



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

Case Reference : **LON/00BB/OLR/2018/0219**

Property : **102A Caulfield Road, London E6
2EN**

Applicants : **Mujib Ahsan**

Representative : **Foskett Marr Gadsby & Head LLP
Solicitors (ref Ms A J Reilly)**

Respondents : **Julia Kerrigan**

Representative : **None**

Type of Application : **Determination of terms of new
lease purchase under section 51 of
the Leasehold Reform, Housing
and Urban Development Act 1993**

Tribunal Members : **Judge Pittaway – Tribunal Judge
Ms Marina Krisko FRICS – Valuer
Member**

**Date and venue of
Paper Determination** : **27 March 2018
10 Alfred Place, London WC1E 7LR**

Date of Decision : **27 March 2018**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the appropriate sum to be paid into Court for the grant of a new lease to the Applicant of the maisonette at 102a Caulfield Road, London E6 2EN (the “**Maisonette**”), pursuant to section 51(5) of the Leasehold Reform, Housing and Urban Development Act 1993 (“**the 1993 Act**”), is **twenty four thousand four hundred and ninety nine pounds (£24,499.00)**.
- (2) The tribunal approves the new lease in the form provided to the tribunal by the applicant’s solicitors except that the demise by the landlord should be with limited title guarantee and not full title guarantee.

The application

1. The applicant, who is the long leaseholder of the Maisonette, seeks the tribunal’s determination of the price to be paid for a new lease of the Maisonette and the terms of the new lease to be granted.
2. The landlord is missing and on 27 July 2017 the applicant issued a Part 8 Claim in the County Court at Clerkenwell and Shoreditch under claim number DO1EC982. On 3 February 2018 a Vesting Order was made by District Judge Pigram pursuant to Section 50 of the 1993 Act which referred the determination of the premium for the new lease to the tribunal.
3. This determination is made on the basis of written representations in accordance with the procedure set out in regulation 13 of the Leasehold Tribunals (Procedure) (England) Regulations 2003. Following the issue of directions the paper determination took place on 27 March 2018.
4. The applicant’s solicitors supplied the tribunal with a bundle that contained copies of the existing lease, a SIMR search which confirmed that the freehold title of the maisonette is unregistered, official copies of the applicant’s title to the maisonette, a copy of the existing lease of the maisonette, relevant documents from the County Court proceedings, a valuation and a draft lease.
5. The applicant relies on the expert report and valuation prepared on his behalf by Mr Gunby MRICS of B Bailey & Co Ltd, a general practice firm of chartered surveyors.
6. The tribunal did not consider that an inspection of the maisonette was necessary given that it had been provided with photographs of the

maisonette and full details of it and the comparables relied upon in the valuation report of Mr Peter Gunby MRICS, referred to below.

Tenure

7. The existing lease is for a term of 99 years from 2 November 1981. The ground rent is fixed at £50 per annum without increase or review. Mr Gunby states the valuation date to be 27 July 2017, at which date the term remaining of the existing lease was 63.27 years.

The maisonette and comparables

8. Mr Gunby inspected the maisonette on 2 February 2018. He has provided photographs and a description of the maisonette, a list of comparable transactions and a valuation rationale.
9. He describes the maisonette a purpose built first floor flat forming part of a two storey late Victorian building comprising two units. It is situated in a terrace of similar style properties in an established residential tree-lined road. There is a separate entrance door leading to the maisonette via a staircase. There are no internal communal parts. To the rear of the property there is an internal staircase leading to a garden used exclusively by the maisonette..
10. The maisonette comprises a storm porch on the ground floor, landing, reception room, three bedrooms, a kitchen and a bathroom, together with a garden. Mr Gunby gives the approximate floor area of the maisonette as 56.2 sqm.
11. He refers to seven comparables but relies on the following three comparables;
 - (a) 79 Wakefield Street London E6 1NR which sold on 9 October 2017 for £270,000. Mr Gunby states that it had a 121 year lease but the official copies suggest that the term was actually 124 years lease. This is a two bedroom flat. Mr Gunby states without supporting evidence (other than a reference to an EPC GIA of 53 metres) that this premium equates to a value per square metre of £5,094.34
 - (b) 27 Charlemont Road, London E6 6HJ (again a two bedroom flat) which sold with a lease for a remaining term of 105 years on 6 September 2017 for £292,000 with an EPC GIA of 54 sqm, equating to a value per square metre of £5,416.67
 - (c) 15b Hockley Avenue London E6 3AN (again a two bedroom flat) which sold with a lease for a remaining term of 93 years on 7 April

2017 for £287,000 with an EPC GIA of 51 sqm, equating to a value per square metre of £5,627.45.

12. Having considered the three comparables Mr Gunby adopted an average value per square metre of £5,379.49 and used this multiplied by the GIA of the maisonette to arrive at a value of £302,327.15 from which he makes an adjustment of £11,000 to reflect the absence of carpets, uPVC double glazed windows, white goods and modern kitchen and bathroom, to value the unimproved extended lease at £290,527, rounded down to £290,500.
13. Mr Gunby considered that the value of the proposed extended lease will be a nominal 1% less than the hypothetical share of freehold value of the property.
14. As far as the short lease value is concerned Mr Gunby has relied on the five graphs produced by valuers for Greater London and England RICS. He takes an average of all five of those graphs and adopts the average of 88.14%.
15. He adopts a capitalisation rate of 7% and a deferment rate of 5%.
16. Mr Gunby then produced a valuation stated to be based on the above but has inadvertently taken the unimproved extended lease value to be £287,624 rather than the £290,500 referred to in his report.

Lease extension premium - the tribunal's decision

17. The tribunal are prepared to accept the methodology adopted by Mr Gunby but have corrected the unimproved extended lease value to the £290,500 referred to in his report. This makes the Freehold value £293,405 and the existing leasehold value £258,607.
18. Accordingly the premium payable on the grant of a new lease under the 1993 Act is **twenty four thousand four hundred and ninety nine pounds (£24,499.00)**.

Reasons for the tribunal's decision

19. The tribunal carefully considered the contents of Mr Gunby's report and are prepared to accept it, subject to the correction referred to above.
20. The tribunal note that Mr Gunby's three preferred comparables were two rather than three bedrooms but as his valuation was based on an average value per square metre and the comparables are of similar size to the maisonette consider that they are valid comparables. Mr Gunby

did not adjust the values of his comparables to allow for the difference in date between the valuation date for the maisonette and the dates upon which the comparables were sold nor did he consider any effect on valuation where the comparable was not on the first floor (as the maisonette is) or the existence of a garden. The tribunal however consider that any adjustments to reflect such differences would have had a minimal effect on the extended lease value of the maisonette.

Terms of new lease

21. The draft lease submitted by the Applicant's solicitors is approved except that the new lease should be granted with the covenants for title implied under Part 1 of the Law of Property (Miscellaneous Provisions) Act 1994 where the disposition is expressed to be made with limited title guarantee, as required by Section 57(8)(b) of the 1993 Act. Accordingly it should be granted with limited title guarantee, not full title guarantee.

The law

22. The relevant legal provisions are set out in the Appendix to this decision.

Name: J Pittaway

Date: 27 March 2018

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act 1993 (as amended)

S50 Applications where landlord cannot be found.

- (1) Where—
 - (a) a qualifying tenant of a flat desires to make a claim to exercise the right to acquire a new lease of his flat, but
 - (b) the landlord cannot be found or his identity cannot be ascertained, the court may, on the application of the tenant, make a vesting order under this subsection.
- (2) Where—
 - (a) a qualifying tenant of a flat desires to make such a claim as is mentioned in subsection (1), and
 - (b) paragraph (b) of that subsection does not apply, but
 - (c) a copy of a notice of that claim cannot be given in accordance with Part I of Schedule 11 to any person to whom it would otherwise be required to be so given because that person cannot be found or his identity cannot be ascertained, the court may, on the application of the tenant, make an order dispensing with the need to give a copy of such a notice to that person.
- (3) The court shall not make an order on any application under subsection (1) or (2) unless it is satisfied—
 - (a) that on the date of the making of the application the tenant had the right to acquire a new lease of his flat; and
 - (b) that on that date he would not have been precluded by any provision of this Chapter from giving a valid notice under section 42 with respect to his flat.

S51 Supplementary provisions relating to vesting orders under section 50(1).

- (1) A vesting order under section 50(1) is an order providing for the surrender of the tenant's lease of his flat and for the granting to him of a new lease of it on such terms as may be determined by a leasehold valuation tribunal to be appropriate with a view to the lease being granted to him in like manner (so far as the circumstances permit) as if he had, at the date of his application, given notice under section 42 of his claim to exercise the right to acquire a new lease of his flat.
- (2) If a leasehold valuation tribunal so determines in the case of a vesting order under section 50(1), the order shall have effect in relation to property which is less extensive than that specified in the application on which the order was made.
- (3) Where any lease is to be granted to a tenant by virtue of a vesting order under section 50(1), then on his paying into court the appropriate sum there shall be executed by such person as the court may designate a lease which—
 - (a) is in a form approved by a leasehold valuation tribunal, and
 - (b) contains such provisions as may be so approved for the purpose of giving effect so far as possible to section 56(1) and section 57 (as that section applies in accordance with subsections (7) and (8) below);and that lease shall be effective to vest in the person to whom it is granted the property expressed to be demised by it, subject to and in accordance with the terms of the lease.
- (4) In connection with the determination by a leasehold valuation tribunal of any question as to the property to be demised by any such lease, or as to the rights with or subject to which it is to be demised, it shall be assumed (unless the contrary is shown) that the landlord has no interest in property other than the property to be demised and, for the purpose of excepting them from the lease, any minerals underlying that property.
- (5) The appropriate sum to be paid into court in accordance with subsection (3) is the aggregate of—
 - (a) such amount as may be determined by a leasehold valuation tribunal to be the premium which is payable under Schedule 13 in respect of the grant of the new lease;
 - (b) such other amount or amounts (if any) as may be determined by such a tribunal to be payable by virtue of that Schedule in connection with the grant of that lease; and
 - (c) any amounts or estimated amounts determined by such a tribunal as being, at the time of execution of that lease, due to the landlord from the tenant (whether due

under or in respect of the tenant's lease of his flat or under or in respect of any agreement collateral thereto).

- (6) Where any lease is granted to a person in accordance with this section, the payment into court of the appropriate sum shall be taken to have satisfied any claims against the tenant, his personal representatives or assigns in respect of the premium and any other amounts payable as mentioned in subsection (5)(a) and (b).
- (7) Subject to subsection (8), the following provisions, namely—
- (a) sections 57 to 59, and
 - (b) section 61 and Schedule 14,
- shall, so far as capable of applying to a lease granted in accordance with this section, apply to such a lease as they apply to a lease granted under section 56; and subsections (6) and (7) of that section shall apply in relation to a lease granted in accordance with this section as they apply in relation to a lease granted under that section.
- (8) In its application to a lease granted in accordance with this section—
- (a) section 57 shall have effect as if—
 - (i) any reference to the relevant date were a reference to the date of the application under section 50(1) in pursuance of which the vesting order under that provision was made, and
 - (ii) in subsection (5) the reference to section 56(3)(a) were a reference to subsection (5)(c) above; and
 - (b) section 58 shall have effect as if—
 - (i) in subsection (3) the second reference to the landlord were a reference to the person designated under subsection (3) above, and
 - (ii) subsections (6)(a) and (7) were omitted.

S57 Terms on which new lease is to be granted.

- (8) In granting the new lease the landlord shall not be bound to enter into any covenant for title beyond—
- (a) those implied from the grant, and
 - (b) those implied under Part I of the Law of Property (Miscellaneous Provisions) Act 1994 in a case where a disposition is expressed to be made with limited title guarantee, but not including (in the case of an underlease) the covenant in section 4(1)(b) of that Act (compliance with terms of lease);
- and in the absence of agreement to the contrary the landlord shall be entitled to be indemnified by the tenant in respect of any costs incurred by him in complying with the covenant implied by virtue of section 2(1)(b) of that Act (covenant for further assurance).