



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

Case Reference : **BG/LON/00AY/OLR/2020/1118**

Property : **Flat 3, 68b Hopton Road,
London SW16**

Applicant : **Joseph Borg**

Representative : **Vivash Brand Solicitors LLP**

Respondent : **Dennis Mathews**

Type of Application : **Determination of terms of lease
extension (missing landlord)**

Tribunal Members : **Mr N Martindale FRICS**

Date of Decision : **4 February 2020**

DECISION

Decision

The premium to be paid by the applicant for the lease extension for Flat 3, 68b Hopton Road, Streatham, London SW16 2EN (the Property) under HM Land Registry title number SGL457122 is **£41,198. (Forty one thousand one hundred and ninety eight pounds)**. The draft deed of surrender and re-grant, attached at Tab p, to the applicant's bundle, is approved.

Introduction

1. This is an application made under Section 50 and 51 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the premium to be paid and the terms of an acquisition of an extension to the

leasehold interest in the Property. The relevant legal provisions are set out in Appendix to this decision.

2. The Property is a ground floor maisonette with its own entrance. It forms part of a small purpose built two storey building of other flats. The building is an infill within an older well established residential area.
3. The Applicant is the long leaseholder of the Property and holds their interest under the terms of a lease dated 31 January 1986, registered under title number SGL457122. That lease was granted by the then freeholder Ace Pud Ltd, to the initial leaseholder Carmel Camillere for a term of 99 years from 25 December 1985. The lease reserves an initial ground rent of £50 pa for 33 years, rising to £100 pa for the next 33, rising to £200 pa for the last 33 years. The residual term of the lease is now vested in the applicant, registered as leasehold proprietor on 31 May 1989.
4. The registered freehold proprietor of the Property was vested in the respondent under title number SGL397089 on 2 February 1994.
5. By order made by District Judge Jarzabkowski in the County Court at Wandsworth on 2 September 2020 and on the court being satisfied that the respondent could not be found, the matter was referred to this Tribunal for determination of the terms of a lease extension under S.51(5); that following this the Applicant will surrender her lease and a new lease will be granted.
6. The Tribunal approves the form of surrender and renewal, however as the applicant has not named a specific solicitor who will execute the lease, the Tribunal refers this case back to the Court so that the new lease will be executed by a Judge of the County Court, in accordance with S.5(3) of Leasehold Reform Housing and Urban Development Act 1993.
7. The Tribunal considered the issue on the papers submitted by the applicants, without a hearing, in accordance with directions issued on receipt by the Tribunal, of the order from the County Court. The case was to be determined on the papers subsequently in 2020. The Tribunal's jurisdiction is derived from the order.

Statutory Basis

8. Part 2, Schedule 13 to the Act provides that the price to be paid by the leaseholder, the applicant for the new leasehold interest where there is no intermediary head leaseholder, applies here.
9. The premium payable in respect of the grant of a new lease is the total of: (a) the diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 3, (b) the landlord's share of the marriage value as determined in accordance with paragraph 4, and (c) any amount of compensation payable to the landlord under paragraph 5.

10. The diminution is: 3(1) The diminution in value of the landlord's interest is the difference between (a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease; and (b) the value of his interest in the flat once the new lease is granted.
11. Paragraph 4 of the Schedule, as amended, provides that the freeholder's share of the marriage value is to be 50%, and that any marriage value is to be ignored where the unexpired term of the lease exceeds eighty years at the valuation date. Here it is included as the unexpired term is less than eighty years.
12. Paragraph 5 of the Schedule provides for the payment of compensation for other loss resulting from the enfranchisement.

Evidence

13. The applicant provided a valuation report dated 5 January 2021, by Zahid Azeem BA MSc MRICS of Scrivener Tibbatts Chartered Surveyors of Wimbledon London SW19 7ND ("Valuation Report").
14. Having considered the contents of the Valuation Report and the opinions expressed by the Valuer, the Tribunal is satisfied that the method adopted is appropriate to determine the premium for the new lease for the Property. The Tribunal accepts the description of the Property and its location as stated.
15. A photograph of the front exterior of the Property within the building of which it forms part, was included in the Valuation Report. The Tribunal did not consider it necessary or proportionate to carry out an inspection of the Property.

Valuation

16. As reported, the ground floor maisonette No.3 at No.68b Hopton Road, consists of: A ground floor outside entrance door and hallway, kitchen, bathroom & WC, living room and two double bedrooms. It has its own small rear garden and space for parking one car off road, to the front. The GIA is 62.3m² or 670ft². The Property has UPVC windows double glazed and full gas fired central heating. No tenant's improvements have been identified. The Property was in 'fair' condition in compliance with the lease obligations.
17. The valuation date prescribed by section 51(1) of the Act is the date of the applicants' application to the court namely 25 August 2020. The unexpired residue of the lease for the Property is 64.33 years.
18. The Valuer's assessment of the market value of the flat is based on evidence of completed sales of five, 2 bedroom comparables. These are a mix of conversions of parts of former older houses and others of purpose built low rise relatively small and modern blocks of flats. The comparable maisonettes and flats have

long or very long unexpired leases. All are within a 0.5 mile. The sale dates are from April 2020 to August 2020. The range being small and close to the AVD, and the market being relatively flat, these sales are not adjusted for time.

19. Overall the Tribunal is satisfied with the relevance and detail of the five comparable property sales provided in the Valuation Report and weighting accorded. It accepts the Valuer's analysis of each in the assessment of the value of new long lease of the Property
20. There is a relatively small range in sale prices from £340,000 to £377,500. The relative relevance and significance of each transaction has been weighted between 10% to 40%, the latter for the most comparable.
21. The best comparable is said to be that of the two bed ground floor flat in a purpose built block in 12 Beechcroft Close SW16 2EW weighted at 40% sold for £350,000. It is in a cul-de-sac location, but is slightly smaller at 633ft² and lacks an off street parking spot. The second most relevant is the ground floor flat also with a private garden, with a share of the freehold and on the ground floor, but is smaller still, at 60ft² and sold for £375,000.
22. From an average of these weighted sales the Valuer calculates a long leasehold value for the Property of £356,025. The Tribunal accepts this figure. The Valuer then reduces this to £350,000 in the text of the Report but, gives no reason. The Tribunal does not accept this degree of rounding.
23. The Tribunal notes and accepts the 1% adjustment by the Valuer in uplifting the long lease value to its notional freehold value.
24. As for relativity between short and long leasehold values for the unexpired term, the Valuer considered and adopted the Gerald Eve graph which showed 81 % in preference to the older RICS approved but now dated graphs. Whilst not excluding reference to or use of the RICS graphs the Upper Tribunal is increasingly in favour of the more recent Savills and GE graphs even for properties in non PCL locations, as here, in suburban London. The Tribunal accepts this conclusion here.
25. The diminution in the value of the landlord's interest in the tenant's maisonette is represented first by the capitalised value of the ground rent receivable under their lease. The calculations of the modest rents at 6% capitalisation yield referenced in the report, are adopted.
26. Secondly the effect of the lease extension will deprive the landlord of the property for a further 90 years in addition to the current unexpired term. The present value of that delayed reversion is determined by applying a deferment rate to the freehold value of the flat. The deferment rate appropriate for leasehold flats in Central London was authoritatively determined to be 5% in the case of *Earl Cadogan v Sportelli* (2006) LRA/50/2005. The Valuer also

adopts the Sportelli deferment rate of 5% for this flat, which the Tribunal accepts.

27. The marriage value is to be shared equally between the parties, 50:50 as required by the Act.
28. Because the Tribunal does not accept the degree of rounding down for the capital value of the long leasehold adopted by the Valuer, the Tribunal provides its own valuation. It also corrects the small error in calculation of FH reversion at A2 in the Report supplied. These changes create a number of differences including that of the final premium payable which is slightly increased beyond that proposed.
29. The premium to be paid by the applicant for the new lease of the Property is therefore is **£41,198. (Forty one thousand one hundred and ninety eight pounds).**

Name: Neil Martindale FRICS Date: 4 February 2021

Appendix

Leasehold Reform, Housing and Urban Development Act 1993

S.50 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.

(4) Before making any such order the court may require the tenant to take such further steps by way of advertisement or otherwise as the court thinks proper for the purpose of tracing the person in question; and if, after an application is made for a vesting order under subsection (1) and before any lease is executed in pursuance of the application, the landlord is traced, then no further proceedings shall be taken with a view to a lease being so executed, but (subject to subsection (5))—

(a) the rights and obligations of all parties shall be determined as if the tenant had, at the date of the application, duly given notice under section 42 of his claim to exercise the right to acquire a new lease of his flat; and

(b) the court may give such directions as the court thinks fit as to the steps to be taken for giving effect to those rights and obligations, including directions modifying or dispensing with any of the requirements of this Chapter or of regulations made under this Part.

(5) An application for a vesting order under subsection (1) may be withdrawn at any time before execution of a lease under section 51(3) and, after it is withdrawn, subsection (4)(a) above shall not apply; but where any step is taken (whether by the

landlord or the tenant) for the purpose of giving effect to subsection (4)(a) in the case of any application, the application shall not afterwards be withdrawn except—

(a) with the consent of the landlord, or

(b) by leave of the court,

and the court shall not give leave unless it appears to the court just to do so by reason of matters coming to the knowledge of the tenant in consequence of the tracing of the landlord.

(6) Where an order has been made under subsection (2) dispensing with the need to give a copy of a notice under section 42 to a particular person with respect to any flat, then if—

(a) a notice is subsequently given under that section with respect to that flat, and

(b) in reliance on the order, a copy of the notice is not to be given to that person,

the notice must contain a statement of the effect of the order.

(7) Where a notice under section 42 contains such a statement in accordance with subsection (6) above, then in determining for the purposes of any provision of this Chapter whether the requirements of Part I of Schedule 11 have been complied with in relation to the notice, those requirements shall be deemed to have been complied with so far as relating to the giving of a copy of the notice to the person referred to in subsection (6) above.

51 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.

Flat 3, 68b Hopton Road London SW16 2EN

Lease Extension

Valuation Date	25/08/20
Expiry of existing lease	25/12/84
Existing Term unexpired	64.33
Capitalisation rate	6
Deferment rate	5
VP Value of Freehold	359585
VP Value of Long Leasehold	356025
Relativity: FH/ Short LH	81.00
VP Value of Short Leasehold	291264

Landlords Present Interest

Fixed Present GR		100	
YP for 31.33 years @ 6% no deferrment	13.9812		£1,398
Fixed GR from second RR in 31.33 years		200	
YP for 33 years @ 6%	14.2302		
PV £1 in 31.33 years @ 6%	0.1611		£458
VP Value of Freehold		359585	
PV £1 in £64.33 years @ 5%	0.0433		£15,584
Total			£17,441

Landlords Proposd Interest**VP Value of Freehold**

PV£1 in 154.33 years @5%	0.0005	359585	£194
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Marriage Value

Tenants Proposed interest		356025	
Add Landlords proposed interest		194	£356,219
Tenants Present Interest		291264	
other additions		0	
Add Landlords Present Interest		17441	£308,705
Marriage Value			£47,514
Landlords Share of Marriage Value 50%			£23,757

Landlords Present Interest

£17,441

plus Landlords Share of Marriage Value

£23,757

Enfranchisement Price**£41,198**