

2822



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

Case Reference : **LON/00BJ/OLR/2013/0826**

Property : **14 Nutwell Street, London SW17
9RS**

Applicant : **Mr S. Forknell (leaseholder)**

Representatives : **Broadway (solicitors) with a
valuation report from Mr A.
Jackson, BSc, MRICS, MBEng (of
Alan Jackson Building Surveyors
Ltd).**

Respondent : **Mr S. Osman (missing landlord)**

Representative : **N/A**

Type of Application : **Application for the determination
of the premium payable and the
determination of the terms of a new
lease in a claim made under section
48 Leasehold Reform, Housing and
Urban Development Act 1993 (the
'Act') for the grant of a new lease.**

Tribunal Members : **Professor James Driscoll, solicitor
(Tribunal Judge) and Mr Luis
Jarero BSc, FRICS (Tribunal
Member)**

**Date and venue of
Hearing** : **27 November 2013**

Date of Decision : **15 January 2014**

DECISION

Summary of the decision

1. The premium payable for the acquisition of a new lease of the subject premises is the sum of £30,523.
2. Subject to the modifications referred to below, the terms proposed for the new lease are approved.
3. Once the premium has been paid into court (as provided for in the order made by the Wandsworth County Court on 11 March 2013) and the approved lease has been lodged, it may then be executed on behalf of the missing landlord by a District Judge of the court.

Background

4. The applicant is the leaseholder of the subject premises which consists of a flat which he purchased in February 2013. Before the sale, the sellers prepared a notice seeking a new lease under section 42 of the Act. When the sale was completed the sellers assigned the benefit of the new lease claim to the applicant.

Proceedings in the Wandsworth County Court

5. The owner of the freehold of the building (who is the landlord under the lease) cannot be found. As a result it was impossible to give the landlord a copy of the section 42 notice. Accordingly an application was made to the Wandsworth County Court under 50 of the Act on or about 16 January 2013.
6. Under section 51(1) of the Act this is to be treated as the valuation date for the purposes of valuing the premium payable for the grant of the new lease and for determining the unexpired term of the current lease.
7. On 11 March 2013 District Judge Guinan, sitting at the Wandsworth County Court, made an order that on the approval by this tribunal of the terms of the new lease, and the determination by this tribunal of the premium to be paid, that a new lease should be executed by a District Judge of the Court. No order was made for in relation to the applicant's costs (there does not appear to have been an application in respect of the applicant's costs).
8. The applicant's lease originally commenced on 25 December 1976 for a term of 99 years. At the valuation date the lease had an unexpired term of 62.94 years. The ground rent for the first 33 years of the lease was £25 per annum, for the next 33 years it is the sum of £50 per annum and £75 per annum for the next 33 years.

The application to the tribunal

9. On 14 June 2013 the tribunal received an application under section 51 of the Act. Directions were given on 25 June 2013. On 2 July 2013 the tribunal's case officer wrote to the applicant's solicitors informing them that a valuation report was needed. In response to a letter questioning the need for such a report, the case officer wrote on 8 July 2013 confirming that such an expert report was essential to enable the tribunal to determine the premium.
10. Two bundles of documents were received by the tribunal on 31 July 2013.

First consideration of the claim

11. As directed by the tribunal the application was considered on 7 August 2013 without an oral hearing (the leaseholder not having sought an oral hearing). However, the tribunal was unable to make a determination on that date because of numerous deficiencies in the documentation. In the tribunal's written decision issued after this consideration, several criticisms were directed at the valuation report and the draft lease. As a result the tribunal was unable to make a determination of the premium to be paid. Nor could it make a decision on the draft lease.
12. As a result the tribunal adjourned consideration of the application until 17 September 2013 and additional directions were given. This time an oral hearing was directed with a time estimate of two hours.

Second consideration of the claim (and the first oral hearing)

13. At the hearing on 17 September 2013 the applicant was represented by Mr Stidolph of Broadways, solicitors. The valuer appointed, Mr Jackson, was not present as he was away on holiday. The tribunal noted that many of the directions had still not been complied with. There were serious deficiencies in the valuation evidence and the draft lease was still incomplete. It was also unclear to the tribunal whether Mr Jackson had carried out an inspection of the flat.
14. The hearing was adjourned until 15 and 16 October 2013. Additional bundles of documents were directed to be lodged with the tribunal by 11 October 2013. Those advising the applicant raised certain objections to the directions which were referred to a tribunal Judge who rejected the objections. The solicitors who represent the leaseholder were informed that they could raise any objections at the hearing.

Third consideration of the claim (and the second oral hearing)

15. At the hearing on 15 October 2013 the applicant was again represented by Mr Stidolph of Broadways solicitors. (Mr Jackson, the valuer was not present at this hearing). Once again, the tribunal noted a continuing and

substantial failure to comply with the directions, such as to make it impossible to determine the price to be paid, or to consider approving the proposed new lease as again, only a draft lease variation had been sent.

16. The tribunal directed that the matter should be adjourned again, this time for a consideration on the basis of the papers and without an oral hearing. Further directions were given.
17. The case was listed for a determination during the week starting 25 November 2013. Various issues were raised by the applicant's advisors and on 8 November the tribunal received from the applicant's solicitors a bundle what they described as an 'up to date' valuation and a 'lease' to be inserted into the hearing bundles which have already been lodged with the tribunal.

Fourth consideration of the claim

18. The tribunal met on 27 November 2013 to consider the application. This was the fourth time the tribunal has had to do this. All of the three previous considerations (which included two hearings) proved abortive simply because those advising the applicant failed to comply with directions. This should have been a straightforward application for the tribunal to determine the premium to be paid and to approve the terms of the new lease.
19. We regret to note the unnecessary drain this has placed on the resources of the tribunal and the additional professional costs that may have been incurred by the leaseholder.

Reasons for our decision

The draft lease

20. We examined the draft lease that has now been provided and we are satisfied that, subject to one matter, that it is an appropriately drafted new lease to be granted under sections 56 and 57 of the Act. It has been drafted as a new lease in substitution for the existing lease at a peppercorn rent, for a term 90 years longer than the existing lease, but otherwise on the same terms as the existing lease (see section 57(1) of the Act. Before it is lodged with the court, the draft must, however, be amended to show that it will be executed by a District Judge of the Court (and not as currently stated by the 'landlord', as this is a missing landlord case).

The premium (the provisions in the Act summarised)

21. We turn now to the premium. New lease valuations are to be carried out in accordance with Schedule 13 of the Act. Paragraph 2 of this schedule provides that the premium is the aggregate of (a) the diminution in value of the landlord's interest in the flat, (b) the landlord's share of the marriage value and (c) any amount of compensation payable to the landlord. (Factor (c) is not relevant to this case).

22. In order to determine (a) one has to work out the value of the landlord's interest prior to the grant of the new lease and that value once the new lease has been granted (as the landlord's entitlement to vacant possession is effectively postponed by another 90 years). Paragraph 3 of the schedule which may be summarised as requiring a determination of the market value of these interests on a number of assumptions, including the assumption that there is no statutory right to seek a new lease under the Act. The purpose of this is to ensure that the existence of a statutory right to seek a new lease will not affect valuation. This is sometimes referred to as approaching valuation in a 'no Act world' (see: *Hague Leasehold Enfranchisement*, 5th edition, 2009). The effects of any leaseholder improvements is also to be disregarded (paragraph 3(2)(c)).
23. As to 'marriage value' where, as in this case, the lease has less than 80 years unexpired that value has to be shared 50:50 (Schedule 13, paragraph 1 of the Act). That schedule in paragraph 2 defines marriage value. Applied to this case it is the difference between the aggregate of the values of the leaseholder's and the landlord's interest under the existing lease and those values once the new lease has been granted. In other words, marriage value is the additional value that is released on the grant of the new lease.
24. Thus to determine marriage value two values for the subject property are required, both of which must be on the assumptions that there is no statutory right to a new lease (that is the 'no Act' world) and that the value of any leaseholder's improvements must be disregarded. As there is little or no market evidence of sales of leases that do not qualify for the rights under the Act, valuers have to assess 'relativity' which has been defined as 'the value of a dwelling held on an existing lease at any given unexpired term divided by the value of the same dwelling in possession to the freeholder expressed as a percentage (*RICS Research Report, 2009*).
25. Returning to the diminution of the landlord's interest, in financial terms the landlord's interest consists of (a) the rental income from the ground rent and (b) the value of the freehold reversion to the flat. As the rental income is lost on the grant of the new lease the landlord's loss of the rent for the remaining term of the lease is capitalised. As to the value of the freehold reversion, one has to determine this value at the valuation date and then to defer it for the remaining term of the lease as this is when the landlord would have vacant possession. On this issue the appropriate rate is 5% (a point most recently endorsed by the Upper Tribunal in the case of *Voyvoda v Grosvenor West End Properties and 32 Grosvenor Square Limited* [2013] UKHT 0334).

The premium (Mr Jackson's report)

26. We have read the report of Mr Jackson dated 5 November 2013 and regret to note that he has once again failed to deal with the directions and the other criticisms made of his previous reports. We give examples of these deficiencies in the following paragraphs.

27. First, having adopted the 16 January 2013 date as the valuation date (as suggested to him by the tribunal on previous occasions) he then states on the first page, paragraph 5 of the latest report that the property is to be valued 'as at today's date') which is incorrect and contradictory. We reiterate that the valuation date is the 16 January 2013; this is the date on which the property is to be valued and the date from which the unexpired term of the lease is to be calculated.
28. As before Mr Jackson cites three transactions as comparable evidence. No information is given as to ground rents or length of lease and one is from 2009. He fails to explain which ones he used and how he reached his conclusion on the value of the existing lease, the value of the new lease and the freehold vacant possession value of the flat at the valuation date. A fourth comparable is given with no relevant details. Mr Jackson refers to the condition of the comparables but does not seem to realise that the valuation of the subject flat has to be carried out on the assumption that the covenants in the lease have been complied with, especially as to condition. He has again incorrectly referred to the unexpired term of the lease at the valuation date. Nor does he explain which sources he relied on to arrive at the 'relativity rate'.
29. When attempting to value the landlord's interest before the grant of a new lease he muddles the capitalisation rate with the deferment rate
30. We also note that there is no indication as to whether Mr Jackson has carried out an inspection of the property or has ever visited it.
31. His report was of very limited assistance to the tribunal.

The premium (Our approach)

32. Taking a proportionate and a pragmatic approach we have decided to deal with the valuation on the basis of the evidence that we have (in the main the sale price for the subject property which is close in time to the valuation date) and also on the basis of our own knowledge and professional experience. We decided that as we had good market evidence provided by the sales evidence of the subject flat, that there are no references to leaseholder improvements, that it was unnecessary for us to carry out an inspection of the subject property.
33. Dealing first with the value of the existing short lease we consider that the market evidence of the sale of the subject property in February 2013 is a cogent evidence of value at the valuation date suitably adjusted for the date of sale by comparison to the valuation date. This produces an adjusted figure of £226,378. The adjustment was carried out with reference to the Land Registry index for the London Borough of Wandsworth.
34. As to the value of the long lease we have had regard to the comparable provided of the sale of an extended lease of a 2 bedroom flat at 22 Nutwell Street on 26 March 2013 at £283,000. Adjusting for the date of this sale to

the valuation date gives a figure of £274,000. This figure is now adjusted by 1% to arrive at the freehold value of £276,768.

35. As to relativity we have had regard to the RICS Leasehold Reform: graphs of relativity publication. We conclude that the appropriate relativity to be applied here is approximately 86.9 % having regard in particular to the graphs published by Nesbitt & Co and that published by Andrew Pridell. We did not use those produced by either Beckett and Kay or Southeast Leasehold. However, comparing the freehold value to the existing lease value shows a relativity of 81.79%. We have decided to use this relevant market evidence as opposed to the relativity tables.

36. The deferment rate is 5% and we also conclude that as the ground rent income is very low that a capitalisation rate of 7% is appropriate.

1. We have corrected the unexpired term to 62.94 years as at the valuation date.
2. To conclude the premium to be paid for the grant of a new lease is the sum of £30,523 which the tribunal, using its knowledge and experience, confirms is not below the premium it would expect to see had the landlord had been available to argue its case.
3. A copy of this decision will be sent to the applicant, his solicitors, his valuers and the Court

**Professor James Driscoll, solicitor (Tribunal Judge) and
Mr Luis Jarero, BSc FRICS (Tribunal Member)**

Appendix A

First-Tier Property Chamber (Residential Property Tribunal)

Ref: LON/00BJ/OLR/2013/0826

Valuation of 14 Nutwell Street London SW17 9RS

| | | | |
|--|-----------------|----------|----------------|
| Valuation date | 16 January 2013 | | |
| 99 year lease from 25 December 1976 | | | |
| Length of lease remaining | 62.94 years | | |
| Ground rent for 1st 33 years | £25 | | |
| Ground rent for 2nd 33 years | £50 | | |
| Ground rent for remainder | £75 | | |
| Freehold value | £276,768 | | |
| Long lease value | £274,000 | | |
| Existing lease value | £226,378 | | |
| Capitalisation rate | 7% | | |
| Deferment rate | 5% | | |
| Value of freeholder's present interest | | | |
| Ground rent | £50 | | |
| YP 29.94 yrs @ 7% | 12.4014 | £620 | |
| Reversion to new ground rent | £75 | | |
| YP 33 yrs @ 7% | 12.7538 | | |
| PV of £1 deferred 29.94 years @ 7% | 0.1319 | £126 | |
| Reversion to freehold value | £276,768 | | |
| Deferred 62.94 years at 5% | 0.04638 | £12,836 | |
| Freeholder's present interest | | | £13,583 |
| Freeholders Interest after grant of long lease | | | |
| Ground rent | 0 | | |
| Reversion to freehold value | £276,768 | | |
| Deferred 152.94 years at 5% | 0.0005745 | | £159 |
| Freeholder's loss | | | £13,424 |
| Calculation of marriage value | | | |
| Value of property after grant of long lease | | | |
| Freeholder's interest | £159 | | |
| Tenant's interest | £274,000 | £274,159 | |
| Value of existing interests | | | |
| Freeholder's interest from above | £13,583 | | |
| Tenant's interest | £226,378 | £239,961 | |
| Marriage value | £34,198 | | |
| Marriage value to be divided equally between freeholder and tenant | | | £17,099 |
| Premium payable to freeholder | | | £30,523 |