



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

Case Reference : **BG/LON/00AJ/OLR/2017/0616**

Property : **Ground Floor Flat, 23 Chandos Avenue, Ealing, W5 4ED**

Applicant : **Mrs Heather Smith**

Representative : **Bonallack & Bishop Solicitors**

Respondent : **Mr Charles Travers**

Representative : **N/A**

Type of Application : **S50/51 Leasehold Reform Housing and Urban Development Act 1993, Missing Landlord**

Tribunal Members : **P M J Casey MRICS
Judge Hargreaves**

Date and venue of Hearing : **Paper hearing on 28 June 2017
10 Alfred Place, London WC1E 7LR**

Date of Decision : **24 July 2017**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the premium payable on the grant of a new lease of the ground floor flat at 23 Chandos Avenue, Ealing, W5 4ED (“the property”) is the sum of £23,600.
- (2) The tribunal makes the determinations as set out under the various headings in this decision

The application

1. The applicant seeks a determination by the Tribunal pursuant to an order made under the provisions of S50(1) of the Leasehold Reform Housing and Urban Development Act 1993 (“the Act”) by District Judge Mauger sitting at the County Court at Central London on 24 April 2017 of the premium to be paid into Court and other terms on the grant of a new lease of the property under the relevant provisions of the Act.
2. The order was made in response to a claim made to the Court on 23 August 2016 by Bonallack & Bishop Solicitors on behalf of the applicants in which it was said that the applicant was entitled to acquire a new lease of the property under the provisions of the Act but had been unable to exercise the right by serving the requisite notice under S42 on the landlord, Charles Travers, because his whereabouts were unknown.

The hearing

3. In response to the Tribunal’s directions which provided for a determination on the papers to be submitted, the applicant’s solicitors provided a bundle of documents including a valuation report dated 22 April 2016 for use in Tribunal proceedings addressed to the Tribunal and prepared by J R Crosbie FRICS of Buntings, Surveyors. The report contained the requisite declarations required of a Surveyor acting as an expert witness.
4. The Tribunal considered the hearing bundle on 28 June 2017. No inspection of the property was deemed necessary given the description, plans and photographs included in the report.

The evidence

5. From Mr Crosbie’s description of the property it is a converted flat on the ground floor of a terraced house built in circa 1910. It comprises three rooms, kitchen, bath/wc and conservatory. There are gardens to front and rear. He also recorded some disrepair to the property, water penetration and leaks from the first floor, some minor internal cracking

to walls, slate roof showing signs of deterioration, some spalling to brickwork and deterioration to sashes at the front. None seemed of any great concern and he rightly records them as falling under the lessee's repairing obligations and thus to be disregarded for valuation purposes. Certain tenant's improvements were also noted, namely refitted kitchen and bathroom, upvc double glazed windows and doors to the rear of the property and the conservatory. Mr Crosbie said these fell to be disregarded under the valuation provisions of the Act.

6. The property is held on a 99 year lease from 2 June 1984 subject, at the valuation date, to a ground rent payment of £50.00 per annum payable in two half yearly instalments.
7. At the Valuation Date, 23 August 2016, the lease had 66.8 years unexpired.
8. Mr Crosbie provides market evidence for the extended lease value of the property as at the Valuation Date by reference to four transactions involving similar properties at around that time the details of which are provided in the report. He makes various adjustments to the sale prices achieved by these properties to reflect the differing sale dates, differences in size and location.
9. From this evidence he says the value of an extended lease in the subject property for a term of 166.8 years at a peppercorn ground rent and on the lease terms proposed is £360,000. He increases this by 1% to give a virtual freehold value of £363,600.
10. To capitalise the ground rent income for the unexpired term of the existing lease in his valuation of the existing freehold interest in the property he adopts a rate of 7½% by reference to three decisions of the First Tier Tribunal whilst to arrive at the present value of the freeholder's right to possession on the expiration of the existing lease term he adopts the "Sportelli" deferment rate of 5%.
11. To calculate the marriage value and the landlord's entitlement to 50% thereof he has assessed the value of the existing lease term in the property, disregarding the value of the rights conferred by the Act, by reference to what are generally referred to as graphs of relativity as he says there is no local sales' evidence for properties held on leases of such an unexpired term. He refers to three of the graphs relating to outer London/England which were published in an RICS report into graphs of relativity though he does not say why he chose those three out of the five such included in the report. Averaging the three suggests to him that in a "no Act world" the existing lease term would have a value of 90.6% of the freehold value.
12. His valuation attached to his report produces a premium of £22,400.

The decision

13. Mr Crosbie's adoption of a capitalization rate of 7½% cannot in the present case be said to be wrong where there is a relatively low fixed ground rent which has to be demanded half yearly and again, in the absence of extensive evidence to the contrary, his adoption of the "Sportelli" deferment rate of 5% is accepted.
14. The comparable sales evidence provided appears to support an extended lease value of £360,000 and the 1% uplift to the virtual freehold value accords with the tribunal's experience of cases involving outer London properties where the extended lease will be for a term exceeding 150 years.
15. However Mr Crosbie took the valuation date to be the date of his report whereas it is actually some four months' later and this has an effect on the valuation albeit small. Mr Crosbie's approach to the value of the existing lease is though lacking in explanation. In the tribunal's experience all of these graphs have their flaws and the more usual approach amongst practitioners in Outer London areas is to take an average of all five of the apparently relevant graphs in the absence of sales evidence. The full report was not however before us and the slightly (ie four months) shorter unexpired term does have some effect. Doing the best we can on what we have got as the Upper Chamber urges we determine a relativity of 90%. The tribunal's valuation is attached to this decision.
16. District Judge Mauger's Order of 24 April 2017 required at 1(b) that the tribunal determines "The terms and form of the new lease referred to in paragraph 2 below". The tribunal will need to be provided with a draft of the deed of surrender and re-grant in order to do so. The Applicant's solicitor shall provide this to the tribunal within 21 days from the date of this decision ensuring that the requirements of the Act are incorporated as appropriate. Only after the tribunal approves these documents can the case be referred back to the County Court.

Name: Patrick M J Casey

Date: 24 July 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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. 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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

LON/00BJ/OLR/2017/0616

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

S48 Leasehold Reform Housing and Urban Development Act 1993

**Determination of the premium payable for an extended lease of
Ground floor flat, 23 Chandos Avenue, Ealing, W5 4ED**

Valuation date: 23 August 2016 – Unexpired term 66.8 years

Diminution in Value of Freehold Interest

Capitalization of ground rent pa	£50		£661
YP for 66.8 years @ 7½%	<u>13.227</u>		

Reversion to F/H value with VP	£363,600		
Deferred 66.8 years @ 5%	<u>0.03835</u>	<u>£13,944</u>	

Less value of F/H after grant of new lease	£363,600		
Deferred 156.8 years @ 5%	<u>0.00047</u>	<u>£170</u>	<u>£13,774</u>
			<u>£14,435</u>

Marriage Value

After grant of new lease

Value of extended lease	£360,000		
Plus freehold value	<u>£170</u>	<u>£360,170</u>	

Before grant of new lease

Value of existing lease @ 90% f/h	£327,240		
Plus freehold value	<u>£14,605</u>	<u>£341,845</u>	
		<u>£18,325</u>	<u>£9,162</u>

50% share to Freeholder and Intermediate Leaseholder			£23,597
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Premium Payable Say £23,600