

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER THE LEASEHOLD REFORM HOUSING
AND URBAN DEVELOPMENT ACT 1993 SECTION 42**

PROPERTY: FIRST FLOOR FLAT 10 HARTLAND ROAD LONDON
NW6 6BJ

APPLICANT: TREVOR VYSE

Represented by: Black Graf & Co, Solicitors

RESPONDENT: NIGEL ST ELMO ROBERTS

Missing Landlord

TRIBUNAL

Mrs T I Rabin Chairman
Ms M Krisko
Ms L Walter

Date of Tribunal's decision: 28th February 2007

FIRST FLOOR FLAT 10 HARTLAND ROAD LONDON NW6 6BJ

FACTS

1. The Tribunal was dealing with an application under Section 42 of the Leasehold Reform Housing and Urban Development Act 1993 ("the 1993 Act") for a determination of the premium to be paid for an extended lease of the flat known as First Floor Flat, 10 Hartland Road London NW6 6BJ (the Premises). The Applicant is Trevor Vyse, the long leaseholder of the Premises. . .
2. An application was made to the Willesden County Court on 7th December 2005 for a vesting order and on 24th October 2006 District Judge Cohen made an order pursuant to Part 1 Chapter 2 of the 1993 Act that the lease of the Premises dated 16th November 1987 for a term of 99 years from 24th June 1987 be surrendered in return for the grant of a new lease of the Flat for a term of 171 years (being 90 years from 24th June 2086) at a peppercorn rent and upon such terms as may be determined by the Tribunal..

REPRESENTATIONS

3. There was no hearing and the Tribunal considered representations made by Messrs Black Graf & Co on behalf of the Applicant and a valuation report and submissions by Mr Terence W Firrell FRICS of Terence Firell Ltd. Mr Firell stated that the Premises was one of two flats in a building and was a converted residential unit on the first and second floors. The Premises benefited from three bedrooms. The lease under which the Premises was held was for a term of 99 years from 24th June 1987 with a ground rent of £50 per annum for the first thirty three years, £100 per annum for the next thirty three years and £150 per annum for the remainder of the term.
4. When considering the premium for the extended lease, Mr Firell noted that the remaining term of the current lease exceeded eighty years and no marriage value was chargeable. He made the following submissions:
 - The valuation date was 7th December 2005
 - Term yield is 7%
 - Deferment rate is 7%. Mr Firell argued that the Section 42 Notice was served prior to the decision in **Cadogan and others v Sportelli and others [2006]**. He had prepared his calculations prior to the **Sportelli** case and the notice adopted a 7% deferment rate which he submitted was appropriate in this case
5. Mr Firell produced details of open market sales of properties similar to the premises in the area. These varied between £340,000 and £359,000 but the sales were approximately six or seven months before the Section 42 Notice had been served. Mr Firell adjusted the prices in accordance with the Halifax Bank of Scotland Index and the Nationwide Index showing the increase in values in Greater London and, having taken the average, adjusted the value by 4.14%, arriving at an open market value for the Premises, subject to the existing lease at £325,000.

DECISION

6. Using its knowledge, skill and experience, the Tribunal accepted the market valuations proposed by Mr Firell for the Premises. The Tribunal found that the unexpired term of the Lease was 80 years and six months and not 80 years and nine months as proposed by Mr Firell at the valuation date. The Tribunal accepted Mr. Firell's comparables and his calculation of the extended lease value at 325,000. They also accepted his yield of 7% on the term. While the ground rent is secure and rising, it is also of modest value and can be expensive to collect.
7. On the question of the yield to be used for the reversion, the Tribunal does not agree with Mr. Firell's figure of 7%. He argues that the valuation date is pre the Sportelli decision; however, the valuation date in Sportelli was 22nd December 2003. The Tribunal considers that any decision made now must refer to the arguments raised in Sportelli.
8. When looking at the reversion, the Tribunal must value the asset with the prospect of appreciation in the longer term. While the subject property is relatively secure in the long term market, there are risks and disadvantages associated with it. These include the liquidity of the residential market, the cost of buying and selling and obsolescence of the Building generally, combined with the general maintenance of the Building and the collection of service charges necessary to keep the property well maintained.
9. In the case of Sportelli, the remaining term was only 21.25 years. It was only in one of the joint cases in respect of a collective enfranchisement that the term was over 70 years. The Lands Tribunal concluded, based on the evidence it was given, that the deferment rate would be constant beyond a 20 year term. However, in the case of the building itself, the remaining term is beyond 80 years. It is not the type of property to be of interest to longer term investors such as pension funds. The current sustained strength of the residential market has pushed prices well above previous long term trends making it very risky to project this growth rate over the next eighty years and more.
10. Additionally, in this case, the risks associated with the long term maintenance will be increased due to a missing landlord. The Lands Tribunal did not rule out the possible need to adjust the deferment rate to take account of obsolescence and condition if these were not fully reflected in the value of the property. They also applied this to the prospect of management problems during the course of a tenancy, allowing that an additional allowance may be necessary where exceptional difficulties are in prospect.
11. The Tribunal has carefully considered the arguments in Sportelli and applied them to the Premises. The Tribunal does not believe that the current market value which could be achieved for the Premises properly reflects the long term situation. Their view is that due to the inherent future risks a deferment rate of 6% is appropriate.

DETERMINATION

12. The Tribunal therefore concludes that the premium to be paid for the extended lease of the Premises is **£3,986.00**
13. The Applicant's solicitors should submit a draft of the proposed lease for the Tribunal's approval within 10 days
14. A copy of the Tribunal's valuation is attached to this decision

CHAIRMAN.....



Mrs T I Rabin

Date: 28th February 2007

FIRST FLOOR FLAT 10 HARTLAND ROAD LONDON NW6 6BJ

Ground Rent

	£	£
£50 per annum to 23 rd June 2020 YP for 14.5 years @7% - 8.9267	446	
£100 per annum to 23 rd June 2053 YP for 33 years @7% - 12.7538 Present value of £1 for 14.5 years @7% - .375	478	
£150 per annum to 23 rd June 2086 YP for 33 years @ 7% - 12.7538 Present value of £1 for 47.5 years @ 7% - .04023	77	
TOTAL		1001
Reversion		
To £325,000 at 23 rd June 2086 Present Value £1 for 80 years six months @ 6% .009185 <i>Please give me this figure</i>		2985
Total value of landlord's existing interest and price for a new lease		3986