



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

**Case Reference** : **CAM/00KF/OLR/2022/0133  
P:PAPERREMOTE**

**Property** : **319 Westborough Road Westcliff on  
Sea Essex SS9 9PU**

**Applicants** : **Joanne Dron**

**Representative** : **Giles Wilson LLP**

**Respondent** : **Lawrence Philogene**

**Representative** : **None**

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

**Tribunal Members** : **Evelyn Flint DMS FRICS**

**Date and venue of  
Hearing** : **20 June 2023  
Remote hearing on the papers**

**Date of Decision** : **20 June 2023**

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**DECISION**

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This has been a remote hearing which has been consented to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing

was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal were referred to are in a bundle, the contents of which have been noted. The order made is described below.

### **Decision**

1. The premium payable is £26,900 (twenty six thousand nine hundred pounds). The proposed Deed of Surrender and grant of a New Lease is approved subject to the amendments at paragraph 18 below. The case is remitted to the Southend County Court under Claim Number H00SS401.

### **Background**

2. This case relates to an application made under section 50 of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) for a determination of the price to be paid for a statutory lease extension of a flat and garden held under a lease, where the landlord is missing. The application was made in the Southend County Court on 6 January 2022. The case was transferred to this Tribunal to determine the terms of the new lease and the price by District Judge Mills on 18 October 2022.
3. Initially the bundle contained a short report on the market value of the property as at 10 July 2020 which clearly did not accord with either the tribunal's Directions dated 19 December 2022 or the requirements of the Act. A second report dated 10 March 2023 was submitted by Brown and Brand which again did not comply with the tribunal's Directions or the requirements of the Act since it was a current valuation, reflected the poor condition of the flat and ignored the ground rent on the basis that the landlord had not demanded it. There was no reference to any comparables, no consideration of marriage value or extended lease value. It was not clear to the Tribunal whether this was due to the surveyor not having been instructed to provide the appropriate valuation and support for his valuations. This resulted in additional work for the tribunal and a delay in reporting back to the county court.
4. After further Directions were issued, the Tribunal was provided with a report and valuation dated 12 May 2023 prepared by Mr Mike Stapleton FRICS of Mike Stapleton and Company. The report included statements confirming that he had complied with the requirements of the rules, protocols and directions of the tribunal and his duty to the Tribunal as an expert witness; the report complied with Royal Institution of Chartered Surveyors Practice Statement: Surveyors Acting as Expert Witnesses.

### **Evidence**

5. The Tribunal considered the valuation report of Mr Stapleton in which he described the property, provided brief details of his comparables, method of adjusting the sales evidence, reasons for adopting the capitalisation and deferment rates which he had adopted together with his approach to relativity.
6. The property is a ground floor flat in a converted two storey terrace house located in a residential area comprising dwellings of a similar age and character close to local amenities.
7. The flat is self-contained with its own ground floor entrance and comprises three rooms, kitchen and bathroom/wc. The windows are uPVC double glazed, the flat has gas fired boiler central heating via radiators. The front and part of the rear garden are demised with the flat.
8. The flat is subject to a lease for a term of 99 years from 1 September 1986 at £50 pa for the first 33 years of the term, £100 for the next 33 years and £150 pa for the remainder of the term. There were 63.65 years unexpired at the valuation date.
9. Mr Stapleton stated that there were no tenant's improvements to be taken into account in the valuation.
10. He adopted a capitalisation rate of 6% based on agreements reached with other chartered surveyors where the ground rent income was modest and a deferment rate of 5% based on the Sportelli decision.
11. He relied on sold prices for four comparables nearby to arrive at the value of the extended lease. He had adjusted the sales prices using with the Land Registry flat price index for the City of Southend on Sea. On the basis of the comparables he had calculated the value of the extended lease of the subject premises at £219,000.
12. He stated that, as he had not been able to find any sales of short leases similar in length to the 63.65 years unexpired at the subject property, *“following the 2019 Upper Tribunal decision in Trustees of The Barry and Peggy High Foundation v Zucconi there has been acceptance in the outer London areas to follow this decision, as a basis for determining relativity. It is controversial because the resultant premiums are now somewhat higher than they had been hitherto this decision. However, in the absence of any other persuasive guidance or market evidence to demonstrate the relativity, for the moment, this approach has become the industry standard. The resultant relativity is 80.72% and this is the relativity I have adopted for the purpose of my calculations.”* Therefore, he had adopted a relativity of 80.72%; the short leasehold value was calculated to be £176,777.
13. His valuation which was included in the report produced a premium of £28,889.82, say £26,900.

## **Decision**

14. **Valuation date.** The valuation date is 6 January 2022, the date of service of the claim. The unexpired term at the valuation date is 63.65 years.
15. **Valuation of the extended lease.** The tribunal accepts the value proposed of £219,000 based on the comparable evidence provided.
16. **Valuation of existing lease.** The tribunal adopts a valuation of £176,777 based on 80.72% of the freehold value as no market evidence was available.
17. **Capitalisation and Deferment Rate.** The Tribunal accepts the capitalisation rate of 6% and deferment rate of 5%.
18. **Enfranchisement Price.** The Tribunal determines the premium to be paid at £26,900.
19. **Terms of the Lease.** The new lease is approved subject to the premium of £26,900 being inserted and the removal of HMCTS Property Chamber Eastern Residential Property First-tier tribunal is removed from the Deed of Surrender and Grant of a New Lease as this aspect will be dealt with by a Judge of the Southend on Sea County Court.

Evelyn Flint

20 June 2023

### **RIGHTS OF APPEAL**

1. 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.
2. 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.
3. 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.

4. 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.

