



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference : LON/00BB/OLR/2016/1566

Property : 25 Ling Road Canning Town London E16 4AP

Applicant : Mr Stephane Swierkos
As personal representative of the estate of Ms
Roselyne Stephanie Martinez

Representative : Mr Mark Loveday of counsel

Respondent : Raj Properties Limited

Representative : Mr Ajay Arora, in-house solicitor of the
Respondent

Type of application : Application to determine the premium
payable on a flat lease renewal and the terms
of the renewal lease under section 48(1) of the
Leasehold Reform Housing and Urban
Development Act 1993

Tribunal member(s) : Judge Pittaway
Mr I Holdsworth FRICS

Date and venue of
hearing : 7 March 2017 at 10 Alfred Place, London
WC1E 7LR

Date of decision : 1 June 2017

DECISION

Decisions of the tribunal

The tribunal determines that

1. Terms of the Lease

- 1.1. The demise should be that granted by the existing lease of the Property; no additional areas should be demised, and no additional rights should be granted except the tribunal invite the parties to agree to the inclusion of an express right of way over the staircase at the front of the Property; and a right of access to the garden, for so long the tenant is under an obligation to maintain it.
- 1.2. The term of the extended lease should be 90 years.
- 1.3. There should be no amendment to the other terms of the lease.

2. Premium

The premium is £39,100 which includes £5000 for the use of the garden.

The tribunal's valuation is attached as an Appendix

3. Costs

The tribunal makes no determination as to costs.

Background

4. The Application

By an application dated 28 September 2016 the applicant, as personal representative of the tenant of the property, sought a determination pursuant to section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993 (as amended) (the "Act") as to the premium payable for the extension of the lease of the Property and certain of the terms of the lease to be granted.

5. The Property

The Property the subject of this application is a first floor purpose built maisonette, occupied by Mr Swierkos, who is the personal representative of the registered tenant.

6. Background

- | | |
|---|-------------------|
| 6.1. Date of tenant's notice: | 27 May 2016 |
| 6.2. Date of landlord's counter-notice: | 28 July 2016 |
| 6.3. Date of application to Tribunal: | 28 September 2016 |

7. Details of tenant's leasehold interest

- 7.1. Term of lease: 99 years from 17 August 1973
- 7.2. Ground rent: £20 p.a. for the first forty years of the term and £40 p.a. for the remainder of the term.

8. Matters agreed

- 8.1. There was a statement of facts agreed which identified that the following were agreed

- (a) Valuation Date: 27 May 2016
- (b) Unexpired lease term: 56.22 years
- (c) Ground rent: years 1-40: £20 p.a
- (d) years 41-99: £40 p.a.
- (e) The Capitalisation rate: 6%
- (f) The Deferment rate: 5%
- (g) The leasehold/freehold differential in value: 1%

- 8.2. At the hearing the valuers were agreed that

- (a) Although the statement of facts in Mr Gunby's valuation referred to an agreed additional value to the premium of £10,000 for the garden and £5000 for the WC at the hearing the valuers agreed that the garden would increase the value of the premium by £5,000, and the inclusion of the WC would include the value of the premium by £2,500;
- (b) Although the statement of matters in dispute in Mr Gunby's valuation stated that the valuers were not in agreement on the difference in reversionary value (by reason of the inclusion of the garden and WC) at the hearing both valuers agreed this to be £15,000; and
- (c) that the differential between the freehold value with vacant possession and the long leasehold value was 1%.

9. Matters in Dispute

- 9.1. The Matters in dispute were

- (a) The terms of the new lease; in particular
 - (i) The extent of the demise
 - (ii) The term
 - (iii) Whether the alienation and use clauses could be varied; and
 - (iv) Whether the registration fee payable to register notices of dispositions could be increased.
- (b) The freehold value with vacant possession (and therefore the resultant long leasehold value).
- (c) Relativity.

9.2. The applicant also asked the tribunal to determine the respondent's costs under section 60 of the Act and at the hearing made an application for costs under Rule 13, although the latter was withdrawn during the hearing.

10. Evidence

10.1. The tribunal had before it bundles which included the valuation report of 20 February 2017 of Mr Taylor MRICS of Wenlock & Taylor for the applicant and the valuation report dated 6 March 2017 of Mr Gunby MRICS of B Bailey & Co Ltd. Mr Loveday, counsel for the applicant provided opening submissions before the start of the hearing. The bundles also contained witness statements by the applicant and Mr Arora, the in-house solicitor of the respondent.

10.2. Mr Taylor and Mr Swierkos gave evidence on behalf of the applicant. Mr Gunby gave evidence on behalf of the respondent. The valuers were each cross-examined.

10.3. Mr Loveday made submissions on behalf of the Applicant and Mr Arora on behalf of the respondent.

10.4. The tribunal have had regard to the evidence, the cross examination, the submissions and the other papers before them in reaching their determination and comment on specific aspects of these in their reasons below.

11. Inspection

11.1. The inspection of the property, garden and attic was carried out on 8th March 2017.

11.2. The dwelling is a purpose built first floor maisonette built at the end of the nineteenth century as part of a small estate of similar styled properties.

11.3. The maisonette has two bedrooms, lounge, kitchen and bathroom/WC at first floor. There is a rear access stairwell that leads to a ground floor WC and a small rear garden. The property has all mains services with a gas fired central heating system.

11.4. The Tribunal carried out an external inspection of all the properties offered as comparable transaction evidence by both valuers. The comparable transaction properties are all situate within a short distance of the subject property.

12. The Law

- 12.1. Section 56 (1) of the Act requires the landlord to grant and the tenant to accept a new lease at a peppercorn rent for a term expiring 90 years after the term date of the existing lease, except as otherwise provide in the Act.
- 12.2. Section 57(1) of the Act provides that the lease to be granted "shall be" on the same terms as the existing lease, as they apply at the relevant date, modified as appropriate/required to omit property included in the existing lease but not comprised in the flat and to reflect alterations made to the property since the grant of the existing lease.
- 12.3. Section 57(6) provides that the above subsection is subject to any agreement between the landlord and the tenant as to the terms of the lease. It also provides that either party may require the exclusion of any term of the existing lease insofar as
 - (a) It is necessary to remedy a defect in the existing lease; or
 - (b) It would be unreasonable in the circumstances to include, or include without modification the term in question in view of changes commencing since the date of commencement of the existing lease.
- 12.4. Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993 (The Act) provides that the premium to be paid by the tenant for the grant of a new lease shall be the aggregate of the diminution in the value of the landlord's interest in the tenant's flat, the landlord's share of the marriage value, and the amount of any compensation payable for other loss.
- 12.5. 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 premises containing the tenant's flat or to acquire any new lease.
- 12.6. Para 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.
- 12.7. Para 5 provides for the payment of compensation for loss arising out of the grant of a new lease.
- 12.8. Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

Reasons for the Tribunal's decisions.

13. The extent of the demise in the proposed lease

- 13.1. The tribunal consider it unfortunate that the lease does not expressly state in the demise whether the staircases leading from the ground floor to the first floor are included in the demise, which describes the premises as, "*ALL THOSE premises comprising the first floor maisonette situate at and being 25 Ling Road....for the purpose of identification only delineated on the plan annexed hereto and thereon edged red.*"
- 13.2. Mr Lovejoy submitted that the staircases were included in the demise. He referred the tribunal to the lease plan, which he submitted showed both as included. Mr Arora submitted that this was a mistake in the plans. Mr Loveday distinguished the demise here, which refers to the premises comprising the first floor maisonette, to the demise in *Munt v Beasley* where the demise was describes as "being on the first floor". Mr Arora did not suggest that the tenant did not have a right to use the front staircase to access the flat.
- 13.3. Inspection of the property confirms that the two staircases are an integral part of the maisonette and are not accessible from any other part of the building. The lease plan (while being for identification only) indicates the staircases are included in the demise (there being no evidence that their inclusion is a mistake as asserted by Mr Arora) and neither party suggested to the tribunal that the tenant did not have a right to use them, although Mr Arora did say that he considered the use of the rear staircase was linked to the tenant's obligation in relation to the garden.
- 13.4. The tribunal therefore determines that the lease does include the staircases in the demise and while not in a position to require the extended lease to refer to the staircases expressly invite the parties to agree to the grant of express rights over the staircases.
- 13.5. It is common ground between the parties that the following are not demised by the existing lease;
- (a) The loft;
 - (b) The garden;
 - (c) The storage shed and WC adjacent to the garden;
- 13.6. The existing lease does not demise the garden nor does it grant the tenant an express right to use it. The lease does however require the tenant, "*to maintain and keep the ground coloured Green on the said plan in a cultivated and tidy condition*"; the ground coloured Green being the garden.

- 13.7. Mr Lovejoy submitted that as the garden was physically divided and the half used by the applicant was only accessible from the flat it should be included in the demise, as should the external WC and surrounding wooden lobby, even though none of these were included in the existing lease, by reason of the tenant having had exclusive use/occupation of these areas. Mr Arora submitted that the exclusion of the garden from the demise in the existing lease was deliberate and a standard provision in the similar leases granted by the original landlord in the immediate area; although no evidence was provided to substantiate this.
- 13.8. The existing lease is silent as to whether the loft is included in the demise. Mr Lovejoy submitted that the new lease should include the loft as it was only accessible from the flat. Mr Arora submitted that its exclusion from the existing lease was deliberate.
- 13.9. Section 56 permits the omission of property included in the existing lease; it does not give the tribunal the right to include premises not demised by the existing lease. Whether the tenant may have obtained additional areas by adverse possession is not a matter for this tribunal. Accordingly the tribunal can only determine that the demise in the lease to be granted should mirror the demise in the existing lease; ie with an obligation to maintain the garden, and silent on the loft, external WC and rear staircase. It is of course open to the parties to reach a separate commercially negotiated agreement to vary the terms of the lease (to include the garden, the attic and the rear staircase).

14. The Term of the lease to be granted

- 14.1. The tenant's notice proposed a term of 99 years which Mr Arora submitted had been accepted by the landlord in its counternotice and should be the term of the new lease. He submitted that section 46, which requires that the tenant's notice must specify the "terms" which the tenant proposes should be contained in any such lease, applied to the term of the lease to be granted. He further submitted that provided the term accepted by the landlord exceeded the term required by the Act it could be agreed under Section 56(1)
- 14.2. It was Mr Loveday's submission that the tribunal did not have the jurisdiction to grant any term other than that referred to in the statute namely an extension of 90 years to the existing term.
- 14.3. Both parties agreed that the difference in term had very little impact on the valuation, and that both valuations had been undertaken on the basis of an extended lease term of 90 from the expiry of the existing lease.
- 14.4. The tribunal do not consider that reference to "terms" in Section 46 is intended to include reference to the term; namely the length of the lease. Further there was no agreement between the tenant and landlord in the notice and counter notice as to the commencement date of the 99 year term so that there was no agreement to a term of 99 years to which

section 56(1) might apply, as its commencement date had not been agreed.

Accordingly the term of the lease to be granted should be 90 years from the expiry of the term of the existing lease.

15. **The other terms of the lease**

15.1. Mr Arora submitted that the other variations which were sought to the lease were required for the following reasons

- (a) The amended use clause, to prevent it being used as a business.
- (b) The alienation clause, in the interests of good estate management
- (c) An increase in the registration fee, because higher registration fees were normal in lease now being granted.

15.2. Mr Loveday submitted that the new lease was to be on the same terms as the existing lease, and that it was not open to the tribunal to add new provisions not found in the old lease; as this is not contemplated by section 57(6).

15.3. The tribunal do not accept that any of the reasons given by Mr Arora are such as to justify a variation to the terms of the existing lease in view of changes occurring since the date of commencement of the existing lease, which is the only basis upon which it can contemplate modifying the terms of the existing lease.

16. **Freehold vacant possession value**

16.1. For the applicant, Mr Taylor valued the freehold vacant possession value of the property (excluding the loft space but including the other disputed areas) at £271,731. He attributed no value to the loft space. Mr Gunby for the respondent valued the property on the same basis at £320,000. Both these valuations assumed that the applicant had the right to use the garden.

16.2. Both valuers provided comparable evidence to substantiate their freehold valuation.

16.3. Mr Taylor provided details of six comparables in Ling Road, each of which he submitted was a first floor three-bedroom maisonette. His report stated that the majority of these included a garden. He indexed the sale prices of the comparable by reference to the land registry index for the LB of Newham to adjust the sale price of each to the valuation date.

- (a) Of his six comparables Mr Taylor preferred three
 - (i) 39 Ling Road, described in the agent's particulars as including a garden, which sold for £301,000 in October

- 2016 (adjusted to £285,522), with a lease term of 84.6 years at an unspecified rent;
- (ii) 134 Ling Road, described as having a private garden, which sold for £280,000 (adjusted to £265,602) in October 2016, with a lease term of 92 years at an unspecified rent; and
 - (iii) 71 Ling Road, again described as having a private garden, which sold in October 2015 for £230,000 (adjusted to (£256,00)), with a 125 year lease at an unspecified rent.

(b) Of his other three comparables Mr Taylor regarded these as less satisfactory evidence

- (i) 70 Ling Road; because it was an end of terrace property described as having four bedrooms. This sold in March 2016 for £325,000 (adjusted to £336,774) with an unexpired lease of 149 years.
- (ii) 105 Ling Road because it had a lease of less than 80 years when it sold for £175,000 (adjusted to £207,753) in May 2015; and
- (iii) 57 Ling Road which had a lease of 58.8 years when it sold in August 2015 for £185,000 (adjusted to £213,822)

Mr Gunby challenged the reliability of 39 Ling Road and 134 Ling Road as comparables as they had not been marketed on Rightmove; 39 Ling Road because it had an "aggressive" ground rent (without providing evidence to substantiate this); and 71 Ling Road because it was not sold in the year of the valuation date.

16.4. Mr Gunby also provided details of six comparables to support his freehold valuation. He did not limit his comparables to three bedroom maisonettes in Ling Road and did not index the sale prices to adjust them to the valuation date, preferring to choose comparable which sold with a finite period before or after the valuation date and then average the sale prices.

(a) Mr Gunby's preferred comparables were

- (i) 70 Ling Road, which he considered a three bedroom flat on the basis that no planning permission evidencing the use of the loft as a bedroom.
- (ii) 67 Kildare Road, described as a three bedroom flat but without access to a garden. When sold for £320,000 it had a lease with an unexpired lease term of 84 years; and
- (iii) 99 Ling Road, which he described as a ground floor flat, slightly smaller in size than the subject Property (by reason of the corridor serving the first floor flat) sold for £315,000.

(b) Mr Gunby also referred to other flats in Ling Road, including 9 Ling Road which sold in March 2015 with a lease of 189 years from 24 June 1976 at £225,000.

- 16.5. Following its external inspection of the various comparables the tribunal considered Mr Taylor's preferred comparables and 67 Kildare Road and 9 Ling Road as the best comparables. In the absence of any evidence that the ground rents payable on Numbers 134 and 71 Ling Road are onerous the tribunal assume that they are not.
- 16.6. The tribunal consider that it is necessary to time adjust sale prices with regard to their sale date as against the valuation date and accept Mr Taylor's method of indexation by reference to the land registry index for the LB of Newham.
- 16.7. The tribunal find it necessary to adjust the preferred comparables to reflect that the flat only has a time-limited right to use the garden. The tribunal note that the parties agreed that if the garden were included in the demise the appropriate garden adjustment is £10,000. The experts had also agreed that if the tenant only had the use of the garden on the lease terms then an additional value of £5,000 could be added to the premium, and this is the basis of the tribunal's valuation.
- 16.8. The tribunal therefore calculated the long leasehold value without garden and added £5000 to premium for garden use. The tribunal determine that the long leasehold value of the flat is £278,319, adjusted to £267,980 to reflect a sale price as the garden is not included in the demise, and the freehold VP value (without the garden) is £270,686.

17. **Relativity**

- 17.1. The tribunal has adopted a relativity of 80.6% in their valuation.
- 17.2. Mr Loveday submitted that it was inappropriate to look to market evidence, as directed in *Mundy* as the preferred basis of establishing the existing leasehold value; as that case was currently the subject of appeal. The tribunal consider that it can and should have regard to the decision in *Mundy*, irrespective of the pending appeal, as that was the relevant authority at the date of the hearing; and that therefore the starting point for establishing relativity should be available market evidence.
- 17.3. Mr Gunby provided as market evidence for a lease of similar length to the lease length of the Property the sale of 57 Ling Road in August 2015 which he described as having sold with a lease term of 60 years for £185,000. Mr Gunby argued for a relativity of 78.6% which at the hearing he confirmed did not contain an adjustment to reflect the "No Act" world. Mr Arora also accepted at the hearing that a deduction of 5% would be appropriate to reflect the "No Act" world.
- 17.4. While the above market evidence was not Mr Taylor's preferred means of calculating relativity he did date adjust the sale price of 57 Ling Road to the valuation date, to £213,822 { see page 9 of bundle}. He stated that at the time of the sale 57 Ling Road had had a term of 58.8 years, which

he then adjusted to a lease term of 56.2 years by reference to his preferred graphs to 82.73%.

- 17.5. Mr Taylor's preferred method of ascertaining relativity was to base it on the average relativity for a lease of 56.2 years, calculated from the graphical data from Nesbitt & Co, Andrew Pridell Associates and South Leasehold graphs. This gave him a relativity of 83.44% .
- 17.6. Mr Taylor submitted that 57 Ling Road, the market comparable proposed by Mr Gunby, should be discounted, because its price was agreed some 18 months before the valuation date and one comparable provided an insufficient basis for a valuation. , and he preferred to confine himself to the same comparables as used for calculating the freehold VP value. Mr Loveday submitted, following Xue v Cherry, that it was appropriate to look to relativity graphs. Of the relativity graphs available Mr Taylor submitted that the most appropriate, given the location of the flat, were issued by Nesbit and Co, Andrew Pridell and South East Leasehold, which produced a combined relativity of 82.73%. Mr Taylor agreed that a reduction of 5% would be appropriate to reflect the "No Act " world, giving a relativity of 77.73%
- 17.7. The tribunal consider that the respondent's ultimate relativity of 73.6% (when a reduction of 5% is taken into account to reflect the "No Act" world) is disproportionately low, which makes the use of the single comparable of 57 Ling Road questionable. It has therefore taken an average of Mr Taylor's adjusted value of 57 Ling Road of 77.73% and his graphical data of 83.44%, as the appropriate relativity; namely 80.59%.

18. **Development Potential of the Loft**

While this may be irrelevant (as the tribunal do not have the ability to include it in the demise if it is not included at present) the tribunal, following inspection, agree with Mr Loveday's submission that the loft is not suitable for conversion. They accept that the property is in an area where there have been no loft conversions. Its configuration makes it suitable for storage but is such that its conversion into habitable space is physically and economically extremely unlikely.

19. **Section 60 Costs and Rule 13 Costs**

- 19.1. The tribunal notes that at the hearing it was stated that the valuers' fees payable under section 60 were agreed. The tribunal have received no written submissions on the other section 60 costs so these remain to be agreed/determined.

19.2. On Rule 13 costs Mr Loveday withdrew the applicant's request for these at the hearing.

Name: Judge Pittaway

Date: 1 June 2017

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).

Property: 25 Ling Road London E16 4AP			
Reference: LON/00BB/OLR/2016/1566			
Lease and Valuation Data			
Lease Term:		17/08/1973	
Lease Expiry date:		16/08/2072	
Unexpired term as at valuation date:	56.14	years	
Date of Valuation		27/06/2016	
Rent receivable by landlord:			
Payable from valuation date for 56.14 years	£	40	
Values			
Extended lease value on statutory terms	£	267,980	
Notional Freehold	£	270,686	
LHVP with current term unexpired	£	218,146	Relativity 80.6%
Capitalisation rate (%)		5.00	
Deferrant rate (%)		5.00	
Value of Freeholders present interest			
Term 1			
Ground rent payable	£	40	
YP @ 56.14 years @ 6%		16.03400	£ 641
Reversion			
Freehold in vacant possession	£	270,686	
Deferred @ 56.14 years @ 5%		0.06463	£ 17,494
Current value of the freeholders interest			£ 18,136
Less			
Freehold value after leasehold extension	£	270,686	
PV of £1 in 146.14 years at 5%		0.00080	£ 217
Freeholders interest value			£ 17,919
Marriage value			
Value of flat with long lease on statutory terms	£	267,980	
Landlords proposed interest	£	217	£ 268,196
Less			
Value of Leaseholders existing interest	£	218,146	
Value of Freeholders current interest	£	18,136	£ 236,282
Marriage value	Total		£ 31,914
Division of Marriage Value equally between			
Freeholder			£ 15,957
Leaseholder			£ 15,957
Price payable to Freeholder			
Value of freeholders current interest			£ 18,136
Plus share of marriage value			£ 15,957
	Total		£ 34,093
Agree premium value of garden rights			£ 5,000
	Say		£ 39,100

Comparable transaction information Long Lease Vacant Possession value												
Valuation date 27th May 2016												
Address	Sale Price	Sale date	Rear garden	Unexpired lease length (years)	Garden adjustment	Adjustment for with rights to use garden	With garden	Without garden	With right to use garden	Adjustment multiplier	Adjusted sale price with garden	
39 Ling Road	£301,000	Oct-16	Yes	84.6	-£10,000	-£5,000	£301,000	£291,000	£296,000	0.94858	£285,522	
134 Ling Road	£280,000	Oct-16	Yes	92	-£10,000	-£5,000	£280,000	£270,000	£275,000	0.94858	£265,602	
71 Ling Road	£230,000	Oct-15	Not Known	125	-£10,000	-£5,000	£230,000	£220,000	£225,000	1.11304	£256,000	
67 Kildare Road	£320,000	Sep-18	No	124	£10,000.00	£5,000	£330,000	£320,000	£325,000	0.939	£309,780	
9 Ling Road	£225,000	Mar-15	Yes	159	-£10,000	-£5,000	£225,000	£215,000	£220,000	1.221	£274,692	
Indexation:										Long leasehold value	£278,319	
	May 2016 =	124.71										
Index	Sep-15	110.56										
Index	Mar-15	102.15										
Index	Sep-16	132.85										
										Freehold VP value	£281,130	