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

**Case Reference** : CHI/43UF/OLR/2014/0089

**Property** : Flat 3, Beechen House, Brighton Road,  
Lower Kingswood, Surrey KT20 6SB

**Applicant** : Steve Halliwell (tenant)

**Representative** : TWM Solicitors LLP

**Respondent** : Vincent Calleja (landlord)

**Representative** :

**Type of Application** : Leasehold enfranchisement (lease  
extension of flat)

**Tribunal Member(s)** : Judge Mark Loveday BA(Hons) MCI Arb  
Derek Lintott FRICS

**Date and venue of CMH** : 12 May 2014 (paper determination)

**Date of Decision** : 12 May 2014

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**DETERMINATION**

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## **Background**

1. This is an application under section 51 of the Leasehold Reform Housing and Urban Development Act 1993 (“the Act”) in respect of a lease extension of a flat where the landlord cannot be found. The subject premises are Flat 3, Beechen House, Brighton Road, Lower Kingswood, Surrey KT20 6SB.
2. On 30 December 2013, the qualifying tenant Ms. Stevie Halliwell applied to Reigate County Court for a vesting order and other remedies under s.50 of the Act. On or about 1 April 2014, the court ordered that a new lease be vested in the Applicant on such terms of acquisition as may be determined by the First-tier Tribunal under s.51 of the Act.
3. Directions were given on 25 April 2014, where the matter was allocated to the paper track for determination without a hearing. The Applicant’s solicitor has submitted a draft form of new lease and a valuation report of Mr I Ailes BSc FRICS dated 2 May 2014.
4. The Tribunal inspected the subject premises on 12 May 2014. The property forms one of three flat conversions in a two storey detached house c.1955 in a semi-rural location. It comprises an entrance lobby, landing, two rooms, kitchen, bathroom and WC with a dedicated parking space to the rear and gas fired central heating. Externally the main building requires some minor repairs and decoration. Internally, the flat has recently been modernised by the current lessee, with new kitchen and bathroom, general re-plastering, internal doors and new radiators.
5. The application includes a copy of the lease of the flat dated 8 December 1988 for a term of 99 years from 29 September 1988. The lease provided a ground rent payable at an initial rate of £50pa for the first 33 years rising at £50 steps every 33 years. Sch 5 para 5 of the Lease also included provision for payment of a service charge. On the

valuation date of 30 December 2013 there was therefore an unexpired term of 73.75 years.

## VALUATION

6. Mr Ailes considered the premium on two alternative bases. For the term, he applied a capitalisation rate of 7% to the ground rent. This produces a term value of £1,167.89. For the reversion, he adopts an extended lease value of £165,000 which he adjusts to freehold by applying 1% uplift to £166,667. He then applied deferment rates of 5% and 5.5% and adopted a long leasehold relativity of 94.31%. These were shown in two valuation sheets attached to Mr Ailes's report. The Tribunal considered each of these matters in turn.
  
7. Capitalisation rates. Mr Ailes referred to auction sales of non-reversionary ground rents sold by his firm between November 2012 and April 2014. An analysis of these sales produced a yield of £6.94% on an average ground rent of £1,399pa. He therefore adopted 7%. The Tribunal agrees that a yield of 7% is appropriate in this instance to reflect the secured ground rent income stream.
  
8. Capital values. Mr Ailes relied on the price of £169,950 agreed for the sale of the Flat last year. The sale was handled by a local estate agent Thomas & May of Epsom and a copy of the property particulars were provided to the Tribunal. Mr Ailes stated that the sale took place on 13 October 2013, but sale has not as yet completed and there no mention of it on the Office Copy entries provided. However, Mr Ailes considered that prices did not change noticeably between October and December 2013, but he allowed £4,950 for tenant's improvements to produce an extended lease value of £165,000.
  
9. Although the evidence of capital values is rather thin, the Tribunal accepts the sale price for the subject premises in October 2013 as properly representing the extended lease value of the flat. Again, no evidence was produced for the adjustment to freehold, but the Tribunal

accepts Mr Ailes's uplift of 1%. This produces a freehold value of £166,667.

10. Deferment rate. In his report, Mr Ailes prefers a deferment rate of 5.5%. He observes that the property is located in mid-Surrey whereas the properties considered by the Upper Tribunal in *Earl Cadogan v Sportelli and others* (2006) LRA/50/2005 (LT) were in Prime Central London. He also notes that the house faces directly onto a main road. In his professional opinion, the value of the property "will always lag behind the rest of the market". Mr Ailes referred to *Yeats v City & Country Properties* (Bishopric Court, Horsham) [2012] UKUT 227 (LC), where the Upper Tribunal determined a deferment rate of 5.5%. He also considers it is inappropriate to adopt a rate of 5% where the property as not managed.
11. The Tribunal adopts a deferment rate of 5%. It notes the comments made by the Upper Tribunal in the case of *Voyvoda v Grosvenor West End Properties* [2013] UKUT 0334 (LC) in relation to *Yeats* and the so-called "Zuckerman addition". Moreover, the Tribunal is not satisfied that it needs to make any adjustment to the risk premium element of the deferment rate on account of volatility, illiquidity, deterioration or obsolescence (the 'permitted' factors for departure from the generic deferment rate considered in *Sportelli*).
12. Relativity. As to the short leasehold value, Mr Ailes relied on his own 2011 table of relativity for South and West London. The table takes an average of the RICS Research Paper *Leasehold Reform: Graphs of Relativity* (2009) graphs produced by Andrew Scott Robertson, Beckett and Kay, South East Leasehold, Nesbitt & Co, Austin Gray and Andrew Pridell Associates. For terms of 70 and 75 years unexpired, the table gives averages of 92.13% and 94.74%.
13. The Tribunal derives its relativity from the same evidence as Mr Ailes. In this case, on the valuation date of December 2013 there were 73.75 years unexpired on each lease. The Tribunal adopts a relativity of

94.31%, being an average of the figures given by the data tables for leases of 70 years unexpired.

14. Conclusions: valuation. Adopting the above figures, the Tribunal determines that for the purposes of s.45 of the 1993 Act, the appropriate sum to be paid into court by the Applicant for the new lease is £6,740. A copy of Mr Ailes's first valuation sheet adopting a 5% deferment rate is attached as Appendix "A" to this determination.

#### **THE TRANSFER**

15. The Tribunal has considered the draft transfer in accordance with s.57 of the Act. The draft at Appendix "B" to this determination is approved.

Judge Mark Loveday  
11 May 2014

## **Appeals**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.



**APPENDIX B: NEW LEASE TERMS**

**DATE**

**2014**

**VINCENT CALLEJA (1)**

**STEVIE HALLIWELL (2)**

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**LEASE  
of  
Flat 3 Beechen House, Lower Kingswood,  
Brighton Road, Tadworth KT20 6SB**

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**TWM Solicitors LLP  
65 Woodbridge Road  
Guildford  
Surrey  
GU1 4RD**



## PRESCRIBED CLAUSES

**LR1. Date of Lease**

2014

**LR2. Title number(s)**

**LR2.1 Landlord's title number(s)**

SY253149

**LR2.2 Other title numbers**

SY594103

**LR3. Parties to this lease**

**Landlord**

Vincent Calleja

Last known address: Beechen House, Brighton Road, Kingswood,  
Surrey KT20 6SB

**Tenant**

Stevie Halliwell

Flat 3, Beechen House, Brighton Road,  
Lower Kingswood, Tadworth KT20 6SB

**Other parties**

None.

**LR4. Property**

**In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail**

See the definition of "Property" in clause 1.1 of this lease and the definition of "Flat" in Clause 4 of the Particulars of the Lease.

**LR5. Prescribed statements etc.**

**LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.**

This lease is granted under Section 56 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act").

**LR5.2 This lease is made under, or by reference to, provisions of:**

None.

**L6. Term for which the Property is leased**

The term as specified in this lease at clause 1.1 in the definition of "Term".

**LR7. Premium**

The premium as specified in this lease at clause 1.1 in the definition of "Premium".

**LR8. Prohibitions or restrictions on disposing of this lease**

None.

**LR9. Rights of acquisition etc.**

**LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land**

None.

**LR9.2 Tenant's covenant to (or offer to) surrender this lease**

None.

**LR9.3 Landlord's contractual rights to acquire this lease**

None.

**LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property**

None.

**LR11. Easements**

**LR11.1 Easements granted by this lease for the benefit of the Property**

The easements included in clause 1.1 of this lease in the definition of "incorporated Terms" and specified in the First Schedule of the Lease.

**LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property**

The easements included in clause 1.1 of this lease in the definition of "Incorporated Terms" and specified in the Second Schedule of the Lease.

**LR12. Estate rent charge burdening the Property**

None.

**LR13. Application for standard form of restriction**

None.

**LR14. Declaration of trust where there is more than one person comprising the Tenant**

Not applicable.

THIS LEASE is dated

2014

## **PARTIES**

- (1) **VINCENT CALLEJA** whose last known address is Beechen House, Brighton Road, Kingswood KT20 (“the Lessor”)
- (2) **STEVIE HALLIWELL** of Flat 3, Beechen House, Brighton Road, Kingswood KT20 6SB (“the Lessee”)

## **BACKGROUND**

- (A) The freehold reversion to the Property is vested in the Landlord and is registered at HM Land Registry under title number SY253149.
- (B) The residue of the term of the Lease is vested in the Tenant and is registered at HM Land Registry under title number SY594103.
- (C) The Tenant requires the Landlord to grant a new lease of the Property in accordance with the Tenant’s rights under the Leasehold Reform, Housing and Urban Development Act 1993 and the Landlord has been ordered to do so.

## **AGREED TERMS**

### **1. INTERPRETATION**

- 1.1 The definitions and rules of interpretation set out in this clause apply to this lease

**Annual Rent:** a peppercorn, if demanded.

**Incorporated Terms:** all of the terms, requirements, covenants and conditions contained in the Lease except to the extent that they are inconsistent with the clauses written in this lease and with such modifications as are necessary to make them applicable to this lease and the parties to this lease

- (a) including:
  - (i) the definitions and rules of interpretation in the Lease;
  - (ii) the agreements and declarations contained in the Lease;
  - (iii) the rights granted and reserved by the Lease (including the right of re-entry and forfeiture); and

- (iv) the third party rights, restrictions and covenants affecting the Property
- (b) but excluding any terms of the Lease which are specifically excluded by the terms of this lease or substituted by the terms of this lease.

**Lessor's Covenants:** the obligations in this lease, which include the obligations contained in the Incorporated Terms, to be observed by the Lessor.

**Lease:** the lease by virtue of which the Tenant holds the Property which is dated 8<sup>th</sup> December 1988 and made between Michael Oratis (1) and Marie-Rose P.E.A. (2) for a term of 99 years beginning on and including 29<sup>th</sup> September 1988 and registered at HM Land Registry under title number SY594103.

**Premium:** (£ ).

**Property:** the property known as the First Floor Flat, Flat 3 Beechen House, Brighton Road, Lower Kingswood, Tadworth KT20 6SB and Parking Space as described in the Lease.

**Rent Payment Date:** 29<sup>th</sup> September

**Lessee's Covenants:** the obligations in this lease, which include the obligations contained in the Incorporated Terms, to be observed by the Lessee.

**Term:** a term of years beginning on and including 29<sup>th</sup> September 1988 and ending on and including 28<sup>th</sup> September 2177.

- 1.2 For the purposes of this lease only, references to the Lessor and Lessee in the Lease shall be read as references to the Lessor and Lessee in this lease and matters in the Lease requiring the consent or approval of the lessor shall also require the consent of the Lessor on the same terms under this lease.

## 2. GRANT

- 2.1 In consideration of the Premium, the Lessor lets with limited title guarantee the Property to the Lessee for the Term at the Annual Rent.
- 2.2 The matters accepted and reserved by the Lease for the benefit of the Lessor are accepted and reserved for the benefit of the Lessor by this lease.

**5. SECTION 62 OF THE LAW OF PROPERTY ACT 1925**

Neither the grant of this lease nor anything in it confers any right over neighbouring property nor is to be taken to show that the Lessee may have any right over neighbouring property, and Section 62 of the Law of Property Act 1925 does not apply to this lease.

**6. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this lease shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Signed as a deed by **DISTRICT JUDGE** ).....  
pursuant to an order made by )  
in the Reigate County Court dated )  
1<sup>st</sup> April 2014 in the presence of: ).....

Signed as a deed by  
**STEVIE HALLIWELL** ) .....  
in the presence of:- ) .....

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation: