



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

Case Reference : **CAM/00MG/OLR/2019/0083**

Property : **Flat A, 206 Church St.,
Wolverton, Milton Keynes
MK12 5JT**

Applicant : **Jenna Christine Simpson**

Representative : **JMW Solicitors LLP**

Respondent : **Christopher Edward Helliar**

Type of Application : **Determination of terms of lease
extension (missing landlord)**

Tribunal Members : **Mr N Martindale FRICS**

Date of Decision : **26 July 2019**

DECISION

Decision

The premium to be paid by the applicants for the lease extension for Flat A, 206 Church St., Wolverton, Milton Keynes MK12 5JT (the Property) under HM Land Registry title number BM171020 is **£9,513**. The draft deed of surrender and re-grant, attached at Tab 12 as an appendix to the applicant's bundle, is approved.

Introduction

1. 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.
2. The Property is on two levels being a ground and lower ground two bedroom flat or maisonette of a three storey building. The building was originally a three storey late Victorian terraced house. The upper floor is a separate flat. The whole Property dates from the 1890’s, and the current residential conversions into separate flats from the early 1990’s.
3. The Applicant is the long leaseholder of the Property and holds her interest under the terms of a lease dated 20 March 1992, registered under title number BM171020. That lease was granted by the respondent to Gary John Smart for a term of 99 years from 11 October 1991. The lease reserves a fixed ground rent of one peppercorn. The residual term of the lease is now vested in the applicant, registered as leasehold proprietor on 14 March 2008.
4. The registered freehold proprietor of the Property remains unchanged from the landlord at the grant of this lease and is the respondent. He was registered as such under title number BM150813 on 27 June 1990.
5. By order made by District Judge Kanwar on 18 March 2019 and on the court being satisfied that the respondent could not be found, the matter was referred to this Tribunal for determination of the terms of a lease extension under S.51(5); that following this the Applicant will surrender her lease and a new lease will be granted. The Tribunal approves the form of surrender and renewal, however as the applicant has not named a specific solicitor who will execute the lease, the Tribunal refers this case back to the Court so that the new lease will be executed by a Judge of the County Court, in accordance with S.5(3) of Leasehold Reform Housing and Urban Development Act 1993.
6. The Tribunal considered the issue on the papers submitted by the applicants, without a hearing, in accordance with directions issued on 5 June 2019. The case was to be determined in the week commencing 22 July 2019.
7. The Tribunal’s jurisdiction is derived from the order made by the court on 18 March 2019.

Statutory Basis

8. 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.
9. 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.
10. 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.
11. 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.
12. Paragraph 5 of the Schedule provides for the payment of compensation for other loss resulting from the enfranchisement.

Evidence

13. The applicant provided a valuation report dated 26 February 2018, by Zahid Azeem BA MSc MRICS of Scrivener Tibbatts Chartered Surveyors of Wimbledon London SW 19 7ND ("Valuation Report").
14. Having considered the contents of the Valuation Report and the opinions expressed by the Valuer, the Tribunal is 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.
15. A photograph of the front 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

16. The ground and lower ground floor flat at 206 Church St. Wolverton MK12 5JT, consists of: A communal ground floor entrance door and

hallway, leading into the ground floor dining room of the flat, kitchen, and separate WC; and then down to a hallway, bathroom/WC and two bedrooms. GIA is 73.9m². The flat has access to the rear garden and side return land. Entry to the communal hallway is via a short front path. There is no off street parking or garage. The flat has UPVC windows mostly double glazed and full gas fired central heating. No tenant's improvements have been identified.

17. The valuation date prescribed by section 51(1) of the Act is the date of the applicants' application to the court namely 6 July 2018. The unexpired residue of the lease for the Property is 72.26 years.
18. The Valuer's assessment of the market value of the flat is based on evidence of completed sales of six, 2 bedroom comparables, being a terraced freehold house, two lower ground and lower ground floor maisonettes and three flats. The maisonettes and flats have long or very long unexpired leases. All are within a 0.5 mile. The sales are from September 2016 to March 2018 and are time adjusted to the valuation date by the HMLR sales price index for flats, relevant to Wolverton.
19. Although there is a relatively wide range in value from approximately £128,000 for the smallest two bedroom flat to £199,000, the sales are weighted at 10% to 15%. However there is a particularly relevant sale of a two level two bedroom converted flat at 76 Aylesbury St. with very similar accommodation which sold 11 April 2008 for £164,406 very near the AVD. It is duly accorded a much higher 40% weighting. From an average of these weighted sales the Valuer adopts a long leasehold value for the Property of £165,000.
20. The Tribunal is satisfied with the relevance and detail of the six comparable property sales provided in the Valuation Report and weighting accorded. It accepts the Valuer's analysis of each in the assessment of the value of new long lease of the Property.
21. The Tribunal notes and accepts the 1% adjustment by the Valuer in uplifting the long lease value to its notional freehold value.
22. As for relativity between short and long leasehold values for the unexpired term, the Valuer considered the Gerald Eve graph which showed 88.3% but which he stated was 2-3% below the relativities found in this location well outside London. He also took and averaged the RICS published graphs of relativity for Greater London and England and these showed 92.42%. but narrowed this down to three graphs Gerald Eve, Nesbitt & Co and Andrew Scott Robertson particularly relevant to this location on the South East fringes, whose collective average showed 90.5%. He also referenced the UT decision in Sloane Stanley and Munday where the Gerald Eve graph had been concluded as overstating relativities by 2 to 3 %. Taking an overall view

he concluded therefore that 90.5% was a fair relativity reflecting the location. The Tribunal accepts this conclusion here.

23. The diminution in the value of the landlord's interest in the tenants' maisonette is represented first by the capitalised value of the ground rent receivable under their lease. However as this is simply a peppercorn, there is no income and hence nil value to the term.
24. 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% for this flat, which the Tribunal accepts.
25. The marriage value is to be shared equally between the parties, 50:50 as required by the Act.
26. The Tribunal accepts the valuation for the property, as produced by the Valuer and in particular his final opinion of value of £9,513 as expressed in his Valuation Report. The Tribunal has therefore not produced its own valuation.
27. The premium to be paid by the applicant for the new lease of the Property is therefore **£9,513, (Nine Thousand Five Hundred and Thirteen Pounds)**.

Name: Neil Martindale FRICS Date: 26 July 2019

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.