

2739



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

Case Reference : **LON/00AP/OLR/2013/0916**

Property : **Flat B, 10, Grove Avenue, London,
N10 2AR**

Applicant : **Harriet Olivia Shephard**

Representative : **Ashfords Solicitors LLP**

Respondent : **Ronald William Huggins**

Representative :

Type of Application : **For the determination of the
premium for a lease extension and
the terms of the new lease**

Tribunal Members : **Mrs H C Bowers MRICS**

**Date and venue of
Consideration** : **28th August 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **4th October 2013**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the premium of £36,215.00 is payable for the lease extension.
- (2) The tribunal makes the determination as to the terms of the new lease as set out under the various headings in this Decision
- (3) This matter should now be referred back to the Clerkenwell & Shoreditch County Court.

The application

1. This matter was transferred from Clerkenwell and Shoreditch County Court on the order of District Judge Sterlini dated 3rd July 2013. The order required the Leasehold Valuation Tribunal to determine the premium payable for a lease extension and the terms of a new lease under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act).

The hearing

2. There was no hearing in respect of this case and the matter was dealt with on the consideration of the papers submitted on behalf of the Applicant.
3. The tribunal did not inspect the property as photographs of the building were provided in the hearing bundle. The Applicant did not request an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The background

4. The Applicant currently holds a long lease of Flat B, 10 Grove Avenue, London, N10 2AR (the subject property). The lease was dated 3rd August 1979 and was for a term of 99 years from 3rd August 1979 at an initial rent of £50 for the first 33 years, increasing to £100 for the second 33 years and to £150 for the final 33 years.

5. The Applicant made a claim dated 17th May 2013, for a vesting order pursuant of section 50(1) of the Act, as the Applicant had been unable to locate the Respondent landlord of the subject property.

The Applicant's case

6. An initial valuation report was prepared by Andrew Cohen MRICS of Talbots Surveying Services Ltd and was dated 29th November 2012. However, in response to a query from the tribunal regarding the valuation date, a

revised valuation report, dated 23rd August 2013 from Alan Cohen BSc FRICS IRRV and Andrew Cohen MRICS, both of Talbots Surveying Services Ltd was submitted to the tribunal.

7. The subject property is described as being located in Muswell Hill, on a residential road. It is a self-contained flat on the first and second floors of a three storey Edwardian, inner terrace house. There is a communal front door and lobby on the ground floor, giving access to the subject flat. The accommodation comprises a bedroom, lounge, kitchen and bathroom with WC on the first floor and two bedrooms on the second floor. One of the bedrooms on the second floor has a low head height. The gross internal floor area is 950 sq ft. There is no external space included with the flat.

8. The flat is described as having single glazed, timber-framed window units. Although the subject property has the benefit of gas fired central heating, it is stated that this was installed after the commencement of the lease and therefore is an improvement that is to be disregarded under the provisions of the Act.

9. It is confirmed that the valuation date is 17th May 2013 and as of that date there was a term of 65.21 years unexpired. The current rent payable is £100 per annum.

10. It is proposed that the appropriate capitalisation rate is to be 7%. It is submitted that as the ground rent review pattern is fixed to every thirty three years and to a fixed increase that this would not be attractive to investor. Additionally, given the level of rent any landlord would need to wait over six years to commence forfeiture proceedings in the case of non-payment. All these factors suggested that there should be no deviation from the benchmark 7% capitalisation rate.

11. A deferment rate of 5% is proposed. This is based on the guidance suggested in Sportelli. It is confirmed that there were no factors that would suggest a departure from the 5%.

12. The value of the extended lease of an unimproved flat is submitted to be £450,000. This figure is based upon a number of comparables that are detailed below.

13. 52a Coniston Road, NW10 sold for £425,000 on 31st January 2013. This is a three bedroom flat with a GIA of 1,057 sq ft and although described as being in good condition, is noted to be in an inferior location. 60 Rosebery Road, NW10 2LA sold for £465,000 on 5th April 2013. It is a ground floor flat with three bedrooms, a private garden, a reception room, fitted kitchen and bathroom. The flat has gas central heating. The GIA is 941 sq ft and was described by the selling agents as being in poor condition. 36a Rosebery Road sold for £590,000 on 7th May 2013. This flat is described as "*Finished to a very high standard, is a delightfully refurbished 2 bedroomed garden flat,*

designed by a renowned, interior designer, spread over the ground floor of an Edwardian corner house. This spacious flat, has 2 double bedrooms and a private South westerly facing garden, a large reception room, a smartly fitted kitchen, a utility room and a super white fitted bathroom, gas central heating, a small storage cellar and a private front door". The GIA for this flat is 1,064 sq ft.

14. The relativity adopted in this case is 87.5%. This figure is derived from the RICS Research Report on Leasehold Reform: Graphs of Relativity. It is submitted that the most relevant data relates to the Greater London and England graphs and in particular reliance was placed on the figures for leases with 65 years unexpired, namely: Beckett & Kay – 89.34%; South East Leasehold – 91%; Nesbitt & Co – 88%; Austin Gray – 89.29% and Andrew Pridell - 89%. Consideration was also given to the John D Woods Pure Tribunal Graph, which shows 85% for a lease with the same unexpired term.

16. In conclusion it was accepted that as the unexpired lease was for a term of less than 80 years, then marriage value was payable on a 50:50 basis. The proposed premium is £36,216.

17. In the papers originally submitted to the tribunal and in further submissions was a copy of the proposed draft lease that included a Schedule 1, titled Changes to the Lease. This schedule stated

"1 Replacement of clauses

1.1 Clause 3(4) of the Existing Lease shall be deleted and replaced by the following clause:

1.1.1 That if so required by the Lessee the Lessor will enforce the covenants similar or corresponding to those contained in sub-clauses (3) to (14) inclusive and sub-clause (20) of Clause 2 hereof entered into or to be entered into by the Lessee of any other flat in the Building on the Lessee indemnifying the Lessor against all costs and expenses in respect of such enforcement and providing such advance payment or security in respect of costs and expenses as the Lessor may reasonably require."

18. On 28th August 2013 the tribunal sought submissions as to why the proposed alterations to the existing lease should be made. Messrs Ashfords made their submissions in a letter to the tribunal dated 12th September 2013. It was stated that in the Council of Mortgage Lenders' Handbook there was reference to a requirement that a lease should make provision for a tenant to request that the landlord enforce the covenants of other lessees in relation to insurance obligations. Under the terms of the existing lease there is an obligation on the lessee to insure the demised premises and the common parts, but there is no provision for the enforcement of these provisions by the landlord at the request of the tenant. It is suggested that as there is another flat within the building, against whom a tenant could potentially wish the

landlord to enforce the relevant covenant, then clause 3(4) in the original form is defective and should be amended in accordance with section 57(6)(a) of the 1993 Act. It is submitted that as a defect of this nature could affect the value and marketability of the property. In addition it is suggested that as the tenant would be indemnifying the landlord in respect of any costs arise from a request made under this proposed amendment, then there would be no prejudice to the landlord.

The tribunal's decision

19. The tribunal considers that the capitalisation rate of 7% is reasonable, given the level of the ground rent and the frequency of the review pattern. The deferment rate of 5% follows the guidance from Sportelli and there appears no reason to depart from that figure. Therefore this rate is adopted by the tribunal.

20. The unimproved, long lease value of the subject flat of £450,000 is within the range of the comparables, especially if the comparable data is adjusted to reflect the individual condition, size and facilities of the comparables. Accordingly, the tribunal determines that the value of the unimproved, long lease interest is £450,000.

21. The proposed relativity figure of 87.5% is within a reasonable range that can be observed from the evidence submitted on the Applicant's behalf and is adopted by the tribunal.

22. The tribunal has applied those figures to the calculation of the premium for the lease extension. The tribunal determines that the premium payable for the lease extension is £36,215.00 as shown in the calculation attached to this decision in Appendix 1.

23. In respect of the proposed terms of the new lease, it would appear that the omission of the wording relating to the enforceability of the mirror insurance provisions is a defect from the stand point of both a reasonable landlord and a reasonable tenant. Accordingly the proposed draft lease with the suggested Schedule 1 as annexed to the letter from Messrs Ashfords dated 12th September 2013 is approved.

The next steps

1. This matter should now be returned to the Clerkenwell and Shoreditch County Court.



Name: Helen C Bowers

Date: 4th October 2013

APPENDIX 1

**Flat B, 10 Grove Avenue,
Muswell Hill
London, N10 2AR**

| | |
|-----------------------|----------|
| FH in reversion value | £454,500 |
| Extended lease value | £450,000 |
| Short lease value | £397,688 |

Freeholder's Present Interest

Term

Term 1

| | |
|---------------|------|
| Rent Reserved | £100 |
|---------------|------|

| | |
|-----------------------------------|----------------|
| YP to 1st review 32.21 years @ 7% | <u>12.6697</u> |
|-----------------------------------|----------------|

£1,267

Term 2

| | |
|---------------|------|
| Rent Reserved | £150 |
|---------------|------|

| | |
|--------------------------------|---------|
| YP to 2nd review 33 years @ 7% | 12.7538 |
|--------------------------------|---------|

| | |
|------------------------------|---------------|
| PV of £1 @ 7% in 32.21 years | <u>0.1131</u> |
|------------------------------|---------------|

£216

Reversion

| | |
|--------------|----------|
| FH reversion | £454,500 |
|--------------|----------|

| | |
|------------------------------|---------------|
| PV of £1 in 65.21 years @ 5% | <u>0.0415</u> |
|------------------------------|---------------|

£18,862

£20,345

less

Freeholder's Proposed Interest

| | |
|--------------|----------|
| FH reversion | £454,500 |
|--------------|----------|

| | |
|-------------------------------|---------------|
| PV of £1 in 155.21 years @ 5% | <u>0.0005</u> |
|-------------------------------|---------------|

£227

£20,118

Marriage value

Proposed

| | |
|----------------------|----------|
| Extended lease value | £450,000 |
|----------------------|----------|

| | |
|-----------------|------|
| FH in reversion | £227 |
|-----------------|------|

less

Existing

| | |
|-----------------------|---------|
| Freeholder's Interest | £20,345 |
|-----------------------|---------|

| | |
|-------------------|-----------------|
| Short lease value | <u>£397,688</u> |
|-------------------|-----------------|

| | |
|----------------|----------------|
| Marriage Value | <u>£32,194</u> |
|----------------|----------------|

50:50 division

| | |
|-----------------------------|----------------|
| Premium for lease extension | <u>£16,097</u> |
|-----------------------------|----------------|

£36,215

APPENDIX 2

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

“57.— Terms on which new lease is to be granted.

(1) Subject to the provisions of this Chapter (and in particular to the provisions as to rent and duration contained in section 56(1)), the new lease to be granted to a tenant under section 56 shall be a lease on the same terms as those of the existing lease, as they apply on the relevant date, but with such modifications as may be required or appropriate to take account—

(a) of the omission from the new lease of property included in the existing lease but not comprised in the flat;

(b) of alterations made to the property demised since the grant of the existing lease; or

(c) in a case where the existing lease derives (in accordance with section 7(6) as it applies in accordance with section 39(3)) from more than one separate leases, of their combined effect and of the differences (if any) in their terms.

(2) Where during the continuance of the new lease the landlord will be under any obligation for the provision of services, or for repairs, maintenance or insurance—

(a) the new lease may require payments to be made by the tenant (whether as rent or otherwise) in consideration of those matters or in respect of the cost thereof to the landlord; and

(b) (if the terms of the existing lease do not include any provision for the making of any such payments by the tenant or include provision only for the payment of a fixed amount) the terms of the new lease shall make, as from the term date of the existing lease, such provision as may be just—

(i) for the making by the tenant of payments related to the cost from time to time to the landlord, and

(ii) for the tenant's liability to make those payments to be enforceable by distress, re-entry or otherwise in like manner as if it were a liability for payment of rent.

(3) Subject to subsection (4), provision shall be made by the terms of the new lease or by an agreement collateral thereto for the continuance, with any suitable adaptations, of any agreement collateral to the existing lease.

(4) For the purposes of subsections (1) and (3) there shall be excluded from the new lease any term of the existing lease or of any agreement collateral thereto in so far as that term—

(a) provides for or relates to the renewal of the lease,

(b) confers any option to purchase or right of pre-emption in relation to the flat demised by the existing lease, or

(c) provides for the termination of the existing lease before its term date otherwise than in the event of a breach of its terms;

and there shall be made in the terms of the new lease or any agreement collateral thereto such modifications as may be required or appropriate to take account of the exclusion of any such term.

(5) Where the new lease is granted after the term date of the existing lease, then on the grant of the new lease there shall be payable by the tenant to the landlord, as an addition

to the rent payable under the existing lease, any amount by which, for the period since the term date or the relevant date (whichever is the later), the sums payable to the landlord in respect of the flat (after making any necessary apportionment) for the matters referred to in subsection (2) fall short in total of the sums that would have been payable for such matters under the new lease if it had been granted on that date; and section 56(3)(a) shall apply accordingly.

(6) Subsections (1) to (5) shall have effect subject to any agreement between the landlord and tenant as to the terms of the new lease or any agreement collateral thereto; and either of them may require that for the purposes of the new lease any term of the existing lease shall be excluded or modified in so far as—

- (a) it is necessary to do so in order to remedy a defect in the existing lease; or
- (b) it would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease.

(7) The terms of the new lease shall—

- (a) make provision in accordance with section 59(3); and
- (b) reserve to the person who is for the time being the tenant's immediate landlord the right to obtain possession of the flat in question in accordance with section 61.

(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).

(8A) A person entering into any covenant required of him as landlord (under subsection (8) or otherwise) shall be entitled to limit his personal liability to breaches of that covenant for which he is responsible.

(9) Where any person—

- (a) is a third party to the existing lease, or
 - (b) (not being the landlord or tenant) is a party to any agreement collateral thereto,
- then (subject to any agreement between him and the landlord and the tenant) he shall be made a party to the new lease or (as the case may be) to an agreement collateral thereto, and shall accordingly join in its execution; but nothing in this section has effect so as to require the new lease or (as the case may be) any such collateral agreement to provide for him to discharge any function at any time after the term date of the existing lease.

(10) Where—

- (a) any such person ("the third party") is in accordance with subsection (9) to discharge any function down to the term date of the existing lease, but
- (b) it is necessary or expedient in connection with the proper enjoyment by the tenant of the property demised by the new lease for provision to be made for the continued discharge of that function after that date,

the new lease or an agreement collateral thereto shall make provision for that function to be discharged after that date (whether by the third party or by some other person).

(11) The new lease shall contain a statement that it is a lease granted under section 56 ; and any such statement shall comply with such requirements as may be prescribed by [land registration rules under the Land Registration Act 2002.”