



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

Case Reference : **LON/00BE/OLR/2018/1252**

Property : **Flat 5 Leaf House, 72 Peckham Road, London SE5 8PU**

Applicant : **Sally Rohays Horsington**

Representative : **Samuels & Co Solicitors**

Respondent : **Maria Alison Sands**

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**

Date and venue of Hearing : **Paper hearing on 6 November 2018
10 Alfred Place, London WC1E 7LR**

Date of Decision : **12 November 2018**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the premium payable on the grant of a new lease of Flat 5 Leaf House, 72 Peckham Road, London SE5 8PU (“the property”) is the sum of £42,875.
- (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 Deputy District Judge Stockdale sitting at the County Court at Leeds on 23 September 2018 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 13 December 2017 by Samuels & Co Solicitors on behalf of the applicant 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 because her 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 19 October 2018 for use in tribunal proceedings addressed to the tribunal and prepared by Andrew Cohen MRICS of Talbots Surveying Services Limited. The report contained the requisite declarations required of a Surveyor acting as an expert witness.
4. The Tribunal considered the hearing bundle on 6 November 2018. No inspection of the property was deemed necessary given the description, plans and photographs included in the report.

The evidence

5. From Mr Cohen’s description of the property and the photographs it is a self-contained flat on the second floor of a five storey purpose built block of eight flats dating from circa 1900. It comprises two rooms, kitchen, bathroom and separate wc. The exterior of the building and

the common parts are said to be in poor condition evidence of long term neglect, conditions adversely affecting the value of the flat. Mr Cohen does not claim there are any tenant's improvements which fall to be disregarded in the valuation process but does say the flat is to be valued in the condition it was in when first let but subsequently maintained as per the terms of the lease. The GIA is said to be circa 520 square feet.

6. The property is held on a 99 year lease from 29 September 1974 subject to ground rent payments of £25 per annum for the first 33 years rising to £50 per annum for the next 33 years and to £75 per annum for the final 33 years.
7. At the Valuation Date, 13 December 2017, the lease had 55.79 years unexpired.
8. Mr Cohen provides market evidence for the extended lease value of the property as at the Valuation Date by reference to four completed transactions involving similar properties in SE5 at around that time the details of which are provided in the report. 6b Vicarage Grove sold in December 2017 for £380,000; 101 Linwood Close also sold December 2017 but for £370,000; 63a Shenley Road sold in November 2017 for £325,000; and, 22c Wilson Road also in November 2017 but for £305,000. All are similar sized one bedroomed flats with either long unexpired lease terms or a share of the freehold. In Mr Cohen's opinion all are better locations not being on a main road for which he deducted 5% from their sale prices. He made further adjustments to the sale prices achieved by three of the comparables, namely, a deduction of 5% for 6b being in a better condition than the hypothetically assumed condition of the subject property, a deduction of 5% on 101 for a parking space and access to communal gardens, and, 5% on 63a for the private garden. From this evidence he values the long leasehold interest in the subject property at £330,000 and adds 1% to this to give a freehold value of £333,300.
9. 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 7% and he defers the reversion on the expiration of the existing lease term at 5%.
10. 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 called graphs of relativity whereby various valuers practising in the field of enfranchisement and lease extensions express their opinions of the value in the "no Act world" that a lease for any given unexpired term would have as a percentage of the freehold value of the same property. An RICS working party produced a report in 2009 which published various of these graphs including five

said to relate to Outer London and England. Mr Cohen adopts the average of these five graphs to suggest that the value of the existing lease term in the subject property with 55.79 years unexpired and without any rights under the Act is some 82.07% of the freehold value or £273,539.

11. His valuation attached to his report produces a premium of £41,082.

The decision

12. The tribunal is satisfied that Mr Cohen's valuations of the freehold and extended leasehold interest are broadly supported by the evidence he provides in his report and his adjustments of the sale prices of the comparable transactions appear reasonable. His 1% differential between long lease and freehold values is a fairly commonly adopted practice and is accepted.
13. Mr Cohen's use of a 7% rate to capitalize the passing ground rents and of 5% to defer the value of the reversion to the term date are perfectly proper and accepted by the tribunal.
14. Mr Cohen offers no evidence of open market sales of properties held on shorter lease terms to support his valuation of the existing lease but relies entirely on published graphs of relativity. It has been the tribunal's experience that in cases where reliable open market sales' evidence has been produced relativities lower than shown by any of the graphs generally result.
15. In the absence of sales evidence the use of so called graphs of relativity is a common practice and the five graphs referred to by Mr Cohen are invariably used in any case outside the prime central London area because practitioners argue that the outer London market is less sophisticated and higher relativities result though none seem able to explain why lease length per se should affect values in different locations in this way. The graphs referred to all have their individual flaws and taking an average of the five that he does, does not make them more reliable. They range from 80.47% to 85.79% for this length of unexpired term which is not too wide a spread to be covered by averaging. The Gerald Eve – John D Wood (1996) graph, the only graph given some credence by the Upper Chamber in *Sloane Stanley Estate v Mundy*, shows a relativity of leasehold to freehold value with 55.79 years unexpired of some 78.47%. Doing the best it can in all the circumstances the tribunal determines the appropriate relativity to be 80%. Its valuation is attached showing the premium to be paid is £42,875.
16. It is confirmed there are no outstanding demands for ground rent or service charges which have been lawfully demanded and have not been

paid. In fact the leaseholders acquired the right to manage the block in 2009 and service charges are payable to the RTM company.

17. Deputy District Judge Stockdale's Order of 23 September 2018 required also that the tribunal determines the terms of the new lease. The tribunal has been provided with a draft of the deed of surrender and regrant in the bundle and having carefully considered the document is satisfied that the proposed terms comply with the requirements of the Act. There appears however to be a line omitted in clause 3 Demise between lines 9 and 10 and this should be corrected before the matter is referred back to the County Court.

Name: Patrick M J Casey

Date: 12 November 2018

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/00BE/OLR/2018/1252

**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
Flat 5 Leaf House, 72 Peckham Road, London SE5 8PU**

Valuation date: 13 December 2017 – Unexpired term 55.79 years

Diminution in Value of Freehold Interest

| | | | |
|---|----------------------------|---------|---------------------------|
| Capitalization of ground rent pa YP for 22.79 years @ 7% | £50 <u>11.2299</u> | | £561 |
| Capitalization of ground rent pa YP for 33 years deferred 22.79 years @ 7% | £25075 <u>2.7281</u> | | £205 |
| Reversion to F/H value with VP Deferred 55.79 years @ 5% | £333,300 <u>0.0657</u> | £21,898 | |
| Less value of F/H after grant of new lease Deferred 145.79 years @5% | £333,300 <u>0.00814</u> | £271 | £21,627 <u>£22,393</u> |

Marriage Value

After grant of new lease

Value of extended lease

Plus freehold value

£330,000
£271 £330,271

Before grant of new lease

Value of existing lease @ 80% f/h

Plus freehold value

£266,640
£22,664 £289,304
£40,967 £20,483

50% share to Freeholder

£42,876

Premium Payable Say £42,875