



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

Case Reference : LON/00AM/OLR/2016/0875

Property : Ground Floor Maisonette, 81
Holmleigh Road, London N16 5QG

Applicant : Yoel Cohen

Respondent : Daejan Properties Limited

Type of Application : Lease extension
s.24 Leasehold Reform, Housing
and Urban Development Act 1993

Tribunal Members : Judge Dickie
Mr W R Shaw, FRICS

**Date and venue of
Hearing** : 5 October 2016, 10 Alfred Place,
London WC1E 7LR

DECISION

Decision of the tribunal

The tribunal determines that the premium payable for the lease extension is £64,114.00 according to the attached calculation.

The application

1. Application has been made under s.48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the premium to be paid and the terms on which an extended lease of the subject premises ("the premises") is to be granted, as well as statutory costs under s.66 of the Act. The premises in question are the property known as Ground Floor Maisonette, 81 Holmleigh Road, London N16 5QG, registered under title number NGL309090. The Respondent is the freeholder. The Applicant is the current holder of the leasehold interest.

2. A Notice of Claim under section 42 of the Act was served by the Applicant on 8 December 2015 (the valuation date) proposing a premium of £43,000 in respect of the grant of the new lease pursuant to the provisions of Part II Schedule 13 of the Act. The landlord's counter notice is dated 17 February 2016 and proposed a premium of £89,986 and certain variations to the lease terms.
3. The subject premises are a ground floor self contained maisonette. The tribunal did not conduct an inspection.

The Hearing

4. At the hearing the Applicant was represented by Mr B Maunder Taylor FRICS of Maunder Taylor Chartered Surveyors and the Respondent by Mr E Shapiro FRICS of Chestertons. The experts had on 22 September 2016 jointly agreed in a Statement of Agreed Facts that:
 - (i) The Deferment rate was 5%.
 - (ii) The unexpired term is 54 years.
 - (iii) There is no other compensation payable under paragraphs 2(c) and 5 of Schedule 13 of the Act.
 - (iv) The existing lease is for a term of 99 years from 25 December 1970 paying £30 ground rent until 24 March 2003, rising to £60 for the next 33 years and £90 for the residue of the term.
 - (v) The ground rent income is £927.
 - (vi) The GIA is 750ft²
 - (vii) Long leasehold / freehold relativity is 99%.
5. By the commencement of the hearing the lease terms, Freehold vacant possession value at £470,000 and costs payable to the landlord under s.60 of the Act were agreed.
6. The only issue in dispute between the parties was the appropriate rate of relativity to be used in calculating the premium payable for the lease. Mr Shapiro put before the tribunal for its determination a single, and somewhat novel, argument on relativity in support of his proposed figure of 74.04%. He conceded that if the tribunal rejected his argument, Mr Maunder Taylor's proposed figure for relativity of 79% based on the Nesbit graph found in the RICS report on graphs of relativity was correct.

Relativity

7. Statutory provisions setting out the premium payable by a lessee in respect of the grant of a lease extension are contained within Part II of Schedule 13 to the Act. By virtue of Paragraph 3(2)(b) the valuation of the landlord's interest must be carried out in what is known as a "No Act world". Mr Shapiro based his argument on a reading of Paragraphs 4 and 4A, which deal with the valuation of the landlord's share of the marriage value. Pursuant to Paragraph 4A, the value of the interest of the tenant under his existing lease is:

Appendix 1

New lease claim	Valuation Date	08-Dec-15		
Present lease	99 Years	From	25/12/70	
Long lease value	£465,300	Freehold	£470,000	
Existing lease value	£371,300	Relativity	79%	
	PV=	5%		
Diminution in value of landlord's interest				
Value before grant of new lease				
Term	Agreed		927	
Reversion				
Flat value (F/H)		£	470,000	
Deferred	54 yrs @5%		0.07174	33,718
				34,645
Less value after grant of new lease				
Term				
New lease at a peppercorn rent			0	
Reversion				
Flat value (F/H)		£	470,000	
Deferred	144 yrs @5%		0.000889	418
				-418
Diminution in value of landlord's interest				
Marriage value				
Aggregate of values of interests after grant of new lease				
Landlord's interest			418	
Tenant's proposed interest	465,300			
			465,718	
Less Aggregate of values prior to grant of new lease				
Landlord's interest			34,645	
Tenant's interest	371,300			
			405,945	
Marriage value			59,773	
		50.00%		29,887
			Premium	64,114

“the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with neither a landlord nor the owner of an intermediate leasehold interest buying or seeking to buy) on the following assumptions:”

8. Four assumptions are then set out in Paragraph 4A(1)(a)-(d), but Paragraph 4A(2) provides that these do “not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date the interest of the tenant under his existing lease might be expected to realise if sold as mentioned in that sub-paragraph.”
9. Mr Shapiro argued that it was appropriate to make a further assumption under Paragraph 4A(2) in respect of the fact that a properly advised purchaser in a no Act world would be aware that the Respondent, part of the Freshwater Group, and freeholder of large estates, would be well known in the market to be resistant to granting lease extensions. Thus he said, it could be assumed that this freeholder would require a higher premium for a lease extension, and that a lower figure for relativity was required to achieve this.
10. Mr Shapiro considered the position similar to that in Prime Central London, in which relativities were lower, and where the owners were the great estates such as Grovesnor, Cadogan, Bedford etc. who were known to be unwilling grantors of lease extensions as the families which owned them were inclined to keep their estates for posterity. Prior to the Act, the only way to persuade these estates to grant a lease extension was to pay a higher premium. He considered that this might account for the higher relativities outside Prime Central London, where most freeholders would be willing grantors. He thus considered that relativity and the identity of the freeholder in a no Act world should be linked and that it was for the tribunal to consider the proven attitude of the landlord to granting an extension in reaching its determination as to the appropriate relativity in each case.
11. In the present case Mr Shapiro observed that it would therefore be relevant that the freeholder had resisted the extension of the lease by obtaining an injunction in a Jewish rabbinical court (Beth Din) which, though non binding in English law, demonstrated the strength of its resistance to the grant. The Freshwater family too would be liable to seek to preserve its large estates, he said.
12. Mr Shapiro's argument was specific to Freshwater. He explained his proposed assumption discursively rather than defining it precisely, and did not suggest what test a tribunal should use in considering whether to apply his assumption in any particular case.
13. Mr Shapiro observed that there is no reference in Paragraph 4A to the landlord being a willing grantor of a lease extension (in contrast to Paragraph 3 which refers to an assumption that the landlord is a willing seller for the

purposes of valuing the landlord's interest). However, the tribunal does not find this remarkable given that Paragraph 4A values the existing lease and is not concerned with the valuation of a lease extension or the landlord's interest at all, but with the interest of the tenant.

- 14.** Having considered Mr Shapiro's argument, and invited written submissions upon it from both parties, the tribunal sees no reason to apply an assumption that the tenant's interest should be valued according to the assumed willingness or otherwise of the freeholder in a no Act world to grant a lease extension.
- 15.** The tribunal prefers the position of Mr Maunder Taylor, who argued that the meaning of "value" in Paragraphs 4 and 4A connotes "market value" (as is defined in the RICS Red Book), as opposed to "price" or "worth" which terms the legislators could have used but did not, and could have imported the kind of subjectivity for which Mr Shapiro argued. Market value disregards sellers or buyers with a special interest, those who act in ignorance, imprudently or under compulsion, who may achieve a deal which represents "price" not "value", whilst "worth" is the personal value to a particular purchaser. Furthermore the value is "the amount which the interest might be expected to realise", and is thus an "expectation", connoting an objective (market) viewpoint.
- 16.** There is nothing in the statutory provisions which indicates that Mr Shapiro gives them their proper reading. Whilst it is noted that Paragraph 4A makes no reference to there being a willing buyer, the tribunal agrees with Mr Maunder Taylor that if Parliament had intended value to give effect to Mr Shapiro's unusual interpretation of the statute it would have included a provision to that effect. To suggest that a landlord could by opposing a tenant's claim for a lease extension on the basis only of the premium being too low to be attractive, and in that way entitle itself in law by virtue of the definition of marriage value to receive a higher premium would frustrate the purpose of the legislation.
- 17.** If Mr Shapiro is correct in his argument, it would provide a financial incentive to freeholders in taking, or purporting to take, a negative attitude towards granting extensions, based on personal motives such as family or sentimental reasons. The purpose of the Act, as recorded in the heading, is "to confer rights ... of lease renewal on tenants of flats". Prior to the Act, a lease renewal could usually be had subject to premium, which might be inflated by a reluctant landlord. If Mr Shapiro's argument was correct the Act would fail to achieve an objective basis on which premiums are determined based on value.
- 18.** Mr Shapiro would have the parties or the tribunal in each case engage in evidence finding in relation to the attitude of each landlord, special reasons for attachment to the property etc., which would make the statute unworkable. His argument amounts to another element in the valuation process in each case about which the Act is silent, in identifying on evidence the freeholder's attitude towards granting lease extensions, and is not an assumption, still less

an appropriate one. Mr Maunder Taylor's submission, that the statute could properly permit for an assumption that all parties are willing parties, is preferred.

19. As Mr Maunder Taylor identified, the decision in *Sportelli* makes it clear that facts which suppress prices are to be taken into account in relation to the freehold vacant possession value.

20. Accordingly, the tribunal determines the Premium payable at £64,114.00 as shown on the attached according to the following schedule.

F. DICKIE

11 NOVEMBER 2016

Leasehold Reform, Housing and Urban Development Act 1993

Schedule 13

Part II

PREMIUM PAYABLE IN RESPECT OF GRANT OF NEW LEASE

Premium payable by tenant

2 The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate 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.

Diminution in value of landlord's interest

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.

(2) Subject to the provisions of this paragraph, the value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) on the following assumptions—

- (a) on the assumption that the vendor is selling for an estate in fee simple or (as the case may be) such other interest as is held by the landlord, subject to the relevant lease and any intermediate leasehold interests;
- (b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;
- (c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and
- (d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which the relevant lease has effect or (as the case may be) is to be granted.

(3) In sub-paragraph (2) "the relevant lease" means either the tenant's existing lease or the new lease, depending on whether the valuation is for the purposes of paragraph (a) or paragraph (b) of sub-paragraph (1).

(4) It is hereby declared that the fact that sub-paragraph (2) requires assumptions to be made as to the matters specified in paragraphs (a) to (d) of that sub-paragraph does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date any such interest of the landlord as is mentioned in

sub-paragraph (1)(a) or (b) might be expected to realise if sold as mentioned in sub-paragraph (2).

(5) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

(6) The value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) shall not be increased by reason of—

(a) any transaction which—

(i) is entered into on or after the date of the passing of this Act (otherwise than in pursuance of a contract entered into before that date), and

(ii) involves the creation or transfer of an interest superior to (whether or not preceding) any interest held by the tenant; or

(b) any alteration on or after that date of the terms on which any such superior interest is held.

Landlord's share of marriage value

4(1) The marriage value is the amount referred to in sub-paragraph (2), and the landlord's share of the marriage value is 50 per cent. of that amount.

(2) Subject to sub-paragraph (2A), the marriage value is the difference between the following amounts, namely—

(a) the aggregate of—

(i) the value of the interest of the tenant under his existing lease,

(ii) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease, and

(iii) the values prior to the grant of that lease of all intermediate leasehold interests (if any); and

(b) the aggregate of—

(i) the value of the interest to be held by the tenant under the new lease,

(ii) the value of the landlord's interest in the tenant's flat once the new lease is granted, and

(iii) the values of all intermediate leasehold interests (if any) once that lease is granted.

(2A) Where at the relevant date the unexpired term of the tenant's existing lease exceeds eighty years, the marriage value shall be taken to be nil.

(3) For the purposes of sub-paragraph (2)—

(a) the value of the interest of the tenant under his existing lease shall be determined in accordance with paragraph 4A;

(aa) the value of the interest to be held by the tenant under the new lease shall be determined in accordance with paragraph 4B;

(b) the value of any such interest of the landlord as is mentioned in paragraph (a) or paragraph (b) of sub-paragraph (2) is the amount

determined for the purposes of paragraph 3(1)(a) or paragraph 3(1)(b) (as the case may be); and

(c) the value of any intermediate leasehold interest shall be determined in accordance with paragraph 8, and shall be so determined as at the relevant date.

4A (1) Subject to the provisions of this paragraph, the value of the interest of the tenant under the existing lease is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with neither the landlord nor any owner of an intermediate leasehold interest buying or seeking to buy) on the following assumptions—

(a) on the assumption that the vendor is selling such interest as is held by the tenant subject to any interest inferior to the interest of the tenant;

(b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;

(c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and

(d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which any interest inferior to the existing lease of the tenant has effect.

(2) It is hereby declared that the fact that sub-paragraph (1) requires assumptions to be made in relation to particular matters does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the interest of the tenant under his existing lease might be expected to realise if sold as mentioned in that sub-paragraph.

(3) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

(4) Subject to sub-paragraph (5), the value of the interest of the tenant under his existing lease shall not be increased by reason of—

(a) any transaction which—

(i) is entered into after 19th January 1996, and

(ii) involves the creation or transfer of an interest inferior to the tenant's existing lease; or

(b) any alteration after that date of the terms on which any such inferior interest is held.

(5) Sub-paragraph (4) shall not apply to any transaction which falls within paragraph (a) of that sub-paragraph if—

(a) the transaction is entered into in pursuance of a contract entered into on or before the date mentioned in that paragraph; and

(b) the amount of the premium payable by the tenant in respect of the grant of the new lease was determined on or before that date either by agreement or by a leasehold valuation tribunal under this Chapter.