



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

**Case Reference** : **LON/00BK/OLR/2019/0820**

**Property** : **4<sup>th</sup> Floor flat 21 Craven Lodge 15 & 17  
Craven Hill London W2 3ER**

**Applicant Tenant** : **Grainger Bradley Ltd**  
**Did not appear and was not  
represented**

**Representative** :

**Respondent Landlord** : **Terpischori Psoma**

**Representative** : **Ms C Crampin, Counsel**

**Intermediate Landlord** : **Craven Lodge (Management) Ltd**

**Representative** : **Mr H Webb, Counsel**

**Type of Application** : **S.48 Leasehold Reform Housing and  
Urban Development Act 1993**

**Tribunal Members** : **Mrs F J Silverman Dip Fr LLM  
Mr I Holdsworth FRICS MCI Arb**

**Date and venue of  
Hearing** : **10 December 2019.  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **24 December 2019**

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## DECISION

**The Tribunal determines that the premium to be paid by the Applicant for an extended lease of the property is £112, 284 as shown on the attached valuation. This sum is to be paid as to £75,661 to the Respondent and £36,623 to the Intermediate Landlord.**

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### Reasons

1. The Applicant seeks a determination pursuant to s.48 Leasehold Reform Housing and Urban Development Act 1993.
2. The hearing of this matter took place before a Tribunal sitting in London on 10 December 2019 at which Ms C Crampin of Counsel represented the Respondent freeholder and Mr H Webb of Counsel represented the Intermediate Landlord. The Applicant tenant did not appear and was not represented.
3. The Applicant and Respondent had agreed between them the upper limit of the premium to be paid by the Applicant and for that reason the Applicant felt it was not necessary to be present at the hearing where the outstanding issue before the Tribunal concerned only the Respondent and the Intermediate landlord.
4. An application on behalf of the intermediate landlord to be joined as a party was granted by the Tribunal.
5. On behalf of the Respondent the Tribunal heard evidence from Mr Loizides and for the Intermediate Landlord evidence was given by Ms Tolgyesi.
6. The sole issue which the Tribunal was asked to determine was the diminution in value of the respective interests of the Respondent Freeholder Superior and the Intermediate Landlord. Other criteria had been agreed by the parties' representatives prior to the hearing and these were accepted by the Tribunal.
7. The Tribunal considered that it would not be proportionate to inspect the subject property and was not asked by the parties to do so.
8. The lease which is the subject of this application was originally granted by the Intermediate Landlord to the Tenant in 1967. However the Intermediate Landlord's own interest was extended and varied by consent of the parties on 10 April 2001 ('the 2001 deed') the effect of which was to create a new term of 125 years as from that date. This means that the Intermediate Landlord's estate currently has a reversion of 60.54 years after the expiry of the 46.87 years of the tenant's current term during which he will be entitled to collect ground rent from the tenant under the terms of the subject lease. The interest which the Tribunal is being asked to value is of that 60.54 year reversionary period.
9. For the Respondent landlord it was argued that the Intermediate Landlord's 60.54 year reversionary interest had no or little value because of the presence

of a clause in the deed of variation which severely restricted the Intermediate Landlord's ability to deal with the property either during the currency of the present underlease or between the period between the term date of the tenant's lease and that of the Intermediate landlord.

10. The interpretation of that clause has a bearing on the value of the Intermediate Landlord's interest and its wording, the salient part of which is set out below, was considered by the Tribunal in conjunction with the arguments put forward by the parties.

11. Clause 4.3 of the deed of variation provides:

*'that there shall be added to the end of clause 2 (xvii) of the lease the following proviso :*

*"PROVIDED THAT Notwithstanding anything herein contained the lessee shall not extend the term of any existing underlease of any part of the demised premises grant any new lease tenancy or licence or enter into any other agreement relating to the whole or any part of the said property ("Dealing") without the consent of the lessor which consent may be withheld for any or no reason and in respect of any dealing the following provisions shall apply:"*

[there follow restrictions relating to the freeholder's absolute right to impose conditions on the dealing , provisions for payment of the entire premium to the freeholder and costs]

- 12 At first sight this clause would appear to be an attempt to exclude or limit the effect of the provisions of the 1993 Act, but having considered section 93 of the Act the Tribunal concluded that it did not per se infringe either the anti-exclusion provisions of that section or Part II of Schedule 13 relating to the calculation of the premium.
- 13 It was initially argued by the freeholder's Counsel that the present application for an extension amounts to a 'dealing' within the scope of the 2001 deed so that the entire amount of any premium should be paid to the freeholder. Although the freeholder has now withdrawn from that position she still maintains that the effect of the 2001 deed is to remove any significant value from the intermediate reversion. Her position as expressed in Mr Lozides' evidence is that the diminution of the intermediate landlord's interest can only be assessed by reference to its loss during that 60.54 year period of the annual ground rent of £55 paid by the tenant under the terms of the sub-lease for the 46.87 years extant on that lease. Mr Lozides calculated the proportion of the premium due to his freeholder client's as £110,797 with the intermediate landlord receipts of £1,524 Their expert included compensation of only £802 for the loss of any reversion to the intermediate leaseholder.
- 14 Although it was conceded by the Intermediate Landlord that the provisions of the 2001 deed were very restrictive they maintained that it did not strip the intermediate reversion of all value. Various suggestions were made as to the use to which the property could be put during this period without infringing the terms of the 2001 deed. These included using the property for storage, use

as overnight accommodation for a director of the intermediate landlord company, use as accommodation for a caretaker employed by the intermediate landlord, use as a restraint on the landlord's ability to develop the property. All or any of these uses would be of some tangible benefit to the intermediate landlord, even taking into account his continuing liability during that period to pay outgoings and comply with repairing obligations under its own lease. The Intermediate landlord suggested that an assignment of the lease would not infringe the clause. The Tribunal disagrees with this contention since an assignment, whether or not preceded by a contract, takes effect as a transfer of legal estate and in the Tribunal's view would fall within the restrictions of the clause.

- 15 The Intermediate landlord's valuer had prepared her report on the premise that the 60.54 reversionary period did indeed have some value which she calculated as representing a premium of £107,846 with a balance of £4,454 being payable to the Respondent freeholder. The intermediate landlord's valuer argued they would enjoy the benefit of the full reversion after 46.87 years had expired. She calculated this reversionary interest value at some £59,072.
- 16 Having considered the evidence put forward by both parties the Tribunal accepts and supports intermediate landlord's argument that the 60.54 year reversion does have a material value. It also considers that the effect of the deed of variation has some detrimental effect on the Respondent's own reversionary interest in that it delays the freeholder's right to absolute possession for another 60.54 years.
- 17 The Tribunal had identified the likely benefits of the reversionary interest to the superior and intermediate landlords at the hearing. In exchanges with the parties the Tribunal sought advice from both Experts on the value they perceived of the possible outcomes from the reversionary interest and the likelihood of their occurrence. Neither Expert proffered an opinion on probability of occurrence, value or a basis for assessment of their value.
- 18 After careful consideration the Tribunal decided the control exercised by the superior landlord of the reversion was most likely to occur and generate greater value than the reversionary rights afforded the intermediate landlord under the 2001 deed provisions. The maximum value ascribed to the reversionary interest by the Experts is some £59,072. They were unable to accept all this benefit would be receivable by the superior landlord.
- 19 The Tribunal has experience and knowledge of market rents for one bedroomed flats in the same locality as the subject. They are also aware that under the 2001 deed the intermediate landlord is responsible for a proportion of the maintenance costs. The Tribunal had regard in their assessment of the likely net benefit of occupation afforded to the intermediate landlord under the 2001 deed during some or all of the reversion.
- 20 Detailed assessment of the likely value of the possible reversionary outcomes is very difficult given the uncertainty surrounding how and for how long the intermediate landlord would choose to benefit from the reversion. Also unknown is the response at reversion of the superior landlord. These uncertainties make quantification of the value of the reversion very difficult.

- 21 The occupational value forms some basis for an assessment conditioned by the restrictions placed on assignment and other dealings under the deed. Despite this provisional basis of value the Tribunal had ultimately to adopt a series of assumptions about the most likely benefits from the 60.84 reversion and to whom these benefits would accrue.
- 22 On balance, the Tribunal considers that the balance of the interests between the Respondent freeholder and the Intermediate landlord would be fairly represented by an approximate 70:30 split. Working with the figures already agreed by the parties and as shown on the attached valuation this results in an actual split of 67% (£75,661) of the premium being payable to the Respondent freeholder and 33% (£36,623) to the Intermediate Landlord.

**The Law**

18. Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993 (The Act) provides that the premium to be paid by the tenant for the grant of a new lease shall be the aggregate of the diminution in the value of the landlord's interest in the tenant's flat, the landlord's share of the marriage value, and the amount of any compensation payable for other loss.

The value of the landlord's interests before and after the grant of the new lease is the amount which at the valuation 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 assumption that the tenant has no rights under the Act to acquire any interest in any premises containing the tenant's flat or to acquire any new lease.

Para 4 of the Schedule, as amended, provides that the landlord's share of the marriage value is to be 50%, and that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil. Para 5 provides for the payment of compensation for loss arising out of the grant of a new lease.

Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

Judge F J Silverman

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As Chairman

.....24 December 2019 .....

Note:

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.

| <b>Property: 21 Craven Lodge, 15-17 Craven Hill London W2 3ER</b>  |   |                        |                    |                      |
|--|---|------------------------|--------------------|----------------------|
| Reference: BG/ON/OOBK/OLR/2019/0820  |   |                        |                    |                      |
| <b>Present occupational Lease and Valuation Data</b>   |   |                        |                    |                      |
| Lease Term:  |   | 29/09/1966             |                    |                      |
| Lease Expiry date:   |   | 28/09/2065             |                    |                      |
| Unexpired term as at valuation date:   |   | 46.87                  | years              |                      |
| Date of Valuation  |   | 05/11/2018             |                    |                      |
| Rent receivable by landlord:   |   |                        |                    |                      |
| 46.87 years  | £ | 55                     |                    |                      |
| <b>Head Lease Terms:</b>   |   |                        |                    |                      |
| Lease to expire:   |   | 09/04/2126             |                    |                      |
| Unexpired term   |   | 107.43                 |                    |                      |
| Present Ground rents (pa0  | £ | 1,610                  |                    |                      |
| <b>Proposed Occupational Lease:</b>  |   |                        |                    |                      |
| Expirt date following lease extension  |   | 18/09/2155             |                    |                      |
| Unexpired term   |   | 136.87                 |                    |                      |
| Ground rent  |   | Peppercorn             |                    |                      |
| <b>Values</b>  |   |                        |                    |                      |
| Extended lease value on statutory terms  | £ | 575,000                |                    |                      |
| Notional Freehold  | £ | 580,808                |                    |                      |
| LHVP with current term of 46.87 years unexpired  | £ | 409,470                | Relativity         | <b>70.50%</b>        |
| LVVP with 60.54 years unexpired  | £ | 550,490                | Relativity (2)     | <b>94.78%</b>        |
| Capitalisation rate (%)  |   | <b>6.50</b>            |                    |                      |
| Deferment rate (%)   |   | <b>5.00</b>            |                    |                      |
| <b><u>Diminution of Headlesses interest</u></b>  |   |                        |                    |                      |
| Current term value   |   |                        | £ 802              | £ 802                |
| Reversion  |   |                        |                    |                      |
| LVVP with 60.54 years unexpired  | £ | 550,490                |                    |                      |
| Deferred @ 46.87 years @ 5%  |   | 0.10159                | £ 55,925           |                      |
| Reduced by an allowance to reflect the user restriction and other limitations within Deed of variation. A reduction of approximately 2/3rds is made to head lease value to reflect the terms of the deed of variation.                             |   |                        |                    |                      |
| Less   |   |                        | £ 37,471           |                      |
| Value to headlesse at end of current term  |   |                        | £ 18,454           | £ 18,454             |
| Diminution in value of headlesses's interest   |   |                        |                    | £ 19,256             |
| <b><u>Diminution in value of Freeholders Interest</u></b>  |   |                        |                    |                      |
| Reversionary value prior to grant  | £ | 580,808                |                    |                      |
| PV of £1 in 107.43 years at 5%   |   | 0.00529                | £ 3,074            |                      |
| Enhanced by a supplement to reflect the use and other beneficial interests conferred by the deed of variation. The reversionary interest prior to grant is increased by a sum approximately 2/3rds of the share of headlease value prior to grant. |   |                        |                    |                      |
| Freeholders interest before lease extension  |   |                        | £ 37,450           |                      |
| Less   |   |                        | £ 40,513           |                      |
| Reversionary value after grant   |   | £580,808               |                    |                      |
| PV of £1 in 136.87 years at 5%   |   | 0.00126                | £ 731              | £ 731                |
| Diminution in value of freeholders interest  |   |                        |                    | £ 39,782.11          |
| <b><u>Calculation of marriage value</u></b>  |   |                        |                    |                      |
| <b>Value of interests after marriage</b>   |   |                        |                    |                      |
| Value of extended lease  |   | £575,000               |                    |                      |
| Headlesses proposed interest   |   | £0.00                  |                    |                      |
| Freeholdersproposed interest   |   | £730.89                |                    |                      |
|  |   |                        | £ 575,731          |                      |
| <b>Value of interests before marriage</b>  |   |                        |                    |                      |
| Value of Leaseholders existing interest  |   | £409,470               |                    |                      |
| Headlesse's present interest   |   | £19,256                |                    |                      |
| Freeholders present interest   |   | £40,513                |                    |                      |
|  |   |                        | £ 469,239          |                      |
| Total marriage value   |   |                        | £ 106,492          |                      |
| <b>Landlords share</b>   |   |                        | 50.00%             |                      |
| Marriage value at 50%  |   |                        |                    | £ 53,246             |
| All landlords existing value   |   |                        |                    | £ 59,038             |
| Premium payable  |   |                        |                    | £ 112,284            |
| <b>Apportionment of price payable among the landlords</b>  |   |                        |                    |                      |
|  |   | Diminution in interest | as % of diminution | Marriage value share |
| Freeholder   |   | £39,782                | 67.38%             | £ 35,879             |
| Headlesse  |   | £19,256                | 32.62%             | £ 17,367             |
| <b>Total</b>   |   | <b>£59,038</b>         | <b>100.00%</b>     | <b>£ 53,246</b>      |
|  |   |                        |                    | Total receivable     |
|  |   |                        |                    | £75,661              |
|  |   |                        |                    | £36,623              |
|  |   |                        |                    | £112,284             |

