



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

Case Reference : **LON/00AJ/OLR/2018/0616**

Property : **4 Shirley Gardens, London W7 3PT**

Applicant : **Cossar Sohail**

Representative : **Tolhurst Fisher LLP**

Respondent : **David John Phillips (1)
Lydia Julia Phillips (2)
Gareth David Johnson (3)**

Representative : **N/A**

Type of Application : **S50/51 Leasehold Reform Housing
and Urban Development Act 1993,
Missing Landlord**

Tribunal Members : **P M J Casey MRICS**

**Date and venue of
Hearing** : **Paper hearing on 18 June 2018
10 Alfred Place, London WC1E 7LR**

Date of Decision : **23 June 2018**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the premium payable on the grant of a new lease of the first floor flat at 4 Shirley Gardens, London W7 3PT (“the property”) is the sum of £27,825.
- (2) The tribunal makes the determinations as set out under the various headings in this decision

The application

1. The applicant seeks a determination by the tribunal pursuant to an order made under the provisions of S50(1) of the Leasehold Reform Housing and Urban Development Act 1993 (“the Act”) by Deputy District Judge Waschkuhn sitting at the County Court at Brentford on 20 April 2018 of the premium to be paid into Court and other terms on the grant of a new lease of the property under the relevant provisions of the Act.
2. The order was made in response to a claim made to the Court on 15 January 2018 by Tolhurst Fisher LLP on behalf of the applicant in which it was said that the applicant was entitled to acquire a new lease of the property under the provisions of the Act but had been unable to exercise the right by serving the requisite notice under S42 on the landlords because their whereabouts were unknown.

The hearing

3. In response to the tribunal’s directions which provided for a determination on the papers to be submitted, the applicant’s solicitors provided a bundle of documents including a valuation report dated 25 May 2018 for use in tribunal proceedings addressed to the tribunal and prepared by Mike Stapleton FRICS of Mike Stapleton & Company. The report contained the requisite declarations required of a Surveyor acting as an expert witness.
4. The Tribunal considered the hearing bundle on 18 June 2018. No inspection of the property was deemed necessary given the description included in the report.

The evidence

5. From Mr Stapleton’s description of the property it is a self-contained flat on the ground floor of a former two-storied terraced house dating from circa 1900 which has been converted into two flats. It comprises two rooms, kitchen and bath/wc. There is a garden to the rear. No want of

repair is noted in the report and no tenant's improvements the additional value of which falls to be disregarded are claimed.

6. The property is held on a 99 year lease from 21 October 1983 subject, at the valuation date, to a ground rent payment of £75.00 per annum which rises to £100 per annum after the 66th year of the term has elapsed.
7. At the Valuation Date, 15 January 2018, the lease had 64.76 years unexpired.
8. Mr Stapleton provides market evidence for the extended lease value of the property as at the Valuation Date by reference to three transactions involving similar properties at around that time the details of which are provided in the report. He makes adjustments to the sale prices achieved by two of these properties to reflect the time difference between sale dates and the valuation date using Land Registry data. From this evidence he forms the opinion that an extended leasehold/share of freehold interest in the subject property would be worth £361,250.
9. To capitalise the ground rent income for the unexpired term of the existing lease in his valuation of the existing freehold interest in the property he adopts a rate of 7% and he defers the reversion on the expiration of the existing lease term at 5%.
10. To calculate the marriage value and the landlord's entitlement to 50% thereof he has assessed the value of the existing lease term in the property, disregarding the value of the rights conferred by the Act, by reference to what are generally referred to as graphs of relativity. He refers to the five graphs relating to outer London/England which were published in an RICS report into graphs of relativity. Averaging these suggests to him that in a "no Act world" the existing lease term would have a value of 89.15% of the freehold value for what he calculates as an unexpired term of 64.76 years.
11. His valuation attached to his report produces a premium of £27,825.

The decision

12. The tribunal is satisfied that Mr Stapleton's valuation of the extended leasehold/share of freehold interest is supported by the evidence he provides in his report.
13. Mr Stapleton's use of a 7% rate to capitalize the passing ground rent and of 5% to defer the value of the reversion at the term date is also perfectly proper and accepted by the tribunal.

14. In the absence of sales evidence the use of so called graphs of relativity is a common practice and the five graphs referred to by Mr Stapleton are invariably used in any case outside the prime central London area because practitioners argue that the outer London market is less sophisticated and higher relativities result though none seem able to explain why lease length per se should affect values in different locations in this way. The graphs referred to all have their individual flaws and taking an average does not make them more reliable. In the tribunal's experience whenever market evidence is introduced lower relativities result. However this is the only evidence before the tribunal and is a commonly adopted approach and is unlikely in this case to have resulted in any significant undervaluation of the premium payable. In the circumstances the tribunal approves the premium proposed of £27,825.
15. It is confirmed there are no outstanding demands for ground rent or service charges which have been lawfully demanded and have not been paid.
16. The County Court Order of 20 April 2018 required that the tribunal determines the terms of the said new lease and the premium payable The tribunal has been provided with a draft of the deed of surrender and re-grant in the bundle. The proposed terms are agreed save that a specific statement to the effect that no long lease created immediately or derivatively by way of sub-demise under the new lease will confer on the sub-tenant any rights under Part II of the Act. This would best be incorporated at Recitals paragraph G. The amended draft should be submitted to the County Court for execution.

Name: Patrick M J Casey

Date: 23 June 2018

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).