Mary Wallis

**Representative** : TJM Law

**Respondent** : The Executors of the Estate of Peter  
Gerrard Murphy

**Representative** : Not applicable

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

**Tribunal Members** : Judge F Dickie  
Mr P Tobin, FRICS, MCI Arb

**Date of Decision** : 30 January 2014

---

**DECISION**

---

**Decisions of the tribunal**

- (1) The tribunal determines that the premium payable for the extended lease shall be £34,500 according to the expert witness's valuation calculation at Appendix 1 to this decision.
- (2) The terms of the new lease should be those set out in the Draft New Lease at Appendix 2 to this determination.
- (3) The appropriate sum under section 51(5) includes £50 in respect of unpaid ground rent.

## **The application**

1. The Applicant wishes to extend her lease under the provisions of Chapter II of Part I the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act").
2. The Applicant is the tenant of the subject premises as successor in title under a lease dated 9 May 1960 for a term of 99 years from 25 December 1959. There has been no contact with the freeholder for several years. A claim form under section 42 of the Act could not be served on the missing landlord. On 26 September 2013 the Applicant made a claim to the County Court for a vesting order pursuant to section 50 of the Act.
3. On 30 September 2013 District Judge Brooks sitting at the Bromley County Court made a vesting order that the Claimant be granted a new lease of the Premises on such terms as may be determined by [the First Tier Tribunal (Property Chamber)] to be appropriate."
4. Pursuant to the application now before the tribunal, the Applicant has obtained an expert valuation report on the subject premises, and produces a draft new lease.

## **The Valuation**

5. The valuation report was prepared by Roger Nelson FRICS IRRV (Hons) and is dated 9 December 2013 after an inspection on 4 November 2013. The valuation date is 26 September 2013, the date of the County Court claim.
6. According to the inspection report, the subject premises are a first floor purpose built two storey maisonette being part of a semi-detached building. It is one of four such similar buildings of traditional construction probably of late 1950s origin. The flat comprises two bedrooms, a lounge, bathroom with a WC, and kitchen. A location map, sketch plan and external photographs were within the report. The tribunal did not consider it necessary to carry out an inspection.
7. The ground rent is fixed at £7.50 per annum for the duration of the lease and there are 45.24 years unexpired as at the valuation date. There are no intermediate leases to consider.
8. The Gross Internal Area is given as 585 sqft, calculated in accordance with RICS Code of Measuring Practice, and there is a store of 20 sq ft converted to a utility room at the bottom of the staircase. Mr Nelson considered a colour copy of the lease plan in the first schedule which identifies the demise and rights of access. The tribunal was provided with a black and white copy with the colours annotated on it. Mr

Nelson could see no mention in the lease of the inclusion of the ground floor store or staircase. The tribunal observes that the new lease defines the demise and rights by reference to the original lease. Whilst noting that Mr Nelson appears to have assumed the inclusion of these areas in reaching his valuation, the tribunal sees no reason to alter his valuation on this ground.

### **The long lease value**

9. Mr Nelson disregarded the following improvements under Paragraph 3(2)(c) of the Act:

- Full gas fired central heating.
- Replacement UPVC double glazing
- New kitchen and bathroom
- Conversion of the ground level store into a utility room

10. Despite this maisonette being one of 16 similar maisonettes in this development 91-105 Footscray Road, the only sales Mr Nelson felt able to consider were of flat 93 in November 2008 and 103 on the ground floor below which sold in May 2008. All other sales were too historic to be of any assistance. Mr Nelson therefore had to consider sales evidence of other dissimilar flats to find the most comparable.

11. Mr Nelson considered the following comparable properties, and indexed each sale price using the Land Registry indices for the London Borough of Greenwich:

*93 Footscray Road* A similar 2 bedroom flat but on the ground floor, sold 28 November 2008 for £174,995 with a 999 year lease. The indexed sale price is £190,244. Mr Nelson adjusted to £180,000 to allow for that property's larger garden and for improvements.

*103 Footscray Road* A 2 bedroom flat immediately below the subject premises with garden and garage, sold for £177,500 on 30 May 2008 on a 999 year lease. The indexed price was £179,139, which Mr Nelson adjusted to £177,500 to allow for notional improvements.

*97A Footscray Road* A first floor flat which sold in November 2006 with the balance of a 999 year lease for £165,000 which Mr Nelson felt was not useful as a comparable since it was pre-boom. He did compare this with its previous sale on 22 August 2005 for £122,000 in considering the appropriate rate of relativity (see below).

*19 Woodington Close* A flat on a larger estate less likely in Mr Nelson's view to be comparable to the subject premises which has its own garden and a better location. Sold on 14 August 2013 for £170,000, which Mr Nelson adjusted to £167,500 for improvements and to £175,000 to allow for the various advantages of the subject premises.

*107 Southwood Road* The balance of a 999 year lease under offer for £195,000. Closer to New Eltham station and within a newer and detached building and with a large garden, Mr Nelson considers an adjustment of 10% appropriate.

12. Based on his comparable properties, Mr Nelson considers a long lease unimproved value of £177,500 to be appropriate. The tribunal considers his valuation approach reasonable and supported by adequate justification, and accepts it.

### **Relativity**

13. The historic sale of 97A Footscray Road produced a relativity in the "Act World" of 78% for a 53 year unexpired term. The tribunal finds it difficult to draw meaningful inference from this market evidence, since as Mr Nelson observes it is not known if there were any special circumstances, and also the condition of the property is not known. However, it seems sensible to assume that the correct relativity would be something below the 78% indicated by that evidence.
14. Mr Nelson had been unable to find any sales of shorter leases which he could adjust to calculate the value of the existing lease under the Act. He therefore relied on an analysis of the RICS Graphs of Relativity to calculate the value of the existing 45 year lease.
15. Mr Nelson considered the three published graphs on relativity that he reasoned were most relevant. The tribunal accepts his opinion that it is appropriate to rely on the Nesbitt & Co. graph figure to obtain a relativity of 73%. That graph is based on information mainly from Greater London and outer suburbs. The author acts mainly for landlords and in this absent landlord case Mr Nelson has taken a balanced approach in the circumstances.

### **Capitalisation Rate**

16. The tribunal accepts Mr Nelson's choice of 7% as the appropriate capitalisation rate in line with his professional experience (though as he notes owing to the low fixed ground rent the choice of rate has little impact on the valuation).

### **Deferment Rate**

17. Mr Nelson saw no reason to depart from the generic Sportelli rate of 5% for flats as he could find no evidence of lack of growth over the period required and nothing to show there should be any adjustment for obsolescence. The tribunal agrees.

### **Conclusion**

18. The tribunal is prepared to accept the reasoned view of Mr Nelson, based on his expert and local knowledge, that the value of the existing lease is therefore £127,800, and it determines the premium payable is £34,500 according to Mr Nelson's calculation attached to this decision.
19. By virtue of section 51(5)(c) the appropriate amount includes any unpaid ground rent, which the tribunal estimates at £50 in the present case.

**Name:** F Dickie

**Date:** 30 January 2014

## PROPERTY

103A Footscray Road London SE9 2SY

Valuation of the premium to extend the lease calculated under the provisions of the Leasehold Reform Housing and Urban Development Act 1993 (as amended)

## Valuation date

26/09/2013

Term start date	25/12/1959
Term years	99
Expiry date	24/12/2058
Unexpired Term	45.24

Rent paid	From
£7.50	25/12/1959

## CAPITAL VALUES

## % of FHVP

FH SHARE VP (Unimproved)  
 EXTENDED LEASE (Unimproved)  
 EXISTING LEASE (Unimproved)

	£177,500
100%	£177,500
72.0%	£127,800

## YIELDS

TERM  
REVERSION

7.00%
5.00%

## DIMINUTION OF LANDLORDS INTEREST (Para 3 Schedule 13)

		years	yield			
<u>Before extension</u>						
Term	Rent x YP	45.24	7.0%	£8 13.617	£102	
Reversion	x PV	45.24	5.00%	£177,500 0.10998	19,522	£19,624
<u>After extension</u>						
Term	Rent x YP	135.24	7.00%	£0 14.284	£0	
Reversion	x PV	135.24	5.00%	£177,500 0.00136	£242	£242
					Diminution	£19,383

## LANDLORD'S SHARE OF MARRIAGE VALUE (Para 4 Schedule 13)

After extension	Extended leasehold interest	£177,500	
	Landlord's interest	£242	£177,742
Before extension	Existing lease	£127,800	
	Freeholders interest	£19,624	£147,424
Marriage Value			£30,317
	Take 50% Marriage Value		£15,159

## COMPENSATION FOR LOSS ARISING FROM LEASE EXTENSION ( Para 5 Schedule 13)

NIL

TOTAL PREMIUM £34,541

Say £34,500

R D Nelson FRICS, IRRV (Hons)  
 RICS Registered Valuer

09 December 2013

**H M LAND REGISTRY**  
**LAND REGISTRATION ACT 2002**  
**LEASE**

---

County/District or London Borough : Greenwich  
 Title Number (Freehold) : TGL216500  
 Title Number (Leasehold) : LN194750  
 Property : 103A Footscray Road, London, SE9 2SY

**THIS LEASE** is made the                      day of                      **TWO THOUSAND AND FOURTEEN**

**BETWEEN:**

- 1 The Executors of the Estate of Peter Gerard Murphy of unknown address ("the Lessor") and
- 2 Sylvia Mary Wallis of 97 Shooters Hill, London. SE18 3RY ("the Lessee")

**NOW THIS LEASE WITNESSETH** as follows:

**1 DEFINITIONS AND INTERPRETATIONS**

In this Lease:

- 1.1 By a lease dated 9<sup>th</sup> May 1990 and made between (1) Elsie Mabel Davies and (2) Constance Laura Parish ("the Original Lease") the residue of the term created by the Original Lease is now vested in the Lessee and the reversion expectant upon the determination of the Original Lease remains vested in the Lessor
- 1.2 "the Term" means the term of years granted by the Original Lease
- 1.3 "the Substituted Term" means the term of 189 years commencing on 25 December 1959
- 1.4 "the Premises" means the premises described in and demised by the Original Lease
- 1.5 "the Rent" means the rent reserved by the Original Lease
- 1.6 "the Substituted Rent" means the sum of one peppercorn per annum

- 1.7 The "Lessor" where the context so admits includes the person for the time being entitled to the reversion immediately expectant on the determination of the Substituted Term
- 1.8 The "Lessee" where the context so admits includes the Lessee's successors in title
- 1.9 Words importing one gender shall be construed as importing any other gender
- 1.10 Words importing the singular shall be construed as importing the plural and vice versa
- 1.11 Where any party comprises more than one person the obligations and liabilities of that party under this deed shall be the joint and several obligations and liabilities of those persons

## **2 RECITALS**

- 2.1 The Premises are now vested in the Lessee for all the unexpired residue of the Term subject to the payment of the Rent and to the Lessee's covenants and conditions contained in the Original Lease title to which is registered at H M Land Registry with Title Absolute under the Title Number mentioned above.
- 2.2 The reversion immediately expectant on the Term is now vested in the Lessor and the title to the reversion is registered at H M Land Registry with Title Absolute under the Title Number mentioned above.
- 2.3 The Lessee has served a Notice under s.42 of the Leasehold Reform Housing and Urban Development Act 1993 and has requested the Lessor vary the terms of the Original Lease as follows

## **3 VARIATIONS**



3.1 In consideration of the sum of £ (receipt of which the Lessor hereby acknowledges)  
the Lessor agrees to replace the Term with the Substituted Term

3.2 The Lessor agrees to replace the Rent with the Substituted Rent with effect from the date  
hereof

#### **4 COVENANTS**

The Lessor and the Lessee mutually covenant that they will respectively perform and observe  
the several exceptions reservations covenants provisos and stipulations contained in the  
Original Lease as if they were repeated in full in this deed with such modifications as are set  
out in the Schedule and as if the names of the parties to this deed were respectively  
substituted for those of the lessor and the lessee in the Original Lease

#### **5 PROVISIO**

It is agreed that if the Term is determined under the proviso for re-entry contained in the  
Original Lease this deed shall become absolutely void

**6** The Lessee agrees to apply to the Chief Land Registrar for notice of this deed to be entered  
on the Register of the Lessor's title

**7** There is no agreement for Lease to which this deed gives effect

**8** This Lease is made pursuant to s.56 of the Leasehold Reform Housing and Urban  
Development Act 1993.

**9** No long lease created immediately or derivatively by way of a sub-demise under this Lease  
shall confer on the sub-Tenant as against the Lessor a right under Chapter II of Part I of the  
Leasehold Reform Housing and Urban Development Act 1993 to acquire a new lease

**10** There is reserved to the Lessor the right to terminate the Lease for redevelopment in  
accordance with Section 61 of the Leasehold Reform Housing and Urban Development Act  
1993

**IN WITNESS** whereof the Lessor and the Lessee have hereunto set their hands the day and year first before written

**THE SCHEDULE**

**Modifications to the Original Lease**

1. In the Original Lease Clause 2(13) on the second line, after the words "against Fire..." the following words are added "...and all other risks as would be included in a comprehensive flat policy and as required by the council of mortgage lenders..."
2. In the Original Lease Clause 2(13) on the fourteenth line, after the words "...damaged by fire" the following words are added "...or any of the other risks included the in comprehensive flat policy ..."
3. In the Original Lease Clause 2(17) the words "one pound and eleven shilling and six pence (£1.11.6)" be deleted and substituted with the words "Fifty Pounds plus VAT".
4. In the Original Lease the following shall be added as Clause 5(4) "That (if so required by the Lessee) the Lessor will enforce the covenants similar to those contained in Clause 2 hereof against the lessees of the adjoining flats provided the Lessee indemnifies the Lessor for any costs incurred thereof.
5. In the Original Lease Second Schedule Clause 5 the additional words "shelter and protection" be added after the word "support".

Signed as a Deed by )

Sitting at Bromley County Court  
In the presence of

Signature of Witness.....

Name (in BLOCK CAPITALS).....

Address.....

Signed as a Deed by )  
**Sylvia Mary Wallis**  
in the presence of

Signature of Witness.....

Name (in BLOCK CAPITALS).....

Address.....