



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

Case reference : **RC/LON/00BG/OLR/2019/1123**

Property : **258a Bethnal Green Road
London E2 0AA**

Applicant : **Linda Susanna Konradsson
(Leaseholder)**

Representative : **Bolt Burdon Solicitors**

Respondent : **Strathdon Ltd. (Incorporated in
Isle of Man - Dissolved). (Flying
Freeholder)**

Representative : **None**

Type of application : **To determine the premium payable
under Schedule 13 as compensation
to the landlord, arising from an
application to extend the lease
under S.50 (missing landlord) of
the Leasehold Reform Housing and
Urban Development Act 1993 (“the
Act”)**

Tribunal : **Mr N. Martindale BSc MSc FRICS**

Venue : **10 Alfred Place London WC1E 7LR**

Date of decision : **19 November 2019**

DECISION

Decision

The premium to be paid by the applicant to the respondent missing landlord for the 90 year lease extension of the Property, 258a Bethnal Green Road London E2 0AA is **£31,828 (thirty-one thousand eight hundred and twenty eight pounds)**. (The form of new lease as drafted and set out in the bundle, has already been approved by the court).

Introduction

1. This concerns an application made under Section 50 of the Leasehold Reform Housing and Urban Development Act 1993 (“the Act”) for an extension of the existing lease of the Property. This determination is of the premium to be paid by the applicant leaseholders to a missing landlord. The basis is set out in the appendix to this decision.
2. The Applicant, Linda Konradsson is the registered long leaseholder of the Property, held under the terms of a lease dated 29 May 1987 for a term of 99 years from and including 25 March 1987, at a fixed rent of £50 pax. The leasehold is registered under HMLR title EGL199529. The original tenant was Paul Anthony Cooper.
3. The Property forms the first, second and third floors with ground floor access forming a large self-contained maisonette. The freehold of the Property mirrors this accommodation unusually being a flying freehold situated above the ground floor and basement freehold at this address. No.258 Bethnal Green Road, consists of a retail ground floor shop and basement store, with this maisonette above. The flying freeholder is registered as Strathdon Ltd. (incorporated in Isle of Man) under HMLR title EGL427843. The original landlords were Christopher Preece and Kathleen Preece.
4. By order made of District Judge Pigram issued 24 July 2019 in the County Court at Clerkenwell and Shoreditch, and on being satisfied that the respondent could not be found, the respondent’s interest in the subject Property was vested in the applicant in accordance with S.50 of the Act.
5. The Tribunal considered the issue on the papers submitted by the applicant, without a hearing. A copy of the Tribunal’s standard Directions in missing landlord cases under S.50, and dated 7 October 2019, was not provided in the bundle by the applicant’s representative. From the file copy, they appeared to have been complied with.

6. The Tribunal's jurisdiction is derived from the vesting order issued by the Court on 24 July 2019. The Court referred the question of the 'premium payable', only, of the acquisition of the leasehold interest.

Statutory basis of valuation

7. Schedule 13 to the Act provides that the price to be paid by the applicant for a 90 year extension to the existing lease. Such premium to be made up of three parts in respect of the grant of the new lease (a) the diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 3; (b) the landlord's share of the marriage value as determined in accordance with paragraph 4, and (c) any amount of compensation payable to the landlord under paragraph 5."

Applicants' Case

8. The applicant provided a valuation report dated 30 October 2019 by Alison Stone BSc(hons) AssocRICS Registered Valuer, of McDowalls Ltd. Surveyors. (the "Valuation Report"). The report contains a formal Statement of Truth confirming that in so far as the facts stated in the report are within their own knowledge, that they believe them to be true. It includes a statement of compliance confirming that they understand their duty to this Tribunal.
9. Having considered the contents of the Valuation Report and the opinions expressed in that report the Tribunal is broadly satisfied that the method adopted is appropriate to determine the enfranchisement price for the Property. The Tribunal accepts the description of the property and its location as stated in the Valuation Report.
10. A photograph of the exterior of the Property was included in the Valuation Report. The Tribunal did not consider it necessary or proportionate to carry out an inspection of the Property.

Valuation

11. According to the Valuation Report, the Property is a large, four level maisonette, within a Victorian terraced building the remainder of which is a commercial ground floor shop with basement. The building is of traditional construction with brick walls and slated mansard roof. Accommodation comprises; ground floor entrance hall, living room and kitchen, bathroom/WC and bedroom, and two further bedrooms in the mansard roof. Totalling 105m². There is no off-street parking and restricted on-street parking. The maisonette occupies the entirety of a flying freehold situated over the ground and basement of 258 Bethnal Green Road. The Property is assumed to have been maintained in accordance with the lease terms. The Property is located on a busy

commercial through route the A1209, in the London Borough of Tower Hamlets.

12. At the valuation date of 29 April 2019, the unexpired residue of the original 99 year lease from 25 March 1987, was 66.90 years.
13. The valuer's assessment of the market value is based on evidence of completed sales of three local, comparable purpose-built flats. Although the number of sales was very small their particularly local and similar aspects were accepted by the Tribunal as sufficient to arrive at the long leasehold value of the Property.
14. The unadjusted leasehold sale prices in late 2018 and early 2019 for the 3 comparable maisonettes were: £382,000 for 66m² devaluing at £5788/m²; £445,000 for 83m² devaluing at £5361/m²; £507,000 for 80m² devaluing at £6,338/m². The comparables were all of local authority properties (unlike the subject property) in residential locations, whereas the subject property is on a busy main road and is situated immediately over commercial premises. The valuer equated the discount in value for each set of circumstances.
15. From this the valuer allowed a further 10% deduction to reflect the reluctance of the market to purchase a lease derived from a flying freehold title. The valuer concluded that the maisonette with a virtual freehold under the assumptions for purposes of lease extension process, was £478,000. (£531,111 less 10%, which equates to 103m² at £5156/m²). There were apparently no tenant's improvements, the value of which needed to be deducted from this. The valuer then made an addition of 1% to the £478,000 to obtain the freehold value, which came to £482,828, a standard approach for properties such as this, which the Tribunal accepts.
16. The value of the landlord's interest in the Property is represented first by the capitalised value of the ground rent receivable under their lease. That income stream is capitalised by the valuer at 7%, which the Tribunal accepts is robust and appropriate in a case where the rent is at a very low and fixed level. This produces a term value stated as £707.
17. The second element of the landlord's interest is the reversion to full vacant possession of the virtual (flying) freehold property of £482,826, but deferred some 66.90 years. The deferment rate adopted is 5% following Sportelli as referenced by the valuer. This produces a reversion value of £18,458. The Tribunal accepts the process adopted and the resulting figure.
18. The value of the landlord's present interest totals £19,165. However, as the lease is below 80 years unexpired, the leaseholder also has to pay half of the marriage value to the landlord as part of the lease extension.

The valuer having looked for sales of short leasehold flat leases found none for otherwise comparable local leasehold maisonette sales on and around the valuation date.

19. The valuer then fell back on a less satisfactory approach being by reference to some of the many graphs based on analysis of past leasehold transactions. In order to obtain the relative value of the existing short leasehold he considered the 2009 RICS graphs for Greater London & England, and an average of all those outside of PCL but on balance preferred the average of the Nesbitt and Co and the more recent Beckett and Kay (mortgage-dependent graph) from 2017. These combined showed £89.74%. The Tribunal accepts this relativity percentage adopted on this occasion in order to find the current short leasehold value for the Property and consequently the total marriage value release as the tenant must pay half of this to the landlord. The marriage addition payable was calculated by the valuer as £12,887.

20. The Tribunal accepts the valuation approach, the three elements to be calculated, the term, reversion and share of the marriage value and the individual and total sum stated by the valuer to be paid in his report. No additional sums fall due as part of the premium, other than these. The premium to be paid by the applicant for the 90 year lease extension in the Property is therefore **£31,823 (thirty-one thousand, eight hundred and twenty three pounds)**.

Name: Neil Martindale

Date: 19 November 2019

Appendix

Leasehold Reform Housing and Urban Development Act 1993

Schedule 13 (extract)

PREMIUM PAYABLE IN RESPECT OF GRANT OF NEW LEASE

Premium payable by tenant

2 The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate of—

- (a) the diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 3,
- (b) the landlord's share of the marriage value as determined in accordance with paragraph 4, and
- (c) any amount of compensation payable to the landlord under paragraph 5.

Diminution in value of landlord's interest

3(1) The diminution in value of the landlord's interest is the difference between—

- (a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease; and
- (b) the value of his interest in the flat once the new lease is granted.

(2) Subject to the provisions of this paragraph, the value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) is the amount which at the relevant 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 following assumptions—

- (a) on the assumption that the vendor is selling for an estate in fee simple or (as the case may be) such other interest as is held by the landlord, subject to the relevant lease and any intermediate leasehold interests;
- (b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;
- (c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and
- (d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which the relevant lease has effect or (as the case may be) is to be granted.

(3) In sub-paragraph (2) "the relevant lease" means either the tenant's existing lease or the new lease, depending on whether the valuation is for the purposes of paragraph (a) or paragraph (b) of sub-paragraph (1).

(4) It is hereby declared that the fact that sub-paragraph (2) requires assumptions to be made as to the matters specified in paragraphs (a) to (d) of that sub-paragraph does not preclude the making of assumptions as to other

matters where those assumptions are appropriate for determining the amount which at the relevant date any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) might be expected to realise if sold as mentioned in sub-paragraph (2).

(5) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

(6) The value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) shall not be increased by reason of—

(a) any transaction which—

(i) is entered into on or after the date of the passing of this Act (otherwise than in pursuance of a contract entered into before that date), and

(ii) involves the creation or transfer of an interest superior to (whether or not preceding) any interest held by the tenant; or

(b) any alteration on or after that date of the terms on which any such superior interest is held.

Landlord's share of marriage value

4(1) The marriage value is the amount referred to in sub-paragraph (2), and the landlord's share of the marriage value is 50 per cent. of that amount.

(2) Subject to sub-paragraph (2A), the marriage value is the difference between the following amounts, namely—

(a) the aggregate of—

(i) the value of the interest of the tenant under his existing lease,

(ii) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease, and

(iii) the values prior to the grant of that lease of all intermediate leasehold interests (if any); and

(b) the aggregate of—

(i) the value of the interest to be held by the tenant under the new lease,

(ii) the value of the landlord's interest in the tenant's flat once the new lease is granted, and

(iii) the values of all intermediate leasehold interests (if any) once that lease is granted.

(2A) Where at the relevant date the unexpired term of the tenant's existing lease exceeds eighty years, the marriage value shall be taken to be nil.

(3) For the purposes of sub-paragraph (2)—

(a) the value of the interest of the tenant under his existing lease shall be determined in accordance with paragraph 4A;

(aa) the value of the interest to be held by the tenant under the new lease shall be determined in accordance with paragraph 4B;

(b) the value of any such interest of the landlord as is mentioned in paragraph (a) or paragraph (b) of sub-paragraph (2) is the amount determined for the purposes of paragraph 3(1)(a) or paragraph 3(1)(b) (as the case may be); and
(c) the value of any intermediate leasehold interest shall be determined in accordance with paragraph 8, and shall be so determined as at the relevant date.

4A(1) Subject to the provisions of this paragraph, the value of the interest of the tenant under the existing lease is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with neither the landlord nor any owner of an intermediate leasehold interest buying or seeking to buy) on the following assumptions—

(a) on the assumption that the vendor is selling such interest as is held by the tenant subject to any interest inferior to the interest of the tenant;

(b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;

(c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and

(d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which any interest inferior to the existing lease of the tenant has effect.

(2) It is hereby declared that the fact that sub-paragraph (1) requires assumptions to be made in relation to particular matters does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date the interest of the tenant under his existing lease might be expected to realise if sold as mentioned in that sub-paragraph.

(3) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

(4) Subject to sub-paragraph (5), the value of the interest of the tenant under his existing lease shall not be increased by reason of—

(a) any transaction which—

(i) is entered into after 19th January 1996, and

(ii) involves the creation or transfer of an interest inferior to the tenant's existing lease; or

(b) any alteration after that date of the terms on which any such inferior interest is held.

(5) Sub-paragraph (4) shall not apply to any transaction which falls within paragraph (a) of that sub-paragraph if—

(a) the transaction is entered into in pursuance of a contract entered into on or before the date mentioned in that paragraph; and

(b) the amount of the premium payable by the tenant in respect of the grant of the new lease was determined on or before that date either by agreement or by a leasehold valuation tribunal under this Chapter.

4B(1) Subject to the provisions of this paragraph, the value of the interest to be held by the tenant under the new lease is the amount which at the relevant date that interest (assuming it to have been granted to him at that date) might be expected to realise if sold on the open market by a willing seller (with the owner of any interest superior to the interest of the tenant not buying or seeking to buy) on the following assumptions—

(a) on the assumption that the vendor is selling such interest as is to be held by the tenant under the new lease subject to the inferior interests to which the tenant's existing lease is subject at the relevant date;

(b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;

(c) on the assumption that there is to be disregarded any increase in the value of the flat which would fall to be disregarded under paragraph (c) of sub-paragraph (1) of paragraph 4A in valuing in accordance with that sub-paragraph the interest of the tenant under his existing lease; and

(d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which any interest inferior to the tenant's existing lease at the relevant date then has effect.

(2) It is hereby declared that the fact that sub-paragraph (1) requires assumptions to be made in relation to particular matters does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date the interest to be held by the tenant under the new lease might be expected to realise if sold as mentioned in that sub-paragraph.

(3) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

(4) Subject to sub-paragraph (5), the value of the interest to be held by the tenant under the new lease shall not be decreased by reason of—

(a) any transaction which—

(i) is entered into after 19th January 1996, and

(ii) involves the creation or transfer of an interest inferior to the tenant's existing lease; or

(b) any alteration after that date of the terms on which any such inferior interest is held.

(5) Sub-paragraph (4) shall not apply to any transaction which falls within paragraph (a) of that sub-paragraph if—

(a) the transaction is entered into in pursuance of a contract entered into on or before the date mentioned in that paragraph; and

(b) the amount of the premium payable by the tenant in respect of the grant of the new lease was determined on or before that date either by agreement or by a leasehold valuation tribunal under this Chapter.

Compensation for loss arising out of grant of new lease

5(1) Where the landlord will suffer any loss or damage to which this paragraph applies, there shall be payable to him such amount as is reasonable to compensate him for that loss or damage.

(2) This paragraph applies to—

(a) any diminution in value of any interest of the landlord in any property other than the tenant's flat which results from the grant to the tenant of the new lease; and

(b) any other loss or damage which results therefrom to the extent that it is referable to the landlord's ownership of any such interest.

(3) Without prejudice to the generality of paragraph (b) of sub-paragraph (2), the kinds of loss falling within that paragraph include loss of development value in relation to the tenant's flat to the extent that it is referable as mentioned in that paragraph.

(4) In sub-paragraph (3) "development value", in relation to the tenant's flat, means any increase in the value of the landlord's interest in the flat which is attributable to the possibility of demolishing, reconstructing, or carrying out substantial works of construction affecting, the flat (whether together with any other premises or otherwise).