

4091



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

Case Reference : **GM/LON/OOBH/OLR/2015/1298**

Property : **67c Ulveston Road, London E17
4BN**

Applicant : **Roman Paul Pistun**

Representative : **Cavendish Legal Group**

Respondent : **Peter Sheldon (1)
Christine Margaret Smith (2)**

Representative : **None**

Type of Application : **Determination of terms of new
lease purchase under section 51 of
the Leasehold Reform, Housing
and Urban Development Act 1993**

Tribunal Members : **Mrs Sonya O'Sullivan – Tribunal
Judge
Mr Richard Shaw FRICS – Valuer
Member**

**Date and venue of
Paper Determination** : **16 September 2015
10 Alfred Place, London WC1E 7LR**

Date of Decision : **16 September 2015**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the appropriate sum to be paid into Court for the grant of a new lease to the Applicant for 67C Ulveston Road, London E17 4BN (“the Flat”), pursuant to section 51(5) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”), is £15,600.
- (2) The tribunal approves the new lease in the form attached, marked “A”.

The application

1. The Applicant who is the long leaseholder of the Flat seeks the tribunal’s determination of the price to be paid for a new lease of the Flat and the terms of the new lease to be granted.
2. The landlord is missing and on 27 July 2015 the Applicant issued a Part 8 Claim in the County Court at Bow under claim number B02BO799. On 4 August 2015 an order was made by District Judge Phillips under section 5.1(5) of the 1993 Act which confirmed that the Court was satisfied that the landlord Respondents could not be found and that the Applicant had the right to acquire a new lease of the Flat and that at the date of making the application to the Court he was not precluded from serving a valid notice under section 42 of the 1993 Act.
3. It was further ordered that that the matter be transferred to this tribunal for a determination of the terms of the lease and the appropriate sum to be paid into Court in accordance with section 5.1 (5) of the 1993 Act less the costs of the application to the Court. It was further ordered that on the Applicant then paying into court such sum as determined by the tribunal Mr Frankel of Cavendish Legal Group is empowered to execute the new lease.
4. This determination is made on the basis of written representations in accordance with the procedure set out in regulation 13 of the Leasehold Tribunals (Procedure) (England) Regulations 2003. Directions were issued on 7 August 2015. The paper determination took place on 16 September 2015.
5. The Applicant’s solicitors supplied the tribunal with a hearing bundle that contained copies of the existing lease, Land Registry searches for the freehold and leasehold titles, relevant documents from the County Court proceedings, a valuation and a draft deed of surrender and re-grant.
6. The tribunal did not consider that an inspection of the property was necessary given that we had been provided with a photograph of the

property and full details of the comparables relied upon and the information provided in the report of Ms Mariner (see below).

7. The relevant legal provisions are set out in the Appendix to this decision.

Tenure

8. The lease is for a term of 99 years from 1 December 1983. The ground rent is set at £25 per annum for the first 33 years after which it increases to £50 per annum for the second thirty years and then £100 per annum for the remaining term. There are some 67.35 years unexpired as at the relevant date.
9. The tenants rely on a valuation prepared on their behalf by Genevieve Mariner BSc (Hons) FRICS of Strettons, chartered surveyors. Ms Mariner has inspected the Flat, having last inspected internally in July 2014 although she confirms she is informed there has been no material change since that date. She has provided a photograph, description, a list of comparable transactions and a valuation rationale.
10. She describes the Flat as a first floor flat contained in an end of terrace converted early 20th century house divided into three flats.

Terms of new lease

11. The draft lease submitted by the Applicant's solicitors is approved.

Lease extension premium

12. The county court claim was issued on 27 July 2015 and that is the valuation date which has been correctly adopted by Ms Mariner.
13. She relies on the following four comparables, all of which are said to be within similar locations and distance from Wood Street Station;
 - i. 37b Upper Walthamstow Road - This is a first floor 2 bedroom flat which sold at £455,000 in September 2014. It is said to be in a superior location with the benefit of a balcony, garden and long leasehold interest. It is also double the size of the subject property. She makes a deduction of 5% in respect of the superior location and £25,000 for eh private garden. Plus 3.8% is made for the time adjustment to reach an adjusted price of £210,000.
 - ii. 23b Eastfield Road – This is a first floor 2 bedroom flat which sold at £401,000 in October 2014. It is said to be in a superior location with a long lease. It is almost half as big again. A deduction of 5% is made to

reflect the better location and £10,000 to reflect the fact it has two bathrooms. Plus 1.8% is made for time adjustment to reach an adjusted price of £250,000.

- iii. 148 Howard Road – This is first floor flat sold for £365,499 in October 2014. It is said to be in a vastly superior location on the edge of Walthamstow Village, closer to shops and restaurants. It also benefits from a roof terrace. It is estimated to be slightly smaller than the subject property. She makes a 10% deduction for what is said to be a vastly superior location and £15,000 for the garden. Plus 1.8% is made for time to reach an adjusted figure of £240,000.
- iv. 117 Kitchener Road – This is a first floor 2 bedroomed maisonette but is of a different type as it is purpose built. It has a garden and a new lease and is smaller than the subject property. It sold for £198,500 in October 2014. She adds £25,000 to reflect the fact it is purpose built and no unattractive and deducts the same sum to reflect its garden. A plus 1.8% time adjustment is made to reach an adjusted price of £240,000.
14. Ms Mariner explains that obtaining evidence of comparable sales of first floor flats in this location has been difficult in spite of her familiarity with the location. This in part is explained she says by a surge in sales in the early part of 2014 which meant it was more difficult to obtain evidence for mid to late 2014. Ms Mariner then goes on to take an average of all four and adopts a value of £255,000 for the long lease value.
15. As far as the short lease value is concerned Ms Mariner has relied on the RICS Graphs of relativity for the Outer London and Rest of England. She takes an average of all five of those graphs and adopts a figure of 90.84%.
16. She adopts a capitalisation rate of 7% as she says there is no reason to depart from this figure.
17. She adopts a deferment rate of 5% as she follows the decision in *Earl of Cadogan and Cadogan Estates v Sportelli* and sees no reason to deviate from it.
18. She produces a valuation based on the above figures to reach a premium for the lease extension of £15,600.

Lease extension premium - the tribunal's decision

19. We adopt Ms Mariner's valuation and confirm that the premium payable on the grant of a new lease under the 1993 Act is £15,600.

Reasons for the tribunal's decision

20. The tribunal carefully considered the contents of Ms Mariner's report. The tribunal notes that Strettons is long established in East London.
21. The relevant date for valuing the lease extension is the date of the original application to the County Court, pursuant to section 51(8)(a) of the 1993 Act. It follows that the appropriate valuation date is 27 July 2015 and this date is correctly noted in Ms Mariner's report. In her table of adjustments however she makes reference to an "April 2015 equivalent". This appears to be a typographical error.
22. The tribunal accept that capitalisation and deferment rates used by Ms Mariner.
23. We accept the explanation given by Ms Mariner for the limited comparable evidence. We accept her figure of £255,000 which is based on an average of the comparables used by Ms Mariner.
24. We accept Ms Mariner's figure for relativity of 90.84%.
25. Accordingly we adopt the valuation of Ms Mariner and conclude that the price to be paid into court for the premium to be payable on the grant of a new lease is £15,600.

Name: S O'Sullivan

Date: 16 September 2015

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act 1993 (as amended)

Section 26

26 Applications where relevant landlord cannot be found.

(1) Where not less than two-thirds of the qualifying tenants of flats contained in any premises to which this Chapter applies desire to make a claim to exercise the right to collective enfranchisement in relation to those premises but—

(a) (in a case to which section 9(1) applies) the person who owns the freehold of the premises cannot be found or his identity cannot be ascertained, or

(b) (in a case to which section 9(2) or (2A) applies) each of the relevant landlords is someone who cannot be found or whose identity cannot be ascertained,

the court may, on the application of the qualifying tenants in question, make a vesting order under this subsection—

(i) with respect to any interests of that person (whether in those premises or in any other property) which are liable to acquisition on behalf of those tenants by virtue of section 1(1) or (2)(a) or section 2(1), or

(ii) with respect to any interests of those landlords which are so liable to acquisition by virtue of any of those provisions,

as the case may be.

(2) Where in a case to which section 9(2) applies—

(a) not less than two-thirds of the qualifying tenants of flats contained in any premises to which this Chapter applies desire to make a claim to exercise the right to collective enfranchisement in relation to those premises, and

(b) paragraph (b) of subsection (1) does not apply, but

(c) a notice of that claim or (as the case may be) a copy of such a notice cannot be given in accordance with section 13 or Part II of Schedule 3 to any person to whom it would otherwise be required to be so given because he cannot be found or his identity cannot be ascertained,

the court may, on the application of the qualifying tenants in question, make an order dispensing with the need to give such a notice or (as the case may be) a copy of such a notice to that person.

(3) If, in a case to which section 9(2) applies, that person is the person who owns the freehold of the premises, then on the application of those tenants, the court may, in connection with an order under subsection (2), make an order appointing any other relevant landlord to be the reversioner in respect of the premises in place of that person; and if it does so references in this Chapter to the reversioner shall apply accordingly.

(3A) Where in a case to which section 9(2A) applies—

(a) not less than two-thirds of the qualifying tenants of flats contained in any premises to which this Chapter applies desire to make a claim to exercise the right to collective enfranchisement in relation to those premises, and

(b) paragraph (b) of subsection (1) does not apply, but

(c) a copy of a notice of that claim cannot be given in accordance with Part II of Schedule 3 to any person to whom it would otherwise be required to be so given because he cannot be found or his identity cannot be ascertained,

the court may, on the application of the qualifying tenants in question, make an order dispensing with the need to give a copy of such a notice to that person.

(4) The court shall not make an order on any application under subsection (1) (2) or (3A) unless it is satisfied—

(a) that on the date of the making of the application the premises to which the application relates were premises to which this Chapter applies; and

(b) that on that date the applicants would not have been precluded by any provision of this Chapter from giving a valid notice under section 13 with respect to those premises.

(5) Before making any such order the court may require the applicants to take such further steps by way of advertisement or otherwise as the court thinks proper for the purpose of tracing the person or persons in question; and if, after an application is made for a vesting order under subsection (1) and before any interest is vested in pursuance of the application, the person or (as the case may be) any of the persons referred to in paragraph (a) or (b) of that subsection is traced, then no further proceedings shall be taken with a view to any interest being so vested, but (subject to subsection (6))—

(a) the rights and obligations of all parties shall be determined as if the applicants had, at the date of the application, duly given notice under section 13 of their claim to exercise the right to collective enfranchisement in relation to the premises to which the application relates; 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.

(6) An application for a vesting order under subsection (1) may be withdrawn at any time before execution of a conveyance under section 27(3) and, after it is withdrawn, subsection (5)(a) above shall not apply; but where any step is taken (whether by the applicants or otherwise) for the purpose of giving effect to subsection (5)(a) in the case of any application, the application shall not afterwards be withdrawn except—

(a) with the consent of every person who is the owner of any interest the vesting of which is sought by the applicants, 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 applicants in consequence of the tracing of any such person.

(7) Where an order has been made under subsection (2) or (3A) dispensing with the need to give a notice under section 13, or a copy of such a notice, to a particular person with respect to any particular premises, then if—

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

(b) in reliance on the order, the notice or 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.

(8) Where a notice under section 13 contains such a statement in accordance with subsection (7) above, then in determining for the purposes of any provision of this Chapter whether the requirements of section 13 or Part II of Schedule 3 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 the notice or a copy of it to the person referred to in subsection (7) above.

(9) Rules of court shall make provision—

(a) for requiring notice of any application under subsection (3) to be served by the persons making the application on any person who the applicants know or have reason to believe is a relevant landlord; and

(b) for enabling persons served with any such notice to be joined as parties to the proceedings.

(1
A
11)

DATED

2015

ROMAN PAUL PISTUN

- and -

PETER SHELDON
CHRISTINE MARGARET SMITH

DEED OF SURRENDER and RE-GRANT

relating to

67c Ulverston Road
Walthamstow
London
E17 4BN

Cavendish Legal Group
188-190 Hoe Street
Walthamstow
London E17 4QH

Tel: 0208 509 6800
Fax: 084547 47 432
Ref: JF 131077.001

LR1. Date of Lease	
LR2. Title number(s)	LR2.1 Landlord's title number(s) EGL128772 LR2.2 Other title numbers EGL148677
LR3. Parties to this lease <i>Give full names, addresses and company's registered number, if any, of each of the parties. For Scottish companies use a SC prefix and for limited liability partnerships use an OC prefix. For foreign companies give territory in which incorporated.</i>	Landlord PETER SHELDON and CHRISTINE MARGARET SMITH of 2 Queens Park Road, Harold Wood, Essex RM3 0HL Tenant ROMAN PAUL PISTUN of 67c Ulverston Road, Walthamstow, London E17 4BN Other parties
LR4. Property <i>Insert a full description of the land being leased or Refer to the clause, schedule or paragraph of a schedule in this lease in which the land being leased is more fully described.</i> <i>Where there is letting of a part of a registered title, a plan must be attached to this lease and any floor levels must be specified.</i>	In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail 67c Ulverston Road, Walthamstow, London E17 4BN
LR5. Prescribed statements etc. <i>If this lease includes a statement falling within LR5.1, insert under that sub-clause the relevant statement or refer to the clause, schedule or paragraph of a schedule in this lease which contains the statement.</i> <i>In LR5.2, omit or delete those Acts which do not apply to this lease.</i>	LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003. The Lease is granted under Section 56 of the Leasehold Reform, Housing and Urban Development Act 1993 LR5.2 This lease is made under, or by reference to, provisions of: None
LR6. Term for which the Property is leased <i>Include only the appropriate statement (duly completed) from the three options.</i> NOTE: The information you provide, or refer to, here will be used as part of the particulars to identify the lease under rule 6 of the Land Registration Rules 2003	189 years from 10 October 1984
LR7. Premium <i>Specify the total premium, inclusive of VAT where payable.</i>	£
LR8. Prohibitions or restrictions on disposing of this lease <i>Include whichever of the two statements is appropriate.</i> Do not set out here the wording of the provision.	This lease does contain a provision that prohibits or restricts dispositions.

<p>LR9. Rights of acquisition etc. <i>Insert the relevant provisions in the sub-clauses or refer to the clause, schedule or paragraph of a schedule in this lease which contains the provisions</i></p>	<p>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 None</p> <p>LR9.2 Tenant's covenant to (or offer to) surrender this lease None</p> <p>LR9.3 Landlord's contractual rights to acquire this lease None</p>
<p>LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property <i>Insert the relevant provisions or refer to the clause, schedule or paragraph of a schedule in this lease which contains the provisions.</i></p>	<p>None</p>
<p>LR11.1 Easements granted by this lease for the benefit of the Property <i>Refer here only to the clause, schedule or paragraph of a schedule in this lease which sets out the easements.</i></p>	<p>The Rights and Easements referred to in clause 5 of this lease incorporating all those Rights and Easements as set out in the Original Lease dated 10 October 1984 as referred to in clause 1.1 of this lease</p>
<p>LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property <i>Refer here only to the clause, schedule or paragraph of a schedule in this lease which sets out the easements.</i></p>	<p>The Exceptions and Reservations referred to in clause 5 of this lease incorporating all those Exceptions and Reservations as set out in the Original Lease dated 1 October 1984 as referred to in clause 1.1 of this lease.</p>
<p>LR12. Estate rentcharge burdening the Property <i>Refer here only to the clause, schedule or paragraph of a schedule in this lease which sets out the rentcharge</i></p>	<p>None</p>
<p>LR13. Application for standard form of restriction <i>Set out the full text of the standard form of restriction and the title against which it is to be entered. If you wish to apply for more than one standard form of restriction use this clause to apply for each of them, tell us who is applying against which title and set out the full text of the restriction you are applying for.</i></p> <p><i>Standard forms of restriction are set out in Schedule 4 to the Land Registration Rules 2003.</i></p>	<p>None</p>
<p>LR14. Declaration of trust where there is more than one person comprising the Tenant <i>If the Tenant is one person, omit or delete all the alternative statements.</i></p> <p><i>If the Tenant is more than one person, complete this clause by omitting or deleting all inapplicable alternative statements.</i></p>	

LAND REGISTRY

LAND REGISTRATION ACT 2002

COUNTY AND DISTRICT: WALTHAM FOREST
TITLE NUMBER: Freehold - EGL128772
Leasehold - EGL148677
PROPERTY: 67c Ulverston Road, Walthamstow, London E17 4BN

THIS SURRENDER AND LEASE is made the day of 2015

BETWEEN (1) PETER SHELDON and CHRISTINE MARGARET SMITH of 2 Queens Park Road, Harold Wood, Essex RM3 0HL ("the Landlord")

(2) ROMAN PAUL PISTUN of 67c Ulverston Road, Walthamstow, London E17 4BN ("the Tenant")

NOW THIS DEED WITNESSES as follows:

1 Definitions

In this deed:

- 1.1 "the Original Lease" means a lease dated 10 October 1984 and made between (1) Peter Sheldon and Christine Margaret Smith (2) Alan David McNamara and Christine Marion Stotter (the Deed).
- 1.2 "the Premises" means the premises described in and demised by the Original Lease and known as 67c Ulverston Road, Walthamstow, London E17 4BN
- 1.3 "the New Term" means a term of 189 years from 10 October 1984

2 Recitals

- 2.1 The unexpired residue of the term created by the Original Lease is now vested in the Tenant
- 2.2 The reversion immediately expectant on the termination of the Original Lease is now vested in the Landlord
- 2.3 This is a new Lease for the purposes of Section 1 of the Landlord and Tenant (Covenants) Act 1995
- 2.4 The Tenant in exercise of the Tenant's rights under Chapter II of Part 1 of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act") has required the Landlord to grant to the Tenant a new lease of the Premises and the Landlord has agreed to do so on the terms set out below

2.5 In consideration of the sum of £ , it has been agreed between the parties to this deed that the Original Lease shall be surrendered and a new Lease of the Premises shall be granted to the Tenant in substitution for it as appears below

3 Release and surrender

In consideration of the demise contained below the Tenant surrenders the Original Lease to the Landlord

4 Fixtures

The Landlord agrees that the Tenant's fixtures in or upon the Premises shall not vest in the Landlord on the execution of this deed and that the Tenant shall have the same rights in them after execution of this deed as if they had been annexed to the Premises after execution of this deed

5 Demise

In consideration of the sum of £ , receipt whereof the Landlord hereby acknowledges and in consideration of the surrender of the Original Lease the Landlord with full limited title guarantee demises to the Tenant the Premises to Hold the Premises to the Tenant from the date of this lease for the unexpired residue of the New Term TOGETHER WITH the rights granted by the Original Lease and EXCEPTING AND RESERVING to the Landlord matters excepted and reserved by the Original Lease YIELDING AND PAYING the rent reserved by this lease

6 Rent

The rent payable after the date of this lease for the Premises shall be a peppercorn rent per annum and payable in the manner and on the same days as provided in the Original Lease

7 Incorporation of covenants

This Lease is made upon the same terms and subject to the same covenants conditions and provisions in all respect as those contained in the Original Lease (except as to the rent and term of years granted and modifications herein) and shall be read and construed as if those covenants conditions and provisions were set forth verbatim in this deed with such modifications only as are necessary to make them applicable to this demise instead of the demise created by the Original Lease and the parties to this Lease

8 Mutual covenants

The Landlord and the Tenant each covenants with the other to observe and perform the covenants conditions and provisions made applicable to this demise by clause 7 of this deed which are or ought to be observed or performed by each of them

9 Sub-tenants

No long lease created immediately or derivatively by way of sub-demise under this lease shall confer on the sub-tenant as against the Landlord a right under Chapter II of Part 1 of the Act to acquire a new lease.

10 Redevelopment

The Landlord may, (a) at any time during the period of 12 months ending on 30 November 2082 and (b) at any time during the period of five years ending on 30 November 2172 apply to the court under section 61 of the Act for an order for possession of the Premises on the ground that for the purposes of redevelopment he intends to demolish or reconstruct, or to carry out substantial works of construction on the whole or substantial part of any building in which the Premises is contained, and that he could not reasonably do so without obtaining possession of the Premises, and the provisions of that section and of Schedule 14 to the Act shall accordingly apply

11 It is not intended that any term of this lease shall be enforceable by any third party under Section 1 of the Contracts (Rights of Third Parties) Act 1999

IN WITNESS whereof the parties hereto have executed this Deed the day and year first above written

On Original

SIGNED as a Deed by
JONATHAN FRANKEL
Solicitor and Partner of
Cavendish Legal Group
As Ordered by the County Court at Bow
Dated 28 July 2015 under Claim No.
B02BO799

In the presence of:
Witness

Name

Address

Occupation

On Counterpart

SIGNED as a Deed by

ROMAN PAUL PISTUN

in the presence of:

Witness

Name

Address

Occupation

