



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

Case Reference : **LON/00AH/OLR/2023/0067**

Property : **Flat 3 Holmsdale Road, South
Norwood, London SE25 6PR**

Applicant : **Elizabeth Anice Hunt**

Representative : **Shakespear Martineau Solicitors**

Respondent : **Patrick Jackson**

Representative : **None**

Type of Application : **Leasehold Enfranchisement:
Missing Landlord s50-51
Leasehold Reform, Housing and
Urban Development Act 1993**

Tribunal Members : **Mr D Jagger MRICS**

**Date of Paper
Determination** : **20th March 2023**

Date of Decision : **20th March 2023**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the appropriate sum to be paid into Court for the leasehold interest in **Flat 3 235 Holmsdale Road, South Norwood, London SE25 6PR** (‘the property), pursuant to section 50 and 51 of the Leasehold Reform, Housing and Urban Development Act 1993 (‘the 1993 Act’), is **£29,928** (Twenty nine thousand nine hundred and twenty eight pounds)

1. This has been a paper decision which has been consented to by the applicant. The documents that were referred to, is in a bundle which extends to 151 pages prepared by the applicant, plus the Tribunals Directions. Therefore, the tribunal had before it an electronic/digital trial bundle of documents prepared by the applicant, in accordance with the Directions

2. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination

3. **The application**

1. On 27th April 2022, Rogers and Burton solicitors issued a Part 8 Claim in Croydon County Court seeking a vesting order under section 50(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (‘the Act’). This is therefore the date of valuation and we shall return to this matter later in this decision. On 13th December 2022 Judge Bishop made an order in the matter subject to the following terms set out in that order

2. *1 Service of the papers to be dispensed on the grounds that the defendant cannot be found, 2 The Claimant is entitled to a Vesting Order on terms to be determined by the First Tier Property Tribunal (Property Chamber) 3 The case is transferred to the Tribunal for consideration as to the terms of the lease, 4 The balance of the claim is adjourned until the Tribunal has made its determination.*

3. The applicants’ representatives were unable to locate Mr Patrick Jackson the Landlord.

4. In accordance with the Vesting Order the application was submitted to the First Tier Property Tribunal and Directions were issued on 19th January 2023. These provided that the case would proceed to a paper determination. The applicant has not objected to this or requested an oral hearing.

5. The paper determination took place on 14th March 2023.
6. In accordance with the directions, the applicants' solicitors supplied the Tribunal with a well prepared and helpful bundle that contained copies of relevant documents from the County Court proceedings, various title documents, the existing and proposed lease and an Expert Witness valuation report prepared by Mr Roshan Sivapalan dated 27th January 2023.
7. The relevant legal provisions are set out in the appendix to this decision.

The background

8. The leasehold interest in the flat is now registered in name of the applicant by virtue of a transfer for the first floor flat made on 18th January 2019 under Title No SGL544161. The freehold of the building has been registered in the name of the respondent under title number SY78164 since the 8th October 1997.
9. The property is a second floor converted flat which forms part of a Victorian mid terrace property located in an established residential area converted to form three self contained flats over three floors approached via a communal hallway. The flat has been reconfigured since the conversion and now provides two bedrooms, living room, study, kitchen and bathroom. The property has not been extended and has a floor area of 764f2

The issues

11. The Tribunal is required to determine the premium to be paid for the extended lease in accordance with the 1993 Act and the appropriate sum to be paid into Court pursuant to section 27(1)-(7) of the Act.
12. The Tribunal is required to consider the proposed terms of the lease .
13. The Tribunal did not consider that an inspection of the flat was necessary under current circumstances, 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.

The sum to be paid into court

15. We determine that the premium payable under the 1993 Act is **£29,928** (Twenty nine thousand nine hundred and twenty eight pounds) and this is the appropriate sum to be paid into Court under section 27(1). Our reasons are set out as follows.
16. In his report, Mr Sivapalan valued the premium at £29,928 This was based on Freehold value of £333,200 (Long lease value £330,000). A capitalisation rate of 7% and a deferment rate of 5%. Mr Sivapalan correctly used the 27th April 2022 as the valuation date. However, the precise date of the Claim form is the 4th March 2022. This provided an unexpired term of 81.81 years for the flat.
17. At that date, the lease had an unexpired term of 66.91 years. The Tribunal agrees, in view of the fact, the lease has an unexpired term of less than 80 years marriage value is deemed to exist.
18. Having carefully scrutinised the valuation report, including the comparable evidence, the Tribunal agrees the capitalisation rate of 7% given the modest level of ground rent and the review pattern. The deferment rate of 5% is also agreed.
19. The Tribunal examined the five comparables provided in the report. Each of these appears to be within a 400 metre radius of the subject property and the date of sale is within six months of the valuation date.
20. The Tribunal considers Flat 2 235 Holmsdale Road (first floor flat within the same building) to be the ‘key’ comparable of the five. The Tribunal would have preferred to see the evidence set out in a schedule with a methodology to indicate adjustments for location, specification, garden, parking and any market movement. However, subject to these minor misgivings the Tribunal commends the report. Based on the comparable evidence and the Tribunal's expert knowledge of the area, the Tribunal agrees with the freehold value of £333,200 entered in the valuation.
21. There was no evidence of any ground rent or service charge arrears for the Flat. In the absence of such evidence, the Tribunal determines that no additional sums are payable under the 1993 Act. It follows that the appropriate sum to be paid into Court is **£29,928** in accordance with valuation set out on page 97 of the bundle.

Terms of the Transfer

- 22.** We have considered the terms of the draft lease set out on page 123 and onwards. We are satisfied that the terms should be approved as drafted.

Name: Mr Duncan Jagger
MRICS

Date: 20th March 2023

RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

Appendix of relevant legislation

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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 ascertainedthe 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.

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- (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.