



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case Reference	:	CAM/22UH/OLR/2018/0119
Property	:	21 Cunningham Rise, North Weald, Epping, CM16 6JR
Applicant Represented by	:	Brian Brundell & Margaret Brundell Peter Gunby MRICS
Respondent	:	St. Jude Investments Ltd. (not present or represented)
Date of Application	:	11th June 2018
Type of Application	:	To determine the terms of acquisition of the lease extension of the property where the landlord cannot be found (section 51 of the Leasehold Reform Housing and Urban Development Act 1993 (“the 1993 Act”))
Tribunal	:	Bruce Edgington (lawyer chair) David Brown FRICS
Date and place of hearing	:	12th September 2018 at Harlow SSCS The Court House, S Gate, Harlow CM20 1HH

DECISION

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1. The ‘appropriate sum’ to be paid into court for the new lease of the property pursuant to section 51(5) of the 1993 Act is £24,340

Reasons

2. This application is for the Tribunal to determine the terms (including the premium) of the lease extension of the property following a vesting order made by District Judge Earl sitting at Chelmsford County Court on the 4th May 2018. The existing freehold owner cannot be found. A combination of the effects of sections 51(3) and 51(8) of the **Leasehold Reform, Housing & Urban Development Act 1993** (“the Act”) mean that the valuation date is 18th January 2018 which is the date used by Mr. Gunby, on behalf of the Applicant.

The Inspection

3. The members of the Tribunal inspected the property on the morning of the hearing, having previously received and read the comprehensive report of the Applicants' expert valuer, Mr. Peter Gunby MRICS. He was present at the inspection. The property is as described in such report.
4. In Mr. Gunby's presence, the Tribunal members also looked at 4 nearby properties and also 41 Wellington Road from the outside, all of which were referred to in Mr. Gunby's report.

The Law

5. The price to be paid on a lease extension is calculated in accordance with the provisions of Schedule 13 of the 1993 Act. The price includes (a) the diminution in value of the freeholder's interest in the tenant's flat once the new lease is granted as compared with the value under the original lease, calculated in accordance with the assumptions in Paragraph 3 of the Schedule (b) the freeholder's share of the marriage value (if any) and (c) any compensation payable to the freeholder under Paragraph 5 of the Schedule of which the Tribunal agreed that there was none.

The Hearing

6. The hearing was attended by Mr. Gunby. He went through his report, confirming his conclusions in respect of the freehold value of £217,150, extended lease value of £215,000 and existing lease value of £192,395. He has used the Sportelli deferment rate of 5% and a capitalisation rate of 7%, which, he said, reflects the relatively low ground rent.
7. Mr Gunby had calculated a relativity of 83.36%, based on three transactions in 2015 and adjusting by 3% as "an arbitrary percentage" to reflect the 'no Act' world. He then rejected that figure because the evidence was historic, preferring relativity graphs and relying on "the average of the average of curves in Greater London" to arrive at a relativity of 88.6%.

Discussion

8. We agree with Mr Gunby's assessments of the freehold value and the extended lease value and with his deferment rate and yield and his calculation of the diminution in the value of the landlord's interest at £10,223.
9. We regard Mr Gunby's relativity of 88.6% as too high. He has taken this from graphs of relativity in Greater London. The Property is not in Greater London and so those graphs are not relevant to North Weald. The graphs for London and England by Nesbitt and Co, Austin Gray and Andrew Pridell Associates Ltd all indicate relativity of 85% or less for 63.93 years unexpired.
10. However, we consider that graphs should not be used in this case. The Upper Tribunal (Lands Chamber) has determined on several occasions that market evidence is to be relied on for computing relativity where it is available. Mr Gunby has referred to helpful market evidence from three

sales in 2015. We accept that these sales are historic but there is no evidence that relativity for this type of property has changed in the intervening three years and so we consider that those sales can be relied upon as evidence for calculating the relativity.

11. The long lease sale evidence is of 41 Wellington Road for £195,000 around October/November 2015. We accept that Wellington Road is a better location than Cunningham Rise and that some adjustment has to be made for that factor, which Mr Gunby puts at £15,000. He also asserts that the Wellington Road flat was in very good condition which warrants a further adjustment of £15,000 but he has not produced any evidence of its condition and, in any event, the subject Property is not in such poor condition that such a large deduction is justified. We consider that an overall deduction of £30,000 is too high and that £25,000 is more appropriate, giving an adjusted sale price of £170,000.

12. Following Mr Gunby's methodology, the calculation is -

$$146,000 \div 170,000 \times 100 = 85.8\%$$

We do not agree with Mr Gunby's discount of 3% for the 'no Act' world. In the decision on the appeal by *Sinclair Gardens Investments (Kensington) Limited* re Flats 9 and 11 George Court, Chelmsford [2017] UKUT 0494 (LC), the Upper Tribunal (Land Chamber) considered discounts that it had accepted in previous cases for unexpired terms of 40 years or more, which include 5.50% in *Orchidbase* for 57.68 years unexpired and 3.50% in *Contactreal* for 67.49 years unexpired. This would indicate that an appropriate discount for 63.93 years unexpired is around 4.5%. Applying that to our figure of 85.8% gives a relativity of 81.3%. This compares favourably with the 82% for 66.81 years determined by the Upper Tribunal in *Sinclair Gardens*.

13. That relativity produces an existing lease value of £176,542.

Conclusions

14. Adopting Mr Gunby's valuation format, as per the Appendix hereto, we determine that the premium payable is £24,340.

15. As far as the draft Deed of Surrender and New Lease is concerned, the Vesting Order did not say that this should be approved by this Tribunal. However, a draft has been supplied in the bundle. In order to assist the Applicants and the court, the Tribunal considers that the form of Deed of Surrender and New Lease in the bundle is appropriate save for the following matters:

- (a) In LR5 the vesting order was made pursuant to subsection 50(1) of the 1993 Act, not section 56.
- (b) LR7 and clauses 26 and 5 need to be completed with the premium stated above.
- (c) LR14 needs to be correctly completed.
- (d) As the landlord is not executing the new lease, it would be inappropriate for there to be a direct landlord's covenant as in clause 7 which should be replaced by a declaration as to liability.

- (e) In clause 12, the Lease is executed for the purposes of Part I, Chapter II of the Act, not Chapter one Part one. Part I Chapter I relates to enfranchisement of freehold titles. This needs to be amended.

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Bruce Edgington
Regional Judge
13th September 2018

APPENDIX – The Tribunal’s Calculation

Diminution of Landlord’s Interest

Mr Gunby’s calculation accepted

£ 10,223

Marriage Value

Value of tenant’s interest with extended lease £215,000

Less

Value of tenant’s existing lease £176,542

Value of landlord’s existing interest £ 10,223

Marriage value £ 28,235

50% £ 14,117

Premium payable £ 24,340

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.