



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

Case Reference : **CAM/11UF/OLR/2022/0067**

Property : **Flat 2 Linden Court Carrington Road, High Wycombe HP12 3JB**

Applicant : **John Shepherd**

Representative : **Bonallack and Bishop (Solicitors)**

Respondent : **Stephen Henry Boulton**

Type of Application : **Determination of terms of lease extension (missing landlord)**

Tribunal Members : **Mr N Martindale FRICS**

Date of Decision : **5 September 2022**

DECISION

Decision

The premium to be paid by the applicants for the lease extension at the Property under HM Land Registry title number **BM207083** is **£14,016 (Fourteen thousand and sixteen pounds)**. The draft deed of surrender and re-grant, attached to the bundle, is approved.

Introduction

1. This is an application made under Section 50 and 51 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the premium to be paid and the terms of an

acquisition of an extension to the leasehold interest in the Property. The relevant legal provisions are set out in Appendix to this decision.

2. The Property is on a single level, first floor, with access via stairs from ground level communal hallway. It forms part of a 3 level 1970's purpose built block of which the Property is one. The Property has a section of the gardens and its own single garage in a separate block.
3. The Applicant is the long leaseholder of the Property and holds their interest under the terms of a lease dated 12 July 1978, for 120 years from 25 December 1977, registered under leasehold title BM207083. That lease was granted by the respondent's predecessor, to Trevor Roland Dixon and Annette Joy Cooke. It was let for 120 years at a ground rent initially £20 pa rising after 40 years to £40 pa and after 80 years to £80 pa. The residual term of the lease is now vested in the applicant, registered as leasehold proprietor on 10 December 2014.
4. The registered freehold proprietor of the Property at grant was Boulton Bros (Builders) Ltd.. The current landlord respondent was registered owner of freehold, title number BM141101 with effect from 7 August 1989. He has not been traced.
5. By order made by District Judge Whiteley on 18 May 2022 and on the Court being satisfied that the respondent could not be found, the matter was referred to this Tribunal for determination of the terms of a lease extension under S.51(5); that following this the Applicant will surrender their lease and a new lease will be granted.
6. The Tribunal's jurisdiction is derived from the order made by the Court on 18 May 2022. The Tribunal considered the issue on the papers submitted by the applicants, without a hearing, in accordance with directions issued on 13 July 2022. The case was to be determined in the week commencing 5 September 2022.

Statutory Basis

7. Part 2, Schedule 13 to the Act provides that the price to be paid by the leaseholder, the applicant for the new leasehold interest where there is no intermediary head leaseholder, applies here.
8. The premium payable in respect of the grant of a new lease is the total of: (a) the diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 3, (b) the landlord's share of the marriage value as determined in accordance with paragraph 4, and (c) any amount of compensation payable to the landlord under paragraph 5.

9. The diminution is: 3(1) The diminution in value of the landlord's interest is the difference between (a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease; and (b) the value of his interest in the flat once the new lease is granted.
10. Paragraph 4 of the Schedule, as amended, provides that the freeholder's share of the marriage value is to be 50%, and that any marriage value is to be ignored where the unexpired term of the lease exceeds eighty years at the valuation date. Here it is included as the unexpired term is less than eighty years.
11. Paragraph 5 of the Schedule provides for the payment of compensation for other loss resulting from the enfranchisement.

Evidence

12. The applicant provided an expert witness report concerning value of the premium to be paid. The Valuation report is dated 8 August 2022 from Daniel GroveAssocRICS Registered Valuer and Director of Chroma Chartered Surveyors at 21 Ellis Street London SW1X 9AL.
13. Having considered the contents of the Valuation Report and the opinions expressed by the valuer, the Tribunal is satisfied that the method adopted is appropriate to determine the premium for the new lease for the Property. The Tribunal accepts the description of the Property and its location as stated.
14. A photograph of the front exterior of the Property was included in the Valuation Report. The Tribunal did not consider it necessary or proportionate to carry out an inspection of the Property.

Valuation

15. The Property at No.2 Linden Court Carrington Road High Wycombe HP12 3JB consists of a single level flat at first floor, a share of garden and a separate single garage in a short terrace. A communal ground floor entrance door and hallway are at the side of the Building. Accommodation comprises living room, kitchen, two bedrooms, bathroom and WC. With 58m² GIA, the Property is a relatively small two doubled flat. There were no improvements which were said to give rise to an increase in value, and which should be deducted from the capital value at the AVD. All mains services were said to be connected or available. There is no obvious off street parking. The Property has UPVC windows, double glazed and full gas fired central heating.
16. The valuation date prescribed by section 51(1) of the Act is the date of the applicants' application to the court namely 8 November 2021. The unexpired residue of the lease for the Property is 76.13 years.

17. The Valuer's assessment of the market value of the flat is based on evidence of completed sales of three, very similar 2 bedroom comparables of the same age, size also purpose built. These maisonettes and flats have long or very long unexpired leases. All are close being within 500m being in the same residential road or an adjoining road, of the Property.
18. **No.2 Nursery Court** sold for £212,000, completed January 2022. It is the same residential road. The block is of a similar style age and construction. It is ground floor slightly smaller than the Property but, has its own private entrance rather than a communal one. from the grounds. It has a share of the grounds a single garage in a separate block. This flat has a share of the freehold and a 999 year lease unexpired at grant. The sale price has been adjusted down the conventionally accepted one percent to reflect the lesser value of the long leasehold interest. The adjusted value for the Property is £210,00.
19. **No.17 Mildun Way** sold for £207,000, completed February 2022. In a neighbouring road again of similar construction and age, a small double bedroom first floor flat at 54m² again with a private entrance. It has a single garage in a block and a share of the garden. Again sold on 999 year largely unexpired with a share of the freehold so another one percent adjustment to find the long leasehold value. It also has a private rather than communal entrance so a further £5000 deduction is made to reflect its absence at the subject. The adjusted value for the Property is £200,000.
20. **No.7 Goodearl Court** sold for £198,000, completed September 2021. Located in a modern block within 500m of the Property. It is a ground floor flat of similar size at 56m². There is allocated parking but no reference to garage or share of the garden. The block is newer but the lease is not a virtual freehold like the former two comparables as it has 82 years remaining. The valuer makes an adjustment of £5000 upwards and to allow for time makes a further addition of 3% for time from the House Price Index. This leaves an adjusted value of £204,000.
21. The Valuer concludes that the capital value with an extended lease at the AVD would lie between £200,000 and £210,000 and placing greater, though unspecified emphasis on the Nursery Court sale, takes it as £210,000 capital value extended lease at the AVD.
22. The valuer uses the unexpired term of 76.13 years to find the relativity which should apply. The valuer uses the conventional 1% deduction to find the virtual freehold values. In so doing he adjusts the £210,000 up to £212,000 capital value of the extended lease at the AVD.

23. The valuer adopts 7% for the capitalisation of the term income, it being relatively modest and only subject to one further fixed review in a little over 35 years time.
24. The valuer adopts the 5% deferment rate in the reversion period, following 'Sportelli', there being no reason to depart.
25. As the term unexpired is below 80 years, value attributable to marriage value as part of the application also requires compensation to the respondent. To establish and remove the value of 'right' to enfranchise the valuer is required to use evidence of sales of short leases, and/ or make a deduction from Acts Rights graphs, or to use No Acts Rights graphs including Savills.
26. The valuer also mentions Flat 1 Linden Court in the same block at the Property, having sold with a short lease the same as for the Property. It sold for £167,500, March 2022 but requiring it is said, £25,000 to be added to make it lease compliant. Taking the percentage adopted in the case of *Reiss v Ironhawk Ltd.* [2018] UKUT 0311 (LC), of 2.5% to get to the no-Act world (at a unexpired term of 75.23 years). These calculations provide a short lease value of £187,688 for the subject.
27. The valuer also refers to the general displacement of the RICS Graphs with those used most recently in *Deritend Investments (Birkdale) Ltd. v Treskonova* [2020] UKUT 164 (LC). Here, valuers were required to have more regard to PCL graphs such as Savills. Adopting this approach here produces a relativity of 88.08% at 76.13 unexpired years. Applied to the extended lease, it produces the value for an unextended lease of £186,818 at the Property.
28. The valuer in the alternative, also considers use of the adjusted short lease flat sale at No.1 Linden Court. In line with the preference given by the Upper Tribunal to transactions rather than graphs, the valuer adopts the value derived from the sale of the short leased comparable £187,688. The relativity of virtual freehold to short leasehold, is taken at 88.49%.
29. The Tribunal has carefully considered the approach, evidence, steps and justifications adopted by the valuer in this application. The Tribunal is satisfied with the relevance and detail of the sales transactions, both long and short leaseholds and the preference to a sales transaction over that of graphs to quantify the relativity. It is content to accept them all without further adjustment being needed.
30. The Tribunal notes and accepts the 1% adjustment by the Valuer in uplifting the long lease value to its notional freehold value.

31. The diminution in the value of the landlord's interest in the Property is represented first by the capitalised value of the ground rent receivable under their lease. The calculation of this modest sum for each term and total is accepted.
32. Next, the effect of the lease extension will deprive the landlord of the Property for a further 90 years in addition to the current unexpired term. The present value of that delayed reversion is determined by applying a deferment rate to the freehold value of the 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. The Valuer also adopts the Sportelli deferment rate of 5% for this flat, which the Tribunal accepts.
33. The marriage value is to be shared equally between the parties, 50:50 as required by the Act.
34. The Tribunal accepts the valuation for the property, as produced by the Valuer. It was found it be clear and balanced. In particular the Tribunal agrees with the final opinion of value as expressed in his Valuation Report. The Tribunal has therefore not produced its own valuation.
35. The premium to be paid by the applicant for the new lease extension of the Property is therefore **£14,016 (Fourteen thousand and sixteen Pounds)**.
36. The Tribunal approves the form of surrender and renewal, however as the applicant has not named a specific solicitor who will execute the lease, the Tribunal refers this case back to the Court so that the new lease will be executed by a Judge of the County Court, in accordance with S.5(3) of Leasehold Reform Housing and Urban Development Act 1993.

Name: Neil Martindale FRICS Date: 5 September 2022

Appendix

Leasehold Reform, Housing and Urban Development Act 1993

S.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) The court shall not make an order on any application under subsection (1) or (2) unless it is satisfied—

(a) that on the date of the making of the application the tenant had the right to acquire a new lease of his flat; and

(b) that on that date he would not have been precluded by any provision of this Chapter from giving a valid notice under section 42 with respect to his flat.

(4) Before making any such order the court may require the tenant to take such further steps by way of advertisement or otherwise as the court thinks proper for the purpose of tracing the person in question; and if, after an application is made for a vesting order under subsection (1) and before any lease is executed in pursuance of the application, the landlord is traced, then no further proceedings shall be taken with a view to a lease being so executed, but (subject to subsection (5))—

(a) the rights and obligations of all parties shall be determined as if the tenant had, at the date of the application, duly given notice under section 42 of his claim to exercise the right to acquire a new lease of his flat; and

(b) the court may give such directions as the court thinks fit as to the steps to be taken for giving effect to those rights and obligations, including directions modifying or dispensing with any of the requirements of this Chapter or of regulations made under this Part.

(5) An application for a vesting order under subsection (1) may be withdrawn at any time before execution of a lease under section 51(3) and, after it is withdrawn, subsection (4)(a) above shall not apply; but where any step is taken (whether by the landlord or the tenant) for the purpose of giving effect to subsection (4)(a) in the case of any application, the application shall not afterwards be withdrawn except—

(a) with the consent of the landlord, or

(b) by leave of the court,

and the court shall not give leave unless it appears to the court just to do so by reason of matters coming to the knowledge of the tenant in consequence of the tracing of the landlord.

(6) Where an order has been made under subsection (2) dispensing with the need to give a copy of a notice under section 42 to a particular person with respect to any flat, then if—

(a) a notice is subsequently given under that section with respect to that flat, and

(b) in reliance on the order, a copy of the notice is not to be given to that person,

the notice must contain a statement of the effect of the order.

(7) Where a notice under section 42 contains such a statement in accordance with subsection (6) above, then in determining for the purposes of any provision of this Chapter whether the requirements of Part I of Schedule 11 have been complied with in relation to the notice, those requirements shall be deemed to have been complied with so far as relating to the giving of a copy of the notice to the person referred to in subsection (6) above.

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.