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

**Case reference** : **OT/LON/OOBA/OLR/2015/1354**

**Property** : **412A Kingston Road, London SW20 8LL**

**Applicants** : **Elizabeth Josephine Rucker**

**Representative** : **Swabey & Co Solicitors**

**Respondent** : **Anthony Derek Holland**

**Representative** : **Not applicable (missing landlord)**

**Type of application** : **Application under sections 50 and 51 of the Leasehold Reform Housing and Urban Development Act 1993**

**Tribunal members** : **Ms N Hawkes  
Mr C Norman BSc FRICS**

**Date and venue of paper determination** : **16<sup>th</sup> November 2015, 10 Alfred Place, London WC1E 7L**

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**DECISION**

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## Decisions of the Tribunal

- (1) The Tribunal determines that the price to be paid by the applicant for the new lease is £17,546.
- (2) The Tribunal also approves the draft terms of the new lease which have been submitted by the applicant, subject to the inclusion of a statement that the consideration (the premium of £17,546) has been paid into court.

## The Background

1. This is an application pursuant to a vesting order made by District Judge Hugman, sitting at the County Court at Wandsworth, under section 50 of the Leasehold Reform Housing and Urban Development Act 1993 (“the 1993 Act”).
2. On 20<sup>th</sup> February 2015, the applicants issued a Part 8 Claim for a vesting order pursuant to section 50(1) of the 1993 Act.
3. On 9<sup>th</sup> July 2015, District Judge Hugman ordered that:
  1. *A new lease of 412A Kingston Road, London Sw20 8LL for an additional 90 years at a peppercorn rent be granted to the Claimant.*
  2. *The matter be referred to the First Tier Tribunal (Property Chamber) for determination of the premium and terms of the new lease thereafter the matter be transferred back to the County Court at Wandsworth for the purpose of executing the new lease.*
4. In support of the application, the applicant relies upon a valuation report dated 31<sup>st</sup> July 2015 prepared by M Geoghegan BA (Hons) MRICS.
5. Section 51 of the 1993 Act provides:
  - (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, 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.*
  - (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 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, 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.

6. Schedule 13 to the 1993 Act makes provision for the determination of the premium to be paid by the tenant for the grant of a new lease.

## **The Determination**

### Relativity

7. The Tribunal has concerns and reservations in relation to opinions expressed by the applicant's valuer in his report dated 31<sup>st</sup> July 2015. The Tribunal much prefers to base its assessment of relativity on actual transactions adjusted for "Act world" rights. However, the applicant's valuer had stated that no such transactions exist. The applicant's valuer has given a declaration as to the veracity of his evidence which the Tribunal accepts.
8. As to the graphs of relativity upon which Mr Geoghegan relies, the Tribunal is concerned about their reliability. All such graphs predate the financial crisis following which mortgage requirements were tightened considerably. Partly for this reason, the Tribunal indicated that it was minded to rely on the Beckett and Kay mortgage dependent graph and invited written submissions from the applicant.
9. In an addendum to his report which was filed in accordance with the Tribunal's directions, Mr Geoghegan opposed the use of the Beckett and Kay graph on the grounds that it was out of line with other graphs to which he had referred; it was not included in the RICS Research Paper on relativities; and it has not generally been accepted by the First Tier Tribunal and its predecessor tribunal.
10. The reliability and utility of the graphs has been considered in various decisions of the Upper Tribunal and its predecessor. In *Kosta v Trustees of the Phillimore Estate [2014] UKUT 0319 (LC)* the Upper Tribunal stated :

"136 However, the RICS itself in its report recognises various difficulties with the graphs including:

- (a) that there are a number of graphs in existence compiled by various organisations which may give quite disparate readings at a given lease length;
- (b) that the supporting data from which the graphs are generated may be scattered quite widely on either side of the line;

- (c) that there is not necessarily any data to support the position of the line at every lease length;
- (d) that some of the lines are computer generated best-fit lines and some are hand drawn—and as regards those which are hand drawn these may incorporate the valuer’s view as to how the market would behave between the points for which data exists;
- (e) some of the graphs rely upon settlement evidence – however settlement evidence is open to criticism where the analysis is not agreed between the parties and in addition settlements may be influenced by the Delaforce effect and may become self-perpetuating;
- (f) some of the data going to make up the graphs may be criticised for being historic;
- (g) some of the graphs incorporate valuers’ views, or the views of those consulted, as to the level at which the transactions would have taken place as opposed to the level of actual sales.

11. The Upper Tribunal continued:

“We consider that these potential weaknesses individually, and especially cumulatively, are of concern” (Paragraph 137).

There is however a point which leads us to conclude that the published graphs would constitute an important ingredient in the decision of potential hypothetical purchasers of the existing lease at the valuation date as to how much to bid for the existing lease. At the valuation date these graphs were in existence...” (Paragraph 139).

12. Many of the graphs include opinion elements in the data as the RICS paper makes clear. The Beckett and Kay mortgage dependent graph (as a previous version) was included in the RICS Research Paper. The latest 2014 version which shows a relativity of 89% was published before the valuation date in the current claim. We disagree that the fact that the graph has been revised reduces its credibility, because the lending market has changed greatly following the financial crisis. Doing the best we can in this case, we consider the relativity should be assessed by taking the average of the two graphs upon which Mr Geoghegan relied together with the 2014 mortgage dependent graph by Beckett and Kaye. This average we calculate as 93%.

Long leasehold value

*384a Kingston Road*

- (i) 384A Kingston Road is a ground floor flat and, with an internal floor space of 527 square feet, it is significantly smaller than subject property. Adjusting for the smaller size alone would give an equivalent figure of £407,000 for the subject property.

- (ii) However, the Tribunal is of the view that the purchasers of properties in the relevant market do not make offers based primarily on the price per square foot, by contrast with the position in prime central London. The Tribunal considers that such purchasers generally place greater weight on the number of bedrooms; on the general amenities and facilities; and on any improvements.
- (iii) Further, because 384a Kingston Road is a ground floor flat there is no possibility of a future loft conversion.
- (iv) For these reasons, the Tribunal has not placed any weight on the comparable sales evidence relating to 384a Kingston Road.

#### *380 Kingston Road*

- (v) 380 Kingston Road, which has an internal floor area of 621 square feet, is very similar in size to the subject property. 380 Kingston Road is a first floor maisonette which was sold for £352,000 on 13<sup>th</sup> February 2015. The loft space is demised. Accordingly, the Tribunal considers that the sales evidence relating to 380 Kingston Road is highly relevant.
- (vi) The applicant's valuer has deducted £2,000 on account of tenants' improvements in installing double glazing. The Tribunal accepts that this adjustment is appropriate but considers that £5,000 should be added to the sales price on account of the fact that the subject property is slightly larger than 380 Kingston Road.

#### *374b Kingston Road*

- (vii) The sale of this property completed on 27<sup>th</sup> February 2014 at a purchase price of £312,525. The applicant's valuer considered it necessary to make a large number of adjustments in respect of this comparable sales evidence.
- (viii) The Tribunal accepts that it is appropriate to make the adjustments which have been proposed on account of the replacement of the kitchen and bathroom but not the proposed adjustments for general refurbishment work and for the installation of a new boiler. This is because the general refurbishment work and the replacement of a new boiler is in the nature of repairs rather than improvements. The Tribunal accepts the applicant's valuer's proposed adjustment of 10% in respect of the garden.
- (ix) Applying the adjustments which have been accepted by the Tribunal would result in a figure of 373,000. However, the Tribunal is concerned by both the large number of adjustments which are required and by the comparatively historic date of the transaction. Accordingly, the Tribunal has not placed any weight on the comparable sales evidence relating to 374b Kingston Road.

#### *Conclusion*

- (x) For the reasons set out above, the Tribunal finds that the long lease value of the subject property is £355,000.

#### Freehold Value

- (xi) The Tribunal does not accept that it is appropriate to apply a 1% adjustment in order to arrive at the freehold value. No evidenced has been provided to the Tribunal that there is any difference in value between a 166 year lease of the subject flat and the freehold interest in the property.
13. The adjusted calculation has resulted in premium of £17,546. A copy of the Tribunal's valuation is attached to this decision.
14. The Tribunal also approves the proposed terms of the new lease which has been submitted by the applicants, subject to the inclusion of a statement at LR7 that the consideration (the premium of £17,546) has been paid into court.
15. This matter should now be returned to the County Court sitting at Wandsworth under Claim Number BOOWT195 in order for the final procedures to take place.

Judge N Hawkes

Date 16<sup>th</sup> November 2015





**Value of Freeholder's Proposed Interest**

£ 355,000

Present Value of £1 in 165.98 years' time @ 5%

0.0003

£ 107

**Diminution in Value of Freeholder's Interest**

£ 10,029

**Calculation of Marriage Value**

**Value of Proposed Interests**

Leaseholder

Unimproved value of virtual freehold flat

£ 355,000

Freeholder

£ 107

**Total Value of Proposed Interests**

£ 355,107

**Value of Present Interests**

Leaseholder's

Unimproved value of the existing lease

£ 330,150

**Freeholder (see above)**

£ 10,135

**Total Value of Present Interests**

£ 340,285

Hence Marriage Value, Difference Between Proposed and Present Interests

£ 14,821

Divide Marriage Value equally between the Parties

£ 7,411

**Hence Premium Payable for lease extension is**

**£ 17,546**