



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

**Case Reference** : **LON/00AP/OLR/2018/0692**

**Property** : **Ground Floor Flat, 169 Westbury Avenue, London N22 6RX**

**Applicant** : **Marcus Swann**

**Representative** : **Boulter & Company, Solicitors**

**Respondent** : **Christos Charalambou**

**Representative** : **N/A**

**Type of Application** : **S50/51 Leasehold Reform Housing and Urban Development Act 1993, Missing Landlord**

**Tribunal Members** : **P M J Casey MRICS**

**Date and venue of Hearing** : **Paper hearing on 5 July 2018  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **23 July 2018**

---

**DECISION**

---

## **Decisions of the tribunal**

- (1) The tribunal determines that the premium payable on the grant of a new lease of the ground floor flat at 169 Westbury Avenue, London N22 6RX (“the property”) is the sum of £23,100.
- (2) The tribunal makes the determinations as set out under the various headings in this decision

## **The application**

1. The applicant seeks a determination by the tribunal pursuant to an order made under the provisions of S50(1) of the Leasehold Reform Housing and Urban Development Act 1993 (“the Act”) by District Judge Letham sitting at the County Court at Edmonton on 9 May 2018 of the premium to be paid into Court and other terms on the grant of a new lease of the property under the relevant provisions of the Act.
2. The order was made in response to a claim made to the Court on 8 January 2018 by Boulter & Company, Solicitors on behalf of the applicant in which it was said that the applicant was entitled to acquire a new lease of the property under the provisions of the Act but had been unable to exercise the right by serving the requisite notice under S42 on the landlords because their whereabouts were unknown.

## **The hearing**

3. In response to the tribunal’s directions which provided for a determination on the papers to be submitted, the applicant’s solicitors provided a bundle of documents including a valuation report dated 12 April 2018 for use in tribunal proceedings addressed to the tribunal and prepared by Vita Choat MRICS of Currell Chartered Surveyors. The report contained the requisite declarations required of a Surveyor acting as an expert witness.
4. The Tribunal considered the hearing bundle on 5 July 2018. No inspection of the property was deemed necessary given the description, plans and photographs included in the report.

## **The evidence**

5. From Ms Choat’s description of the property and the photographs it is a self-contained flat on the ground floor of a former terraced house converted into two flats dating from circa 1900. It comprises three rooms, kitchen and bath/wc. There is a garden to the rear. No want of repair is noted in the report but Ms Choat believes it would benefit from

re-wiring. The kitchen and shower/wc fittings are said to be relatively modern and there is a central heating system and mainly double glazed windows and doors to the garden. It has a gross internal area of 630 sq ft. Ms Choat says the layout of the property has been altered since the lease was first granted and it has been refurbished. She also thinks it has been extended at the rear where there is now a shower-room/wc. There is a second wc under the stairs. The GIA ignoring what she thinks is an extension by the tenant or a predecessor in title is 575 sq ft.

6. The property is held on a 99 year lease from 25 March 1987 subject to ground rent payment of £100 per annum for the first 33 years rising to £125 for the next 33 years and to £150 for the final 33 years.
7. At the Valuation Date, 8 January 2018, the lease had 68.2 years unexpired.
8. Ms Choat provides market evidence for the extended lease value of the property as at the Valuation Date by reference to seven completed transactions involving similar properties at around that time the details of which are provided in the report. She adjusts the sale prices achieved by these properties to reflect differences in time between the sale dates and the valuation date. She says the sale prices range from £300,000 to £330,000 with no outside space or only a shared space to £345,000 to £415,000 with a private garden. Ms Choat refers particularly to 161 Westbury Avenue, a one bed first floor flat with no garden, which sold in January 2018 for £330,000 ( gross area 653 sq ft) as well as 31B Belmont Road, a one bed garden flat, which sold for £345,000 in February 2018 (gross area 482 sq ft): 239 Sirdar Road, one bed share of garden slightly dated condition, sold for £330,000 in November 2017; and 10 Raleigh Road, one bed garden flat in better location, sold for £412,500 in January 2018 (gross area 519 sq ft). She disregards as a tenant's improvement the rear extension at the subject property and arrives at an extended lease value based on the comparables of £350,000 from which she deducts £10,000 to reflect the value of the tenant's revised layout/refurbishment which she says are improvements which fall to be disregarded to leave £340,000. She adds 1% to this figure for the benefit owning the freehold to give £343,400 as the freehold value.
9. To capitalise the ground rent income for the unexpired term of the existing lease in her valuation of the existing freehold interest in the property she adopts a rate of 7% and she defers the reversion on the expiration of the existing lease term at 5%.
10. To calculate the marriage value and the landlord's entitlement to 50% thereof she has assessed the value of the existing lease term in the property, disregarding the value of the rights conferred by the Act, by looking firstly at two sales in Walthamstow in May 2018 where the

interests sold were leases with in one case 67.09 years and in the other 70.62 years unexpired. Her analysis of these transactions, after adjusting for Act rights, apparently show relativities of existing lease value to freehold value of 75.61% and 81.48% both being significantly lower than the percentages suggested by the Gerald Eve 1996 graph of relativities for Prime Central London properties and neither being consistent with the other. The use of the Gerald Eve graph itself is not in her view appropriate in this non Prime Central London location and whilst she is critical of some of the other published graphs for Outer London and other non Prime Central London locations she ends up taking the average of the five such graphs, as was decided by a First-tier tribunal case in which she was involved, to give a relativity of 91.39%.

11. Her valuation attached to her report produces a premium of £20,027.

### **The decision**

12. The tribunal is satisfied that Ms Choat's valuation of the extended leasehold interest is broadly supported by the evidence she provides in her report. However the tribunal has some concerns regarding the disregards for claimed tenant's improvements. It is clear from the lease plan that the demise of the ground floor flat included a small single storey rear extension and the 55 sq ft excluded from the area used in the valuation probably should not have been. The remodelling of the layout is however a tenant's improvement that falls to be disregarded but the allowance of £10,000 to reflect that and refurbishment of kitchen and bathroom is excessive as unless fixtures and fittings are new and of high quality it is the tribunal's experience they have little effect on value. In the circumstances the tribunal's view is that £350,000 is a fair reflection of the long leasehold value disregarding the effect on value of any tenant's improvements. The uplift from leasehold value to the freehold of 1% is a fairly normal addition in the outer London area for this length of lease and gives a freehold, VP value of £353,500.
13. Ms Choat's use of a 7% rate to capitalize the passing ground rent and of 5% to defer the value of the reversion to the term date is also perfectly proper and accepted by the tribunal.
14. Following the Upper Chamber's guidance in *Sloane Stanley Estate v Mundy* she has looked for evidence of open market sales of properties held on shorter lease terms but all she could come up with are two sales giving inconsistent results and showing significantly lower relativities than those shown by the only graph given some credibility by the Upper Chamber in *Sloane Stanley*, namely the Gerald Eve graph. Without being given a great deal more information in relation to those two sales the tribunal does not find them to be of any great assistance though it has been the tribunal's experience that in cases where reliable open

market sales' evidence has been produced relativities lower than shown by any of the graphs generally result.

15. In the absence of sales evidence the use of so called graphs of relativity is a common practice and the five graphs referred to by Ms Choat are invariably used in any case outside the prime central London area because practitioners argue that the outer London market is less sophisticated and higher relativities result though none seem able to explain why lease length per se should affect values in different locations in this way. The graphs referred to all have their individual flaws and taking an average of the five that she does does not make them more reliable. They range from 88.8% to 92.2% for this length of unexpired term which is not too wide a spread to be covered by averaging. The Gerald Eve – John D Wood (1996) graph shows a relativity of leasehold to freehold value with 68.2 years unexpired of some 86.0%. Doing the best it can in all the circumstances the tribunal determines the appropriate relativity to be 90%. Its valuation is attached showing the premium to be paid is £23,100.
16. It is confirmed there are no outstanding demands for ground rent or service charges which have been lawfully demanded and have not been paid.
17. District Judge Letham's Order of 9 May 2018 required also that the tribunal determines the terms of the new lease. The tribunal has been provided with a draft of the deed of surrender and re-grant in the bundle and having carefully considered the document is satisfied that the proposed terms comply with the requirements of the Act.

**Name:** Patrick M J Casey

**Date:** 23 July 2018

## **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).