



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

<b>Case reference</b>	:	<b>CAM/00KA/OLR/2019/0024</b>
<b>HMCTS code (paper, video, audio)</b>	:	<b>P:PAPERREMOTE</b>
<b>Property</b>	:	<b>Flat B, 2 Stanley Street Luton LU1 5AN</b>
<b>Applicant</b>	:	<b>Nicholas Anthony Staples</b>
<b>Representative</b>	:	<b>Meaby &amp; Co Solicitors LLP</b>
<b>Respondent</b>	:	<b>Donald Robert Burns</b>
<b>Type of application</b>	:	<b>Determination of the terms of acquisition of a new lease under the Leasehold Reform Housing and Urban Development Act 1993 ("the Act")</b>
<b>Tribunal member(s)</b>	:	<b>Mrs M Hardman FRICS IRRV (Hons) Judge David Wyatt</b>
<b>Date of decision</b>	:	<b>6 May 2020</b>

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**DECISION**

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**The tribunal determines that:**

- 1) The premium payable for the new lease is £5,998.
- 2) Unless the Applicant and the Respondent agree otherwise, the terms of the new lease shall be as set out in the draft deed of surrender and regrant at pages 13 to 20 of the bundle except that the premium shall be as determined above and the amendments set out in paragraph 53 below shall be made.

## **Background**

1. This is an application made by the Applicant for determination of the premium to be paid for, and the other terms of, a new lease of the Property under Chapter II of Part 1 of the Act.
2. The Applicant is the leasehold owner of a basement flat known as Flat B ,2 Stanley Street, Luton LU1 5AN. The leasehold title is registered at the Land Registry under title number BD144897. The existing lease is dated 3 June 1988 and for a term of 99 years from 16 March 1987.
3. The Applicant instructed Meaby & Co Solicitors LLP and Richard John Clarke Chartered Surveyors to act on his behalf. The Applicant proposed a premium of £5,800 for the new lease.
4. The Respondent is the freehold owner of 2 Stanley Street, which is defined in the existing lease as the “**Building**”. The freehold title is registered at the Land Registry under title number BD19612.
5. On 22 May 2018, the Applicant applied to the County Court at Luton for a vesting order under section 50 of the Act, but the landlord was then traced. Accordingly, by section 50(4) of the Act:
  - a. the rights and obligations of the parties are to be determined as if the Applicant had, at the date of the application to the Court, duly given notice under section 42 of the Act to exercise the right to acquire a new lease of the Property; and
  - b. the County Court has power to give directions as to the steps to be taken for giving effect to those rights and obligations, including directions modifying or dispensing with any of the relevant requirements.
6. The tribunal is informed that the Respondent confirmed that the right to request an extension of the existing lease was accepted, but the proposed terms and premium were not agreed, proposing a premium of £41,250.
7. On 5 December 2019, the County Court gave the Applicant permission to apply to the tribunal for a determination of the matters in dispute between the parties, pursuant to section 48(1) of the Act.
8. The tribunal received that application on 20 December 2019. The tribunal has jurisdiction to determine the relevant matters under sections 48(1) and/or 91 of the Act.
9. Extracts from the Act are provided at Annex 2 to this decision.

### **Case management**

10. The tribunal issued directions on 23 January 2020, which required in the first instance that title details and a draft deed of surrender and new lease be submitted by the Respondent's conveyancers by 10 February 2020.
11. On about 19 February 2020, the Respondent contacted the tribunal, stating that the Applicant was subletting the Property without permission.
12. On 17 March 2020, the tribunal wrote to the Respondent, noting that the Respondent did not appear to have complied with the directions and enclosing revised directions, requiring the Applicant to provide the requisite title documents and draft new lease.
13. The tribunal warned the Respondent that it was for the Respondent to make any comments on the draft new lease (which it appears had already been produced to him in the County Court proceedings) and to supply any evidence to support his valuation in accordance with the amended directions. The tribunal warned further that, if the Respondent failed to do so, he would be barred from taking further part in the proceedings and/or the decision would be based only on the papers which the tribunal received in accordance with the revised directions. The tribunal explained that, even if the Applicant is subletting the Property, that would not affect the issues to be determined by the tribunal in this application.
14. On 31 March 2020, the tribunal informed the parties that in view of the Coronavirus restrictions this case would be decided entirely on the papers, without a hearing, subject to any comments from the parties. The Applicant had already consented to this case being decided on the papers. On 3 April 2020, the Respondent replied to confirm (in essence) that he had nothing to add, that the fact the Applicant was subletting the Property should be relevant and that he would have no part in the proceedings.
15. Pursuant to the case management directions, the Applicant has prepared an electronic bundle and has sent this to the tribunal and the Respondent. Unless otherwise indicated, references in this decision to page numbers are to the page numbers in that bundle.

### **The premium**

16. The case management directions gave each party permission to rely on expert evidence.
17. Pursuant to those directions, the Applicant has produced a valuation report dated 1 August 2019 by Richard Murphy Dip. Surv. MRICS of Richard John Clarke Chartered Surveyors.

18. However, possibly unbeknown to Mr Murphy, the claim was made in the county court was originally made on 22 May 2018 and this is the date of valuation.
19. In his valuation report Mr Murphy describes the property as a basement flat within a three-storey end of terrace property. It was built as a house approximately 100 years ago and converted into 3 flats probably at the start of the lease in 1988.
20. The property is of traditional construction with solid brick walls, painted render with a concrete tiled roof.
21. The accommodation comprises a reception/bedroom, kitchen and bathroom. The floor area is 30.5 m<sup>2</sup>. Mr Murphy reports the property to be in generally poor condition with limited natural light and poor ventilation.
22. To arrive at his valuation of the long leasehold, he considered the sales of 4 leasehold flats in the immediate area of the property over a 12-month period.

196 Wellington St	3/5/19	£97,000	lease	108 yrs rem
51c Cardiff Rd	10/7/18	£80,000	lease	112 yrs rem
3 Stanley St	10/8/17	£120,000	lease	105 yrs rem
Flat 4 43 Dumfries St	6/12/17	£120,000	lease	123 yrs rem

He found no sales of basement flats and made a 20% adjustment to all sale prices to reflect the lower value of basement flats. He made further adjustments where the sales were earlier than the valuation date he had adopted (1 August 2019) having regard to the UK House Price Index for Luton, for new build (Dumfries St) (10%) and for one property sold subject to an AST (Cardiff Rd). Doing this and averaging the adjusted sales prices he arrived at a long leasehold value of the subject property of £80,000. He then adjusted to the freehold value by the addition of 1% to arrive at a freehold value of £80,808.

23. To arrive at the diminution in the value of the landlord's interest in respect of the receipt of ground rent he explains that he adopted a capitalisation rate for future ground rent income of 7% based upon his experience and following the advice in *Nicholson v Goff*.
24. On the basis of the 'Sportelli' decision he adopted 5% in respect of the rate applied to value of the reversion to the freehold interest.

25. Finally, in order to arrive at the existing lease value, he was unable to find any market transactions that would assist. He therefore had regard to the Upper Tribunal decisions in *Sloane Stanley Trustees v Carey-Morgan* [2011] and *Coolrace Ltd* [2012] and adopted the average of the relativities in the five graphs that deal with Greater London and the rest of England. This produces a figure of 90.37 which Mr Murphy applied to the Freehold value to arrive at a short lease value of £73,028. Adopting the above he arrived at an enfranchisement price of £5,800.
26. Despite the directions and the warnings from the tribunal, the Respondent did not comment on this report or provide any evidence or other information to support his valuation of £41,250.

### **Determination of premium**

27. In the absence of any rationale or evidence provided by the Respondent the tribunal has had to have particular regard to the report supplied by the Applicant.
28. The tribunal accepts the three-stage approach to the valuation proposed by Mr Murphy. It accepts the capitalisation rate of 7% as being appropriate in this case. We also accept the proposed deferment rate of 5% and agree that this is almost universally accepted following Sportelli.
29. The tribunal has reviewed the comparables provided by Mr Murphy. It has had regard to all 4 comparables but attaches less weight to 51c Cardiff Rd, given this appears to have been sold subject to a tenancy and also does not accept that a 2<sup>nd</sup> floor flat in a property with no lift requires an adjustment of 20% to arrive at an equivalent basement value. The tribunal has also had regard to the earlier valuation date of May 2018 – some 15 months earlier than the valuation date adopted in the report by Mr Marsh for the Applicant. It determines that the long leasehold value of the subject property is £84,000 and the freehold value is £84,840
30. Turning to the value of the existing leasehold interest the tribunal notes that there is no evidence of sales of short leases available – which is unfortunate but not at all unusual. In the absence of any evidence presented for the Respondent the tribunal is inclined to accept the argument put forward by Mr Marsh in respect of adoption of the indices for Greater London and England, although adjusting for the slightly longer lease length given the valuation date and adopts 91.14% to reflect absence of rights to enfranchise and determines the value of the existing lease at £76,558.
31. The tribunal is unable to place any weight on the figure of £41,250 put forward by the Respondent as it has no way of knowing how it was arrived at or whether any professional advice was taken – although it appears unlikely that it was given the disparity with a realistic valuation.

### **The tribunal's decision**

32. The tribunal determines the appropriate premium to be £5,998. A copy of its valuation calculation is provided at Annex 1 to this decision.

### **The terms of the new lease**

33. Pursuant to the case management directions, the Applicant produced a draft deed of surrender and new lease, a copy of which is at pages 13 to 20 of the bundle.
34. The Applicant has provided no further information or submissions in relation to this draft. The Respondent has provided no objections or other comments in respect of it.
35. The draft is in a standard short form. It would:
- a. incorporate by reference all the terms of the existing lease;
  - b. add the prescribed clauses required by the Land Registry;
  - c. provide that the lease is granted with full title guarantee at a peppercorn rent for a term expiring on 15 March 2176; and
  - d. by clause 3, make specific amendments (set out in the schedule at page 19 of the bundle) to the terms of the existing lease.

### *Applying the law*

36. In effect, the rent and term are fixed by the Act. By section 56(1), the new lease is to be at a peppercorn rent for a term expiring 90 years after the term date of the existing lease. The term date of the existing lease is 15 March 2086. Accordingly, the provisions in the draft new lease for the new rent and term are correct.
37. By section 57 of the Act, the starting point is that the other terms of the new lease are to be the same as those in the existing lease, subject to the relevant provisions or any agreement between the landlord and the tenant.
38. Reviewing the draft new lease, the prescribed clauses required by the Land Registry identify but do not change the actual terms. These and the other substantive provisions of the draft are in the same terms as those of the existing lease, except for the provisions examined below.

### *Covenants for title*

39. By section 57(8) of the Act, in granting the new lease the landlord shall not be bound to enter into any covenant for title beyond those implied by the grant (or, in a case where limited title guarantee is given, certain covenants which would then be implied).
40. Accordingly, the words “*with full title guarantee*” should be deleted from clause 2.3 (the grant by the landlord) and if that title guarantee is not given it is appropriate to delete the same words from clause 2.1 (the surrender by the tenant of the existing lease) at page 17 of the bundle.
41. It is of course open to the Applicant and the Respondent to agree to give full or limited title guarantee, but that is a matter for them. If they do not agree, the landlord is not obliged to give full or limited title guarantee and nor is the tenant.

### *Proposed modifications*

42. By section 57(6) of the Act, either party may require that 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 terms 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.
43. The first specific amendment in the schedule to the draft new lease, at page 19 of the bundle, reads:

“1.1        *The words “protection and shelter” shall be added after the words “lateral support” in paragraph 1 of the Second Schedule to the Lease.*”
44. Paragraph 1 of the second schedule to the existing lease gives the Property a right to subjacent and lateral support.
45. Such right of support may not itself include a right of “protection” or “shelter” but, following Rees v Skerrett [2001] EWCA Civ 760, it is not to be given an unduly narrow scope. Moreover, the existing lease already includes any rights the Property could ordinarily need in relation to “protection” or “shelter” because, at clause 5(a) of the existing lease, the landlord covenants with the tenant to:

*“ ... maintain repair decorate and renew ... the main structure main walls the roof foundations party structures (other than internal walls) gutters and rainwater pipes ... of the Building ...”*

46. The parties have provided no further information or submissions in respect of this proposed amendment. On the information available and for the reasons given above, the provision in the existing lease is not defective (or, if it is, in view of the landlord’s repairing covenant it is not necessary to remedy that defect) and the provision has not become unreasonable in view of changes since the commencement of the existing lease.
47. The second specific amendment in the schedule to the draft new lease reads:
- “1.2 The words “and telecoms” shall be added after the words “including telephone” in paragraph 2 of the Second Schedule to the Lease.”*
48. Paragraph 2 of the second schedule to the existing lease gives the Property the free and uninterrupted passage of various utilities, which include *“electricity (including telephone)”*, from and to the Property.
49. This existing wording probably includes telecoms without any such modification. In any event, on the information provided, the provision in the existing lease is not defective (or, if it is, it is not necessary to remedy that defect) and has not become unreasonable in view of changes since commencement of the existing lease.
50. The last specific amendment in the schedule to the draft new lease reads:
- “1.3 The words “or other suitable flooring provided that suitable sound deadening materials have been used” shall be added after the words “carpet and an underlay” in paragraph 7 of the first schedule to the Lease.”*
51. Paragraph 7 of the first schedule to the existing lease requires the tenant to cover the floors with carpet and an underlay, other than the floors of the kitchen and bathroom which shall be properly and suitably covered.
52. Since this is a basement flat, the nature of the flooring may be less important than it might be in an upper floor flat. However, on the information available, the provision in the existing lease is not defective and has not become unreasonable in view of changes since commencement of the existing lease.

### **The tribunal's decision**

53. For the reasons set out above the tribunal determines that, unless the Applicant and the Respondent agree otherwise, the terms of the new lease shall be as set out in the draft deed of surrender and regrant at pages 13 to 20 of the bundle except that the premium shall be as determined above and the following amendments shall be made:

<b>Bundle (page)</b>	<b>Reference</b>	<b>Provision</b>	<b>Amendment</b>
16	1.1	Incorporated Terms	Delete " <i>and as specifically varied by clause 3</i> "
17	Clauses 2.1 and 2.3	Surrender and grant	Delete " <i>with full title guarantee</i> " from both clauses
17	Clause 3	Changes to the lease	Delete and substitute " <i>Clause not used</i> "
19	Schedule	Changes to the lease	Delete entire schedule

### **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).

## Annex 1

### Tribunal's valuation

Valuation date **22 May 2018**

Unexpired term		<b>67.82</b>
Capitalisation rate		<b>7%</b>
Deferment rate		<b>5%</b>
Extended lease value		<b>£ 84,000</b>
Freehold uplift	1%	<b>£ 84,840</b>
Relativity		<b>91.14%</b>
Existing Lease value		<b>£ 76,558</b>

#### Calculations

##### Diminution of freehold

Loss of ground rent				£50		
Years Purchase	1.82	years @	7.00%	1.6551	£83	£1
Loss of ground rent				£100		
Years Purchase	33	years @	7.00%	12.7538		£0
Present value of £1 in	1.82	years @	7.00%	0.8841	£1,128	
Loss of ground rent				£200		
Years Purchase	33	years @	7.00%	12.7538		
Present value of £1 in	34.82	years @	7.00%	0.0948	£242	
Sub-total						£1,453

##### Reversion to Freehold

Capital value				£		
loss of reversion				84,840		
Present value of £1 in	67.82	years @	5%	0.0366		£3,101
						<b>£4,554</b>

##### Marriage Value calculation

<u>Value of proposed interests</u>						
Freeholder				£0		
Leaseholder				£84,000	£84,000	
<u>Value of existing interests</u>						
Freeholder				£4,554		
Leaseholder				£76,558		
Sub-Total					£81,112	
Total marriage value					£2,888	£1,444
at 50%						

##### Enfranchisement Price

**£5,998**

## Annex 2

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

#### **S57. - 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.

...

(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 an 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.

...

[(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.]

...

#### **S91.— Jurisdiction of tribunals.**

(1) [Any] question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by [the appropriate tribunal].

(2) Those matters are—

(a) the terms of acquisition relating to—

- (i) any interest which is to be acquired by a nominee purchaser in pursuance of Chapter I, or
- (ii) any new lease which is to be granted to a tenant in pursuance of Chapter II,

including in particular any matter which needs to be determined for the purposes of any provision of Schedule 6 or 13;

(b) the terms of any lease which is to be granted in accordance with section 36 and Schedule 9;

(c) the amount of any payment falling to be made by virtue of section 18(2);

(ca) the amount of any compensation payable under section 37A;

(cb) the amount of any compensation payable under section 61A;

(d) the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which section 33(1) or 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs; and

(e) the apportionment between two or more persons of any amount (whether of costs or otherwise) payable by virtue of any such provision.

(9) [The appropriate tribunal] may, when determining the property in which any interest is to be acquired in pursuance of a notice under section 13 or 42, specify in its determination property which is less extensive than that specified in that notice.

(11) In this section—

*“the nominee purchaser”* and *“the participating tenants”* have the same meaning as in Chapter I;

*“the terms of acquisition”* shall be construed in accordance with section 24(8) or section 48(7), as appropriate

(12) For the purposes of this section, *“appropriate tribunal”* means—

(a) in relation to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) in relation to property in Wales, a leasehold valuation tribunal.