



3075

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

**Case Reference** : **AGR/LON/00AJ/OLR/2015/0300**

**Property** : **Flat 3, 107 Mill Hill Road, London, W3 8JF**

**Applicant** : **Godwill N'Dulor (the "Applicant")**

**Representative** : **Mike Stapleton and Co, chartered surveyors**

**Appearances** : **Mr. Mike Stapleton, FRICS**

**Respondent** : **Ajay Anand (the "Respondent")**

**Representative** : **Cheal Asset Management, Estate Legal & Litigation Services**

**Appearances** : **None**

**Type of Application** : **Application under Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993**

**Tribunal** : **1. Mr A Vance, Tribunal Judge  
2. Mr P Casey, MRICS**

**Date of Hearing** : **2 June 2015**

**Date of Decision** : **2 June 2015**

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**DECISION**

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## Decisions of the tribunal

1. The Tribunal determines that the premium payable by the Applicants under Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") on the grant of a new lease of the subject property is **£17,500**. The reasons for the Tribunal's decision are set out below.
2. The Tribunal approves the terms of the draft lease handed up at the hearing subject to the amendments made in that document and referred to below. A copy of the draft lease is annexed to this decision at Appendix A.

## Background

3. Numbers appearing below in square brackets refer to pages in the hearing bundle provided by the Tenant.
4. This is an application under section 48 of the Leasehold Reform Housing and Urban Development Act 1993 (the "1993 Act").
5. The Applicant is entitled to a new lease of Flat 3, 107 Mill Hill Road, London, W3 8JF ("the Property") under Chapter II of the 1993 Act.
6. The Applicant served notice of a claim to take a new lease of the Property on 26 September 2014 [79-82]. In that notice the Applicant stated that the proposed terms of the new lease should be the same as those contained in the existing lease except for those terms set out in Part 1 of the 1993 Act, including a 90 year extension of the lease term at a peppercorn rent.
7. On 25 November 2014 the Respondent served a counter-notice admitting the Applicants' entitlement but disputing the proposed terms of acquisition [83-84]. None of the Applicant's proposals were accepted.
8. The Applicant applied to this Tribunal for the determination of the disputed terms on 3 February 2015.

## Lease

The following are particulars of the Applicants' leasehold interest:

- |  |   |
|--|---|
| (a) Date of lease:   | 21 September 1984   |
| (b) Term of lease:   | 99 years commencing on 25 March 1984  |
| (c) Ground rent:   | £75 per annum for the first 33 years, rising to £150 for the following 33 years and then to £300 for the remainder of the term. |
| (d) The unexpired term at valuation date (the date of service of the Applicant's notice) is therefore 68.49 years. |   |

9. The Respondent was registered as freehold proprietor of the Property on 24 September 1998 [87]. The Applicant purchased his or leasehold interest on 22 October 2004 at a price of £175,000. The Applicant's leasehold interest was registered on 13 December 2004. There are no intermediate interests.
10. The Applicant's proposed premium before the Tribunal was £17,500. [78].
11. The Respondent's proposed premium was £25,600 [21].

### **Inspection**

12. Neither party requested that the Tribunal inspect the Property and the Tribunal did not consider it necessary or proportionate to do so.

### **The Law**

13. Schedule 13 the Act provides that the premium to be paid by the tenant for the grant of a new lease shall be the aggregate of the diminution in the value of the landlord's interest in the tenant's flat, the landlord's share of the marriage value, and the amount of any compensation payable for other loss.
14. The value of the landlord's interests before and after the grant of the new lease is the amount which at the valuation date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) on the assumption that the tenant has no rights under the Act to acquire any interest in any premises containing the tenant's flat or to acquire any new lease.
15. Para 4 of the Schedule, as amended, provides that the landlord's share of the marriage value is to be 50%, and that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil.
16. Para 5 provides for the payment of compensation for loss arising out of the grant of a new lease.
17. Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

### **The Hearing**

18. Mr Stapleton appeared on behalf of the Applicant. There was no attendance by the Respondent despite notice of the hearing being sent to the address stated on the letterhead of his representative, Cheal Asset Management.

### **The evidence before the Tribunal**

19. The evidence before the Tribunal comprised the valuation report of Mr Stapleton that he informed the Tribunal was prepared following his inspection of the Property in about late August/early September 2014 together with a one page calculation sheet sent on behalf of the Respondent to Stapleton & Co.

20. Mr Stapleton's report is supported by a Statement of Truth confirming that insofar as the facts stated in his report are within his own knowledge that they are believed by him to be true and by a statement of compliance confirming that Mr Stapleton understands his duty as an expert witness.
21. The Tribunal asked Mr Stapleton a considerable number of questions concerning the information and calculations provided by him in his report and valuation. Having heard his oral evidence the Tribunal is satisfied that the facts and matters stated in his report are true and that the opinions he expresses are a reliable starting point to determine the premium payable for the new lease of the Property.
22. By contrast, the Tribunal has no confidence at all in the calculation sheet provided on behalf of the Respondent. This is signed by Messrs PK and AK Associates but there is no indication as to who this organisation is or that they are qualified to provide valuation evidence. There is no evidence to justify the proposed reversion to freehold value of £375,000, nor why at one point in the calculation they use a relativity rate of 89% and later on a rate of 90%. Further there is a clear miscalculation of the remaining term of the Lease.
23. The Respondent has provided no other valuation evidence to this Tribunal and Mr Stapleton told us that he has not received anything from his representatives aside from this calculation sheet despite numerous phone calls and several letters to them. It is possible that if the Respondent's had made contact with Mr Stapleton or attended today's hearing that some of the issues in dispute could have been narrowed. We note the relativity rates being proposed are not too dissimilar so this could possibly have been agreed.
24. Regrettably, given the above errors and lack of evidence justifying the calculation provided by the Respondent the Tribunal considers this of no evidential real value in determining the premium payable. The Tribunal therefore proceeded on the basis that the only evidence of value before it was that of Mr Stapleton.

## **Valuation**

25. Mr Stapleton describes the Property as a small first and second floor converted flat in a former semi-detached house, originally built circa 1900 in traditional materials. The building is built of solid brick work under a timber pitched and tiled roof. He describes the external condition of the building in which the flat is situated as requiring some general improvement and that some decoration was required to the internal communal areas. He also states that the Property has not been improved in a manner which needs to be disregarded for the purpose of valuation.
26. In his report Mr Stapleton has stated the valuation date to be 26 September 2014, the date the notice of claim was given to the Respondent.
27. An assessment of virtual freehold vacant possession value of the Property ("FHVP") as at the valuation date is required in order to value the Respondent's reversionary interest and the value of the long leasehold interest in the Property once extended.

28. Mr Stapleton's assessment of the value of the FHVP is based on transactions relating to the sales of comparable one bedroom flats in the W3 area. He provides information concerning four such flats. None of these transactions have yet completed although he informed the Tribunal that two of them are due to complete shortly. He stated that he had difficulty in obtaining details of suitable completed transactions.
29. In his view, the best comparable was that of a flat located in the same building as the Property, 107 Mill Hill Road, London W3 8JF [11] which is on the market for £270,000. Mr Stapleton states that it is of similar size to the Property but told the Tribunal that it has the benefit of its own car parking space and own entrance door.
30. The other comparables were 79 Prices Court, Church Road, London W3 8LX [15-16] which is currently available to purchase at £279,500 on a 125 year lease. Mr Stapleton indicated that this flat was slightly larger than the Property but a little further from Acton station; Flat 2, 106 Churchfield Road, London W3 6BY [17] which is being sold for £290,000 with 98 years of the lease remaining and 40 Cromwell Road, London W3 6BN [19-20] that he said was the subject of a sale going through at the moment in the sum of £285,000.
31. Mr Stapleton's starting point was the price of £270,000 relating to 107 Mill Hill Road. He then made two adjustments to that figure. Firstly, he took into account the fact that it was being sold on an original lease with less than 68 years unexpired. To adjust for this he took the inverse of the average of the RICS Graphs of Relativity referred to below to identify what the value might have been had it been possible to sell the comparable flat with the benefit of a long lease. This adjustment factor of 1.0958 results in a value of almost £296,000.
32. The second adjustment was to factor in the passage of time since the valuation date for which he used changes in the Land Registry house price index for flats within the London Borough of Ealing between September 2014 and March 2015. This showed that an average flat had increased by approximately 2.63% during that period. Taking that into account reduces the adjusted value from £296,000 to £288,400. He then adjusted that figure to take into account the fact that the comparable flat has the benefit of a car parking space and adjusted the figure down to £275,000. He did not make any further adjustment to take into account the fact that it also had the benefit of its own front door but informed the Tribunal that he considered this to be properly reflected on the valuation of £275,000.
33. The Tribunal is satisfied that Mr Stapleton's report is impartial and objective and is satisfied with his methodology and that the comparable evidence supports a valuation for the subject property not greater than his suggested figure of £275,000. It agrees that the best comparable is the flat being sold at 107 Mill Hill Road given its proximity and similar size and that this compares favourably with the other comparables provided. It considered the adjustment made for the fact that 107 Mill Hill Road was being sold on an original lease with less than 68 years unexpired to be an unusual approach but did not consider it an inappropriate adjustment.
34. The Tribunal therefore adopts the figure of £275,000 for the long leasehold value of the Property.

35. Mr Stapleton arrived at his valuation of the 68.49 year unexpired residue of the current Lease by first treating the figure of £275,000 as equivalent to the freehold vacant possession value of the Property because in his view there was no difference in the area between the extended lease value and the freehold value of the Property. In order to determine the value of the unexpired residue the assumed freehold value is then adjusted by a factor of 91.6% arrived at by taking the average of five graphs of relativity. These were the South East Leasehold, Nesbitt & Co, Austin Gray, Andrew Pridell Associates and Beckett & Kay graphs. The average relativity figure was 91.58% which Mr Stapleton rounded to 91.6%. The Tribunal accepts that approach as legitimate in principle, given the lack of transactional evidence of sales with similar unexpired lease terms.
36. The diminution in the value of the landlord's interest in the Property is represented first by the capitalised value of the grounds rent receivable under the lease which will be surrendered and replaced by a peppercorn rent under the terms of the Act. That income stream is capitalised by the Mr Stapleton at 7%, which the Tribunal accepts is appropriate in this case.
37. Next, the effect of the grant of the new lease will be to defer the landlord's freehold reversion for a further 90 years, thereby for practical purposes depriving the landlord of the current value of the freehold reversion indefinitely. The present value of the reversion is determined by applying a deferment rate to the FHVP of £275,000. 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 parties have agreed a deferment rate of 5% which the Tribunal accepts.
38. Marriage value is the difference between (on the one hand) the aggregate value of the interests of the leaseholders, the landlord and the intermediate leaseholder before the new lease; and (on the other) the aggregate value after the grant of the new lease. It is to be shared equally between the parties, as required by the Act.
39. The premium payable by the Applicants under Schedule 13 of the Act on the grant of a new lease of the Property is £17,500 as per Mr Stapleton's valuation

#### Lease terms

40. The Applicant's solicitors have prepared a draft lease which the Tribunal is invited to approve. Mr Stapleton confirmed that this draft, handed up at the hearing, had been provided to Cheal Asset Management. The draft lease provides for the surrender of the existing Lease and the grant of a new lease with a term of 189 years in accordance with section 56(1) of the Act. The terms of the new lease are the same as those of the Lease (with the addition of statutory rights of termination for redevelopment).
41. The Tribunal noted from correspondence sent to it by Cheal Asset Management that it had previously sent the Applicant's solicitors an alternative version of new lease comprising wide scale changes to the existing lease. This is inappropriate given the very limited circumstances set out in s.57 of the 1993 Act in which modifications can be made to the existing lease terms on the grant of a new lease under the 1993 Act.

42. The Tribunal is satisfied that the terms proposed by the Applicant are appropriate for the new lease but sees no justification for the insertion of clauses 6.1 to 6.3 inclusive. Mr Stapleton was unable to explain why these terms had been included in the new Lease they are therefore deleted by the Tribunal.

**43.**

**Name: Amran Vance**

**Date: 2 June 2015**

## Annex 1

(1)

and

(2)

**LEASE**  
of

Term - 189 years from

Extension - 90 years

Brown and Co  
126 Station Road  
Burnham on Crouch  
Essex CM0 8HQ

Ref MB

**1. PRESCRIBED CLAUSES AND DEFINITIONS**

<b>LR1. DATE OF LEASE</b>	201
<b>LR2. TITLE NUMBER(S)</b>	<p><b>LR2.1 Landlord's title number</b> (referred to in this lease as "the Freehold Title Number")</p> <p><b>LR2.2 Other title numbers</b> (referred to in this lease as "the Leasehold Title Number")</p>
<b>LR3. PARTIES TO THIS LEASE</b>	<p><b>Landlord</b> whose registered office is at (referred to in this lease as "the Lessor")</p> <p><b>Tenant</b> (referred to in this lease as "the Lessee")</p> <p><b>Other Parties</b> None</p>
<b>LR4. PROPERTY</b>	<p><b>In the case of a conflict between this clause and the remainder of this lease then for the purpose of registration this clause shall prevail</b></p> <p>as described in the Schedule of the Existing Lease and as comprised in the Leasehold Title Number (referred to in this lease as "the Demised Premises")</p>
<b>LR5. PRESCRIBED STATEMENT ETC</b>	<p><b>LR5.1. Statements under rules 179 of the Land Registration rules</b></p> <p>This lease is granted under Section 56 of the Leasehold, Reform, Housing and Urban Development Act 1993</p> <p><b>LR5.2 This lease is made under, or by reference to , provisions of:</b></p> <p>N/A</p>
<b>LR6. TERM FOR WHICH THE PROPERTY IS LEASED</b>	<p><b>The term is as follows:</b> 189 years from (referred to in this lease as "the New Term")</p>
<b>LR7. PREMIUM</b>	<p>£ (pounds) (referred to in this lease as "the Premium")</p>
<b>LR8. PROHIBITIONS OR RESTRICTIONS ON DISPOSING OF THIS LEASE</b>	<p>This lease contains a provision that prohibits or restricts dispositions.</p>

<p><b>LR9. RIGHTS FOR ACQUISITION ETC</b></p>	<p><b>LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land</b> N/A</p> <p><b>LR9.2 Tenant's covenant to (or offer to) surrender this lease</b> N/A</p> <p><b>LR9.3 Landlord's contractual rights to acquire this lease</b> N/A</p>
<p><b>LR10. RESTRICTIONS COVENANTS GIVEN IN THIS LEASE BY THE LANDLORD IN RESPECT OF LAND OTHER THAN THE PROPERTY</b></p>	<p>N/A</p>
<p><b>LR11. EASEMENTS</b></p>	<p><b>LR11.1 Easements granted by this lease for the benefit of the Property</b> Clause 4.1 of this lease (as granted in the Schedule of the Existing Lease so far as they affect the Freehold Title Number)</p> <p><b>LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other Property</b> Clause 4.1 of this lease (as excepted and reserved in the Schedule of the Existing Lease)</p>
<p><b>LR12. ESTATE RENT CHARGE BURDENING THE RESTRICTION</b></p>	
<p><b>LR13. APPLICATION FOR STANDARD FORM OR RESTRICTION</b></p>	<p>None</p>
<p><b>LR14. DECLARATION OF TRUST WHERE THERE IS MORE THAN ONE PERSON COMPRISING THE TENANT</b></p>	<p><b>The Tenant is more than one person. They are to hold the Property on trust for themselves as joint tenants.</b> <b>OR</b> <b>The Tenant is more than one person. They are to hold the Property on trust for themselves as tenants in common in equal shares</b> <b>OR</b> <b>The Tenant is more than one person. They are to hold</b></p>

	the Property on Trust <i>Complete as necessary</i>
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## **2. FURTHER DEFINITIONS**

- 2.1 the Existing Lease : A Lease dated made between (1) and (2)
- 2.2 the Existing Term : 99 years from
- 2.3 the New Rent : A peppercorn (if demanded)
- 2.4 the Act : The Leasehold Reform, Housing and Urban Development Act 1993

The definitions contained in the Prescribed Clauses and this Clause 2 shall be deemed to be incorporated in this lease.

## **3. RECITALS**

- 3.1 This lease by way of extension under Section 56 of the Act is made on the date stated in Clause LR1 between the persons named in Clause LR3.
- 3.2 By the Existing Lease the Demised Premises were demised for the Existing Term and subject to the covenants, agreements, provisos and other matters therein more particularly specified.
- 3.3 The term of years granted by the Existing Lease is now vested in the Lessee and the reversion expectant on the determination of the Existing Lease is now vested in the Lessor.

#### 4. DEMISE

- 4.1 In consideration of the surrender of the Existing Lease and the Premium paid by the Lessee to the Lessor (receipt of which is acknowledged by the Lessor) the Lessor with Limited Title Guarantee demises to the Lessee the Demised Premises together with the rights set out in Clause 1 of the Existing Lease so far as they affect the Freehold Title Number but subject to the exceptions and reservations set out in the Clause 1 of the Existing Lease **TO HOLD** the Demised Premises to the Lessee for the New Term yielding and paying during the New Term the New Rent.
- 4.2 The tenancy granted by this lease is in substitution for the tenancy of the Demised Premises granted by the Existing Lease which Existing Lease is surrendered to the Lessor by the Lessee.
- 4.3 The Lessee covenants with the Lessor during the New Term to pay the New Rent and other monies payable under this lease to the Lessor on the days and in manner appointed for payment thereof.
- 4.4 Each of the Lessor and the Lessee covenant with each other during the New Term to observe and perform the covenants, conditions and provisions made applicable to this demise by Clause 4.5 of this lease which are or ought to be observed and performed by each of them upon the grant of this lease.
- 4.5 Save as expressly set out herein this lease is made upon the same terms and subject to the same definitions, covenants, conditions, provisions, agreements and declarations in all respects as those contained in the Existing Lease and shall be read and construed as if those definitions, covenants, conditions, provisions, agreements and declarations were set forth verbatim in this lease with such modifications only as are necessary to make them applicable to this demise instead of the demise created by the Existing Lease.

5. The Lessee agrees to apply to the Chief Land Registrar to make the necessary entries and cancellations on the Registers of the Freehold Title Number and the Leasehold Title Number in order to give effect to the surrender and demise contained in this lease within one month of completion and to provide to the Lessor's solicitors at his cost an official copy of the register of title from the Land Registry within seven days of receipt thereof.

6. AGREEMENTS AND DECLARATIONS

It is hereby agreed and declared as follows:

~~6.1 If the Rent or other monies hereby reserved or any part thereof shall not be paid to the Lessor within fourteen days of any of the days hereinbefore appointed for payment thereof to pay to the Lessor interest upon such sum as shall remain unpaid at the rate of four per centum per annum above the Bank of England base rate on the date that the rent or other payment is due (but at the rate of ten per centum per annum if this rate shall for any reason not be ascertainable) for the period commencing on the date the outstanding sum became due to be paid and ending on the date of actual payment thereof but without prejudice to the operation of the proviso for re-entry contained in the Existing Lease or any other right of action of the Lessor in respect of non-payment of rent or other monies due **PROVIDED ALWAYS** that if such interest or any part thereof remains unpaid when the outstanding sum has been paid further interest at the rate aforesaid shall be added to the interest due at the date of such payment and shall be compounded at the end of each subsequent period of three months until such time as the interest due at the date of such payment and all subsequent interest thereon has been paid.~~

~~6.2 Any licence, consent, approval, notice or act hereinbefore or howsoever required or authorised to be given or done by the Lessor not as a deed shall be valid and effectual~~

~~if given or done by a Director or the Secretary for the time being of the Lessor or its duly appointed agents.~~

6.3 Each of the covenants on the part of the Lessee in this lease ~~shall remain in full force and effect both at law and in equity notwithstanding that the Lessor may have waived or released similar covenants affecting the other parts of the building containing the Premises or any adjoining or neighbouring premises.~~

6.4 The Lessor may;

- (i) at any time not earlier than twelve months before the date of expiry of the Existing Term and
- (ii) at any time during the period of five years ending on the date of expiry of the New Term

apply to the Court under Section 61 of the Act for an order for possession of the Premises on the ground that for the purpose of redevelopment he intends to demolish or reconstruct or to carry out substantial works of construction on the whole or a substantial part of the building in which the premises form part, and that he could not reasonably do so without obtaining possession of the Premises and the provisions of that section and of Schedule 14 of the Act shall apply accordingly.

6.5 It is not intended that any third party should have the right to enforce any provision in this lease pursuant to the Contracts (Rights of Third Parties) Act 1999

6.6 No sub-tenant of the Lessee nor any sub-tenant of his has any right enforceable against the Lessor to acquire a new lease under Chapter II of Part I of the Act.

6.7 The conditions of re-entry in the Existing Lease which are incorporated into this lease by virtue of Clause 4.5 hereof shall be exercisable on any breach of the covenants and conditions contained or referred to herein.

6.8 In this lease where the context so admits words importing the singular number only include the plural number and vice versa and words importing the masculine gender include the feminine and neuter and vice versa and where there are two or more persons included in the expression "the Lessee" covenants expressed to be made by them shall be deemed to be made jointly and severally.

6.9 Where this lease refers to a clause or clauses in the Existing Lease and that clause in the Existing Lease refers to "the term" or "the said term" such reference to "the term" or "the said term" shall be construed herein as referring to "the New Term".

6.10 There is no agreement for lease to which this lease gives effect.

IN WITNESS whereof the parties have set their hands the day first before written.

SIGNED as a DEED by the said )  
in the presence of: ) \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Witness Name (Print): \_\_\_\_\_

Witness Address: \_\_\_\_\_

Witness Occupation: \_\_\_\_\_

SIGNED as a DEED by

LIMITED acting by a Director     )  
and its Secretary:-                     )

Director \_\_\_\_\_

Secretary \_\_\_\_\_