



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

Case Reference : **DD/LON/00AH/OLR/2016/0106**

Property : **Ground and first floor maisonette
41 Oval Road Croydon Cro 6BJ**

Applicants : **Mr J C Clarke**

Representative : **Ms C MacMahon
Grant Saw Solicitors LLP**

Respondent : **Ms M A Davis**

Representative : **Not represented**

Type of Application : **Application under section 50
Leasehold Reform, Housing and
Urban Development Act 1993 (the
"Act") for right to acquire a new
lease of the property where the
relevant landlord cannot be found.**

Tribunal Members : **Judge Pittaway
Mr W R Shaw FRICS**

Date of Decision : **Determination without an oral
hearing in accordance with
Regulation 31 The Tribunal
Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013**
1 March 2016

DECISION

Introduction

1. The respondent is the registered proprietor of the freehold of 41 Oval Road registered at the Land Registry under title number SGL45738.
2. Mr John Christopher Clarke is the leaseholder of the ground and first floor maisonette at 41 Oval Road held under a lease dated 15 October 1979 for a term of 99 years from 29 August 1978 at a ground rent of £25 p.a. until 38 August 2003, £50 p.a. until 28 August 2028, £75 p.a. until 28 August 2053 and thereafter £100 p.a. for the remainder of the term.
3. By a claim (No.B03CR732) issued in the Croydon County Court dated 15 October 2015 (the "relevant date") the applicant applied for a Vesting Order pursuant to section 50(1) of the Act
4. By an Order dated 12 January 2016 the District Judge ordered that the claim be transferred to the First-tier Tribunal for determination of the terms of the new lease and the premium to be paid for it.
5. The applicant provided the tribunal with a copy of the applicant's claim in the county court, official copies of the freehold and leasehold interests in the Premises (dated 10 February 2016), a copy of the lease of the property, a copy of the sealed Order of 12 January 2016, a valuation report by Mr P Gosden MRICS of Hindwoods chartered surveyors dated February 2016 and a draft lease.
6. The applicant requested that the matter be determined without an oral hearing.

Decision

1. The tribunal did not carry out an inspection but relied on the description of the Premises given on pages 4-5 of Mr Gosden's report.
2. The relevant valuation date is 15 October 2015.
3. At the relevant date the lease had a remaining term of 61.88 years unexpired.
4. The relevant legislation is annexed as the Appendix to this decision.
5. As the lease of the property has less than 80 years to run marriage value at 50% is payable.
6. The respondent landlord has not served any rent demands in statutory form so no arrears of rent is payable, and no sum is therefore payable into Court under section 51 (5) (c) of the Act.

7. The tribunal accepts that the ground rent be capitalised at 6.5%.
8. The tribunal agrees with Mr Gosden's use of 5% for the deferment of the reversion, which is in accordance with the decision in *Sportelli*.
9. The tribunal are prepared to accept Mr Gosden's valuation of a long leasehold interest in the property at £280,000, on the basis of the comparables offered in his valuation.
10. The tribunal also accepts his submitted relativity 87.2%, on the basis of his analysis of the RICS Greater London and South East graph.
11. The tribunal is therefore prepared to accept Mr Gosden's valuation of **£25,159.00**
12. As to the terms of the lease the draft lease is approved subject to the deletion of the proposed new clauses 4(4) and 4(5) set out in clause 3, which clause 3 should therefore be deleted in its entirety. Section 57(1) of the Act requires the new lease to be granted on the same terms as those of the existing lease.

The tribunal note that a New Plan is required to be annexed to the new lease

As the draft lease has been granted with reference to the Original Lease (as defined) the tribunal recommend that a copy of the Original Lease be attached to the lease when granted as a matter of record.

Judge Pittaway

1 March 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

APPENDIX

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

42 Notice by qualifying tenant of claim to exercise right

(1) A claim by a qualifying tenant of a flat to exercise the right to acquire a new lease of the flat is made by the giving of notice of the claim under this section.

(2) A notice given by a tenant under this section ("the tenant's notice") must be given—

(a) to the landlord, and

(b) to any third party to the tenant's lease.

(3) The tenant's notice must—

(a) state the full name of the tenant and the address of the flat in respect of which he claims a new lease under this Chapter;

(b) contain the following particulars, namely—

(i) sufficient particulars of that flat to identify the property to which the claim extends,

(ii) such particulars of the tenant's lease as are sufficient to identify it, including the date on which the lease was entered into, the term for which it was granted and the date of the commencement of the term,

(c) specify the premium which the tenant proposes to pay in respect of the grant of a new lease under this Chapter and, where any other amount will be payable by him in accordance with any provision of Schedule 13, the amount which he proposes to pay in accordance with that provision;

(d) specify the terms which the tenant proposes should be contained in any such lease;

(e) state the name of the person (if any) appointed by the tenant to act for him in connection with his claim, and an address in England and Wales at which notices may be given to any such person under this Chapter; and

(f) specify the date by which the landlord must respond to the notice by giving a counter-notice under section 45.

(4A) A notice under this section may not be given by the personal representatives of a tenant later than two years after the grant of probate or letters of administration.]

F4(5) The date specified in the tenant's notice in pursuance of subsection (3)(f) must be a date falling not less than two months after the date of the giving of the notice.

(6) Where a notice under this section has been given with respect to any flat, no subsequent notice may be given under this section with respect to the flat so long as the earlier notice continues in force.

(7) Where a notice under this section has been given with respect to a flat and—

(a) that notice has been withdrawn, or is deemed to have been withdrawn, under or by virtue of any provision of this Chapter, or

(b) in response to that notice, an order has been applied for and obtained under section 47(1),

no subsequent notice may be given under this section with respect to the flat within the period of twelve months beginning with the date of the withdrawal or deemed withdrawal of the earlier notice or with the time when the order under section 47(1) becomes final (as the case may be).

(8) Where a notice is given in accordance with this section, then for the purposes of this Chapter the notice continues in force as from the relevant date—

(a) until a new lease is granted in pursuance of the notice;

(b) if the notice is withdrawn, or is deemed to have been withdrawn, under or by virtue of any provision of this Chapter, until the date of the withdrawal or deemed withdrawal; or

(c) until such other time as the notice ceases to have effect by virtue of any provision of this Chapter;

but this subsection has effect subject to section 54.

(9) Schedule 12 (which contains restrictions on terminating a tenant's lease where he has given a notice under this section and makes other provision in connection with the giving of notices under this section) shall have effect.

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.

(4) Before making any such order the court may require the tenant to take such further steps by way of advertisement or otherwise as the court thinks proper for the purpose of tracing the person in question; and if, after an application is made for a vesting order under subsection (1) and before any lease is executed in pursuance of the application, the landlord is traced, then no further proceedings shall be taken with a view to a lease being so executed, but (subject to subsection (5))—

(a) the rights and obligations of all parties shall be determined as if the tenant had, at the date of the application, duly given notice under section 42 of his claim to exercise the right to acquire a new lease of his flat; and

(b) the court may give such directions as the court thinks fit as to the steps to be taken for giving effect to those rights and obligations, including directions modifying or dispensing with any of the requirements of this Chapter or of regulations made under this Part.

(5) An application for a vesting order under subsection (1) may be withdrawn at any time before execution of a lease under section 51(3) and, after it is withdrawn, subsection (4)(a) above shall not apply; but where any step is taken (whether by the landlord or the tenant) for the purpose of giving effect to subsection (4)(a) in the case of any application, the application shall not afterwards be withdrawn except—

(a) with the consent of the landlord, or

(b) by leave of the court,

and the court shall not give leave unless it appears to the court just to do so by reason of matters coming to the knowledge of the tenant in consequence of the tracing of the landlord.

(6) Where an order has been made under subsection (2) dispensing with the need to give a copy of a notice under section 42 to a particular person with respect to any flat, then if—

(a) a notice is subsequently given under that section with respect to that flat, and

(b) in reliance on the order, a copy of the notice is not to be given to that person,

the notice must contain a statement of the effect of the order.

(7) Where a notice under section 42 contains such a statement in accordance with subsection (6) above, then in determining for the purposes of any provision of this Chapter whether the requirements of Part I of Schedule 11 have been complied with in relation to the notice, those requirements shall be deemed to have been complied with so far as relating to the giving of a copy of the notice to the person referred to in subsection (6) above.

s 56 Obligation to grant new lease.

(1) Where a qualifying tenant of a flat has under this Chapter a right to acquire a new lease of the flat and gives notice of his claim in accordance with section 42, then except as provided by this Chapter the landlord shall be bound to grant to the tenant, and the tenant shall be bound to accept—

- (a) in substitution for the existing lease, and
 - (b) on payment of the premium payable under Schedule 13 in respect of the grant,
- a new lease of the flat at a peppercorn rent for a term expiring 90 years after the term date of the existing lease.

s.57 Terms on which new lease is to be granted.

(1) Subject to the provisions of this Chapter (and in particular to the provisions as to rent and duration contained in section 56(1)), the new lease to be granted to a tenant under section 56 shall be a lease on the same terms as those of the existing lease, as they apply on the relevant date, but with such modifications as may be required or appropriate to take account—

(a) of the omission from the new lease of property included in the existing lease but not comprised in the flat;

(b) of alterations made to the property demised since the grant of the existing lease; or

(c) in a case where the existing lease derives (in accordance with section 7(6) as it applies in accordance with section 39(3)) from more than one separate leases, of their combined effect and of the differences (if any) in their terms.

(2) Where during the continuance of the new lease the landlord will be under any obligation for the provision of services, or for repairs, maintenance or insurance—

(a) the new lease may require payments to be made by the tenant (whether as rent or otherwise) in consideration of those matters or in respect of the cost thereof to the landlord; and

(b) (if the terms of the existing lease do not include any provision for the making of any such payments by the tenant or include provision only for the payment of a fixed amount) the terms of the new lease shall make, as from the term date of the existing lease, such provision as may be just—

(i) for the making by the tenant of payments related to the cost from time to time to the landlord, and

(ii) for the tenant's liability to make those payments to be enforceable by distress, re-entry or otherwise in like manner as if it were a liability for payment of rent.

(3) Subject to subsection (4), provision shall be made by the terms of the new lease or by an agreement collateral thereto for the continuance, with any suitable adaptations, of any agreement collateral to the existing lease.

(4) For the purposes of subsections (1) and (3) there shall be excluded from the new lease any term of the existing lease or of any agreement collateral thereto in so far as that term—

(a) provides for or relates to the renewal of the lease,

(b) confers any option to purchase or right of pre-emption in relation to the flat demised by the existing lease, or

(c) provides for the termination of the existing lease before its term date otherwise than in the event of a breach of its terms;

and there shall be made in the terms of the new lease or any agreement collateral thereto such modifications as may be required or appropriate to take account of the exclusion of any such term.

(5) Where the new lease is granted after the term date of the existing lease, then on the grant of the new lease there shall be payable by the tenant to the landlord, as an addition to the rent payable under the existing lease, any amount by which, for the period since the term date or the relevant date (whichever is the later), the sums payable to the landlord in respect of the flat (after making any necessary apportionment) for the matters referred to in subsection (2) fall short in total of the sums that would have been payable for such matters under the new lease if it had been granted on that date; and section 56(3)(a) shall apply accordingly.

(6) Subsections (1) to (5) shall have effect subject to any agreement between the landlord and tenant as to the terms of the new lease or any agreement collateral thereto; and either of them may require that for the purposes of the new lease any term of the existing lease shall be excluded or modified in so far as—

(a) it is necessary to do so in order to remedy a defect in the existing lease; or

(b) it would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease.

(7) The terms of the new lease shall—

(a) make provision in accordance with section 59(3); and

(b) reserve to the person who is for the time being the tenant's immediate landlord the right to obtain possession of the flat in question in accordance with section 61.

(8) In granting the new lease the landlord shall not be bound to enter into any covenant for title beyond—

(a) those implied from the grant, and

(b) those implied under Part I of the Law of Property (Miscellaneous Provisions) Act 1994 in a case where a disposition is expressed to be made with limited title guarantee, but not including (in the case of an underlease) the covenant in section 4(1)(b) of that Act (compliance with terms of lease);

and in the absence of agreement to the contrary the landlord shall be entitled to be indemnified by the tenant in respect of any costs incurred by him in complying with the covenant implied by virtue of section 2(1)(b) of that Act (covenant for further assurance).

(8A) A person entering into any covenant required of him as landlord (under subsection (8) or otherwise) shall be entitled to limit his personal liability to breaches of that covenant for which he is responsible.

(9) Where any person—

(a) is a third party to the existing lease, or

(b) (not being the landlord or tenant) is a party to any agreement collateral thereto,

then (subject to any agreement between him and the landlord and the tenant) he shall be made a party to the new lease or (as the case may be) to an agreement collateral thereto, and shall accordingly join in its execution; but nothing in this section has effect so as to require the new lease or (as the case may be) any such collateral agreement to provide for him to discharge any function at any time after the term date of the existing lease.

(10)Where—

(a)any such person (“the third party”) is in accordance with subsection (9) to discharge any function down to the term date of the existing lease, but

(b)it is necessary or expedient in connection with the proper enjoyment by the tenant of the property demised by the new lease for provision to be made for the continued discharge of that function after that date,

the new lease or an agreement collateral thereto shall make provision for that function to be discharged after that date (whether by the third party or by some other person).

(11)The new lease shall contain a statement that it is a lease granted under section 56; and any such statement shall comply with such requirements as may be prescribed by rules made in pursuance of section 144 of the M1Land Registration Act 1925 (power to make general rules).

SCHEDULE 13 PART II PREMIUM PAYABLE IN RESPECT OF GRANT OF NEW LEASE

Premium payable by tenant

2 The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate of—

- (a) the diminution in value of the landlord’s interest in the tenant’s flat as determined in accordance with paragraph 3,
- (b) the landlord’s share of the marriage value as determined in accordance with paragraph 4, and
- (c) any amount of compensation payable to the landlord under paragraph 5.

Diminution in value of landlord’s interest

3(1) The diminution in value of the landlord’s interest is the difference between—

- (a) the value of the landlord’s interest in the tenant’s flat prior to the grant of the new lease; and
- (b) the value of his interest in the flat once the new lease is granted.

3(2) Subject to the provisions of this paragraph, the value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) is the amount which at the relevant 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 following assumptions—

- (a) on the assumption that the vendor is selling for an estate in fee simple or (as the case may be) such other interest as is held by the landlord, subject to the relevant lease and any intermediate leasehold interests;
- (b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant’s flat or to acquire any new lease;
- (c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and
- (d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which the relevant lease has effect or (as the case may be) is to be granted.

3(3) In sub-paragraph (2) "the relevant lease" means either the tenant's existing lease or the new lease, depending on whether the valuation is for the purposes of paragraph (a) or paragraph (b) of sub-paragraph (1).

3(4) It is hereby declared that the fact that sub-paragraph (2) requires assumptions to be made as to the matters specified in paragraphs (a) to (d) of that sub-paragraph does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) might be expected to realise if sold as mentioned in sub-paragraph (2).

3(5) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

(6) The value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) shall not be increased by reason of—

(a) any transaction which—

(i) is entered into on or after the date of the passing of this Act (otherwise than in pursuance of a contract entered into before that date), and

(ii) involves the creation or transfer of an interest superior to (whether or not preceding) any interest held by the tenant; or

(b) any alteration on or after that date of the terms on which any such superior interest is held.

Landlord's share of marriage value

4(1) The marriage value is the amount referred to in sub-paragraph (2), and the landlord's share of the marriage value is 50 per cent. of that amount.

4(2) Subject to sub-paragraph (2A), the marriage value is the difference between the following amounts, namely—

(a) the aggregate of—

(i) the value of the interest of the tenant under his existing lease,

(ii) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease, and

(iii) the values prior to the grant of that lease of all intermediate leasehold interests (if any); and

(b) the aggregate of—

(i) the value of the interest to be held by the tenant under the new lease,

(ii) the value of the landlord's interest in the tenant's flat once the new lease is granted, and

(iii) the values of all intermediate leasehold interests (if any) once that lease is granted.

4(2A) Where at the relevant date the unexpired term of the tenant's existing lease exceeds eighty years, the marriage value shall be taken to be nil.

4(3) For the purposes of sub-paragraph (2)—

(a) the value of the interest of the tenant under his existing lease shall be determined in accordance with paragraph 4A;

(aa) the value of the interest to be held by the tenant under the new lease shall be determined in accordance with paragraph 4B;

(b) the value of any such interest of the landlord as is mentioned in paragraph (a) or paragraph (b) of sub-paragraph (2) is the amount determined for the purposes of paragraph 3(1)(a) or paragraph 3(1)(b) (as the case may be); and

(c) the value of any intermediate leasehold interest shall be determined in accordance with paragraph 8, and shall be so determined as at the relevant date .

4A(1) Subject to the provisions of this paragraph, the value of the interest of the tenant under the existing lease is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with neither the landlord nor any owner of an intermediate leasehold interest buying or seeking to buy) on the following assumptions—

(a) on the assumption that the vendor is selling such interest as is held by the tenant subject to any interest inferior to the interest of the tenant;

(b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;

(c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and

(d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which any interest inferior to the existing lease of the tenant has effect.

4A(2) It is hereby declared that the fact that sub-paragraph (1) requires assumptions to be made in relation to particular matters does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date the interest of the tenant under his existing lease might be expected to realise if sold as mentioned in that sub-paragraph.

4A(3) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

4A(4) Subject to sub-paragraph (5), the value of the interest of the tenant under his existing lease shall not be increased by reason of—

(a) any transaction which—

(i) is entered into after 19th January 1996, and

(ii) involves the creation or transfer of an interest inferior to the tenant's existing lease; or

(b) any alteration after that date of the terms on which any such inferior interest is held.

4A(5) Sub-paragraph (4) shall not apply to any transaction which falls within paragraph (a) of that sub-paragraph if—

(a) the transaction is entered into in pursuance of a contract entered into on or before the date mentioned in that paragraph; and

(b) the amount of the premium payable by the tenant in respect of the grant of the new lease was determined on or before that date either by agreement or by a leasehold valuation tribunal under this Chapter.]

4B(1) Subject to the provisions of this paragraph, the value of the interest to be held by the tenant under the new lease is the amount which at the relevant date that interest (assuming it to have been granted to him at that date) might be expected to realise if sold on the open market by a willing seller (with the owner of any interest superior to the interest of the tenant not buying or seeking to buy) on the following assumptions—

(a) on the assumption that the vendor is selling such interest as is to be held by the tenant under the new lease subject to the inferior interests to which the tenant's existing lease is subject at the relevant date ;

(b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;

(c) on the assumption that there is to be disregarded any increase in the value of the flat which would fall to be disregarded under paragraph (c) of sub-paragraph (1) of paragraph 4A in valuing in accordance with that sub-paragraph the interest of the tenant under his existing lease; and

(d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which any interest inferior to the tenant's existing lease at the relevant date then has effect.

4B(2) It is hereby declared that the fact that sub-paragraph (1) requires assumptions to be made in relation to particular matters does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date the interest to be held by the tenant under the new lease might be expected to realise if sold as mentioned in that sub-paragraph.

4B(3) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

4B(4) Subject to sub-paragraph (5), the value of the interest to be held by the tenant under the new lease shall not be decreased by reason of—

(a) any transaction which—

(i) is entered into after 19th January 1996, and

(ii) involves the creation or transfer of an interest inferior to the tenant's existing lease; or

(b) any alteration after that date of the terms on which any such inferior interest is held.

4B(5) Sub-paragraph (4) shall not apply to any transaction which falls within paragraph (a) of that sub-paragraph if—

(a) the transaction is entered into in pursuance of a contract entered into on or before the date mentioned in that paragraph; and

(b) the amount of the premium payable by the tenant in respect of the grant of the new lease was determined on or before that date either by agreement or by a leasehold valuation tribunal under this Chapter.

5(1) Where the landlord will suffer any loss or damage to which this paragraph applies, there shall be payable to him such amount as is reasonable to compensate him for that loss or damage. 5(2) This paragraph applies to—

(a) any diminution in value of any interest of the landlord in any property other than the tenant's flat which results from the grant to the tenant of the new lease; and

(b) any other loss or damage which results therefrom to the extent that it is referable to the landlord's ownership of any such interest.

5(3) Without prejudice to the generality of paragraph (b) of sub-paragraph (2), the kinds of loss falling within that paragraph include loss of development value in relation to the tenant's flat to the extent that it is referable as mentioned in that paragraph.

5(4) In sub-paragraph (3) "development value", in relation to the tenant's flat, means any increase in the value of the landlord's interest in the flat which is attributable to the possibility of demolishing, reconstructing, or carrying out substantial works of construction affecting, the flat (whether together with any other premises or otherwise).