

2757.



First-Tier Tribunal  
Property Chamber  
(Residential Property)

**Case Reference** : **CAM/OOKF/OLR/2013/0078**

**Property** : **Flat B, 5 Avenue Road, Westcliff-on-Sea,  
Essex SSO 7PN**

**Applicant** : **Daniel Oliver Walton**

**Representative** : **Mr M. Stapleton FRICS**

**Respondent** : **Forcelux Limited**

**Representative** : **Mr R. Plant, Solicitor  
Witness Mr C. Gibb B.Sc (Econ)  
MRICS**

**Type of Application** : **To determine the terms of acquisition  
and the costs of the Lease extension of  
Property**

**Tribunal Members** : **Judge D. Robertson  
Mrs E. Flint DMS FRICS IRRV  
Mr R. Thomas MRICS**

**Date and venue of  
Hearing** : **10<sup>th</sup> September 2013  
The Court House, 80 Victoria Avenue,  
Southend-on-Sea, Essex SS2 6EU**

**Date of Decision** : **7th October 2013**

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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 £11,500 in accordance with the Schedule annexed hereto.
2. The terms of the New Lease and the costs have been fully agreed between the parties and therefore there is nothing disputed in this respect to be decided by the Tribunal

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## REASONS

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### Background

1. The application relates to the extension of an existing Lease dated the 8<sup>th</sup> April 1988 for a term of 99 years from the 24<sup>th</sup> June 1987 at an initial ground rent of £50.00 per annum .
2. The application is made under Section 48 of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act"). The Applicant served notice in accordance with Section 42 of the Act and the Respondent served a counter-notice under Section 45 of the Act which admits that the Applicant has the right to acquire a New Lease of the Property.

### The Lease and its variation

3. There is produced to the Tribunal a deed dated the 27<sup>th</sup> March 1998 made between Forcelux Limited of the one part and Richard Anthony Stephens of the other part which purports to vary the Lease to give the tenant the right to use the communal garden, the right to park one motor vehicle in a designated space and also appropriate rights of way for the use of those facilities (the 1998 Deed).
4. There is also produced to the Tribunal a deed believed to have been dated in January of 2007 between Forcelux Limited of the one part and Aktar Hussan of the other part which purports to vary the Lease to allow for assignment or underletting of the whole subject to an increase in rent as follows:-
  - (a) From the 25<sup>th</sup> March 2006 until the 24<sup>th</sup> March 2014 the yearly rent in the sum of £150.00
  - (b) From the 25<sup>th</sup> March 2014 until the 25<sup>th</sup> March 2039 the yearly rent in the sum of £450.00

- (c) From the 25<sup>th</sup> March 2039 for the residue of the term the yearly rent in the sum of £1,000.00 (the 2007 Deed)

### **The Property and Inspection**

5. The Property was inspected by the Tribunal in the presence of the sub-tenant of the Applicant and the carer of that sub-tenant. The Property is a ground floor converted flat. It is part of what was a terraced house built at the turn of the 20<sup>th</sup> century converted into six flats in about 1988. The Property has a good sized lounge which incorporates a kitchen area. It has a bathroom with modern fittings. There is a bedroom but the Tribunal considered it would be difficult to have a double bed in this room and it should be regarded as a single bedroom.
6. The Property has the benefit of central heating. The Tribunal noted the communal parking and garden areas to the rear. Parking in the road in the vicinity of this Property is difficult.

### **Preliminary Application**

7. Mr Stapleton in his report dated the 3<sup>rd</sup> July 2013 says the 2007 Deed should not be considered for valuation purposes. Mr Plant in his letter of the 14<sup>th</sup> of August 2013 to Mr Stapleton says that the 1998 Deed is not enforceable as it is not referred to in the 2007 Deed. Mr Plant also in his letter of the 14<sup>th</sup> August 2013 to Mr Stapleton says that the Tribunal does not have jurisdiction to make a determination on the legality of the 2007 Deed. Mr Plant says that in his view the correct forum for considering the validity of the 2007 Deed would be that of a court.
8. At the Hearing the Tribunal said that it would consider issues in two stages. Firstly as to whether they have the power to consider the validity of the deeds of 1998 and 2007 and if they do as a second stage they would hear evidence with regard to such validity.
9. At the Hearing the Tribunal said that they would be reluctant to have to make four different valuations one if neither deed applies, one if both deeds apply, one if the 1998 Deed applies and one if the 2007 Deed applies. The parties confirmed their position that the Applicant says that the 1998 Deed is valid and the 2007 Deed is invalid but the Respondent says that the 1998 Deed is invalid and the 2007 Deed is valid.
10. It was then confirmed that the wording of the proposed New Lease has been agreed and this makes reference to both the 1998 Deed and the 2007 Deed as being valid and part of the existing Lease. Mr Stapleton concedes that he has no special legal qualification and says that the New Lease had been agreed by the Applicant's solicitor without reference to him. He still purports that the 2007 Deed should not be considered for valuation purposes.

11. It was agreed between the parties that both the deeds of 1998 and 2007 if valid would have an impact on the premium for assessment by the Tribunal. It was further agreed that the 1998 Deed was registered on the Applicant's title but the 2007 Deed was not. Neither deed had been registered with the Repondent's title.
12. Mr Plant in his submission refers to Sections 48(1) and Section 48(7) of the Act. He says that although the Tribunal should consider the terms of acquisition in dispute the validity of a Deed of Variation does not come within the definition of the terms of acquisition in the Act.
13. He then went on to refer to the new Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013. He referred the Tribunal to Rule 37 and Section 110 of the Land Registry Act of 2002. The Tribunal intervened at this stage to advise Mr Plant that this Rule does not relate to residential property cases. It is part of the special procedures which relate to land registration cases and therefore does not apply to this case.
14. There was then a discussion of general rule 3. It was agreed that the new rules do not override the Act but there is an overriding objective for the Tribunal to deal with a case fairly and justly. Mr Stapleton says that the Tribunal is an expert Tribunal and has expertise to consider the Deeds of Variation. It would be wrong to put his client to the cost and inconvenience of making a court application. Mr Plant says that to deal with this issue of the validity of the Deeds of Variation fairly and justly it should be referred to a court.
15. There was then an adjournment whilst the Tribunal decided if they have jurisdiction to hear evidence as to the validity of the 1998 Deed and the 2007 Deed.
16. The Tribunal considered both the legal and equitable estates that apply to the purported Deeds of Variation. The Tribunal accepts that failure to register a deed makes it ineffective in law and because of this a party could lose priority. On the other hand a third party with an equitable interest could be bound if they had notice of the deed.
17. The Tribunal decided that they could not determine certain issues relating to the legal estates of the deeds such as whether they are effective in law for registration purposes but they do have the special expertise to consider certain issues concerning the equitable interests such as whether the 2007 Deed had been completed and if so whether the Applicant had notice and was aware of it. The premium cannot be determined without considering the validity of the Deeds of Variation. The Tribunal decided it could hear evidence as to the validity of the 1998 Deed and the 2007 Deed .
18. After making this decision there was another adjournment and the parties came back with confirmation that they now agreed that for the purposes of this determination by the Tribunal both of the 1998 Deed and 2007 Deed should be considered as valid. There is no need to hear evidence on the validity of the deeds.

## **Main Hearing and Issues outstanding**

19. The parties have made written representations and wish to expand on these at the Hearing. They do agree 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% and there is no compensation payable. The valuers confirm that the valuation date is the 4<sup>th</sup> January 2013 and the unexpired term is 73.47 years. They have agreed an interest rate of 5% for deferment. They also agreed on the day of the hearing the value of the unimproved virtual freehold of £92,800.00. The issues not agreed are:-

(a) The value of the existing Lease and the appropriate relativity percentage and

(b) The interest rate for capitalisation

20. Mr Stapleton considers that his suggested premium of £4,650.00 would now need adjustment to take into account that both Deeds of Variation are to be considered as valid and Mr Gibb for the Respondent confirms his valuation of the premium at £17,450.00.

## **Value of Existing Lease and Relativity**

21. Mr Stapleton says the relativity percentage should be 93.3% whereas Mr Gibb says it should be 89.5% net of ground rents.

22. Mr Stapleton has searched for evidence of short lease sales comparable to the Property without success. He confirms that Flat F, 5 Avenue Road was sold in July 2012 for £93,500.00 but it is a much larger flat.

23. Mr Stapleton's written representation considers three two bedroomed flats on long leases and then a fourth flat on an unexpired term of 74.5 years. This gives a relativity of 93.35%. Making an adjustment for the Lease being only 73.47 years this gives a relativity of 93.3%.

24. At the hearing Mr Stapleton went on to say that 93.3% is correct from his own personal experience. The Tribunal should look to market evidence rather than graphs. Graphs in his view should only play second fiddle.

25. Mr Plant questioned Mr Stapleton as to how he could make his assessment without considering the Delaforce effect of tenants paying more because they were anxious to settle. Mr Stapleton's response is that locally in the Southend area the same price would be paid on a sale with or without the benefit of the Act. Mr Gibb says Mr Stapleton must be wrong as a valuation in a no act world must be different where there is no right to a lease extension and no right to marriage value.

26. Mr Gibb gives extensive written evidence on the relativity rate. This includes a paper relating to the RICS graphs prepared by Mr Gibb on the 2<sup>nd</sup> March 2011. Mr Gibbs main argument is that you should rely on graph evidence and then adjust this with a net of ground rent calculation.
27. Mr Gibb says that he takes his rate of 89.5% as the mid-way point with respect to the Beckett and Kay graph of 2007 which coincides with the Knight Frank graph which includes some cases outside prime central London area. Mr Stapleton challenges this and says that the Knight Frank graph has no place in Southend and there are other graphs which reflect the provincial position and are more relevant.
28. So far as Mr Gibbs is concerned speaking in his capacity as a surveyor and also an economist there should be no difference between London and the provinces except in exceptional circumstances. Mr Gibb at the hearing also stated that in his view a deferment rate of 5% has an impact on relativity but did not provide any evidence to support this contention.
29. There was then some debate as to mortgagees requirements relating to the term of a lease. Mr Gibb purports that they want over 80 years unexpired term whereas Mr Stapleton says that mortgagees will consider a total picture with each application. Mr Plant says that in his experience mortgagees require a 55 to 60 year unexpired term.
30. One of the main arguments of Mr Gibb is that in cases of onerous ground rent such as this case you need to deduct the ground rent value from the lessees current interest rather than adjusting the relativity rates to take this into account. He says that a deduction of £11,158.95 should be made in this respect. Mr Stapleton challenges this because this results in a relativity rate of about 77% which in his view must be wrong.
31. The Tribunal accepts that the market in Southend is not as sophisticated as it is in prime central London. They agree with Mr Stapleton that settlements in the provinces tend to adopt a higher rate than prime central London. The Tribunal prefers the evidence of Mr Plant on the current lending policies of mortgagees in that they require unexpired terms of between 55 and 60 years.
32. The Tribunal accepts that there should be an adjustment for onerous ground rents but only to the extent that these are excessive. A ground rent of £450.00 for this property would be at the top end of the normal range but a ground rent of £1,000.00 per annum would be regarded as onerous. The Tribunal capitalised the excess ground rent at 6% and deducted £1,500.00 from the existing lease value to reflect this onerous provision in the 2007 Deed.
33. The Tribunal considered all of the evidence and using their own knowledge and experience decided on 93% as a relativity percentage with the deduction of £1,500.00 to take into account the excessive element of an onerous ground rent.
34. Value of the existing Lease is £84,804

## **Capitalisation Rate**

35. Mr Stapleton says that this should either be 6% or 6.5% whereas Mr Gibb says that it should be 5%. Mr Stapleton bases his evidence on agreements that he has reached and also previous leasehold valuation tribunal cases.
36. Originally Mr Stapleton suggested a capitalisation rate of 7% based on his own experience and previous tribunal decisions but now agrees that the rate should be reduced to 6% because the 2007 Deed applies to this valuation. He then tries to argue that a buyer would be concerned that this deed is unregistered and would want an adjustment to 6.5%. Mr Plant challenges this. The parties have agreed that the 2007 Deed is valid for the determination of this case and therefore must be considered valid for all issues of valuation.
37. Mr Gibb argues that yield rates are closely allied to government long term stock and in this respect the Tribunal should consider annuity rates. He also has a concern that if leasehold valuation tribunals continue to uphold artificially high rates those lessees who wish to mitigate the cost of a lease extension by retaining an element of ground rent are forced to pay more than would otherwise be the case.
38. Mr Gibb believes that the market has changed substantially in the last five to six years. With annuities you are now getting less than 5% and with bank deposits you are getting no better than 2%. He believes that in reality the capitalisation rate could be argued at 3% but he is being generous in offering 5%.
39. The Tribunal firstly agree with Mr Plant that Mr Stapleton should not try and argue for 6.5% on the basis that the 2007 Deed is not registered. Mr Stapleton has already agreed that it is valid for the purposes of this valuation.
40. Again the Tribunal considered all of the evidence and using their own knowledge and experience based on a property market valuation under the Act rather than in the general financial market that the capitalisation rate in this case should be 6%.

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**JUDGE D. ROBERTSON**

**FLAT B, 5 AVENUE ROAD, WESTCLIFF-ON-SEA, SS9 7PN**

Matters Determined:

- Valuation date – 4 January 2013.
- Lease 99 years from 24 June 1987 with ground rents (subject to Deed of Variation) of:-
  - a. £150 per annum until 24 March 2014;
  - b. £450 per annum until 24 March 2039; and
  - c. £1,000 per annum for the residue of the term.
- Unexpired term 73.47 years.
- Value of extended lease £92,800.
- Value of existing lease £84,804.
- Relativity 93%.
- Capitalisation rate 6%.
- Deferment rate 5%
- Marriage value 50%.

**First term:**

Ground rent	£150	
Years purchase 1.22 years at 6%	1.1392	£170.88

**Second Term:**

Ground rent	£450	
Years purchase 25 years at 6% - 12.7834	}	
	}	
x present value 1.22 years at 6% - 0.931648	}	11.909632
		£5,359.33

**Third Term:**

Ground rent	£1,000	
Years purchase 47.25 years at 6% - 15.6043	}	
	}	
X present value 26.22 years at 6% - 0.217073	}	3.387272
		£3,387.27

Reversion to Freehold	£92,800	
Present value £1 in 73.47 years at 5%	0.027756	£2,575.75

Freeholders existing interest £11,493.23

Value of landlords interest in new lease at peppercorn taken to be nil.

Marriage value

Extended lease value	£92,800
- less	
Landlords existing interest	£11,493.23

Existing lease value £92,800 at 93% relativity  
less £1,500 for onerous ground rent =

£84,804

(£3,497.23)

As negative marriage value is nil

Price payable for lease extension

£11,493.23

say

£11,500.00

Note: Existing lease value reduced by £1,500.00 to  
reflect onerous ground rent in final term.