



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

**Case Reference** : CAM/00KF/OCE/2018/0003  
**County Court Claim No** : DooSS761

**Property** : 27 Napier Avenue Avenue, Southend-on-Sea SS1 1LY

**Applicants** 1 Regis Group (Nationwide) Limited  
 2 Michelle Elizabeth POLLEY

**Representative** : Laura Cleasby (Pier Legal Services)  
 Colin Horton BSc AssocRICS (expert valuer)

**Respondent** : Timothy John SAUNDERS

**Representative** : (not traceable or served)

**Type of Application** : to determine the appropriate sum payable on  
 enfranchisement where the landlord cannot be found  
 [LRHUDA 1993, s.26]

**Tribunal Members** : G K Sinclair, E Flint DMS FRICS IRRV  
 & D Barnden MRICS

**Date and venue of  
Hearing** : Wednesday 9<sup>th</sup> May 2018 at Southend County Court

**Date of decision** : 23<sup>rd</sup> May 2018

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DECISION

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- Price to be paid into court ..... paras 1–2
- Background ..... paras 3–5
- Inspection ..... paras 6–9
- Applicable valuation principles ..... paras 10–14
- Valuation evidence and hearing ..... paras 15–19
- Findings ..... paras 20–26
- Schedule 6 valuations ..... Schedule

1. For the reasons given below the tribunal determines that the sum to be paid into court is £21 438, being the sum of £10 380 for the ground floor flat and £11 058 for the first floor flat.
2. The form of transfer is as drafted in form TR1, which is part of Attachment 6 to the County Court Part 8 application, subject to :
  - a. the insertion of the price
  - b. any reasonable requisitions raised by the Land Registry, and
  - c. the execution block for the transferor being amended to state that the document is executed by a County Court District Judge.

**Background**

3. The subject premises comprise two flats; one on the ground floor and another on the first floor. Each is let for a term of 99 years from 1<sup>st</sup> October 1984, with a stepped ground rent rising from an initial £60 to £120 and £180 every 33 years. Unusually, although he had acquired the freehold title as recently as 1989, the landlord has vanished. His only address registered at the Land Registry is that of the ground floor flat, despite the fact that it was let to the current lessee as long ago as 2000. Two enquiry agents have been employed and those bearing similar names have been tracked down and visited, but each has denied having anything to do with the property.
4. On 21<sup>st</sup> November 2017 the two applicants issued a claim in the County Court at Southend under Part 8 of the Civil Procedure Rules 1998, seeking a transfer to them of the freehold title to the property. By order dated 21<sup>st</sup> November 2017 Deputy District Judge Callaghan ordered that the claim be heard by a judge of this tribunal authorised to sit as a judge of the County Court for the purposes of exercising the court’s jurisdictions under the Leasehold Reform Housing and Urban Development Act 1993 and, at the same time, such judge might exercise the jurisdiction of the tribunal in respect of the subject matter of the claim or give directions as to how it should be exercised.
5. By two orders dated 8<sup>th</sup> March 2018 Regional Judge Edgington :
  - a. Dispensed with the need to serve an initial notice and made a vesting order in favour of both claimants under section 26 of the Act, and
  - b. Issued tribunal directions for the determination of the price payable into court in respect of the claim under section 27.

**Inspection**

6. The tribunal inspected the exterior of the property and the interior of each flat on the morning of the hearing. The building is a typical end-terrace house in a

residential area comprising fairly similar properties, although some do not have a bay window on each floor. The external condition is reasonable, thanks only to the efforts of the lessee of the first floor flat carrying out external painting and work to gutters, etc. In the rear garden of the ground floor flat a thick concrete slab has been cut away from the wall of the building, allowing a French drain to be installed. The rear garden of the first floor flat, beyond, is accessed by a locked side passage shared with the neighbouring property and is laid mainly to grass.

7. Although they each broadly share a common footprint (save for the stairs) the layout of each flat is different. In the upper flat a recently renovated kitchen is at the rear, overlooking the garden, with a small second bedroom/study next along the rear corridor. Opposite the top of the stairs, in the middle of the flat, is a small WC, with the main bedroom next to it and then, off the front corridor, a lounge and modern fitted bathroom each overlooking the street.
8. The ground floor flat is entered by a door at the foot of the stairs, giving access to a narrow corridor to the rear but obstructing access to the front lounge, the door to which is behind the other. As the tenant said she was storing some of her son's belongings the flat perhaps had a more cluttered appearance than normal. Proceeding along the corridor towards the rear, the sole double bedroom is next after the lounge, with some under stairs cupboards opposite the side entrance giving access to the rear yard and garden. Next lies an unimproved kitchen through which one reaches a small bathroom with no natural light and, through that, to an airing cupboard on one side and WC opposite.
9. The tribunal then walked around the nearby streets, visiting and viewing the exterior of each of the comparable properties relied upon by Mr Colin Horton BSc AssocRICS, the applicants' current valuer. Some were quite similar, while the streets varied in character and distance from High Street and railway stations.

#### **Applicable valuation principles**

10. By section 27(5) of the Act :
  - ...the appropriate sum which is to be paid into court in respect of any interest is the aggregate of :
    - (a) such amount as may be determined by the appropriate tribunal to be the price which would be payable in respect of that interest in accordance with Schedule 6 if the interest were being acquired in pursuance of such a notice as is mentioned in subsection (1)(b); and
    - (b) any amounts or estimated amounts determined by such a tribunal as being, at the time of execution of the conveyance, due to the transferor from any tenants of his of premises comprised in the premises in which that interest subsists (whether due under or in respect of their leases or under or in respect of agreements collateral thereto).
11. By paragraph 2 of Schedule 6 the price payable for the acquisition of the premises ...shall be the aggregate of –
  - (a) the value of the freeholder's interest in the premises as determined in accordance with paragraph 3,
  - (b) the freeholder's share of the marriage value as determined in

- (c) accordance with paragraph 4, and  
any amount of compensation payable to the freeholder under paragraph 5.

12. An important element in calculating the price is the appropriate deferment rate. The default position here is the rate for flats of 5% set by the Lands Tribunal (and upheld by the Court of Appeal) in the leading case of *Cadogan v Sportelli*.<sup>1</sup> In certain circumstances, however, tribunals have been prepared to venture beyond that, with two possible reasons being argued for and upheld in the particular circumstances of *Zuckerman and others v Trustees of the Calthorpe Estates*.<sup>2</sup> The first is that if the subject premises are outside the PCL area, and of much lower value, they are much more likely to become obsolescent than expensive flats in Belgravia. The second is that since the decision in *Sportelli* the property management world had woken up to the increased importance of complying with the statutory consultation requirements under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.<sup>3</sup> As failure to do so could be financially calamitous, so management had in turn become more onerous. This should be reflected in an increased risk factor of say 0.25%.

13. *Sportelli* was appealed on another point to the House of Lords<sup>4</sup>, which determined (Lord Hoffman dissenting) that hope value could constitute part of the price payable to the freeholder in relation to non-participating flats on a collective enfranchisement. In the instant case both lessees jointly comprise the nominee purchaser, so hope value does not apply.

14. In most cases where there is a missing landlord, but perhaps surprisingly not in all, there will have been no rent paid for a substantial period before the date of the application. Section 27(5) requires that the applicant must pay into court not only the price payable, as determined by the tribunal, but also the amount or estimated amount remaining unpaid of any pecuniary rent payable for the house and premises up to the date of the conveyance. Section 166 of the Commonhold and Leasehold Reform Act 2002<sup>5</sup> may, however, impose a restriction upon that by providing that :

A tenant under a long lease of a dwelling is not liable to make a payment of rent under the lease unless the landlord has given him a notice relating to the payment; and the date on which he is liable to make the payment is that specified in the notice.

The limitation period for recovery of unpaid rent is 6 years, so that is the maximum rent which could ever be recoverable under the head-lease.

<sup>1</sup> [2007] EWCA Civ 1042; [2008] 1 WLR 2142

<sup>2</sup> [2009] UKUT 235 (LC); [2011] L&TR 12 – otherwise known as the *Kelton Court* decision

<sup>3</sup> This level of concern has reduced since the Supreme Court's decision in *Daejan Investments Ltd v Benson* [2013] UKSC 14 on the principles applicable to the exercise of the tribunal's powers to grant dispensation under section 20ZA

<sup>4</sup> [2008] UKHL 71; [2010] 1 AC 226

<sup>5</sup> In force from 28<sup>th</sup> February 2005

### **Valuation evidence and hearing**

15. The tribunal was in the interesting position of having two different valuations produced on behalf of the applicants. The first, by Paul Holford BSc MRICS, was produced with a valuation date of 13<sup>th</sup> February 2017 with a view to serving notice under section 13 on the freeholder (who later could not be traced). The missing landlord approach was therefore required and, after commencing County Court proceedings under section 26 in November 2017, the applicants considered that a further, more up-to-date, valuation was necessary. By then the first applicant, which was managing the application on behalf of both, had parted company with Mr Holford and his company and so on this occasion instructed Mr Horton. His report is dated 3<sup>rd</sup> April 2018 and he attended the hearing to answer questions from the tribunal.
16. Unlike Mr Holford, who had produced a “high” and “low” figure for the combined values of the flats, Mr Horton produced a single figure for each. Although their respective assumptions as to value, deferment rate and yield differed the results achieved were surprisingly similar, with Mr Holford’s producing a “low” figure of £18 685 (for both flats) against Mr Horton’s combined total of £18 588.
17. Questioned by the tribunal, Mr Horton admitted to a mistake in his report, in that the references to an improved kitchen, etc should have referred to the first floor flat and not that on the ground floor. On relativity, he referred both in his report and oral evidence to the recent appeal in *Mundy v Sloane Stanley*<sup>6</sup> and to the Court of Appeal’s observations on the various graphs relied upon, but argued that they were still relevant.
18. Asked why he had chosen a capitalisation rate of 10%, Mr Horton said that he had come across quite a few of these types of property and, given the risk of ground rents being abolished in the future or reduced, a low ground rent is not attractive to investors as there is not much of a return. He said that he used to work for a large property investor. Asked whether he had ever agreed a 10% rate with anyone he admitted that he had not, as when dealing with these he tended to work on the basis of freehold values. Asked what he would expect to pay, he said 8% – as it is not an attractive ground rent. It was low for this part of the world, at only 0.1% of freehold value.
19. As for his divergence from the *Sportelli* deferment rate of 5% to 6%, he argued that he had done some further research the previous night – which was not in his report – but he either did not have it with him or he did not provide copies for the tribunal. As there was a missing landlord, he argued, this provided further risk, eg with respect to external repairs. He was reminded that, as a result of this application to the court, there would not be a missing landlord in future. Despite this, he remained happy with his suggested deferment rate of 6%.

### **Findings**

20. Although Mr Horton’s more recent report was the one which was relied upon by the applicants they had also put the earlier one by Mr Holford before the court, and it was in the bundle. The tribunal found both to be helpful, while also taking into account its own expertise and the evidence obtained from inspection of the

<sup>6</sup> [2018] EWCA Civ 35; [2018] HLR 13; [2018] 1 P&CR 18

subject property and external inspection of the suggested comparators. Although not possible to study the terms of the leases of the comparator properties both the tribunal and the two valuers were able to apply their knowledge of the lease terms typically in use at the time in the Southend area for flats such as these.

21. Mr Holford provided a range of values while Mr Horton offered only the one. The opinions set out in their respective reports are as follows :

	Holford	Horton
<b>Freehold value of ground floor flat</b>	£135 – £140 000	£135 000
<b>Freehold value of first floor flat</b>	£140 – £150 000	£145 000
<b>Relativity</b>	90.42 – 82.52%	89.80%
<b>Capitalisation rate</b>	7.75% – 6.75%	10%
<b>Deferment rate</b>	5%	6%

22. Having considered the available evidence, including comparable properties put forward on behalf of the applicants, the tribunal agrees that there should be a price differential between the two flats, but determines that this should be no greater than £10 000. It prefers the values reflected in Mr Holford's report and determines that the freehold value of the ground floor flat (27A) is £140 000 and that of the first floor flat (27) is £150 000.
23. The tribunal agrees that the various graphs produced concerning PCL properties are unhelpful, but that those produced by the RICS for Greater London and Southeast England are relevant. The average of the five listed on the website [www.graphsofrelativity.co.uk](http://www.graphsofrelativity.co.uk) for a 65.86 year unexpired term is 89.88%, which is almost the figure reached by Mr Horton (unless his is a typographical error). That is the figure selected by the tribunal.
24. On capitalisation the tribunal can see no evidence justifying the 10% for which Mr Horton argued. In the tribunal's experience the 7.75 – 6.75% range chosen by Mr Holford straddles the figure which is more consistently used by tribunals in this area, and which this tribunal chooses, namely 7%.
25. As for deferment, taking into account that this property is small, of relatively poor quality (hence not justifying the high maintenance costs that might prove acceptable within the Cadogan estate), quite low value and situate in this part of Southend, the tribunal agrees that some degree of divergence from the *Sportelli* rate is justified. It sees no reason to award as much as 6% but is prepared to award 5.25%. A two-unit property is unattractive for property managers.
26. As a result of these findings the results achieved, and the sums that must be paid into court by the applicant lessees, are :
- |    |  |                |
|----|--|----------------|
| a. | Ground floor flat (Regis Group) .....                      | £10 380        |
| b. | First floor flat (Polley) .....                            | £11 058        |
|    | <b>Total payable (as per the schedules attached) .....</b> | <b>£21 438</b> |

Dated 23<sup>rd</sup> May 2018

*Graham Sinclair*

Graham Sinclair  
Tribunal Judge

## SCHEDULE

Valuation date ..... 20<sup>th</sup> November 2017

Freehold market value of flats :

Ground floor ..... £140 000  
 First floor ..... £150 000

Unexpired term of lease (to 30<sup>th</sup> September 2083) ..... 65.8 years

Relativity ..... 89.88%

Deferment rate (*Sportelli* + 0.25%) ..... 5.25%

Capitalisation of current ground rent : yield ..... 7.0%

Value of current ground rent ..... Nil

### Ground floor flat (27A)

#### 1. Value of freeholder's present interest

a.	Term – ground rent			
	Ground rent 1 = £120			
	YP 32.86 yrs @ 7.0%	12.7392		£1,528
	Ground rent 2 = £180			
	YP 33 yrs @ 7.0%	12.7538	£2,296	
	deferred 32.86 yrs @ 7.0%	0.10826		£249
b.	Deferred value of freehold reversion		£140,000	
	PV of £1 x 65.86 yrs @ 5.25%	0.03439		£4,815
	<b>Sub-total</b>			<b>£6,592</b>

#### 2. Share of marriage value

a.	Value of flat with virtual freehold			£140,000
	<i>Less</i>			
b.	Existing leaseholders' interest		£125,832	
c.	Freeholder's current interest		£6,592	
	<i>Net</i>		<b>£7,576</b>	
	50% =			<b>£3,788</b>

3. Compensation under paragraph 5 ..... Nil

**Sum payable into court for flat 27A ..... £10,380**



**First floor flat (27)**

<b>1. Value of freeholder's interest</b>			
a. Term – ground rent			
Ground rent 1 = £120			
YP 32.86 yrs @ 7.0%	12.7392		£1,528
Ground rent 2 = £180			
YP 33 yrs @ 7.0%	12.7538	£2,301	
deferred 32.59 yrs @ 7.0%	0.10826		£249
b. Deferred value of freehold reversion		£150,000	
PV of £1 x 65.86 yrs @ 5.25%	0.03439		£5,159
<b>Sub-total</b>			<b>£6,936</b>
<b>2. Share of marriage value</b>			
a. Value of flat with virtual freehold		£150,000	
Less			
b. Existing leaseholders' interest		£134,820	
c. Freeholder's current interest		£6,936	
Net		<b>£8,244</b>	
50% =			<b>£4,122</b>
<b>3. Compensation under paragraph 5</b>			Nil
<b>Sum payable into court for flat 27</b>			<b>£11,058</b>