

2991



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

Case Reference : **LON/00BH/OLR/2014/1848**

Property : **124A Orford Road, Walthamstow,
London E17 9QX**

Applicant : **Mr Ashley Joseph Felton (1)
Ms Suzanne Marie Bowles (2)**

Representative : **Ringley Legal**

Respondent : **Mr Mohammed Walid Kaddah**

Representative :

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 : **Mr Jeremy Donegan BSc – Tribunal
Judge
Mr Ian Holdsworth MSc FRICS –
Valuer Member**

**Date and venue of
Paper Determination** : **20 January 2015
10 Alfred Place, London WC1E 7LR**

Date of Decision : **20 January 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 Applicants for 124A Orford Road, Walthamstow, London E17 9QX (“the Flat”), pursuant to section 51(5) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”), is £23,920 (twenty three thousand, nine hundred and twenty pounds).
- (2) The tribunal approves the new lease in the form attached, marked “A”.

The application

1. On 24 September 2014 the Applicants issued a Part 8 Claim in the County Court at Edmonton under claim number A03ED364, seeking a vesting order. It appears from the “*Details of Claim*” that accompanied the Claim Form that the application was made under section 50(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”), although that is far from clear.
2. On 04 November 2014 Deputy District Judge Bennett made an order in the following terms:
 1. *The Claimants are entitled to a vesting order upon receipt of a determination of the premium to be paid by the First Tier Tribunal (Property Chamber).*
 2. *The matter is to be transferred to the said Tribunal for them to determine the premium.*
3. The tribunal has some reservations as to the form of the order, as the recitals inconsistently refer to the service of a notice under section 42 of the 1993 Act but go onto state that the Applicants have “*fulfilled their duty in accordance with Section 50(4) of the Act and that the requirement to service notice has been fulfilled*”. Further it appears to the tribunal that the Applicants did not qualify for an order under section 50(1) in that on the date of the application they did not have the right to acquire a new lease of the Flat, as they did not have the requisite two years ownership for the purposes of section 39(2). However the tribunal is unable to interfere with the order made by the County Court and has determined the terms of the new lease in accordance with section 50(5).
4. Directions were issued on 25 November 2014. These provided that case would proceed to a paper determination. None of the parties has objected to this or requested an oral hearing. The paper determination took place on 20 January 2015.

5. The Applicants' 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 report of Mr David Field FRICS dated 19 December 2014 and a draft lease. The bundle also included an earlier report from Mr Field, dated 25 November 2013.
6. The relevant legal provisions are set out in the Appendix to this decision.

The background

7. The Applicants are the joint leaseholders of the Flat. The Respondent is the freeholder of 124 Orford Road ("the Building").
8. The previous leaseholders of the Flat were Sebastian James Correa and Rodrigo Alejandro Correa. They served a notice under section 42 of the 1993 Act at the Respondent's last known address on 12 December 2013. This specified that the deadline for service of any counter-notice was 21 February 2014. No counter-notice was served by the Respondent.
9. The Applicants purchased the Flat on 26 March 2014 and the benefit of the section 42 notice was assigned to them on that date. The deadline for making any application for a vesting order under section 49 (1) of the 1993 Act was 20 August 2014, being six months after the deadline for service of the counter-notice. It appears that no such application was made by the Applicants.

The lease

10. The lease of the Flat was granted by the Respondent to Mr Robin Robert Demel on 14 November 1983 for a term of 99 years from 25 December 1982.
11. The ground rents specified in the lease are £50 per annum for the first 33 years of the term, £100 per annum during the second 33 years and £150 per annum during the remainder of the term.

The issues

12. 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).
13. The tribunal did not consider that an inspection of the Building or Flat was necessary, nor would it have been proportionate to the issues in dispute.

14. Having studied the various documents in the Applicant's bundle the tribunal has made the determination set out below.

Terms of new lease

15. The draft lease submitted by the Applicant's solicitors is largely approved. However certain minor amendments were required to prescribed clause LR2.2 and paragraph 2.5. Further two additional paragraphs numbered 3.3 and 3.4 have been inserted, in order to comply with sections 57(7)(a) and (b) of the 1993 Act. The approved form of new lease is attached, marked "A".

Lease extension premium

16. In his initial report, Mr Field provided three different figures, namely £29,850, £26,390 and £17,685, which were described as "*Possible landlord's counter claim*", "*Possible settlement figure*" and "*Premium for insertion into claim notice*".
17. In his second report, Mr Field valued the premium for a statutory lease extension at a figure of £21,995. This was based on an extended lease value of the Flat of £313,600, a capitalisation rate of 7%, a deferment rate of 5% and a relativity of 90.1%. Mr Field used 08 December 2013 as the valuation date, being the date inserted in the previous leaseholders' section 42 notice. As explained at paragraph 8 above, the notice was served on 12 December 2013.

The tribunal's decision

18. The premium payable under Schedule 13 of the 1993 Act is £23,920 (twenty three thousand, nine hundred and twenty pounds).

Reasons for the tribunal's decision

19. 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 24 September 2014 rather than the date used by Mr Field (08 December 2013).
20. The tribunal accept that capitalisation and deferment rates used by Mr Field. The tribunal adopted an extended lease value of the Flat of £309,900, which is based on a figure of £555 per square foot. This has been calculated in accordance with the schedule attached marked "B" and is based on a mean average of the three best comparables used by Mr Field with a 5% adjustment for time in the case of 8 Third Avenue. Based on its knowledge and experience gained from dealing with other

similar cases, the tribunal concluded that the freehold value should be adjusted by 1%, rather than the 2% proposed by Mr Field, when determining the long leasehold value.

21. In relation to relativity, Mr Field relied on 4 tribunal decisions, the graphs from Beckett & Kay, Nesbitt & Co and Andrew Pridell Associates, as well as the John D Wood & Co Pure Tribunal Graph. However he was working upon the basis of an unexpired term of 68 years, whereas at the valuation date the lease had 67.15 years unexpired. Having regard to the slightly shorter lease term and the evidence put forward by Mr Field, the tribunal concluded that the appropriate relativity was 88%.
22. The tribunal's calculation of the premium is set out in the schedule attached marked "B".

Name: Tribunal Judge Donegan **Date:** 21 January 2015

Appendix of relevant legislation

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

Section 50 (1)-(3)

(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 1 of Schedule II 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 an application of the tenant, make an order dispensing with the need to give a copy of such a notice that 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

(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 the appropriate 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, as 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 the appropriate 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 the appropriate 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 the appropriate tribunal of any question as to which 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 the appropriate 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, as 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 or 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 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.

"A"

THE PRESCRIBED CLAUSES

LR1. Date of lease	
LR2. Title number(s)	LR2.1 Landlord's title number(s) EGL120008
	LR2.2 Other title number(s) EGL 138892
LR3. Parties to this lease	Landlord
Include Address	Person/Persons who are so appointed by Court by virtue of s51(3) of the 1993 Act to execute on behalf of Mohammed Walid Kaddah of 4 Central Parade, Walthamstow, London, E17 4RT (missing landlord)
Include Address	Tenants Ashley Joseph Felton and Suzanne Marie Bowles of 124A Orford Road, Walthamstow, London, E17 9QX
	Other parties None
LR4. Property	In the case of conflict between this clause and the remainder of this lease then, for the purpose of registration, this clause shall prevail 124A Orford Road, Walthamstow, London, E17 9QX as the same was demised by a Lease (referred to as "the Original Lease" and "the Existing Lease") dated 14 November 1983 and made between Mohammed Walid Kaddah ("the Lessor") and Robin Robert Demel ("the Lessee")
LR5. Prescribed statements	This lease is made under, or by reference to provisions of Part I Leasehold Reform, Housing and Urban Development Act 1993

LR6. Term for which the Property is leased	The term is as follows: 189 years from 25 December 1982
LR7. Premium	£
LR8. Prohibitions or restrictions on disposing of this lease	Those comprised in the Original Lease as varied by this Deed of Surrender and Lease
LR9. Rights of acquisition	LR9.1 Tenant's contractual right to renew this lease, to acquire the reversion in the Property or another lease of the Property, or to acquire an interest in other land. None
	LR9.2 Tenant's covenant to (or offer to) surrender this lease. None
	LR9.3 Landlord's contractual right to acquire this lease. None
LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property	None
LR11. Easements	LR11.1 Easements granted by this lease for the benefit of the Property Clause 1 of the lease dated 14 November 1983
	LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property Clause 1 of the lease dated 14 November 1983
LR12. Estate rent charge burdening the Property	None
LR13. Application for standard form of restriction	None

LR14. Declaration of trust where there is more than one person comprising the tenant	The Tenants are more than one person and they are to hold the property on trust for themselves as joint tenants.
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THIS LEASE is made the day of 2014

BETWEEN:

Persons who are so appointed by Court on behalf of
Mohammed Walid Kaddah (missing landlord) of 4 Central Parade, Walthamstow,
London, E17 4RT (hereinafter called "the Lessor") of the first part, and

Ashley Joseph Felton and Suzanne Marie Bowles of 124A Orford Road,
Walthamstow, London, E17 9QX (hereinafter called "the Lessees") of the second part

1. DEFINITIONS AND INTERPRETATIONS

In this Lease the following terms have the following meanings:-

1.1 "the Existing Lease"

A Lease dated the 14 November 1983 and made between Mohammed Walid Kaddah ("the Lessor") and Robin Robert Demel ("the Lessee") title number EGL138892 with title absolute.

1.2 "the Existing Term"

The term granted by the existing lease 99 years from 25 December 1982

1.3 "the New Term"

A term of 189 years from 25 December 1982

1.4 "the Existing Rent"

The Rent reserved by the Existing Lease

1.5 "the New Rent"

The Rent of one peppercorn per year

1.6 "the Premises"

The Premises and demised by the Existing Lease

1.8 "the Lessor"

Where the context so admits includes the persons for the time being entitled to the reversion immediately expectant on the determination of the Term

1.9 "the Lessees"

Where the context so admits includes the tenant's successors in title

2. RECITALS

2.1 The Lessor is the owner in fee simple of the land situated at 124 Orford Road, Walthamstow, London, E17 9QX coloured red on the plan attached to the Existing Lease and the building thereon known as 124 Orford Road, Walthamstow, London, E17 9QX registered at HM Land Registry under title number EGL120008.

2.2 By a Lease ("the existing lease") dated 14 November 1983 between Mohammed Walid Kaddah ("the Lessor") and Robin Robert Demel ("the

Lessee") the Property hereby demised ("The Property") comprising part of the Building was demised to Ashley Joseph Felton and Suzanne Marie Bowles for a term of 99 years commencing on 25 December 1982 at an annual ground rent of £50.00 for the first 33 years of the said term, £100 for the second 33 years of the said term and £150 for the remainder of the said term.

- 2.3 The Lessee is the proprietor of the Existing Lease which is registered at HM Land Registry under title number EGL138892
- 2.4 The term date of the Existing Lease is 25 December 1982.

The Lessee in exercise of his rights conferred on him by Chapter II of Part I of the Leasehold Reform, Housing and Urban Development Act 1993 ("The Act") has required the Landlord to grant to them a new lease of the property for an extended term in substitution for the existing lease.

- 2.5 This Lease is granted in accordance with Section 51 of ~~the Leasehold Reform Housing and Urban Development Act 1993~~ ^{THE ACT} by Court Order dated 15th July 2011, on the terms as approved by the ~~Leasehold Valuation Tribunal~~ ^{20/01/15} on 11 July 2012. **FIRST-TIER**
- 2.6 The Existing Lease is replaced by:-

- (a) The grant of a new lease under the Act for a term of 189 years from 25 December 1982
- (b) The decrease of the Rent to a peppercorn

3. NOW THIS DEED WITNESSETH as follows:-

- 3.1 In consideration of the premium of £ _____ the Court on behalf of the Lessor demises to the Lessees the Premises together with the same easements rights and privileges but subject to the same exceptions and reservations as are contained in the Existing Lease the Existing Lease is varied with effect from the date hereof:-
- (a) By the deletion of the Existing Term and the substitution for it of the New Term in Clause 1
- (b) By deletion of the Existing rent and the substitution for the New Rent in Clause 1
- 3.2 That the Lessee shall HOLD for the New Term subject to and with the benefit of the Lessee's and Lessor covenants respectively contained in the Existing Lease as hereby varied

3.3 + 3.4 SEE RUBER

4. COVENANTS

- 4.1 The Lessor and the Lessee's mutually covenant that they will respectively perform and observe the several covenants provisos and stipulations contained in the Existing Lease as if they were repeated in full in this Lease and as if the names of the parties to this Lease were respectively substituted for those of the Landlord and Tenant in the Lease

- 4.2 That the Lessee's will continue to observe and perform the obligations and requirements contained in the Existing Lease relative to the Lessor in so far as they relate to the demised premises
- 4.3 That the Lessor hereby applies to the Chief Land Registrar to make the necessary entries on the register of Title Number EGL120008 in respect of the Freehold land.

5. CERTIFICATES

It is hereby certified as follows:-

- 5.1 There is no Agreement for Lease to which this Supplemental Lease gives effect
- 5.2 The transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds ONE HUNDRED AND TWENTY FIVE THOUSAND POUNDS (£125,000)

IN WITNESS whereof the parties hereto have hereunto set their hands the day and year first before written

SIGNED as a DEED

by the Person/Persons who are so appointed by Court by virtue of s51(3) of the 1993 Act to execute on behalf of the Lessor **MOHAMMED WALID KADDAH**

in the presence of:-

SIGNED as a DEED

by **ASHLEY JOSEPH FELTON**

in the presence of:-

SIGNED as a DEED

by **SUZANNE MARIE BOWLES**

in the presence of:-

RIDER TO NEW LEASE – 124A ORFORD ROAD, WALTHAMSTOW, LONDON
E17 9QX

- 3.3 No long lease created immediately or derivatively by way of sub-demise under this lease shall confer on the sub-tenant as against the Lessor a right under Chapter II of Part I of the Act to acquire a new lease.
- 3.4 The Lessor may, (a) at any time during the period of 12 months ending on 24 December 2081, and (b) at any time during the period of five years ending on 24 December 2171 apply to the court under section 61 of the Act for an order for possession of the Property on the ground for that for the purposes of redevelopment he intends to demolish or reconstruct, or to carry out substantial works of construction on the whole or a substantial part of any premises in which the Property is contained, and that he could not reasonably do so without obtaining possession of the Property and the provisions of that section and of Schedule 14 to the Act shall apply accordingly.

124A Orford Road London E17 9QX

Comparable analysis

Long Leasehold

Address of property	Type of property	Interest	ft2	Sale date	Sale price	Price change for sale date	Adjusted Sale price	Value per ft2	Notes
8 Third Avenue	A two bedroomed ground Floor Flat	99 year lease	577	July 2013	£335,000	5.00%	£351,750	£610	2,3
51 Granville road	A two bedroomed ground Floor Flat	99 year lease	692	December 2014	£370,000	nil	£370,000	£535	2
7a Comely Bank Road	A two bedroomed ground Floor Flat	97 year lease	690	September 2014	£360,000	nil	£360,000	£522	2
							Average	£555	
							Long leasehold value	£309,900	1

Notes:

1. Gross internal area is taken as 55.6m2 or 558ft
2. Comparable evidence taken from Ringley report dated 19th December 2014
3. Price change since sale date based upon knowledge and experience of property market

"B"

116A

Property: 124A Orford Road London E17 9QX
LON/00BH/OLR/2014/1843

Lease and Valuation Data

Lease Term:	99 years from 25th December 1982		
Lease Expiry date:	December 24, 2081		
Unexpired term as at valuation date:	67.15	years	
Date of Valuation	24th September 2014		
Rent receivable by landlord:			
Payable from 24/09/2014 for 1.25 years	£	50	
Payable from 24/12/2015 for 33 years	£	100	
Payable from 24/12/2048 for 33 years	£	150	
Values			
Long leasehold value	£	309,900	
Freehold Value	£	312,999	
LHVP	£	275,439	Relativity 88.00%

Capitalisation rate	7.00%
Deferment rate	5.00%

Value of Freeholders present interest

Term 1			
Rent passing	£	50	
Present Value at 7% for 1.25 years		1.15851	£ 58
Term 2			
Rent passing	£	100	
Present value at 7% for 33 yeras		12.753790	
Deferred 1.25 years		0.918904	£ 1,172
Term 3			
Rent passing	£	150	
Present value at 7% for 33 yeras		12.753790	
Deferred 34.25 years		0.098538	£ 189
Total term value			£ 1,418
Reversion			
Freehold in vacant possession	£	312,999	
Deferred 67.15 years @ 5%		0.0378	£ 11,822
Total			£ 13,240

Reversion to Freehold in possession after extension			
Freehold in vacant possession	£	312,999	
Deferred 157.15 years after lease extension at 5%		0.000468	£ 146
Total			£ 13,084

Calculation of Marriage Value

Value of flat with long lease	£	309,900	
Landlords proposed interest	£	146	£ 310,046
Less			
Value of Leaseholders existing interest	£	275,439	
Value of Freeholders current interest	£	13,240	£ 288,679
marriage value			£ 21,367

Division of Marriage Value equally between			
Freeholder			£ 10,684
Leaseholder	£	10,684	

Price payable to Freeholder

Value of freeholders current interest	£	13,094
Plus share of marriage value	£	10,684

Total	£	23,924
Say	£	23,920

- Notes:
- The price for Lease Extension is calculated in accordance with the Leasehold Reform, Housing Urban and Development Act 1993 as amended.
 - Valuation based upon Valuation Report prepared by Ringleys dated 16th December 2014