



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

Case Reference : **CAM/00KF/OLR/2024/0616**

Property : **Flat 208a Sutton Road,
Southend on Sea,
Essex SS2 5ES**

Applicant : **Amanda Angela Davis &
Stephen Braybrook
(Leaseholders)**

Representative : **Paul Robinson LLP
(Solicitors)**

Respondent : **John Ali
(Missing Landlord)**

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

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

Date of Decision : **22 May 2025**

DECISION

Decision

1. The premium to be paid by the applicants for the lease extension at the Property under HM Land Registry leasehold title number **EX395905** is **£27,343 (Twenty seven thousand two hundred and forty three pounds)**. The Tribunal approves the draft terms of the new lease in substitute for the previous, attached to the bundle.

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 single level flat on the ground floor. There is access from the ground floor entrance. It forms part of a former 2 level late Victorian mid-terraced house. The ground floor contains a separate flat with side street level entrance. The Property has a rear garden and obtains access over a short front path from the back edge of the street. There is no off street vehicle parking.
4. The Applicants are the long leaseholders of the Property. They hold their interest under the terms of a lease dated 25 November 1988, for 99 years taken to be from 25 November 1988, registered under leasehold title EX395915. That lease was granted by the respondent to Brian and Janice Dear. It was let for 99 years from 25 December 1987. A ground rent was payable at £50pa for the first 33 years; £100pa for the next 33 years; and £200 pa for the last 33 years. The residual term of the lease is now vested in the applicants, registered as leasehold proprietors on 17 March 2022, when they paid £176,490 for the remaining short leasehold term.
5. The registered freehold proprietor of the Property at grant was the respondent and remains the notional landlord as registered owner of freehold. A copy of the current freehold title EX120540 was provided to the Tribunal. He has not been traced.
6. By order made by Deputy District Judge Mark Brent Hatzler JP issued on 18 October 2024, on the Court being satisfied that the respondent could not be found, the matter was referred to this Tribunal for determination of the premium, and approval of the draft lease variation, for a lease extension under S.51(5): That following this the Applicant will receive a varied lease with among matters the extended term and nominal rent in return for the premium.
7. The Tribunal's jurisdiction is derived from the order made by the Court on 18 October 2024. The Tribunal considered the issue on the papers submitted by the applicants, without a hearing, in accordance with standard Directions though the applicant did not include a copy of the actual Directions issued, in the bundle. The case was to be determined in the week commencing 22 May 2025.

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 an expert witness report concerning value of the premium to be paid. The Valuation report is dated 5 June 2024 from James Buck AssocRICS, RICS Registered Valuer of Project and Co. No.11989041 of Office 10, Fanton Hall Farm, Wickford SS12 9JF.
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 Property at Flat No.208a Sutton Road, Southend on Sea Essex SS2 5ES consists of a single level, ground floor level and entrance. Access is over the small front garden by way of a path from the back edge of the pavement. Accommodation comprises GF: Entrance hall, living room, bedroom, bathroom, dining room/ second bedroom, kitchen. The property is essentially a two bedroom or three room flat; not a one bedroom or two room flat as stated in the Report.

17. With 66m² or 710 ft² GIA, the Property has three rooms, kitchen, bathroom/WC. The plastic framed double glazing windows. It is not asserted that these or any other features are tenants improvements and nothing is presented as giving rise to an increase in value which should be deducted from the capital value at the AVD.
18. All mains services were said to be connected or available. There was no reserved or off street parking. The Property is assumed to have full gas fired central heating.
19. The valuation date prescribed by section 51(1) of the Act is the date of the applicants' application to the County Court namely 3 June 2024. Although this was only a little more than two years after the applicants bought the Property (March 2022) for £176,490 this transaction is not mentioned in the Report (other than in the HMLR title), nor is it otherwise distinguished, or an explanation offered as to why it was not taken into account with due weighting. The unexpired residue of the lease for the Property is 62.55 years at the AVD.
20. The Valuer's assessment of the market value of the flat is based on evidence of completed sales of six, one bedroom (two room) comparables. All are smaller, indeed some much smaller than the Property, one at 40m² less than two thirds of the size of the Property. The Tribunal is puzzled as to why two bedroom (three room) flats were not considered, indeed as The Report states (bundle p.83) *"The subject property benefits from a Gross Internal Area GIA of 66sqm (710sqft) based on the EPC which is substantially larger than all size comparables reviewed (ranging from 40 to 57 sqm). At a market value of £155,000 this equates to an implied rate of £218 sqft which is significantly below the range observed in the comparables (£253 to £347 psf). This low unit rate reflects key qualitative factors affecting the subjects marketability."*
21. At this point the Tribunal would have expected reference to and an explanation of, the evidence less than a year (March 2022), earlier than the oldest comparable offered (Feb 2023), but there is no mention. On the face of it the sale at £176,490 (on 710'GIA is £249/ft²) for the short lease then of around 65 years (March 2022) should give an indication at least, of the minimum value for short leasehold value at the AVD some two years later or an explanation distinguishing the value of this evidence but, no commentary is to be found.
22. The comparables provided in The Report all appear to be later conversions (1970's and 1980's particularly) of former two storey houses in similar streets of older generally late Victorian or early Edwardian houses, in this part of Southend. It was reported that these comparable flats generally have long or very long unexpired leases at low or nominal ground rents but no HMLR extracts, nor agent sales particulars were provided as is generally Directed. The Report did

contain a large amount of generalised data to which no substantive reference was made in the body which the Tribunal found of little assistance in the exercise.

23. **No.1 105 Milton Road, Southend SS2 5BU** sold for £172,000, February 2023. Good condition, 121 years left. The Property is in a building of similar age, condition and construction. It was also converted into smaller units from the former terraced house. This flat 46m²/ **495 ft²** GIA, ground floor and has 2 rooms, kitchen and bathroom/WC. No mention of allocated or off street parking. This devalues to **£347/ft²**.
24. **No.2 140a Bournemouth Park Road Southend SS2 5LT** sold for £148,750, August 2023. Dated condition, 122 years left. This first floor flat 40m² / **431ft²** GIA, has 2 rooms, kitchen and bathroom/WC. There is a parking space in part of the rear garden. It is in a former end terrace house at a busy road junction with Central Avenue. This devalues to **£345/ft²**.
25. **No.3 105a Central Avenue Southend SS2 4DY** sold for £160,000, January 2024. Fair condition, 110 years left. This first floor flat 48m²/ **517ft²** GIA, has 2 rooms, kitchen and bathroom/WC. Also in a busy street with a small garden as at the Property. It is in a building of similar age, condition and construction. This devalues to **£309/ft²**.
26. **No.4 44 St. Anns Road Southend SS2 5AW.** It sold for £163,000, April 2024. Good condition, 157 years left. This ground floor flat 48m²/ 517ft² GIA, has 2 rooms, kitchen and bathroom/WC. This devalues to **£315/ft²**.
27. **No.5 91a York Road Southend SS1 2DL.** It sold for £155,000, May 2024. Good condition, 149 years left. This ground floor flat 57m²/ 613ft² GIA, has 2 rooms, kitchen and bathroom/WC. This devalues to **£253/ft²**.
28. **No.6 109b Rylands Road Southend SS2 4LL.** It sold for £160,000, March 2024. Average condition, 149 years left. This ground floor flat 50m²/ 538sqft GIA has rooms, kitchen and bathroom/WC. This devalues to **£297/ft²**.
29. The Valuer makes no adjustment for a rising or falling market locally over the period of comparables in relation to the subject property. The Valuer makes no percentage or lump sum deduction for particular advantage or disadvantages between comparables and the Property. Although the average devaluation of sales £/ft is given as £311/ft² all sales are equally weighted and reaches an early conclusion (bundle P.83), that taking the average of £311/ft² (£311 @710ft²) produces a

market value of £220,000 for the Property (long leasehold). However this figure is quickly dismissed and instead the figure of £160,000 is adopted: No explanation for this change to the much lower figure is given other than the statement: “..considering the average of the sold prices from the above data...”, the Report then continues, “...In applying the comparators listed above, it is typical to make adjustments to reflect the particular circumstances of each one. Typically adjustments are made to reflect age, size, construction, specification, condition, location, layout and general price movements and changes in market sentiment”. Although the Tribunal agrees with this sentiment it sees none of the workings for these adjustments presented in the Report, simply the generalised conclusion: “Taking into consideration the transactional evidence outlined above we are of the opinion that the market value of the subject property falls within the range of £150,000 to £160,000 say £155,000.”

30. The Tribunal prefers the earlier reasoning in the Report, largely based on the falling unit price rate seen for otherwise essentially similar small and medium sized converted flats as appropriate. The Tribunal concludes that the capital value with an extended lease at the AVD would be £220,000 as the Report earlier concludes.
31. There is also the matter of the sale a little over 2 years earlier for the short lease then of about some 65 years, at £176,490. Such a sale might be expected to be a little lower at the AVD with the shortened lease but, also a little higher in a slowly rising market. It might also be argued to have been a slight over bid by a prospective occupying leaseholder (to be ignored under the Act) and therefore potentially a little excessive for the short lease. However even using it as a simple check alone, at the AVD the figure of £176,490 would represent about 80% of the long leasehold value then, or taking the freehold (at 1% higher £222,200) some 79.5% which does not appear unexpected. This then supports the adoption of £220,000 for the long leasehold value as referenced earlier in the Report, at the AVD.
32. If the Report had included comparables of 3 room flat conversions in the same area, rather than 2 room flats, then this value of £220,000 or some other figure might have been more accurately determined either by the Valuer at first or by the Tribunal later: However such details were not provided, so the Tribunal relies on the sales of the smaller flats and as a check only, the sale of the short leasehold of the subject Property sold two years earlier. It therefore concludes for these reasons that the freehold value of the Property at the AVD is £222,200 and not the Report's £155,000.
33. The Report later references the short leasehold value of the Property (bundle page 90) in the valuation set out, as £123,985. This figure cannot be correct as it bears no comparison with the actual sale of the same interest some two years earlier for £176,440. It's far too low.

34. As the term unexpired is below 80 years, value attributable to marriage value as part of the application also requires compensation to the respondent. To establish and remove the value of 'right' to enfranchise the valuer to use evidence of sales of short leases, and/ or make a deduction from Acts Rights graphs, or to use No Acts Rights graphs from Savills. The Tribunal places no reliance on the actual sale of the short leasehold flat but, is content to adopt it as a simple check on the short leasehold value. It is content to adopt the approach Upper Tribunal decisions in particular the case of Trustees of Barry & Peggy High Foundation v Zucconi and another. On this basis the Valuer adopts the relativity of 79.99% which the Tribunal is content with.

Decision

35. The Tribunal has carefully considered the approach, evidence, steps and justifications adopted by the Valuer in this application. The Tribunal is satisfied with the relevance of the sales transactions, of long leaseholds but, as noted above has had to make significant adjustments to the virtual freehold capital value at the AVD owing to the absence of sales of larger 3 room flats much more like the Property. As for the remainder of the valuation exercise the Tribunal is content with the approach and various percentages adopted without further adjustment being needed.
36. The Tribunal notes and accepts the 1% adjustment by the Valuer in uplifting the long lease value to its notional freehold value. In so doing he adjusts the long leasehold value basis to the virtual freehold at the AVD which the Tribunal confirms. The Tribunal finds the long leasehold is now £220,000; the freehold therefore, £222,200.
37. The diminution in 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. The Valuer adopts 7% for the capitalisation of the term income, it being relatively modest and without significant review for the term which the Tribunal approves.
38. 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*. The Valuer adopts the Sportelli deferment rate of 5% for this flat, which the Tribunal accepts.
39. The marriage value is to be shared equally between the parties, 50:50 as required by the Act.

40. The Tribunal accepts the valuation layout and percentages for the property, as produced by the Valuer. It lays out the revised valuation to incorporate its value for the Capital Value at AVD for the reversion and marriage value share however.
41. The premium to be paid by the applicants for the lease extension at the Property under HM Land Registry leasehold title number **EX395905** is **£27,243 (Twenty seven thousand two hundred and forty three pounds)**. The Tribunal approves the draft terms of the new lease in substitute for the previous, attached to the bundle.

Name: Neil Martindale FRICS Date: 22 May 2025

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.

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 either party is dissatisfied with this decision, they may apply for permission to appeal to the Upper Tribunal (Lands Chamber) on any point of law arising from this Decision.

Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision to the person making the application (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013).

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).