



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

Case Reference	:	RC/LON/00AH/OCE/2019/0249
Property	:	4 Laurier Road, Croydon, Surrey, CR0 6JQ
Applicant	:	Tracey Brown (leaseholder)
Representative	:	Rose & Rose LLP (solicitors)
Respondents	:	Innocent Chijioke Kafor (landlord)
Type of Application	:	Determination of terms of lease extension (missing landlord)
Tribunal Members	:	N Martindale FRICS
Date of Decision	:	4 March 2020

DECISION

Decision of the Tribunal

1. The premium to be paid by the applicant for the lease extension of the First Floor flat at 14 Laurier Road, Croydon, CR0 6JQ. registered at HM Land registry under title number SGL197177 (the "Property") is **£31,869**. The draft deed of surrender and re-grant attached as an appendix to the applicant's bundle, is approved except for the Premium stated therein. Back dated ground rents of **£567.74** are to be paid on completion.

Introduction

2. This is an application made under Section 50 and 51 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the premium to be paid and the terms of an acquisition of an extension to the leasehold interest in the Property. The relevant legal provisions are set out in Appendix to this decision.
3. The Property is a first floor flat, being the upper level of a two-storey building, itself formerly a house, in a terrace of similar houses. The lower floor flat constitutes a separate dwelling. The whole Property dates from the 1900’s, the flat conversion appears to be from the 1970’s.
4. The applicant is the long leaseholder of the Property holds their interest under the terms of a lease dated 28 January 1975 registered under title number SGL197177. That lease was granted by Innocent Chijioke Kafor to Peter George Joyce and Margaret Potter for a term of 99 years from 24 June 1974. The lease reserves a fixed ground rent of £25 pa. The residual term of the lease is now vested in the applicant, registered as leasehold proprietor on 3 January 1997.
5. The registered freehold proprietor of the Property is the respondent, Innocent Chijioke Kafor. They were registered as such under title number SGL58054 on 18 December 1972.
6. By order made by District Judge Hartley on 9 December 2019 and on the Court being satisfied that the respondent could not be found, the respondents’ interest in the subject Property was vested in the applicant in accordance with section 50 of the Act.
7. It was further ordered that service by the applicants of a notice under section 49 of the Act was dispensed with and that the proceedings were to be transferred to this Tribunal for a determination of the terms of the new lease, from the respondent.
8. The Tribunal considered the issue on the papers submitted by the applicants, without a hearing, in accordance with directions issued on 19 December 2019. The case was to be determined in the week commencing 19 February 2019. The paper submissions were reviewed by the Tribunal on 27 January 2020 and were found to contain a number of deficiencies. The Tribunal requested a revised valuation report to be submitted by 21 February 2020.
9. The Tribunal’s jurisdiction is derived from the order made by the court on 9 December 2019.

Statutory basis of valuation

10. Part 2, Schedule 13 to the Act provides that the price to be paid by the leaseholder, the applicant for the new leasehold interest where there is no intermediary head leaseholder, applies here.
11. The premium payable in respect of the grant of a new lease is the total 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.
12. The diminution is: 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.
13. Paragraph 4 of the Schedule, as amended, provides that the freeholder's share of the marriage value is to be 50%, and that any marriage value is to be ignored where the unexpired term of the lease exceeds eighty years at the valuation date. Here it is included as the unexpired term is less than eighty years.
14. Paragraph 5 of the Schedule provides for the payment of compensation for other loss resulting from the enfranchisement.

Evidence

15. The applicants have provided a revised valuation report dated 18 February 2020 by Roshan Sivapalan of Blakes Chartered Surveyors ("Valuation Report").
16. Having considered the contents of the Valuation Report and the opinions expressed by the valuer, the Tribunal is broadly satisfied that the method adopted is appropriate to determine the premium for the new lease for the Property. The Tribunal accepts the description of the Property and its location as stated.
17. 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

18. The first floor flat consists of hallway, living room, 1 bedroom, bathroom, and kitchen. It also has a share of the rear garden.
19. Entry to the flat (and the ground floor flat) is via the small front garden path. There is no shared internal hallway as it has been sub-divided as part of the conversion.
20. It is not stated in the Valuation Report whether the flat has replacement UPVC double glazed windows and/or full gas fired central heating. From the photographs to the report the Property appears to have a double pitched tiled main roof. *“The internal décor fixtures and fittings are of reasonable quality although considered in slightly dated decorative order although in compliance with the repair and maintenance obligations of the lease.”* There was no note of any ‘significant improvements’ made by the tenant and therefore no specific discount was made from the long leasehold market value.
21. The valuation date prescribed by section 27(1) of the Act is the date of the tenant’s application to the court namely 18 September 2019. The unexpired residue of the lease for the Property is 53.84 years.
22. The Valuation Report assessment of the market value of the Property is based on evidence of completed sales of four comparables and with reference to the marketing attempts to sell a fifth - the flat at 4a Laurier Road, beneath the Property. It did not sell. Three of the comparables had shares of the freehold. All are within a quarter of a mile. One flat was first floor, the rest ground floor, but there was no evidence of a distinct local market differential between lower and upper floors. The overall local sales market was considered flat for all comparables so no adjustment was required for timing between them and the Property valuation date. The valuer adopts a long leasehold value for the Property of £240,000.
23. The Tribunal is satisfied with the relevance and detail of all comparable property sales provided in the Valuation Report. The Tribunal accepts the valuer’s analysis and assessment of each in the opinion of the value of new long lease of the Property.
24. The Tribunal notes and accepts the 1% adjustment by the valuer in uplifting the long lease value to its notional freehold value of £242,400.
25. The valuer having considered the RICS published graphs of relativity, which for an unexpired term of 53.84 years shows an average of 80.00% from the published graphs for Greater London and England.

The valuer duly applies this percentage relativity to the virtual freehold value of the Property. The valuer makes no case for 'no rights' discount. The Tribunal accepts the case as stated.

26. The diminution in the value of the landlord's interest in the tenant's flat is represented first by the capitalised value of the ground rent receivable under the lease. That small income stream is capitalised by the valuer at 7%, which the Tribunal accepts is appropriate in this case owing to the low, fixed, modest ground rent.
27. Next, the effect of the lease extension will deprive the landlord of the property for a further 90 years in addition to the current unexpired term. The present value of that delayed reversion is determined by applying a deferment rate to the freehold value of the flat. 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. The valuer also adopts the Sportelli deferment rate of 5% which the Tribunal accepts.
28. The marriage value is to be shared equally between the parties, as required by the Act.
29. The Tribunal accepts the valuation for the Property, as produced by valuer and in particular their final opinion of value as expressed in their Valuation Report. The Tribunal has therefore not produced its own.
30. The premium to be paid by the applicant for the new lease of the Property is therefore **£31,869**. (Thirty one thousand eight hundred and sixty nine pounds).
31. The draft deed of surrender and re-grant attached as an appendix to the applicant's bundle, is approved except for the proposed Premium stated therein. The applicant's representative Rose and Rose LLP Solicitors, may complete and register the transaction.
32. The application stated that the landlord had not demanded and the applicant had not paid ground rent of £25pa, from commencement of their tenure, to issue of claim, 22 years, 259 days; **£567.74**.
33. The Tribunal notes that the Court order dated 9 December 2019 required the landlord to pay the applicant's costs of **£1,500**. Such sum may be deducted from the other sums above, on completion.

Name: N Martindale FRICS Date: 4 March 2020

Appendix

Leasehold Reform, Housing and Urban Development Act 1993

S.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) The court shall not make an order on any application under subsection (1) or (2) unless it is satisfied—

(a) that on the date of the making of the application the tenant had the right to acquire a new lease of his flat; and

(b) that on that date he would not have been precluded by any provision of this Chapter from giving a valid notice under section 42 with respect to his flat.

(4) Before making any such order the court may require the tenant to take such further steps by way of advertisement or otherwise as the court thinks proper for the purpose of tracing the person in question; and if, after an application is made for a vesting order under subsection (1) and before any lease is executed in pursuance of the application, the landlord is traced, then no further proceedings shall be taken with a view to a lease being so executed, but (subject to subsection (5))—

(a) the rights and obligations of all parties shall be determined as if the tenant had, at the date of the application, duly given notice under section 42 of his claim to exercise the right to acquire a new lease of his flat; and

(b) the court may give such directions as the court thinks fit as to the steps to be taken for giving effect to those rights and obligations, including directions modifying or dispensing with any of the requirements of this Chapter or of regulations made under this Part.

(5) An application for a vesting order under subsection (1) may be withdrawn at any time before execution of a lease under section 51(3) and, after it is withdrawn, subsection (4)(a) above shall not apply; but where any step is taken (whether by the landlord or the tenant) for the purpose of giving effect to subsection (4)(a) in the case of any application, the application shall not afterwards be withdrawn except—

(a) with the consent of the landlord, or

(b) by leave of the court,

and the court shall not give leave unless it appears to the court just to do so by reason of matters coming to the knowledge of the tenant in consequence of the tracing of the landlord.

(6) Where an order has been made under subsection (2) dispensing with the need to give a copy of a notice under section 42 to a particular person with respect to any flat, then if—

(a) a notice is subsequently given under that section with respect to that flat, and

(b) in reliance on the order, a copy of the notice is not to be given to that person,

the notice must contain a statement of the effect of the order.

(7) Where a notice under section 42 contains such a statement in accordance with subsection (6) above, then in determining for the purposes of any provision of this Chapter whether the requirements of Part I of Schedule 11 have been complied with in relation to the notice, those requirements shall be deemed to have been complied with so far as relating to the giving of a copy of the notice to the person referred to in subsection (6) above.

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—

(a) is in a form approved by a leasehold valuation tribunal, and

(b) 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.