

Lease.

4695



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

Case Reference : CHI/29UN/OLR/2017/0240

Property : Flat 1, 21 Augusta Road Ramsgate Kent
CT11 8JP

Applicant : Stuart Alexander John Evans

Representative : Bartons solicitors

Respondent : Roger William Smith

Representative :

Type of Application : Determination of premium and other
terms of acquisition

Tribunal Member(s) : Judge D. R. Whitney
Mr. K. Ridgeway FRICS

Date of Determination : 12th February 2018

DETERMINATION

BACKGROUND

1. By Order of the County Court at Thanet under claim number DooTT265 a Vesting Order was made granting the Applicant a new lease subject to determination of the terms by this Tribunal. Directions were issued on 25th October 2017.
2. Those directions were complied with save that after receipt of bundles the Tribunal further directed that an additional valuation report should be filed. A further report dated 31st January 2018 prepared by Jeremy Parkin MRICS was filed.

DETERMINATION

3. The Applicants filed a draft form of lease. A copy is annexed hereto marked "A". The Tribunal approves the form of lease save for the two amendments they have made to the definition of "Term" and the execution clause.
4. The Tribunal considered carefully the valuation report dated 31st January 2018. This included a description of the subject flat. The Tribunal agreed the appropriate deferment rate is 5% in line with the well known decision in the case of Sportelli.
5. Further the valuer had taken an average of various graphs of relativity to reach a relativity of 87%. The Tribunal was satisfied that this was a reasonable approach and was happy to accept this figure.
6. The Tribunal did not agree that a reversionary rate of 5% was appropriate. Taking account the location and relatively modest ground rent the Tribunal using its expert knowledge felt that a rate of 6% was more appropriate.
7. This left then the question of the extended lease value. The Tribunal notes that no comparable short lease transactions were drawn to the Tribunal's attention. The report did refer to a number of transactions. In particular the Tribunal took notice of the fact the subject flat has been marketed (but had not sold) at £129,500. Further Flat 1, 22 Victoria Road had sold at a figure of £125,000. This flat has a lease with 150 years remaining and a ground rent of £200 per annum. This flat was also a one bedroom lower ground floor flat. The Tribunal was able to view property particulars of the same via Right Move.
8. The Tribunal notes the instance flat benefits from an enclosed rear garden. The valuer makes a deduction for the installation of gas central heating and a reduction for the risk of the local authority taking enforcement action in respect of the installation of double glazing to

the rear without necessary permissions and in his opinion suggests a price of £110,000. This Tribunal felt the deductions were too high. We bear in mind that Flat 1, 22 Victoria road did not appear to have an enclosed rear garden and the ground rent payable was still relatively high at £200 per annum. Further the Tribunal was not satisfied that new gas central heating was of itself an improvement given there was no suggestion made that the subject property had not had some form of heating present and so this may have been said to be a repair. Further whilst we acknowledge there is some risk of the local authority taking some action in this Tribunal's opinion any reduction would be modest.

9. Taking all of these points into consideration we determine that the long leasehold value would be £120,000.
10. Applying all of these figures gives a premium of **£9,960** being the Premium payable as set out in the calculation at Annex "B".
11. The Tribunal has so determined the terms of acquisition and the premium payable.

Judge D. R. Whitney

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

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LR1. Date of lease

LR2. Title number(s)

LR2.1 Landlord's title number(s)

K147983

LR2.2 Other title numbers

K675460

LR3. Parties to this lease

Landlord

Roger William Smith

Tenant

Stuart Alexander John Evans

Other parties

None.

LR4. Property

In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.

See the definition of "Property" in clause 1.1 of this lease and in the First Schedule of the Lease.

LR5. Prescribed statements etc.

LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.

This lease is granted under section 56 of the Leasehold Reform, Housing and Urban Development Act 1993.

LR5.2 This lease is made under, or by reference to, provisions of:

None.

LR6. Term for which the Property is leased

The term as specified in this lease at clause 1.1 in the definition of "Term".

LR7. Premium

£[PREMIUM PAYABLE IN FIGURES] [(PREMIUM PAYABLE IN WORDS)].

LR8. Prohibitions or restrictions on disposing of this lease

This lease contains a provision that prohibits or restricts dispositions.

LR9. Rights of acquisition etc.

LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion 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 rights 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

The easements included in clause 1.1 of this lease in the definition of "Incorporated Terms" and specified in the Second Schedule of the Lease.

LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property

The easements included in clause 1.1 of this lease in the definition of "Incorporated Terms" and specified in the Third Schedule of the Lease.

LR12. Estate rentcharge 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

None

This lease is dated

Parties

- (1) Roger William Smith of 21 Augusta Road, Ramsgate, Kent, CT11 8JP (Landlord)
- (2) Stuart Alexander John Evans of 173 Kings Street, Ramsgate, Kent, CT11 8PN (Tenant)

BACKGROUND

- (A) The freehold reversion to the Property is vested in the Landlord and is registered at HM Land Registry under title number K147983.
- (B) The residue of the term of the Lease is vested in the Tenant and is registered at HM Land Registry under title number K675460.
- (C) The Tenant requires the Landlord to grant a new lease of the Property in accordance with the Tenant's rights under the Leasehold Reform, Housing and Urban Development Act 1993 and a Vesting Order was made on 19th September 2017 in the County Court sitting at Thanet under Case No. D00TT265. ✓

1. Interpretation

The following definitions and rules of interpretation apply in this lease.

1.1 Definitions:

Annual Rent: a peppercorn, if demanded. ✓

Incorporated Terms: all of the definitions, rules of interpretation, agreements, declarations, rights granted and reserved (including the right of re-entry and forfeiture), terms, requirements, restrictions, covenants and conditions contained in the Lease but excluding any terms of the Lease which are specifically excluded by the terms of this lease or substituted by the terms of this lease.

Landlord's Covenants: the obligations in this lease, which include the obligations contained in the Incorporated Terms, to be observed by the Landlord.

Lease: the lease by virtue of which the Tenant holds the Property, which is dated 25 July 1989 and made between (1) Roger William Smith and (2) Jocelyn Ann Harries for a term of years beginning on and including 25 July 1989 and ending on and including 24 July 2088 and registered at HM Land Registry under title number K675460 (a certified copy of which is annexed to this lease).

Premium: £[PREMIUM PAYABLE IN FIGURES] ([PREMIUM PAYABLE IN WORDS] pounds).

Property: the property known as Flat 1, 21 Augusta Road, Ramsgate and garden ground as described in the Lease. ~~As outlined in red on the plan~~

Rent Payment Date: 25 July

Tenant's Covenants: the obligations in this lease, which include the obligations contained in the Incorporated Terms, to be observed by the Tenant.

Term: a term of years beginning on and including 25 July 1989 and ending on and including 24 July 2187. 2178

1.2 References to the landlord and tenant in the Lease shall be read as references to the Landlord and Tenant in this lease.

2. Grant

2.1 In consideration of the Premium, the Landlord lets with full title guarantee the Property to the Tenant for the Term at the Annual Rent.

2.2 This grant is made on the terms of this lease which include the Incorporated Terms as if they were set out in full in this lease.

2.3 The Tenant covenants with the Landlord that it will comply with the Tenant's Covenants.

2.4 The Landlord covenants with the Tenant that it will comply with the Landlord's Covenants.

3. The Annual Rent

The Tenant shall pay the Annual Rent on or before the Rent Payment Date.

4. Leasehold Reform, Housing and Urban Development Act 1993

4.1 This lease is granted under section 56 of the Leasehold Reform, Housing and Urban Development Act 1993 and the terms of the Vesting Order made on 19th September 2017 annexed to this lease.

4.2 No long lease created immediately or derivatively by way of sub-demise under this lease shall confer on the sub-tenant, as against the Landlord, any right under Chapter II of the Leasehold Reform, Housing and Urban Development Act 1993 to acquire a new lease. For this purpose, "long lease" shall be construed in accordance with section 7 of that Act.

- 4.3 At any time during the period of:
- (a) 12 months ending with the term date of the Lease being 24 July 2088; or
 - (b) five years ending with the term date of this lease,

the Landlord may apply to the court for an order for possession of the Property on the basis that the Landlord intends to demolish, reconstruct or carry out substantial works of construction on the whole or a substantial part of any premises in which the Property is contained, and that the Landlord could not reasonably do so without obtaining possession of the Property. If the court makes such an order, the Tenant will be entitled to compensation from the Landlord for the loss of the Property.

- 4.4 The Landlord shall only be personally liable for breaches of any covenant for which he is responsible.

5. Registration of this lease

Following the grant of this lease, the Tenant shall without delay apply to register this lease at HM Land Registry. The Tenant shall ensure that any requisitions raised by HM Land Registry in connection with that application are dealt with promptly and properly. The Tenant shall send the Landlord official copies of the Tenant's title within one month of the registration being completed.

6. Section 62 of the Law of Property Act 1925

Except as mentioned in clause 2.2, neither the grant of this lease nor anything in it confers any right over neighbouring property nor is to be taken to show that the Tenant may have any right over neighbouring property, and section 62 of the Law of Property Act 1925 does not apply to this lease

7. Contracts (Rights of Third Parties) Act 1999

A person who is not a party to this lease shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this lease. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

8. Governing law

This lease and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

9. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this lease or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by

~~The Landlord~~

.....

DISTRICT JUDGE
of the County Court at _____
pursuant to a Vesting Order dated 19th September 2017

Landlord _____

Signed as a deed by The Tenant

Stuart Alexander John Evans

In the presence of:

.....

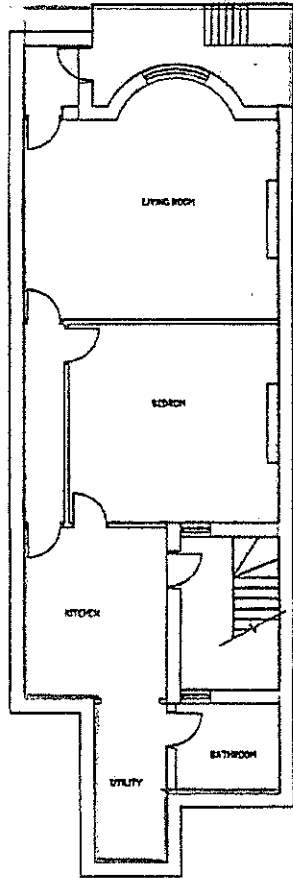
Signature of Tenant

Signature of Witness:

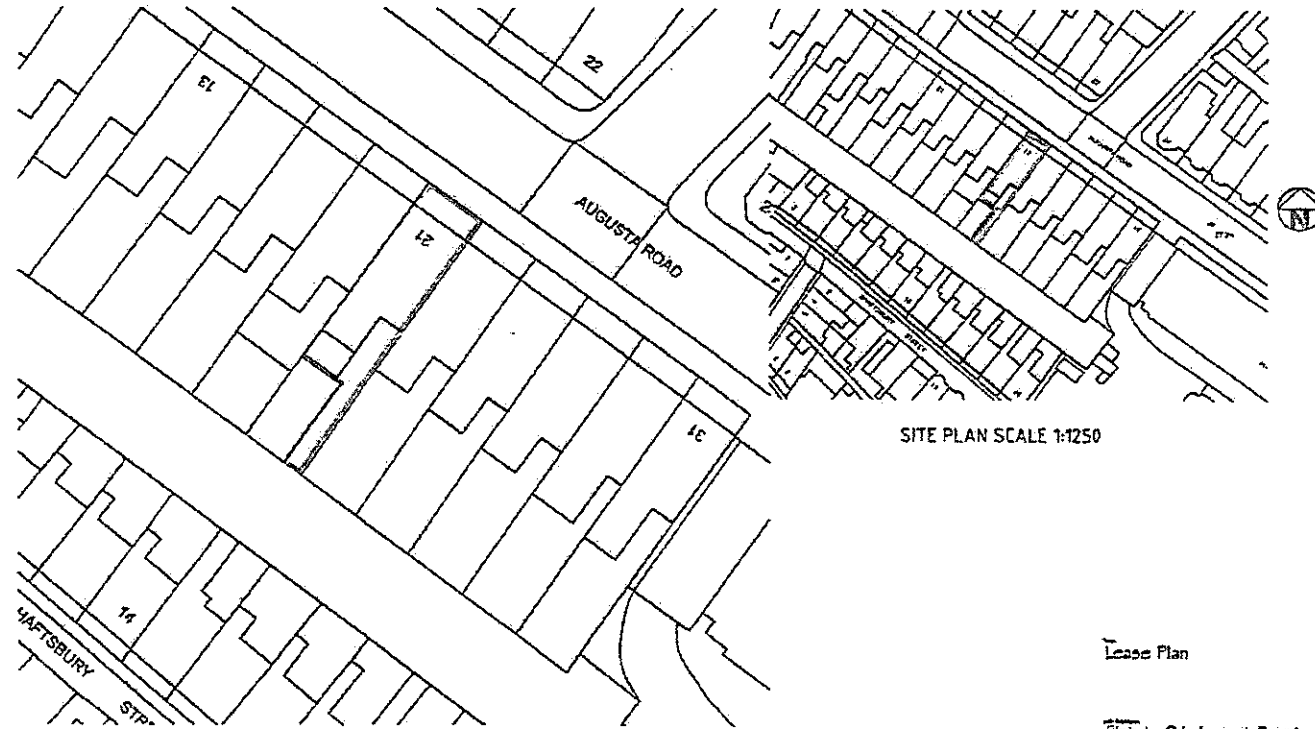
Name of Witness:

Address of Witness:

Occupation of Witness:



FLAT 1 FLOOR PLAN SCALE 1:100



SITE PLAN SCALE 1:1250

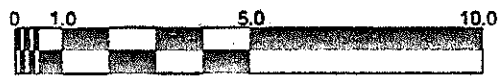
BLOCK PLAN SCALE 1:500

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Lease Plan

Flat 1, 21 August Road,
Ramsgate, Kent, CT11 8UP

Floorplan, Site Plan, Block
Plan



Scale bar in meters

ACAT
 Alex Cowell Architectural Technologists
 11100, 1200, 111250
 Alex Cowell
 A110 AC101
 11100 1200 111250

ANNEX B

Valuation for lease extension

Value of flat VP	£104,400 (The new lease adj. for relativity)
Value of lease	£120,000 Existing
Ground rent	£50.00
Current lease	70.66 Years unexpired
Deferment rate	5.00%
Compensation	£0
Relativity	87.00%

Diminuation of Landlord's interest

Ground rent	£50	
YP 70.66 yrs @ 6.00 %	<u>16.39518762</u>	£820
Reversion to VP value	£110,000	
PV 70.66 yrs @ 5.00 %	<u>0.03182469</u>	
		<u>£3,501</u>
		£4,320

Landlord's share of Marriage Value

Val'n tenant's interest new lease	£120,000	
Val'n l/lord's interst new lease	<u>£0</u>	£120,000
Less		
Val'n tenant's interest existing lease	£104,400	
Val'n l/lord's interst existing lease	<u>£4,320</u>	£108,720
		<u>£11,280</u>
Marriage Value at 50%		£5,640
Other compensation		<u>£0</u>
PREMIUM		£9,960

DRAFT

DATED

**NEW LEASE OF A FLAT UNDER THE LEASEHOLD REFORM, HOUSING AND URBAN
DEVELOPMENT ACT 1993**

between

Roger William - Smith

and

Stuart Alexander John Evans