



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

**Case Reference** : RC/LON/00BH/OLR/2017/0418

**Property** : 52 Granville Road, London, E17 9BT

**Applicant** : Gemma Margaret Stuart

**Representative** : Cavendish Legal Group, solicitors

**Respondent** : Jane Margaret Moir

**Representatives** : N/A

**Type of Application** : Leasehold Reform Housing and Urban Development Act 1993: sections 50& 51 (missing landlord)

**Tribunal** :  
1. Mr A Vance, Tribunal Judge  
2. Ms M Krisko, FRICS

**Date of Paper Determination** : 4 May 2017

**Date of Decision** : 4 May 2017

---

**DECISION**

---

## Decisions of the Tribunal

1. We determine that the premium payable by the applicant 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 **£8,980**. The reasons for our decision are set out below.
2. We approve the terms of the draft lease provided by the applicant.

## Background

3. This is an application under sections 50 and 51 of the Leasehold Reform Housing and Urban Development Act 1993 (“the Act”) for determination of the terms of a new lease to be granted to the applicant and for the determination of the premium and other sums (if any) to be paid to the respondent.
4. Numbers appearing below in square brackets refer to pages in the hearing bundle provided by the Applicant.
5. Extracts of the key relevant legislation are at Appendix 2 of this decision.
6. Proceedings were originally issued in the Bow County Court under claim no. B00B0155 [1]. The date of issue of the claim was 20 January 2017.
7. The claim was transferred to this tribunal, by order of Deputy District Judge Holland, dated 9 March 2017 (the “County Court Order”) [50-52] for the tribunal to determine :
  - 7.1. the terms of the new lease; and
  - 7.2. The amount of the premium payable under Schedule 13 of the 1993 Act by the applicant to the respondent.
8. The applicant is the leasehold owner of 52 Granville Road, London, E17 9BT (“the Flat”) whose interest was registered at HM Land Registry under title number EGL444709 on 23 October 2014 [7-12]. She is entitled to a new lease of the Flat under Chapter II of the 1993 Act.
9. The freehold interest in the Flat is vested in the respondent under title number EGL381050 [11]. She was registered as freehold owner on 6 January 1997. It was the applicant’s asserted claim before the County Court that she had been unable to serve a notice to extend her lease on the respondent because despite her best endeavours to trace her, her landlord’s whereabouts are unknown. This was accepted by the County Court who duly made a vesting order which is contained in the County Court Order.

10. On the making of that order the applicant therefore became entitled to a new lease of the Flat for the residue of the term of her lease plus an additional 90 years, at a peppercorn rent, on such terms and on the payment of such a premium determined in accordance with Schedule 13 to the 1993 Act as this tribunal may determine.

### **Lease**

11. The following are particulars of the applicant's lease ("the Lease"):

- (a) Date of lease: 10 June 2002
- (b) Term of lease: 99 years commencing on 1 January 2002
- (c) Ground rent: £200 per annum for the first 33 years, rising to £400 for the following 33 years and then to £800 for the remainder of the term.

12. There are no intermediate interests.

### **Inspection**

13. The applicant did not request that the tribunal inspect the Flat and in light of the helpful photographs provided we did not consider it necessary or proportionate to do so.

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

14. The evidence before the tribunal comprises the valuation report of Ms Genevieve Mariner, FRICS dated 11 April 2017. Her report contains a statement confirming that the facts and matters referred to in her report that are within her own knowledge are believed by her to be true and includes a statement of compliance confirming that she understands her duty to this tribunal as an expert witness.
15. We carried out our own checks on the information and calculations provided by Ms Mariner and are satisfied that her report is impartial and objective. We are also broadly satisfied that the method she has adopted is appropriate to determine the premium payable for the new lease of the Flat.

## **The statutory basis of valuation**

16. Schedule 13 to the Act provides that the premium to be paid by a tenant for the grant of a new lease shall be the aggregate: (a) of the diminution in the value of the landlord's interest in the tenant's flat; (b) the landlord's share of the marriage value; and (c) the amount of any compensation payable for other loss. An equivalent amount is also payable to any intermediate landlord in respect of their interest.
17. 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 Property containing the tenant's flat or to acquire any new lease.
18. Paragraph 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. Paragraph 5 provides for the payment of compensation for loss arising out of the grant of a new lease.
19. Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

## **Valuation**

20. Ms Mariner notes that the Flat is a split level, one bedroom ground/first floor flat within a purpose built end terrace, modern house and with sole use of the front garden. It has its own front door. The Flat comprises a bedroom with an en suite shower room/WC and a small open plan kitchen/reception. Access to the bedroom is via a very narrow spiral staircase that leads to the first floor. She states that the gross internal floor area is 393 square foot. Gas central heating is present and she describes the Flat as being in reasonable internal order, although showing signs of wear and tear. She makes no allowances for any tenants' improvements.
21. The valuation date prescribed by section 51(1) of the Act is the date of the applicant's application to the Court which was 20 January 2017. The unexpired remainder of the term of the Lease is therefore 83.95 years.
22. An assessment of virtual freehold vacant possession value of the Flat ("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 Flat once extended.

23. Ms Mariner's assessment of the value of the FHVP is based on an examination of comparable transactions relating to the sales of four one-bedroom floor flats with long leases in the postcode area E17 9 that sold in the six months prior to the valuation date. The size of these four flats ranges between 491 square feet to 554 square feet and the sale prices ranged from £357,000 to £410,000. She adjusts for time using HM Land Registry data and arrives at an average value of £749 per square foot. However, as all of these four comparable transactions involved flats that have the benefit of a rear garden she made an adjustment of £25,000 for each flat, arriving at an adjusted per square foot value of £702.
24. Because of the unique nature of the flat, set over two floors, in a modern building, and feeling more like a bijou house than a flat she added a 15% premium, arriving at a value of £805 per square foot and a value of £315,000 when applied to the subject Flat. However, because the staircase to the first floor is not stable and is limited in space for users she adjusts that price downwards by £5,000, arriving at a long leasehold value for the Flat of **£310,000**. She uplifted that figure by 1% to arrive at a FHVP of **£313,131**.
25. As the Lease has a term of more than 80 years unexpired no marriage value is payable and there was therefore no need for her to consider relativity.
26. We are satisfied by Ms Mariner's choice of comparables and the adjustments she has made. Although there is no evidence to support the £25,000 adjustment for lack of a rear garden in the tribunal's experience the adjustment is reasonable. In our view her adjustment of £5,000 for the spiral staircase is probably too low. It is clear from the photographs provided that the staircase is extremely narrow and steep. However, we consider that her 15% adjustment to reflect the more desirable bijou feel of the Flat is probably too high. The sales particulars that she has provided for the four comparables indicate that those flats, whilst all Victorian conversions, as opposed to being located in modern purpose built buildings, were all modernised to a good standard and possessed attractive period features. Balancing these two factors we consider that, overall, an adjustment of £10,000 is reasonable.
27. We therefore accept Ms Mariner's long leasehold value for the Flat of **£310,000** and agree that a 1% uplift to arrive at a FHVP of **£313,131** is appropriate.
28. 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 Ms Mariner at 7%, which we accept is appropriate in this case.

29. 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 £313,131. 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*. Ms Mariner has suggested a deferment rate of 5% which we accept.
30. The premium payable by the applicant under Schedule 13 of the Act on the grant of a new lease of the Flat is therefore **£8,980** as per Ms Mariner's valuation

### Lease terms

31. The applicant's solicitors have prepared a draft lease which we are invited to approve. The draft lease provides for the deemed surrender and re-grant of the Lease subject to and with the benefit of the new lease. It also provides for the grant of a new term of 189 years from 1 January 2002 in accordance with section 56(1) of the Act. The terms of the new lease are the same as those of the previous Lease, which are incorporated by reference. We are satisfied that the terms proposed are appropriate for the new lease to be granted to the applicant.

**APPENDIX 1**

**VALUATION OF MS G MARINER, FRICS**

52 GRANVILLE ROAD E17

LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993 (AS AMENDED)

RC/LON/00BH/OLR/2017/0418

**freeholder's present interest**

ground rent (pa)	£200		
YP 17.95 years @ 7%	<u>10.045</u>		
		£2,009	
Ground rent (pa)	£400		
YP 33 years @ 7%	12.754		
PV£1 def 17.95 years @ 7%	<u>0.297</u>		
		£1,514	
Ground rent (pa)	£800		
YP 33 years @ 7%	12.754		
PV£1 def 50.95 years @ 7%	<u>0.032</u>		
		£324	
reversion to	£313,131		(long lease value plus 1%)
PV£1 def. 83.95 years @ 5%	<u>0.017</u>		
		<u>£5,198</u>	
			£9,046

**Less**

**freeholder's proposed interest**

reversion to		£313,131 (long lease value plus 1%)	
PV £1 def 173.95 years @ 5%		<u>0.0002</u>	
			<u>£66</u>
			<b>£8,980</b>



## APPENDIX 2

### Leasehold Reform, Housing and Urban Development Act 1993

#### Section 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)-(6) [.....]

#### Section 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.

### APPENDIX 3 - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.