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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**NAT/LON/00BH/OAF/2017/0039**
Property	:	**Ground Floor Flat, 97 Fairlop Road, London E11 1BE**
Applicant	:	**Miss Dawn Marie Nockles**
Representative	:	**Thirsk Winton LLP Solicitors**
Respondent	:	**Mr Stephen Barrington** **Mr Michael Colson**
Representative	:	**N/A**
Type of Application	:	**S50/51 Leasehold Reform Housing and Urban Development Act 1993, Missing Landlord**
Tribunal Members	:	**P M J Casey MRICS**
Date and venue of Hearing	:	**Paper hearing on 20 February 2018** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**15 March 2018**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the premium payable on the grant of a new lease of the ground floor flat at 97 Fairlop Road, London E11 1BE ("the property") is the sum of £20,900.

(2) The tribunal makes the determinations as set out under the various headings in this decision

The application

1. The applicant seeks a determination by the tribunal pursuant to an order made under the provisions of S50(1) of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act") by Deputy District Judge Kirby QC sitting at the County Court at Clerkenwell and Shoreditch on 23 October 2017 of the premium to be paid into Court and other terms on the grant of a new lease of the property under the relevant provisions of the Act.

2. The order was made in response to a claim made to the Court on 10 March 2017 by Thirsk Winton LLP Solicitors on behalf of the applicant in which it was said that the applicant was entitled to acquire a new lease of the property under the provisions of the Act but had been unable to exercise the right by serving the requisite notice under S42 on the landlords because their whereabouts were unknown.

The hearing

3. In response to the tribunal's directions which provided for a determination on the papers to be submitted, the applicant's solicitors provided a bundle of documents including a valuation report dated January 2018 for use in tribunal proceedings addressed to the tribunal and prepared by David Nesbit BA (Hons) MRICS of Resolution Property Surveyors. The report contained the requisite declarations required of a Surveyor acting as an expert witness.

4. The Tribunal considered the hearing bundle on 20 February 2018. No inspection of the property was deemed necessary given the description, plans and photographs included in the report.

The evidence

5. From Mr Nesbit's description of the property and the photographs it is a converted flat on the ground floor of a terraced house built in circa 1900. It comprises two rooms, kitchen and bath/wc. There are gardens

to front and rear. No want of repair is noted in the report nor are any tenant's improvements claimed. It has a gross internal area of 515 sq ft.

6. The property is held on a 99 year lease from 25 December 1988 subject, at the valuation date, to a ground rent payment of £100.00 per annum which doubles after every 33 years of the term has elapsed.

7. At the Valuation Date, 10 March 2017, the lease had 70.79 years unexpired.

8. Mr Nesbit provides market evidence for the extended lease value of the property as at the Valuation Date by reference to four transactions involving similar properties at around that time the details of which are provided in the report. He makes no specific adjustments to the sale prices achieved by these properties to reflect any differences in size and dates of sale but says they are mostly in a similar condition to the subject property. From this evidence he forms the opinion that an extended leasehold interest in the subject property would be worth £320,000, equivalent to £621 per sq ft. The average of his comparable transactions is £607 per sq ft.

9. From this sum he makes a deduction of 5% to reflect a purchaser's concern regarding the risk of the tenant staying on after the lease expiry date under the provisions of Schedule 10 of the Local Government and Housing Act 1989 (the 1989 Act). He claims such a discount must be made having been universally adopted and accepted by the Lands Tribunal and seeks support for his 5% from four Lands Tribunal cases. This would give a figure of £304,000 for the long leasehold but he makes a small uplift to arrive at the share of freehold value of £306,850.

10. To capitalise the ground rent income for the unexpired term of the existing lease in his valuation of the existing freehold interest in the property he adopts a rate of 8½% by reference to his analysis of the sales of 14 freehold interests subject to long underleases which went under the auction hammer at sales which took place between December 2014 and July 2015. Extracts from auction catalogues and published results are included in the bundle. Mr Nesbit firstly gives the gross initial yield for each transaction and then makes a deduction for the estimated value of the reversion calculated from sales prices on the road in question from Right Move's website and deferring at 5% to give a gross initial yield net of reversion. He makes a further deduction from the sale price of £200 per flat for profit to be made from management which he capitalize at 20% and re-divides the remainder by the passing ground rents to produce a gross initial yield net of reversionary value and potential for profit on management. The average of his 14 transactions is 7.97%. Even these adjustments do not in his view exhaust the possible income sources other than ground rent

to a freeholder such as insurance commission, potential fees on licences, assignments etc and so adopts an 8½% capitalization rate.

11. Mr Nesbit defers the reversion on the expiration of the existing lease term at 5¼% citing Zuckerman V Trustees of the Calthorpe Estate (2009) and referring to the photographs in the bundle as showing evidence of hastened physical obsolescence from lack of management.

12. To calculate the marriage value and the landlord's entitlement to 50% thereof he has assessed the value of the existing lease term in the property, disregarding the value of the rights conferred by the Act, by reference to what are generally referred to as graphs of relativity. He refers to the five graphs relating to outer London/England which were published in an RICS report into graphs of relativity. Averaging these suggests to him that in a "no Act world" the existing lease term would have a value of 92.64% of the freehold value.

13. His valuation attached to his report produces a premium of £14,825.

The decision

14. The tribunal is satisfied that Mr Nesbit's valuation of the extended leasehold interest is supported by the evidence he provides in his report. It does not however agree with him that a deduction must be made from that valuation to reflect the risk of the tenant holding over on the expiration of the lease and claiming a tenancy under Schedule 10 of the 1989 Act. The reversion is far too distant and no evidence is put forward to suggest any such risk. The Upper Tribunal (Lands Chamber) recently considered the question in Midlands Freeholds Ltd and Speedwell Estates [2017] UKUT 046 (LC) and reviewed the decisions referred to by Mr Nesbit. The decision was that no such deduction should be made. The existing lease in that case had 46 years unexpired. It is not entirely clear what uplift from leasehold value to freehold Mr Nesbit has made; the normal addition in the outer London are for this length of lease would be 1% which is adopted here to give a freehold, VP value of £323,200.

15. Mr Nesbit devotes much of his report to the issue of the rate to be used to capitalize the ground rents including analysis of a great deal of evidence from auction sales of freeholds subject to long leases. Whilst he is right to identify that unlike enfranchisements lease extensions leave the landlord with the benefits of owning the freehold save that the ground rent is reduced to a peppercorn. The tribunal has not however seen any other practitioners making a difference in the capitalization rate used. These transactions moreover take place in the real world and reflect the impact of the Act on values. The class of purchase is not limited as it is in a valuation under the provision of the Act. Full details of ground rent reviews are not available in all cases and no evidence that the market adopts the Sportelli deferment rate when considering

what value to ascribe to the reversion which in all cases is more than 90 years distant. Without specific evidence that it is market practice the tribunal does not think it realistic on the part of any investor to make a profit of £200 per flat from management or indeed any significant profit from insurance commissions or administration charges given tenant's rights under the Landlord and Tenant Acts and the Commonhold and Leasehold Reform Act 2002. The evidence is of little assistance thought it is noted that in two of the sales the ground rent is fixed and Mr Nesbit's adjustment for the reversion only shows yields of 6.3% and 5.52%. The ground rent in this case is £100 doubling every 33 years and is even as a single ground rent a reasonably attractive investment which in the tribunal's opinion should be capitalized at no more than 7%.

16. The suggested ¼% uplift to the Sportelli deferment rate to reflect obsolescence is again unsupported by evidence of the kind needed to displace the Upper Chamber guidance. The issue is also addressed in Midlands Freeholds Ltd referred to above. The deferment rate to be adopted is 5%.

17. In the absence of sales evidence the use of so called graphs of relativity is a common practice and the five graphs used by Mr Nesbit are invariably used in any case outside the prime central London area because practitioners argue that the outer London market is less sophisticated and higher relativities result though none seem able to explain why lease length per see should affect values in different locations in this way. The graphs referred to all have their individual flaws and taking an average of the five does not make them more reliable. In the tribunal's experience whenever market evidence is introduced lower relativities result. The only graph to have been given some credence by the Upper Chamber is the Gerald Eve – John D Wood (1996) graph. This shows a relativity of leasehold to freehold value with 70.79 years unexpired of some 87.6% against the lowest of the five outer London graphs of 91.7% and the average of 92.64%. Doing the best the tribunal can with this very limited evidence the relativity is determined at 90%.

18. The draft documents included in the bundle relating to the form of the new lease are approved and it is confirmed there are no outstanding demands for ground rent or service charges which have not been paid.

Name: Patrick M J Casey **Date:** 15 March 2018

LON/00BH/OAF/2017/0039

FIRST TIER TRIBUNAL
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S48 Leasehold Reform Housing and Urban Development Act 1993

Determination of the premium payable for an extended lease of Ground floor flat, 97 Fairlop Road, London E11 1BE

Valuation date: 10 March 2017 – Unexpired term 70.79 years

Diminution in Value of Freehold Interest

Capitalization of ground rent pa	£100		396
YP for 4.79 years @ 7%	3.96		
Capitalization of ground rent pa	£200		1,844
YP for 33 years deferred 4.79 years @ 7%	9.22		
Capitalization of ground rent pa	£400		396
YP for 33 years deferred 37.79 years @ 7%	0.99		
Reversion to F/H value with VP	£323,200		
Deferred 70.79 years @ 5%	0.0316	£10,213	
Less value of F/H after grant of new lease	£323,200		
Deferred 160.79 years @5%	0.00039	£126	£10,087
			£12.723

Marriage Value

After grant of new lease			
Value of extended lease	£320,000		
Plus freehold value	£126	£320,126	
Before grant of new lease			
Value of existing lease @ 90% f/h	£290,880		
Plus freehold value	£12,849	£303,729	
		£16,397	£8,198
50% share to Freeholder and Intermediate Leaseholder			£20,921

Premium Payable Say £20,900