



**Leasehold Valuation Tribunal**

<b>Case Reference</b>	:	<b>CAM/OOKF/OLR/2013/0029</b>
<b>Property</b>	:	<b>The Ground Floor Flat, 41 Ronald Park Avenue, Westcliff-on-Sea Essex SSO 9QR</b>
<b>Applicant</b>	:	<b>Helen Nancy Finch</b>
<b>Respondent</b>	:	<b>Karen Phillips</b>
<b>Date of Application</b>	:	<b>12<sup>th</sup> February 2013</b>
<b>Type of Application</b>	:	<b>To determine the terms for acquisition and costs of a Lease extension of the Property</b>
<b>Tribunal</b>	:	<b>Mr D.T. Robertson (Lawyer/Chair) Mr S.E. Moll FRICS Mr G.F. Smith MRICS, FAAV</b>
<b>Date and venue of Hearing</b>	:	<b>30<sup>th</sup> April 2013 Room 6, Southend Magistrates Court, The Court House, 80 Victoria Avenue, Southend-on-Sea, Essex SS2 6EU</b>
<b>Appearances</b>	:	<b>Mr I. Burden, Valuer for the Applicant, the Respondent supported by Mr Ho</b>

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**DECISION**

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1. The price to be paid for the statutory extension of the existing Lease is calculated by the Tribunal to be £ 5,290.00 in accordance with the Schedule annexed hereto.
2. The remainder of the application is adjourned and notice is hereby given that a Tribunal intends to resolve the outstanding issues of:
  - (a) The assessment of the Respondent's costs and disbursements and also
  - (b) The form of the Deed of Surrender and new Lease

without an oral hearing on the next available hearing date unless at least 7 days before that date either party requests an oral hearing when that will then be arranged.

3. The Directions Order of the 20<sup>th</sup> February 2013 is repeated in so far as it is not varied by or inconsistent with this decision. Directions numbered 10 to 13 inclusive are in particular highlighted.

4. The Respondent must by 4pm on 22nd May 2013 deal with Direction No. 1 fully and then the Applicant must by 4pm on 29th May 2013 deal with Direction No. 2 and further the Respondent must by 4pm on 5th June 2013 deal with Direction No. 3.

5. The Respondent's solicitor must by 4pm on 22nd May 2013 deal with Direction No. 4 with the Applicant's solicitors by 4pm on 29th May 2013 commenting on the draft Deed and the Respondent's solicitors shall respond by 4pm on 5th June 2013.

6. The Application by Mr Burden for a Costs Order under Schedule 12 of the Commonhold and Leasehold Reform Act 2002 ("2002 Act") is rejected by this Tribunal.

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## REASONS FOR THESE DECISIONS

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### **Background**

1. The Application relates to the extension of an existing Lease dated the 9<sup>th</sup> day of April 1985 for a term of 99 years from the 24<sup>th</sup> December 1984 at an initial ground rent of £30.00 per annum for the first 33 years rising to £60.00 per annum for the next 33 years and then £90.00 per annum for the last 33 years of the term.

2. The Application is made under Section 48 of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act") the Applicant served a notice in accordance with Section 42 of the Act and the Respondent served a Counter Notice under Section 45 of the Act admitting the Applicant's right to a new Lease of the Property.

### **The Property and Inspection**

3. The Property was inspected by the Tribunal in the presence of Mr Burden access having been provided by the letting agent for the Applicant. The Property is a Ground Floor Flat in a two storey building formerly a house now converted into two flats. The building was constructed in the early 1900's but the date of the conversion into two flats is not known. The building has rendered walls and a tiled roof. There is a flat roof extension to the side and rear of the Property.

4. The Property comprises three rooms with a kitchen and also a bathroom/WC leading off the kitchen. The room presently used as a lounge is a good size. There is a room between the lounge and the kitchen that could be used for a dining area or a study but is not easily used as a second bedroom. The Property has the benefit of gas fired central heating and is in fair condition

but the kitchen and bathroom fittings are dated. The Tribunal are advised by Mr Burden that there are no improvements since the commencement of the Lease to be considered. The Property is in a primarily residential area close to the amenities found in the centre of Westcliff. Parking in the road is limited.

5. Outside the Tribunal are advised by Mr Burden that there is a small area of shared garden at the front but the two parking spaces in the front garden area belong to the First Floor Flat. There is a good sized garden at the rear which gives potential for further extension and at the end of the garden there is a garage and shed. At present the right of way to the garage is blocked. The turning area in front of the garage would limit the size of the vehicle that could access this facility.

### **Directions and Preliminary Application**

6. The Tribunal ascertained that although Mr D.M. Rona of the Rona Partnership has prepared a valuation for the Respondent he will not be attending this hearing and the Respondent wishes to rely on his written representation.

7. The Tribunal then reviewed Directions.

8. With regard to costs the Respondent has made a representation that her valuer's costs came to £400.00 plus VAT and her solicitor's costs come to £750.00 plus VAT and disbursements but as yet she has not instructed a solicitor. Because the Respondent has not instructed a solicitor no draft Deed of Surrender and new Lease has yet been prepared. Directions 1 to 5 inclusive of the Directions given on the 20<sup>th</sup> February 2013 now need to be dealt with promptly. The Respondent appreciates that she is at fault and is now attending to matters immediately.

9. The Tribunal wish to highlight that the draft Deed of Surrender and new Lease must comply with statutory requirements if they are to be considered by another tribunal. The Respondent has proposed terms for this deed which do not comply with the statutory requirements.

10. The Respondent has requested that the Application be dismissed and has persisted with this request in spite of her failure to comply with directions. She has issues concerning the conduct and status of the Applicant which are not relevant to the matters to be decided by this Tribunal. Her application for dismissal is refused.

### **Issues Outstanding**

11. The parties have agreed that the valuation of the Property is to be made in accordance with Schedule 13 of the Act. In this respect they agree there is a marriage value payable at 50% but there is no compensation payable. They now agree that the valuation date is the 15<sup>th</sup> June 2012 with an unexpired term of 71.50 years. They have also agreed a relativity percentage of 94%. The issues outstanding in addition to the Lease and costs that are not agreed and are to be decided at this hearing are as follows:-

(a) The interest rate for capitalisation

- (b) The value of the unimproved virtual freehold
- (c) The yield for deferment

12. The Applicant considers the premium should be £2,000.00 and the Respondent considers the premium should be £7,137.00.

### **Interest Rate for Capitalisation**

13. Mr Burden says this should be 8% because of the extremely low ground rent. Unfortunately Mr Rona does not state what he considers the capitalisation rate should be. The Tribunal challenged Mr Burden but he was not able to provide any comparable evidence that a lower ground rent would create a higher interest rate.

14. The Tribunal considered it was appropriate for them to rely on their own knowledge and experience and decided upon a rate of 7% for capitalisation.

### **Unimproved Virtual Freehold**

15. The Applicant says the value is £70,000.00 whereas the Respondent says it is £135,000.00. The main difference between the valuers relates to the size of the accommodation. Mr Burden provides one bedroomed flat comparables, whereas Mr Rona provides mainly two bedroomed flat comparables. Neither valuer supplies any agents particulars to support their valuations.

16. Mr Burden gives four properties as comparables. The best of these being 66 Ronald Park Avenue, Westcliff-on-Sea, a one bedroomed ground floor flat which he says is in better condition. It was sold in August 2012 at £98,000.00 with an unexpired lease of 160.00 years. Mr Burden confirmed that it is substantially smaller and has no off-street parking facilities. He has been able to inspect this property.

17. Mr Rona gives eight comparables but unfortunately he supplies very little information. The best of his comparables appears to be 51 Southview Drive, Westcliff-on-Sea which is in fact a one bedroomed ground floor flat with a large bedroom a large lounge, garden but no garage. He says that it has a 90 year lease and needs updating. He believes that contracts will shortly be exchanged for the sale at a price of £120,000.00.

18. The Tribunal then raised the issue of secondary evidence as referred to in the Land Registry Office Copy Entries. The Property was sold for £97,500.00 on the 8<sup>th</sup> January 2004. The Applicant bought it in 2010 and appears to have re-mortgaged it in 2011 but there is no evidence of valuations given at the time of her purchase and mortgage. The Respondent thought that prices have increased since 2004 but neither party provided any evidence with regard to any index that should be applied

19. The Tribunal considered all of the comparable evidence. They thought that none of it was particularly good but 66 Ronald Park Avenue put forward by Mr Burden was the best of the evidence. They in particular noted that this Property is much bigger and again applying their own knowledge and experience decided on an unimproved virtual freehold value of £115,000.00.

## **Deferment Rate**

20. Both valuers agreed that the yield rate of 5% should be the starting rate for assessment as decided in the Sportelli case. Mr Rona sees no reason to vary it but Mr Burden refers to the Kelton Court case and says that 6% is the appropriate rate allowing 0.25% for obsolescence, 0.50% for future growth and 0.25% for additional management issues.

21. On the issue of obsolescence Mr Burden made a general comment about flats outside London being likely to deteriorate more rapidly. He says this Property has an extension with a flat roof and scaffolding for repair and maintenance will be expensive. The Respondent considers that nobody is going to let a flat like this go to rack and ruin.

22. The Tribunal decided that there is no compelling evidence given by Mr Burden to vary the Sportelli percentage so far as obsolescence is concerned.

23. The issue of future growth was then considered. Mr Burden argues that the Southend area has a history of there being an over supply of flats which has an impact on the long term future growth of this type of investment. The Respondent had no comment to make on this issue.

24. The Tribunal decided that there was limited evidence to support a variation in the percentage for future growth and decided that 0.25% should be added to the Sportelli figure.

25. Finally the issue of flat management was considered. Mr Burden takes the view that two converted flats are more difficult to manage than say a large modern block. This property has no provision for service charges being paid on account. The Respondent gave evidence that she has experienced no problems in collecting rent and insurance premiums. If anything else needs doing she asks the two flat owners to agree and then has the work done.

26. Again the Tribunal do not consider there is any compelling evidence to change the rate in Sportelli in this respect.

27. The Tribunal decides that the deferment rate should be 5.25%

## **Costs**

28. As part of his summing up Mr Burden decided to make an application for costs under Schedule 12 of the Commonhold and Leasehold Reform Act 2000 based on the fact that the Respondent was unreasonable in failing to comply with directions. He purports that this will involve him in three to four hours of additional work at the rate of £150.00 per hour.

29. The Respondent said that she had not been unreasonable. She had misunderstood the significance of the directions and gave evidence of the failure of Mr Burden to effectively communicate with her as regards the application in general. In particular there were issues about fees and a deposit being paid which appear to have been unresolved for a considerable period of time.

30. The Tribunal decided that as there had been failures by both sides and the high hurdle set by Schedule 12 of the 2002 Act has not been crossed this claim for fees by Mr Burden is rejected.

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MR D.T. ROBERSON  
Chair

13th May 2013

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THE SCHEDULE

**41 Ronald Park Avenue Westcliff-on-Sea SS0 9QR**

Ground Floor Flat

Valuation Date	15th June 2012
Lease Start Date	24th December 1984
Lease Length (Years)	99
Lease Remaining (Years)	71.5 yrs

Capitalisation Rate	7%
Deferment Rate	5.25%
Relativity	94%

**Freeholder's Present Interest**

Ground Rent	£30.00		
YP 5.5 years at 7%	4.4433	£133	
Ground Rent	£60		
YP 33 years at 7% deferred 5.5yrs	8.7958	£527	
Ground Rent	£90		
YP 33 years at 7% deferred 38.5yrs	0.9432187	£85	
			£745
Reversion to Freehold with vacant possession	£115,000		
PV of £1 at 5.25% deferred 71.5 years	0.257787	£2,964	
Less value of new reversion	£115,000		
PV of £1 at 5.25% deferred 161.5 years	0.000258	30	
			£3,679

**Marriage Value**

**Add**

Freeholders proposed interest	£30		
Lessee's proposed interest	£115,000	£115,030	

**Less**

Freeholder's current interest	£3,709		
Lessee's current interest	£108,100	£111,809	

Marriage value		£3,221	
	50%		£1,611

<b>PREMIUM</b>			<b>£5,290</b>
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**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **CAMOOKF/OLR/2013/0029**

**Property** : **41 Ronald Park Avenue, Westcliff-on-sea, Essex SS0 9QR**

**Applicant** : **Helen Nancy Finch  
Represented by Mr I. Burden DIP.BS,  
FRICS**

**Respondent** : **Karen Phillips**

**Type of Application** : **To determine the terms for  
acquisition and costs of a lease  
extension of the Property**

**Tribunal** : **Judge D.T. Robertson (Chairman)  
Mr S.E. Moll FRICS**

**Date and venue of  
Hearing** : **Tuesday 16<sup>th</sup> July 2013 at Unit C4  
Quern House, Mill Court, Great  
Shelford, Cambridge CB22 5LD**

**Date of Decision** : **16th day of July 2013**



## DECISION

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1. Costs awarded under Section 60 of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act") exclusive of VAT are £400.00 to The Rona Partnership .
2. The Application for assessment of the Respondent's legal costs and determination of the form of Deed of Surrender and new Lease is dismissed.
3. A new Application for the determination of the form of the Deed of Surrender and new Lease and the assessment of the Respondent's legal costs and disbursements in connection with that deed may be made if these outstanding issues are not agreed between the parties.

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## REASONS FOR THESE DECISIONS

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1. The original Application related to the extension of an existing Lease dated the 9<sup>th</sup> April 1985 under the Act where the Respondent admitted the Applicant's right to a new Lease of the Property.
2. At the first hearing on the 30<sup>th</sup> April 2013 the Tribunal which included the present members and also Mr G.F. Smith MRICS, FAAV decided the price to be paid for the statutory extension of the existing Lease is to be £5,290,00.
3. That Tribunal also decided that the remainder of the Application was adjourned and notice was given that a tribunal intends to resolve the outstanding issues of:-
  - (a) The assessment of the Respondent's costs and disbursements and also
  - (b) The form of the Deed of Surrender and new Leasewithout an oral hearing on the next available hearing date unless at least seven days before that date either party requests an oral hearing when that will then be arranged.
4. A fresh hearing date of Tuesday the 16<sup>th</sup> July 2013 has been set and there has been no request for an oral hearing.
5. There was a Directions Order made on the 20<sup>th</sup> February 2013 and those Directions applicable to the assessment of the Respondent's costs and disbursements and also the form of the Deed of Surrender and new Lease

were repeated in the first decision dated the 13<sup>th</sup> May 2013. A letter was received from Mr Burden on the 31<sup>st</sup> May 2013 explaining that the Respondent had failed to deal with Directions. Other than this no further written representations have been made by the parties or their representatives.

6. At the original hearing on the 30<sup>th</sup> April 2013 the respondent made representations that her valuer's costs came to £400.00 plus VAT and her solicitors costs came to £750.00 plus VAT and disbursements. She did at that stage state that she has not instructed a solicitor and no draft Deed of Surrender and new Lease has been prepared.

7. The Respondent on the 30<sup>th</sup> April 2013 appreciated that she was at fault and promised to attend to matters immediately. There is no evidence that she has done so. When giving evidence at the original hearing on the 30<sup>th</sup> April 2013 the Respondent did confirm that Solicitor's costs of £750.00 plus VAT and disbursements was an estimate that she had been given and no actual costs in this respect have been incurred by her. At that stage the only costs that she had incurred were those of The Rona Partnership amounting to £400.00 plus VAT.

8. The Tribunal considers that the Respondent's valuer's costs of £400.00 exclusive of VAT are reasonable but as there is no evidence that she has instructed a solicitor to deal with the Deed of Surrender and new Lease. The Tribunal dismisses the application for assessment of the Respondent's legal costs and disbursements and also the determination of the form of Deed of Surrender and new Lease.

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**JUDGE D.T. ROBERTSON**  
**(Chairman)**