

4744



Case Reference : **RC/LON/00BA/OLR/2018/0599**

Property : **Upper Floor Flat, 33A South
Park Road, London SW19 8RR**

Applicant : **Neskop Limited**

Representative : **Mr. T Jackman MRICS,
Chartered Surveyor of Aspect
Surveyors Limited**

Respondent : **Vincent Mary Rourke**

Representative : **N/A**

Type of Application : **Lease extension**

Tribunal Members : **Judge Tagliavini
Miss M Krisko FRICS**

**Date and venue of
hearing** : **10 Alfred Place, London WC1E
7LR
18 September 2018**

Date of Decision : **19 September 2018**

DECISION

The tribunal decision:

- A. The premium payable for the extension of the lease is £39,220

The application

1. This is an application made under the provisions of the Leasehold Reform Housing and Urban Development Act 1993 ('the 1993 Act') seeking a determination of the First-tier tribunal (FTT) of the premium payable for the grant of a new lease of the Upper Floor Flat, 33A South Park Road, London SW19 8RR ('the subject property').

The background

2. By a Notice dated 28th November 2017 the then lessee asserted her right to the grant of a new lease for the subject property. In a Counter-Notice dated 5th February 2018 the Respondent admitted this right to a lease extension and proposed the grant of a new lease in the terms appended to the Counter-Notice. Subsequently, the right to a lease extension was assigned firstly to Open Property Finance Limited and thereafter to the Applicant who currently holds the leasehold interest.
3. The subject property comprises a first floor two-bedroom maisonette flat in a converted Victorian house, with a floor area measuring 74 sq.m and situate in the residential area of Wimbledon in the London Borough of Merton and is subject to a lease granting a term of 114 years from 1st January 1967.

The issues

4. As there had been no agreement between the parties the FTT was required to determine all elements of the calculation of the premium. However, the terms of the new lease were accepted to be those proposed by the Respondent in the draft attached to the Counter-Notice.

The hearing

5. The Applicant was represented by Mr. T Jackman who spoke to his report dated 5th September 2018. The Respondent was not represented.

The Applicant's case

6. In his report, Mr. Jackman identified the lease as having 63.09 years remaining as at the date of valuation of 28th November 2017. Mr. Jackman proposed a capitalisation rate of 7% to reflect the modest ground rent provision of £50 per annum for the remainder of the term in the subject property lease; *Nicholson and others v Goff* 1 EGLR 83.
7. In the absence of clear market evidence of short lease values, Mr. Jackman adopted a rate of relativity of 88% having relied on an average of the four non-Prime Central London (PCL) graphs of Austin Grey, Nesbitt & Co, South East London and Andrew Pridell Limited. Mr. Jackman acknowledged that there was criticism of these graphs, but without short lease sales evidence reliance on these graphs was the most appropriate method of assessing relativity.
7. In calculating the Freehold Vacant Possession Value, Mr. Jackman relied upon the sales evidence of comparable properties at Flat 3, The Broadway (a two-bedroom 2nd and 3rd floor flat above commercial premises measuring 77sq.m/832 sq.ft) the Flat 53 Pelham Road SW19 (a two-bedroom maisonette with garden measuring 48 sq.m/524 sq. ft.); Flat 22, 10 Stanley Road SW19 (a two-bedroom second floor flat of 65sq.m/695sq.ft) which sold for £484,000, £440,000 and £510,000 respectively, within a short period either side of the valuation date of 28th November 2017. Mr. Jackman also relied upon 1B South Park Road (a three-bedroom flat conversion on three floors sold STC for £475,000 measuring 90sq.m/969 sq.ft). From these comparable sales allowing for differences in size, location, condition and garden to the subject property and taking into consideration the Land Registry House Price Index indicating a general house price increase in the London Borough of Merton between 0.60% to 0.17% (approximately) from October 2017 to November 2017, Mr. Jackman concluded that the FVPV for the subject property is £500,000.
8. Mr. Jackman applied these figures to his valuation and arrived at a premium payable of £39,220.

The Respondent's case

9. The Respondent had played no further part in this application since the service of the Counter-Notice and failed to provide the FTT with a valuation on which he sought to rely.

The tribunal's decision

10. In the absence of any challenge to Mr. Jackman's valuation, the tribunal accepted his report as providing a sufficiently detailed report on which it could rely. The tribunal accepted the capitalisation rate of

7% as being in line with the percentage adopted where a modest ground rent is charged. The tribunal also accepts the relativity rate adopted of 88% using the for non-PCL graphs and the FHVP of £500,00. The tribunal therefore accepts the valuation of Mr. Jackman without amendment as attached at Appendix A providing a premium payable of £39,220.

11. The Applicant also sought an application for cost under the provisions of Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on the grounds of the Respondent's non-compliance with the FTT's directions and vexatious behaviour. However, the tribunal does not consider that the Respondent has behaved in a manner that can be said to meet the high bar set by the requirement of Rule 13 and therefore does not make an award of costs under this provision. However, the Applicant is entitled to seek an order for costs under section 60 of the 193 Act and therefore the tribunal makes no further determination on the issue of costs thereby allowing a properly formulated application for costs to be made relating to the investigating the claim of the tenant's right to a new lease, the valuation costs and the conveyancing costs of the granting of the new lease

Signed: Judge Tagliavini

Dated: 19 September 2018

Appendix A:

SUBJECT TO CONTRACT & WITHOUT PREJUDICE
DIMINUTION IN VALUE OF LANDLORD'S INTEREST

Unexpired 63.09

Valuation at 28th November 2017

**SUBJECT TO CONTRACT & WITHOUT PREJUDICE
DIMINUTION IN VALUE OF LANDLORD'S INTEREST**

1. Capitalisation of ground rents:

Current rent:			50	
YP	63.09	7.00%	14.0857	704

2. Landlords existing reversionary interest

Reversion			500,000	
PVEI	63.09 years	5.00%	0.04604337	23022
				33726

3. Landlords Proposed future reversion

Reversion			500,000	
PVEI	153.09 years	5.00%	0.00057034	285
Landlord's Net Diminution in Value of Freehold				23441

B ASSESSMENT OF MARRIAGE VALUE

Extended Interests

Reversion to Future Capital Value	£285	
Extended Lease Value	£495,000	£495,285

Existing Interest

Value of Freeholder's interest	£23,726	
Existing Lease Value	£440,000	£463,726
		£31,569

Landlord's share	50%	
	£15,780	£15,780

Premium payable to freeholder		£39,220
Plus costs		