



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

Case Reference : **CHI/23UB/OLR/2020/0025**

Property : **Flat 2 56 St James Street Cheltenham GL52
2SH**

Applicant : **Locutus Est Terra Limited**

Representative : **Willans LLP Solicitors**

Respondents : **Michael Benfield
Martin Robert Wheatley
Woan Suak Cho**

Type of Application : **A determination of the premium and lease
extension terms under the provisions of
section 51 of the Leasehold Reform Housing
and Urban Development Act 1993 where the
Landlord cannot be found.**

Tribunal Members : **V Ward BSc (Hons) FRICS
Judge D Barlow**

Date of Decision : **2 April 2020**

DECISION

Decision of the Tribunal

The Tribunal determines that the appropriate sum to be paid into court for the grant of a new lease of Flat 2, 56 St James Street, Cheltenham GL52 2SH ('the Property') pursuant to section 51(5) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act'), is £15,157.00. (fifteen thousand, one hundred and fifty seven pounds).

The application

1. On 21 January 2020, Willans LLP Solicitors issued a Part 8 Claim in the County Court at Gloucester seeking a vesting order under section 50(1) of the 1993 Act.
2. On 28 January 2020, District Judge Singleton made an order that the case be transferred to the Residential Property Tribunal First-tier, and after the Tribunal has determined the price and terms on which the surrender of the Applicant's lease of the Property and the grant of a new lease to the Applicant should take effect, the leasehold Property shall be vested in the Applicant on such terms and at such price as the Tribunal has determined in accordance with section 51(1) of the 1993 Act.
3. The relevant legal provisions are set out in Appendix 2 to this decision.

Background

4. Salient details of the lease in respect of the Property are as follows:
 - a) Date of lease; 4 December 1987
 - b) Lease Commencement date and term; 99 years from 29 September 1987.
 - c) Ground Rent; For the first 3 years, £50 pa
For the next 33 years, £100 pa
For the remainder, £150 pa
5. The Property
 - (i) From the submissions made to the Tribunal, brief details of the Property are as follows.
 - (ii) The Property comprises a first floor flat formed out of converted mid terraced house. The house was believed to have been originally constructed circa 1920 and has rendered elevations under a double pitched slate tiled roof. Access to the flat is via a communal staircase.
 - (iii) The Property offers the following accommodation:

Hallway
Lounge
Kitchen
One double bedroom
Bathroom with shower over bath, toilet and wash hand basin

There are no parking spaces or external areas included within the demise

- (iv) The Property benefits from gas fired central heating and hot water.
- (v) The Property lies within easy walking distance of Cheltenham town centre to the west. The property fronts onto St James Street close to its junction with Albion Street and is opposite a public car park. St James Street is a mixture of residential and commercial occupiers.

The Issues

- 6. The Tribunal is required to determine the terms of the new lease pursuant to section 51(3) of the 1993 Act and the appropriate sum to be paid into court pursuant to section 51(5).
- 7. The Applicant did not seek any amendments to the terms of the new lease from the original.
- 8. The Tribunal did not consider that an inspection of the Property was necessary, nor would have been proportionate to the issues in dispute and has therefore determined this matter on the basis of the written submissions of the Applicant.

The Valuation

- 9. The Applicant's valuation was prepared by Johanne Coupe FRICS of Coupe Property Consultants Limited. The Tribunal finds it convenient to detail its own consideration of each input following that of the Applicant's.

Capitalisation rate

- 10. The Applicant. Ms Coupe had applied the principles from *Nicholson v Goff* (2007) where the rate used to capitalise the rental income should be differentiated from the capitalisation rate. In addition, the following should be considered; the lease term, the security, the amount of the ground rent and rent review provisions, if any. Balancing these factors, Ms Coupe considered that the relatively modest ground rent, even allowing for the uplift to £150 pa, is not particularly attractive to a potential investor hence had adopted a capitalisation rate of 6.5%.

11. The Tribunal. The Tribunal takes no issue with Ms Coupe's analysis and also adopts 6.5%.

Deferment Rate.

12. The Applicant. Ms Coupe followed the decision in *Earl Cadogan v Sportelli* LRA/50/2005 and accordingly adopted 5%.
13. Tribunal. The Tribunal considers that the rate adopted by Ms Coupe, 5.00%, is appropriate in this matter.

Relativity.

14. The Applicant. Following the guidance in *The Trustees of the Sloane Estate v Mundy* (2016) UKUT 223 (LC) and *Reiss v Ironhawk Ltd* (2018) UKUT 311 (LC), Ms Coupe initially considered local market evidence but finding this inconclusive adopted the Savills unenfranchiseable graph following the latter decision which gave a relativity of 82.54%.
15. The Tribunal. In the absence of any useful comparable evidence, or derivatives therefrom, graphs may be used to calculate relativity and therefore endorses the Applicant's approach.

Development Value

16. The Applicant. In the opinion of Ms Coupe, the Property is fully developed and therefore makes no allowance in this regard.
17. The Tribunal. The Tribunal concurs, there does not seem to be any apparent way in which the Property could be developed further.

Long leasehold value.

18. The Applicant. The comparables considered by Ms Coupe were as follows:

Address	Details	Tenure (at date of sale)	Date of Sale	Price Achieved
Flat 2, 3 Gloucester Place Cheltenham GL52 2RJ	Ground floor one bedroom flat. Comparable location	978 years with share of the freehold	Aug-19	£ 140,000.00
Flat 5 Lawley House Montpelier Cheltenham GL50 2XF	Upper Floor one bedroom flat. Superior location	994 years	Aug-19	£ 165,000.00
Flat 1 Saxthorpe Berkeley Street Cheltenham GL52 5SY	Lower ground floor flat. Comparable location.	965 years with share of the freehold	Dec-19	£ 141,000.00

19. Sifting the evidence above, Ms Coupe determined that the property on Berkeley Street was the most comparable albeit that it had a small garden and the subject did not. Further, it was the opinion of Ms Coupe that there had been no significant movement in value between August 2019 and the valuation date and accordingly no adjustments were made in that regard. An allowance of £2,000 was made by Ms Coupe to reflect the high quality of kitchen and bathroom fittings within the Property. Ultimately the long leasehold value adopted by Ms Coupe was £138,000.
20. The Tribunal. There is a significant range of sale prices for leasehold properties in the vicinity of the subject from £126,000 to over £170,000 at or about the valuation date. Interpolating the evidence available, the Tribunal adopts the figure of £140,000.

Adjustment for freehold vacant possession value.

21. The Applicant. Following established case law, Ms Coupe followed the principle of making an adjustment of 1% to reflect the difference between long leasehold and freehold values.
22. The Tribunal. The Tribunal concurs.

Schedule 10 Rights

23. The Applicant. Following the guidance in *Midlands Freehold Ltd and Speedwell Estates Limited* 2017, Ms Coupe made no deduction for the ability of a tenant to remain in occupation after the expiry of the term under Schedule 10 to the Local Government & Housing Act 1989 as the lease term remaining in this matter is in excess of 66 years.
24. The Tribunal. The Tribunal agrees, it is unlikely that a prospective purchaser would make any allowance for this possibility.
25. The premium determined by Ms Coupe on behalf of the Applicant was, after rounding, £14,913.00

The Tribunal's Decision

26. The relevant date for valuing the lease extension is the date of the Court application pursuant to section 51(8)(a) of the 1993 Act. The date of the County Court application is given as 21 January 2020, which is the date adopted for this valuation. At that date the lease had 66.68 years unexpired.
27. Having carefully considered the Applicant's valuation, including comparables and applying the inputs above, the Tribunal's valuation is as shown within Appendix 1 to this decision.
28. The Tribunal determines that the premium to be paid for a 90-year lease extension in respect of the Property known as Flat 2, 56 St James Street, Cheltenham GL52 2SH under the Leasehold Reform and Urban Development Act 1993 is £15,157.00. (Fifteen thousand, one hundred and fifty seven pounds) and this is the appropriate sum to be paid into court under section 51(5).

Appeal

29. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Vernon Ward

APPENDIX 1– The Tribunal’s Valuation

Term 1

Rent Receivable	£	50.00	£	32.25
YP 6.5% 0.68 years		0.6449		

Term 2

Rent Receivable	£	100.00	£	1,289.49
YP 6.5% 33 years		12.8949		
def'd .68 years				

Term 3

Rent Receivable	£	150.00	£	242.09
YP 6.5% 33 years		1.6139		
def'd 33.68 years				
			<hr/>	
			£	1,563.82

Reversion (to Freehold)

Extended Lease Value		£ 140,000.00		
Add Freehold Uplift	1.00%	<u>£ 1,400.00</u>		
		£ 141,400.00		
PV 66.68 years @ 5%		0.03865	<hr/>	
			£	5,464.46
			£	<u>7,028.28</u>

Less Reversion (after extension)

Freehold Market Value	£	141,400.00	£	67.69
PV 156.68 years @ 5%		0.0004787		

Diminution in Freehold Interest			<hr/>	£	<u>6,960.59</u>
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Marriage Value

Proposed Interests

Freehold	£	66.72	
Leasehold	£	140,000.00	£ 140,066.72

Present Interests

Freehold	£	6,950.21	
Leasehold	£	116,723.23	£ 123,673.44

Marriage Value			£ 16,393.28
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Freeholders Share	50.00%		£ 8,196.64
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Premium			£ 15,157.23
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say			£ 15,157.00
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APPENDIX 2 - Relevant Legislation

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

Section 50(1) – (3)

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

(a) that on the date of the making of the application the tenant had the right to acquire a new lease of his flat; and

(b) that on that date he would not have been precluded by any provision of this Chapter from giving a valid notice under section 42 with respect to his flat.

Section 51

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.