

4451



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

**Case Reference** : **RC/LON/00BJ/OLR/2017/0432**

**Property** : **Flats 1 and 2, 12 Manville Road, London,  
SW17 8JN**

**Applicants** : **Flat 1**  
**(1) Harry Goulden**  
**Flat 2**  
**(2) Rajeshwar Kumar Mohan**  
**(3) Navaneet Mohan**  
**(4) Manju Mohan**

**Representative** : **Comptons Solicitors LLP**

**Respondent** : **The Estate of Charles Ocansey**

**Representatives** : **N/A**

**Type of Application** : **Leasehold Reform Housing and Urban  
Development Act 1993: sections 50& 51**

**Tribunal** : **1. Mr A Vance, Tribunal Judge**  
**2. Ms M Krisko, FRICS**

**Date of Paper Determination** : **4 May 2017**

**Date of Decision** : **4 May 2017**

---

**DECISION**

---

## Decisions of the Tribunal

1. We determine that the premium payable by the applicants under Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) on the grant of a new lease of the subject flats is as follows:
  - (a) Flat 1, 12 Manville Road, London, SW17 8JN - **£32,831**
  - (b) Flat 2, 12 Manville Road, London, SW17 8JN - **£30,656**
2. We approve the terms of the draft lease for each Flat as provided by the applicants’ solicitors except that the grant of title at paragraph 2.1 of each lease must be for **limited title guarantee** and not full title guarantee.

## Background

3. This is an application under sections 50 and 51 of the Leasehold Reform Housing and Urban Development Act 1993 (“the Act”) for determination of the terms of new leases to be granted to the applicants and for the determination of the premium and other sums (if any) to be paid to the respondent.
4. Extracts of the key relevant legislation are at Appendix 2 of this decision.
5. Proceedings were originally issued in the Wandsworth County Court under claim numbers C01WT148 (Flat 1) and C01WT152 (Flat 2). The date of issue of both claims was 24 August 2016.
6. The claims were transferred to this tribunal, by orders of District Judge Parker, both dated 19 December 2017 (the “County Court Orders”) for the tribunal to determine:
  - 6.1. the terms of the two new leases; and
  - 6.2. The amount of the premiums payable under Schedule 13 of the 1993 Act by the applicants to the respondent.
7. The first applicant is the leasehold owners of Flat 1, 12 Manville Road, London, SW17 8JN (“Flat 1”) whose interest was registered at HM Land Registry under title number SGL364043 on 22 November 1996. The second to third applicants are the leasehold owners of Flat 2, 12 Manville Road, London, SW17 8JN (“Flat 2”) whose interest was registered at HM Land Registry under title number SGL374881 on 5 March 2010. All the applicants are entitled to a new lease of their respective Flats under Chapter II of the 1993 Act.

8. The freehold interest in both Flats is registered at HM Land Registry under title LN164284 in the name of Charles Ocansey. He was registered as freehold owner on 27 October 1977. When the County Court Claims were issued the applicants' asserted claim was that after the second to fourth applicants had attempted to serve a notice under section 42 of the Act seeking to extend their lease their solicitors received an email from Mr Ocansey's daughter, Ms Agatha Akyigyina (in fact, it appears from a perusal of her email that she is Mr Ocansey's daughter-in-law and not her daughter). In that email Ms Akyigyina states that:
- (a) Mr Ocansey had died;
  - (b) His son, her husband, Mr Charles Ocansey Jnr had also died;
  - (c) The will of the late Mr Charles Ocansey (it appears that this is a reference to Mr Charles Ocansey Snr rather than Mr Charles Ocansey Jnr) was the subject of court proceedings in Ghana which had been on-going for 13 years.
9. The County Court decided to make a vesting order in both claims and these are contained in the County Court Orders.
10. On the making of the County Court Orders the applicants therefore became entitled to new leases of their Flats for the residue of the term of their leases plus an additional 90 years, at a peppercorn rent, on such terms and on the payment of such a premium determined in accordance with Schedule 13 to the 1993 Act as this tribunal may determine.

### Leases

11. The following are particulars of the first applicant's lease:

- (a) Date of lease: 2 December 1982.
- (b) Term of lease: 99 years commencing on 29 September 1982.
- (c) Ground rent: £30 per annum.

There are no intermediate interests.

12. The following are particulars of the second to fourth applicants' lease:

- (a) Date of lease: 6 April 1983.

(b) Term of lease: 99 years commencing on 29 September 1982.

(c) Ground rent: £20 per annum.

### **Inspection**

13. The applicants did not request that the tribunal inspect the Flats and considering the photographs provided we did not consider it necessary or proportionate to do so.

### **The statutory basis of valuation**

14. Schedule 13 to the Act provides that the premium to be paid by a tenant for the grant of a new lease shall be the aggregate: (a) of the diminution in the value of the landlord's interest in the tenant's flat; (b) the landlord's share of the marriage value; and (c) the amount of any compensation payable for other loss. An equivalent amount is also payable to any intermediate landlord in respect of their interest.
15. The value of the landlord's interests before and after the grant of the new lease is the amount which at the valuation date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) on the assumption that the tenant has no rights under the Act to acquire any interest in any Property containing the tenant's flat or to acquire any new lease.
16. Paragraph 4 of the Schedule, as amended, provides that the landlord's share of the marriage value is to be 50%, and that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil. Paragraph 5 provides for the payment of compensation for loss arising out of the grant of a new lease.
17. Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

### **Valuation**

18. The evidence before the tribunal comprises the valuation report of Mr Andrew Cohen, MRICS dated 12 April 2017. His report contains a statement of truth confirming that he understands his duty to this tribunal as an expert witness.
19. We carried out our own checks on the information and calculations provided by Mr Cohen. We satisfied that his report is impartial and objective. We are also broadly satisfied that the method he has adopted is

appropriate to determine the premium payable for the new leases of the Flats.

- 20.** We do, however, have concerns regarding the level of detail provided in Mr Cohen's report and the limited number of transactions relating to comparable properties relied upon. At paragraph 2.19 of his report he refers to tenant's improvements carried out to Flat 1 but the nature of those improvements is unclear. At paragraph 2.35 he refers to a ground floor extension to Flat 1 constructed in 2000 but does not explain what that extension involved. Regrettably, we have not been provided with a current plan of the property that would help us identify this. It seems it may refer to the extension of the lounge into a through lounge but the position is uncertain.
- 21.** At paragraph 2.22 he refers to tenants' improvements to Flat 2 which appear to refer to internal alterations that led to the creation of two bedrooms. The lease plan indicates that Flat 2 was originally demised as a one-bedroom flat. Again, it would have been helpful if Mr Cohen had provided a plan showing the current layout of Flat 2 so that we could identify how this additional bedroom had been created which would have enabled us to gauge the size of the two bedrooms.
- 22.** Despite these reservations, we note Mr Cohen's confirmation at paragraph 2.37 that he has assessed the value of each Flat based on their original layout as required by the Act. That is the right approach and we are therefore satisfied that he has treated the question of tenants' improvements correctly when preparing his valuation.
- 23.** Mr Cohen notes that the Flats are both self-contained flats located in a converted Victorian three-storey centre-terrace building which has been converted into three flats, one on each floor. Each flat is accessed via a communal front door and lobby. Flat 1 comprises a double bedroom, through lounge, kitchen and internal bathroom/WC. Flat 1 also has the benefit of the demise of the rear garden. He calculates the gross internal floor area to be 46 square metres which he equates to 490 square feet.
- 24.** Flat 2 comprises two bedrooms, an open plan lounge, kitchen and bathroom/WC. He calculates the gross internal floor area to be 45 square metres which he equates to 480 square feet. The valuation date prescribed by section 51(1) of the Act is the date of the applicants' applications to the Court which was 24 August 2016. The unexpired remainder of the term of both leases is therefore 65.1 years.
- 25.** An assessment of virtual freehold vacant possession value of the Flats ("FHVP") as at the valuation date is required in order to value the respondent's reversionary interest and the value of the long leasehold interest in the Flats, once extended.

26. Mr Cohen's assessment of the value of the FHVP of both flats is based on an examination of comparable transactions relating to the sales of five flats with long leases in the area of the postcode of the subject Flats.
27. The size of these five flats ranges between 519 square feet to 634 square feet and the sale prices ranged from £415,000 to £545,000. The dates of sale ranged from August 2015 to April 2017. Mr Cohen's made no adjustments for time but, having had regard to the comparables he has identified, and his own experience and expertise, concludes that the extended lease value for Flat 1 is £470,000 and £440,000 for Flat 2.
28. Unfortunately, of those five comparables, only 20c Veronica Road, a one-bedroom ground floor flat, and 20 Veronica Road, a one-bedroom first floor flat, were directly comparable to the subject Flats.
29. Of the others, Top Floor Flat, 40 Manville Road is a second floor flat with areas of reduced head height which sold for £415,000 on an unknown date. Both flat 4, 41 Manville Road and Flat 3, 98 Elmbourne Road are first floor flats which consist of two double bedrooms with *en suite* bathrooms. Flat 4, 41 Manville Road sold in August 2015 for £525,000 and Flat 3, 98 Elmbourne Road sold in June 2016 for £545,000.
30. In our view, Mr Cohen could have provided more useful evidence of sales of comparable properties. Annexed to his report is the first page of a four-page document that resulted from his search on the Right Move website for historic sales in the area on the Flats. This report identifies that a flat at 39 Manville Road sold in August 2016 for £422,000. Unfortunately, Mr Cohen has not provided any details about this transaction which is clearly a very useful comparable, being so close to the valuation date. We carried out our own search on Right Move which showed current, under offer sales, of a first floor flat in Elmbourne Road at £450,000 (£915 per square foot) and a second floor flat with reduced head height in Manville Road at £425,000 (£820 per square foot).
31. Due to the lack of adequate comparables, the tribunal has taken an overall view of both the sale prices and the values per square foot of the comparable evidence provided. Regarding Flat 1, although five months before the valuation date, 20a Veronica Road is the only truly comparable ground floor flat with a garden. This sold for £463,000 in March 2016 (£867 per square foot). The value proposed by Mr Cohen for Flat 1 equates to £959 per square foot. Given the five-month period between this sale in March 2016 and the valuation date we consider that the square foot valuation for Flat 1 proposed by Mr Cohen to be reasonable given that 20a Veronica Road is a larger flat by about 9% and given the per square foot sale prices achieved in the other identified transactions.
32. As to Flat 2, we consider the best comparable transaction identified by Mr Cohen is the sale of the first floor flat at 20c Veronica Road which

sold, very close to the valuation date in August 2016 for £460,000 (£851 square foot). The value of £440,000 proposed for Flat 2 equates to £916 per square foot which in our view sits well with the current under offer sale of £915 per square foot for the similar flat in Elmbourne Road.

33. We therefore accept the long lease values for **Flat 1** of **£470,000** and for **Flat 2** of **£440,000** determined by Mr Cohen.
34. He then uplifted that figure by 1% to arrive at a FHVP of **£474,700** for Flat 1 and **£444,400** for Flat 2. We are satisfied that this 1% uplift to ascertain the freehold value is appropriate.
35. The diminution in the value of the landlord's interest in the Flats is represented first by the capitalised value of the grounds rent receivable under the lease which will be surrendered and replaced by a peppercorn rent under the terms of the Act. That income stream is capitalised by Mr Cohen at 7%, which we accept is appropriate in this case.
36. Next, the effect of the grant of the new lease will be to defer the landlord's freehold reversion for a further 90 years, thereby for practical purposes depriving the landlord of the current value of the freehold reversion indefinitely. The present value of the reversion is determined by applying a deferment rate to the FHVP of each 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*. Mr Cohen has suggested a deferment rate of 5% which we accept.
37. The premium payable by the applicant under Schedule 13 of the Act on the grant of a new lease of the Flat 1 is therefore **£32,831** and **£30,656** as per Mr Cohen's valuations.

### Lease terms

38. The applicant's solicitors have prepared draft leases for both Flats which we are invited to approve. The draft leases provide for the deemed surrender and re-grant of both leases subject to and with the benefit of the new leases. They also provide for the grant of a new term of 189 years from 29 September 1982 in accordance with section 56(1) of the Act. The terms of the new leases are the same as those of the previous leases, which are incorporated by reference.
39. We are satisfied that the terms proposed are appropriate for the new lease to be granted to the applicants with one important exception which is that the grant of title at 2.1 of the draft lease must be for **limited title guarantee** and not full title guarantee (see paragraph 2(2) of Schedule 7 to the Act amended by the Law of Property (Miscellaneous Provisions) Act 1994).

## APPENDIX 1

### VALUATIONS OF MR COHEN, MRICS

#### Flats 1 and 2, 12 Manville Road, London, SW17 8JN

**LEASE EXTENSION CALCULATIONS IN ACCORDANCE WITH SCHEDULE 13 OF THE  
LEASEHOLD REFORM, HOUSING & URBAN DEVELOPMENT ACT 1993 AS AMENDED**

Flat 1, 12 Manville Road, Balham, SW17 8JN

DATE OF VALUATION: 24/08/2016

**LEASE DETAILS:**

Commencement Date	29/09/1982
Term	99
Expiry Date	28/09/2081
Unexpired Term	65.10
Rent Review Every	33
Capitalisation Rate	7%
Deferment Rate	5%
Rent Receivable by Landlord	£30

**VALUES & RELATIVITY:**

Freehold Value (101%)	£474,700
Extended Lease Value (100%)	£470,000
Relativity	89.4%

**VALUE OF THE FREEHOLDER'S INTEREST:**

Term 1				
Loss of Rent			£30	
xYP	65.10	7.00%	14.1111	£423
Reversion				
Freehold Value			£474,700	
xPV	65.10	5.00%	0.0417	£19,818
				<b>Value of Freeholders existing Interest: £20,241 (a)</b>
Less New Reversion				
Freehold Value	155.10	5.00%	£474,700 0.000517	£245 (b)

**Diminution in landlords existing Interest £19,996 (a) - (b)**

**CALCULATION OF MARRIAGE VALUE:**

Value of the flat with the extended lease	£470,000	
Value of the landlords proposed Interest:	£245 (b)	
Sub total		£470,245
Less:		
Value of the flat with the existing lease	£424,334	
Value of freeholders Interest	£20,241 (a)	
Sub total		£444,575 -
Total marriage value		£25,670
Landlords usual 50% share:		£12,835 (c)
<b>TOTAL PREMIUM PAYABLE:</b>		<b>£32,831 (c) + (d)</b>



**LEASE EXTENSION CALCULATIONS IN ACCORDANCE WITH SCHEDULE 13 OF THE  
LEASEHOLD REFORM, HOUSING & URBAN DEVELOPMENT ACT 1993 AS AMENDED**

**Flat 2, 12 Manville Road, Balham, SW17 8JN**

DATE OF VALUATION: 24/08/2016

**LEASE DETAILS:**

Commencement Date 29/09/1982  
 Term 99  
 Expiry Date 28/09/2081  
 Unexpired Term 65.10  
 Rent Review Every 33  
 Capitalisation Rate 7%  
 Deferral Rate 5%  
 Rent Receivable by Landlord £30 **£20**

**VALUES & RELATIVITY:**

Freehold Value (101%) £444,400  
 Extended Lease Value (100%) £440,000  
 Relativity 89.4%

**VALUE OF THE FREEHOLDER'S INTEREST:**

Term 1				
Loss of Rent			£20	
xYP	65.10	7.00%	14.1111	
				£282
Reversion				
Freehold Value			£444,400	
xPV	65.10	5.00%	0.0417	
				£18,553
			Value of Freeholders existing Interest:	£18,835 (a)
Less New Reversion				
Freehold Value			£444,400	
	155.10	5.00%	0.000517	
				£230 (b)

~~Diminution in landlords existing interest: £18,605 (c) = (a) - (b)~~

**CALCULATION OF MARRIAGE VALUE:**

Value of the flat with the extended lease	£440,000	
Value of the landlords proposed interest:	£230 (b)	
Sub total		£440,230
Less:		
Value of the flat with the existing lease	£397,294	
Value of freeholders interest	£18,835 (a)	
Sub total		£416,129 -
Total marriage value		£24,101

~~Landlords usual 50% share: £12,051 (d)~~

~~TOTAL PREMIUM PAYABLE: £30,856 (d) + (b)~~

## APPENDIX 2

### Leasehold Reform, Housing and Urban Development Act 1993

#### Section 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)–(6) [.....]

#### Section 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.

### **APPENDIX 3 - RIGHTS OF APPEAL**

1. 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.
2. 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.
3. 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.
4. 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.