

2802



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

**Case Reference** : **CAM/26UK/OLR/2013/0116**

**Property** : **223A Harwoods Road  
Watford  
Herts WD18 7RU**

**Applicant** : **Victoria Jane Ursulean**

**Representative** : **Bolt Burdon Solicitors**

**Respondent** : **Steven John Crew**

**Representative** : **N/A**

**Type of Application** : **To determine purchase price on  
and approve terms of Lease  
extension where landlord cannot  
be found – s50 of the Leasehold  
Reform, Housing and Urban  
Development Act 1993.**

**Tribunal Members** : **Francis Davey (Judge)  
Marina Krisko BSc (EST MAN)  
FRICS (valuer member)  
Derek Barnden MRICS (valuer  
member)**

**Date and venue of  
Hearing** : **9 November 2013**

**Date of Decision** : **14 January 2014**

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**DECISION**

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## **Introduction**

1. The Applicants issued a claim in Watford County court for an extension of their lease of 223A Harwoods Road, Watford WD18 7RU ("the Property") pursuant to section 39 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act") on the basis that the location of their landlord was unknown.
2. On 27 August 2013 (sealed 2 September 2013), District Judge White, sitting in Watford County Court, ordered that the Applicants make an application to the First Tier Tribunal (Property Chamber) for the determination of the lease terms together with the amount payable into court in accordance with section 51(5) of the 1993 Act.
3. The Applicants issued an application in those terms on 6 September 2013.
4. An inspection and hearing to follow immediately afterwards were ordered for 27 November 2013, the hearing to be held at Watford Magistrates' Court.

## **The Inspection**

5. Before the hearing, we inspected the Property, which is a self-contained converted flat on the ground, first and second floor of a 2/3 storey late Victorian end-terrace house and which has been converted into two flats.
6. We had no evidence as to when the conversion into two flats took place, but it seems likely that it occurred at around the time of the original grant of the lease in 1987.
7. The Property appears traditionally constructed with external elevations of solid load bearing brickwork under a pitched roof clad in natural slate.
8. The guttering is in poor condition and in parts appears to be broken. Although the windows in the front elevation appear all to have been replaced with uPVC double glazing and the surrounding brickwork repointed, the slate roof over the ground floor bay window are in very poor condition.
9. The main roof is in need of some attention. There are small areas of brickwork, which may require repointing.
10. The flat is accessed via its own front door. On the ground floor there is a small triangular space jutting into what appears the front of the ground floor flat at the side of a short hallway leading to stairs going up. The triangular space does not appear on the plans attached to the lease and appears to be an encroachment on the demise of the ground floor flat.

11. It is not in our jurisdiction to investigate the reason for that discrepancy. We have decided that we should value the property on the basis that the additional triangular space does not form a part of the property and our order is not intended to affect the status of that space, whatever that might be.
12. On the first floor, the stairs lead directly into a living area. Off which are a corridor leading to a kitchen and a bathroom/WC. A double bedroom on the front of the flat connects to the living area, which also contains stairs going up to the loft space.
13. The evidence before us, which we accept, is that the roof space and the stairs leading to it constitute improvements by the applicant/tenant. Other tenant improvements that we noted are: (1) the replacement of original sash single glazed windows in the living area and main bedroom with uPVC double glazing; and (2) high quality wooden flooring replacing pre-existing carpeted floors.
14. Outside the Property is a small rear garden accessible by way of a separate entrance at the side of the building secured by a locked gate.
15. There is no off-road parking space associated with the Property. It was our view that parking was very difficult in the locality and a right to parking would be highly valuable.

### **Evidence**

16. From the papers it appears that, the Property is let under a 99 year lease, dated 2<sup>nd</sup> December 1987, for a term commencing on 21<sup>st</sup> June 1987. The ground rent is £50 per annum for the first 33 years, £100 for the second 33 year period and £150 for the third.
17. Clause 5(k) of the lease contains an absolute prohibition on the making of any alterations or additions to the Property.

### **Premium**

18. In order to calculate the premium in accordance with the 1993 Act, there are five points which need to be decided by us:
  - a) The capitalization rate in order to calculate the present value of the existing lease term (that is the loss to the landlord of the ground rent over the remainder of the term).
  - b) The yield, to calculate the present value of the reversion (also known as the deferment rate).
  - c) The value of the unimproved extended lease.
  - d) Relativity (the percentage by which the unimproved extended lease is reduced to find the value of the unimproved existing lease).
  - e) The marriage value (of which the landlord is to be paid half).

19. Before us, Mr Cohen argued for a capitalization rate of 8% (the value used in the final calculations in his expert report) although in the body of his report (at paragraph 11.01) he proposed a value of 7%. He argued that £50 was on the borderline of being worth collecting. Taking into account inflation over the term, the ground rent will never exceed its present value in real terms and so will remain marginal.
20. We accept those submissions and decide upon a capitalization rate of 8%.
21. For the deferment rate, Mr Cohen relied on the figure of 5% for flats decided in *Earl Cadogan v Sportelli*. In his view there were no factors that would suggest an alternative value.
22. In his oral evidence he said that he had considered factors that might suggest a difference such as those mentioned in *Zuckerman v Trustees of the Calthorpe Estates*. In particular, on prospects of future growth, he thought that Watford shows reasonable prospects of growth albeit not as great as central London. He thought that the risks associated with flat management relied on in *Zuckerman* had lessened in the light of recent decisions such as *Daejan v Benson* and so no allowance for extra management of flats was required.
23. Again, we agree and set the appropriate deferment rate at 5%.
24. For the unimproved extended lease, we carefully considered three comparables, all located within close proximity to the subject property. These were:
  - a) 65 Harwoods Road, sold for £144,950 with a share of freehold. It has off-street parking and double glazing, but it has a very poor location on a small corner plot. As a ground floor flat, it would suffer from a lack of privacy on two elevations as well as having an unattractive appearance with no reduction in value. Other negative features include: a bathroom through a kitchen: a smaller bathroom and much smaller bedroom than the subject property.
  - b) 89 Harwoods Road, sold for 162,000 on a long lease. It is an improved flat in very good condition and slightly larger than the subject property. It has double glazing and a kitchen/diner and it has direct access to the garden and a share of freehold. In our view it would command a value higher than the subject property.
  - c) The most similar comparable in terms of size and location is Holywell Road. This property has been improved, with double glazing, and has allocated car parking, however it has a poorer layout. For example, the kitchen is in the reception room (albeit that is fairly large). It has a smaller bedroom and a slightly larger ground rent.
25. Holywell Road sold for £155,000 in July 2013. After making appropriate allowances to reflect the differences between the

properties, The Tribunal decided that the extended unimproved leasehold value for the subject property was £152,500.

### **Relativity**

26. Mr Cohen suggested a figure of 93% for relativity in his expert report. In his updated report he dropped this to 92.8%. He told us that he computed this figure as the average of the 5 graphs given in section 2 of the RICS Research Report "Leasehold Reform: Graphs of Relativity" using a lease term of 73 years.
27. We accept the use of the RICS graphs as being a sound basis on which relativity may be calculated. However carrying out the same exercise we reach a figure of 94%. We assume the discrepancy is due to the hurried nature of Mr Cohen's recalculation. Given that the final figure is a matter of computation not evidence, we adopted 94% as the figure for relativity. Our calculation, on the same basis, gives a relativity figure of 94%.
28. That in turn gives a value of £143,350 for the unimproved existing value of the lease with a corresponding marriage value of £3,806 of which the landlord's share is £1,903.
29. Accordingly, in accordance with section 51(5)(a), we determine the premium payable by the Applicant under Schedule 13 of the 1993 Act to be £7,247. The calculations arriving at that figure are set out in the first schedule to this decision.
30. We also determine that no sum is payable under s51(5)(b) in addition to the premium.

### **Ground Rent**

31. In evidence the Applicant's representative was asked about the state of the ground rent account. He told us that no ground rent had been paid over the last 6 years. Since the lease term is in its first period of 33 years, the ground rent is £50 per annum the ground rent due would amount to the sum of £300.
32. However, we were also told that no valid demands for ground rent had been served on the Applicant, nor had the Respondent supplied an address for service and hence at the relevant date, no sums were due for ground rent.
33. Accordingly we determine that no sum is payable under s51(5)(c) and therefore the total sum payable into court under all headings is £7,247.

### **Lease terms**

34. The Applicant proposes that the lease be extended by a deed of surrender and re-grant incorporating the terms of the original lease with consequential modifications in the deed. We have been supplied with a copy of the proposed deed (at page 99 of the hearing bundle).

35. There is nothing in the proposed new terms that does not, in our view, follow naturally from the extension of the lease and, accordingly we approve those new terms.

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Francis Davey  
21 January 2014

# Calculation of Premium

## LVT Valuation for 223A Harwoods Road, Watford.

### Valuation assumptions

Lease expiry date	20/06/2086
Valuation date	11/07/2013
Unexpired term	72.9425
Capitalisation rate	8%
Deferment rate	5%
Freehold value	£ 154,025
Extended lease value	£ 152,500
Existing lease value	£ 143,350
Relativity	94.0%

### Valuation of landlords existing interest

Term:					
Ground rent		£	50		
Years Purchase	6.9425 years @	8%	5.17402	£	259
					0.00000021
Ground rent		£	100		
Years Purchase	33 years @	8%	11.51389		0.00000000
Present value of £1 in	6.9425 years @	8%	0.586078		
				£	675
Ground rent		£	150		
Years Purchase	33 years @	8%	11.51389		0.00000000
Present value of £1 in	39.9425 years @	8%	0.046235		
				£	80
Reversion					
Capital Value		£	154,025		
Present value of £1 in	72.9425 years @	5%	0.028471		
				£	4,385
<b>Less</b>					
New reversion		£	154,025		
Present value of £1 in	162.9425 years @	5%	0.000353		
				£	54
<b>Total</b>					<b>£ 5,344</b>
<b>Marriage value on grant of extended lease</b>					
Value of tenants existing lease		£	143,350		
Value of landlords existing interest		£	5,344		
<b>Total value of existing interests</b>				<b>£</b>	<b>148,694</b>
Value of tenant's interest with extended lease		£	152,500		
Landlords interest under new lease		£	-		
<b>Total value of Interests under new lease</b>				<b>£</b>	<b>152,500</b>
<b>Marriage value</b>				<b>£</b>	<b>3,806</b>
<b>Landlords 50% share</b>				<b>£</b>	<b>1,903</b>
<b>Premium payable</b>				<b>£</b>	<b>7,247</b>

# Applicant's Revised Calculation

**223A Harwoods Road Watford**  
**Applicant's revised calculations**

**Valuation assumptions**

Lease expiry date	20/06/2086
Valuation date	11/07/2013
Unexpired term	72.9425
Capitalisation rate	7%
Deferment rate	5%
Freehold value	£ 146,450
Extended lease value	£ 145,000
Existing lease value	£ 135,906
Relativity	92.8%

**A) Diminution of freehold**

Loss of ground rent		£ 50			
Years Purchase	6.9425 years @	7%	5.354612	£ 268	0.4203772
Loss of ground rent		£ 100			
Years Purchase	33 years @	7%	12.75379		0.0621497
Present value of £1 in	6.9425 years @	7%	0.6251772	£ 797	
Loss of ground rent		£ 150			
Years Purchase	33 years @	7%	12.75379002		0.1072447
Present value of £1 in	39.9425 years @	7%	0.0670407	£ 128	
Loss of reversion		146450			
Present value of £1 in	72.9425 years	5%	0.0284708	<u>£ 4,170</u>	
<b>Less</b>					
New reversion		£ 154,025			
Present value of £1 in	162.9425	5%	0.0003527	£ 54	£ 5,309

**B) Marriage value**

Value of tenant's interest with extended lease		£ 145,000		
Landlords interest under new lease		£ -		
less				
Value of tenants existing lease		£ 135,906		
value of landlords existing interest		£ 5,309		
Marriage gain		£ 3,786		
<b>Landlords 50% share</b>		<b>£ 1,893</b>		
<b>Premium payable</b>				<b>£ 7,201</b>