

**LON/00AP/OLR/2009/0021****DECISION OF THE LEASEHOLD VALUATION  
TRIBUNAL ON APPLICATION UNDER SECTION 48 OF  
THE LEASEHOLD REFORM, HOUSING & URBAN  
DEVELOPMENT ACT 1993**

Address: 16 Langham Close, Langham Road, London, N15  
3LD

Applicant: Mr Michael McGarvey

Respondent: Twinsectra Limited

Application: 16 January 2009

Inspection: 7 May 2009

Hearing: 6 May 2009

Appearances:**Tenant**

Mr Duckworth	Counsel
Mr A. Chapman FRICS	Chartered Surveyor
Mr McGarvey	Leaseholder
Mr Madden	Leaseholder

For the Applicant

**Landlord**

Mr A E Fanshawe MRICS	Chartered Surveyor, Douglas & Gordon
-----------------------	--------------------------------------

For the Respondent

Members of the Tribunal

Mr I Mohabir LLB (Hons)  
Mr N. Martindale FRICS

**IN THE LEASEHOLD VALUATION TRIBUNAL**

**LON/00AP/OLR/2009/0021**

**IN THE MATTER OF SECTION 48 OF THE LEASEHOLD REFORM,  
HOUSING & URBAN DEVELOPMENT ACT 1993**

**AND IN THE MATTER OF 16 LANGHAM CLOSE, LANGHAM ROAD,  
LONDON, N15 3LD**

**BETWEEN:**

**MICHAEL McGARVEY**

**Applicant**

**-and-**

**TWINSECTRA LIMITED**

**Respondent**

---

**THE TRIBUNAL'S DECISION**

---

***Introduction***

1. This is an application made by the Applicant pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) ("the Act") to determine the terms and dispute for the grant of a new lease in respect of the property known as 16 Langham Close, Langham Road, London, N15 3LD ("the subject property"). The only term in issue is the premium to be paid by the Applicant to the Respondent for the grant of the new lease. The Tribunal was told by the parties that, save for this matter, the other lease terms had been agreed.
2. The Applicant is the present leaseholder of the subject property, having taken an assignment of the lease dated 16 May 1993 granted by the Respondent to

Pierre Michael Bichara for it term expiring on the 24 day of March 2034 from the same date.

3. By a Notice of Claim dated 3 October 2008 and served pursuant to section 42 of the Act, the Applicant exercised the right to claim the grant of a new lease in respect of the subject property for a term expiring 90 years after the term date of the existing lease, at a ground rent of one peppercorn and otherwise on the same terms as the existing lease. The Applicant proposed a premium of £30,000 for the new grant.
4. By a Counter Notice dated 7 November 2008, the Respondent admitted the Applicants right to acquire a new lease. It also agreed the proposed terms on which the new lease would be granted save for the proposed premium and counter proposed the sum of £54,200.
5. It seems that the parties were unable to agree the premium to be paid and, on 16 January 2009, the Applicant applied to the Tribunal for that determination to be made.

### ***The Issues***

#### ***(a) Matters Agreed***

6. Of these are set out in the statement of agreed facts annexed to this Decision.

#### ***(b) Matters Not Agreed***

7. The remaining matters in issue were:

- (i) The Freehold Value of the Flat

The Applicant made no distinction between the freehold and extended lease values. The Respondent applied a 1% uplift from the extended lease value and contended for a figure of £140,000.

- (ii) The Extended Lease Value of the Flat

The Applicants and the Respondent contended for values of £110,000 and £138,600 respectively.

(iii) The Existing Lease Value of the Flat

The Applicants and the Respondent contended for values of £70,000 and £78,400 respectively.

Each of these issues is considered below.

***The Relevant Law***

8. The valuation principles applied by the Tribunal in determining the premium to be paid by the Applicant are set out in Schedule 13, Part II of the Act. The Tribunal did not deem it necessary to set out those valuation principles here, as they are self evident and both parties were professionally represented in this matter.

***Inspection***

9. On 7 May 2009, the Tribunal externally inspected the building generally and the internal parts of Flat 2 and the subject property together with a number of the other comparable properties relied on by the parties. The subject property comprised 3 rooms, hall and bathroom all in fair condition. The flat was accessed from an internal, shared staircase serving 6 flats and forming part of a three storey block, constructed in the 1930's, set within gardens.

***Hearing***

10. The hearing in this matter took place on 6 May 2009. The Applicant was represented by Mr Duckworth of Counsel. The Respondent was represented by Mr Fanshawe MRICS, a Chartered Surveyor from the firm of Douglas & Gordon.
11. Expert evaluation evidence on behalf of both parties had been provided in reports prepared by Mr Chapman FRICS and Mr Fanshawe MRICS respectively, both of which are dated 30 April 2009.

***The Applicant's Case***

12. In opening, Mr Duckworth drew the Tribunal's attention to an earlier Tribunal determination dated 17 October 2007 ("the earlier decision") made by Mr

Madden, the leasehold of several flats in the building, where is essentially the same issues that fell to be determined in this application were considered. Whilst Mr Duckworth accepted that the earlier decision was not strictly binding of this Tribunal, nevertheless, he submitted that it was highly persuasive.

13. At paragraph 15 of the earlier decision, the Tribunal had concluded that the common parts of the property were generally in an appalling condition and that the grounds required substantial work in order to bring them in a reasonable condition. By way of background, Mr Madden gave evidence on behalf of the Applicant that, since the earlier decision, nothing had been done to the common parts and none of the major works required had been carried out. The remaining squatters into flats had only been evicted some weeks earlier. The only improvements that he had made since the earlier decision had been purely cosmetic by pruning the trees and the installation of new external doors to the common entrances of the building. His reason for doing so was that he would not be able to let his vacant flats. Nevertheless, he maintained that drug users continued to use the bin area and, less so, the common parts as a lavatory and there was a continuing problem with litter.
14. Mr Madden told the Tribunal that he had purchased the two flats from which the squatters had been evicted for £70,000 each. He had been the only purchaser, as the flats had not been marketed on the open market. In cross-examination, he said that both flats also had similar unexpired terms of approximately 25 years. He had refurbished them by installing new doors and windows because they could not be sold in their former condition. In his opinion, he believed that the market value of the flats was £70,000.
15. The Tribunal also heard evidence from the Applicant, Mr McGarvey, that the condition of the building had remained unchanged since the earlier decision and that the flats located off the stairwell of the subject property had mainly been affected by squatting. He said that the subject property had been vacant since January of this year. It had been redecorated in the interim and was presently vacant.

16. By way of background, Mr Chapman also concurred with the evidence given by the Applicant and Mr Madden that the overall condition of the building had remained largely unchanged since the earlier decision. On that occasion, he had given expert evidence on behalf of Mr Madden. He had inspected the subject property last year and found that the garden had since been tidied up, but this was simply a cosmetic improvement. The Respondent had not carried out any major structural works in the last 6-7 years.
  
17. Mr Chapman said that the subject property could not be used as a two-bedroom flat because it was approximately 500 ft.<sup>2</sup> in size. Indeed, the lease only referred to the property being a one bedroom flat. To create a two-bedroom flat it will be necessary to sacrifice one the room for this purpose. In his opinion, this was the worst block of flats in this part of London. In terms of its condition, it was in a downward spiral because the continuing lack of maintenance made it more unattractive and at the same time the unexpired term of the leases was becoming shorter. He concluded that an ordinary purchaser would not buy a flat in this block because it was regarded as a problem property.
  
18. In his somewhat brief report, Mr Chapman set out transaction evidence in relation to four comparable properties. It was not entirely clear to the Tribunal what reliance, if any, he placed on this evidence in his valuation. Save for the purchase price of one flat in the same building in November 2007, it was not known how the stated values of the other comparative properties were relevant to this matter and whether they related to leases of a similar term. Indeed, Mr Chapman discounted one comparable altogether at the hearing. He said that the subject property was not a normal property with a short lease. Moreover, there were hardly any comparable property transactions as at the valuation date. His valuation evidence appears to be largely based on the findings made in the earlier decision, his own knowledge and experience and "feeling".

18. In relation to the subject property, Mr Chapman saw no distinction should be made between the freehold and extended lease values, as was found by the last Tribunal. He simply contended for a figure of £110,000 on the basis that, although market values had increased since the earlier decision, values had fallen back since then to approximately the same level. When asked by the Tribunal, Mr Chapman said that market values had stabilised since Christmas 2008, having declined by approximately 20% since March 2008. This conclusion was based entirely on his own knowledge and experience. In his opinion, by having a share of the freehold, there was no additional value between this and the extended lease value.
19. As to the existing lease value, Mr Chapman contended that this was £70,000. He seemed to arrive at this valuation in three ways. Firstly, it appeared to be based on the purchase price recently paid by Mr Madden for two of the flats in the building. He contended that the flats would not have been sold without having first obtained an independent valuation, although he accepted there was no evidence before the Tribunal of this. Secondly, Mr Chapman appeared to place some reliance on the sale of 4 Langham Close in November 2007 for £76,500. He said that the purchase price was at the peak value in the market at the time and this has since declined by approximately 20%. This flat was identical to the subject property with a lease granted on the same terms and with the same unexpired term. Mr Chapman said that his other comparables were substantially better properties and he placed no reliance on these. Thirdly, Mr Chapman said his valuation figure of £70,000 for the existing lease value was also based on his "feeling".

### ***The Respondent's Case***

20. In his report, Mr Fanshawe arrived at the freehold value by looking for market evidence of sales of one bedroom and small two-bedroom flats proximate to the subject property. He obtained four comparable property transactions, which appear at Appendices 4-7 of his report. He then adjusted the selling prices to be valuation date using the Land Registry House Price Index. In cross-examination, he accepted the proposition that the Land Registry Index included a wide divergence of properties, both in terms of condition and price.

He also accepted that a degree of caution had to be exercised when applying the index, but he still maintained that it was a useful tool.

21. Mr Fanshawe contended that, applying the Land Registry Index to the earlier Tribunal's finding of £110,000 for the freehold/long lease value, and updated value of £131,318 was obtained. He further contended that, since the earlier decision, the building had been noticeably improved and that Tribunal had said (at paragraph 19 in the decision) that if the property had been in reasonable condition it would command a value of £130,000 for the extended lease. This appeared to lend support for his figure of £131,318. However, he accepted in cross-examination that overall the building was still in a poor condition. He also accepted that a disadvantage of this property was its close location to the bus and underground station.
22. In addition, Mr Fanshawe placed reliance on the transaction evidence provided by the sale of the closest comparable property, 176 The Sandlings. He said that this property was a one-bedroom second-floor flat that provided smaller accommodation than the subject property. It was sold in June 2008 for £149,000 and was subject to a lease with an unexpired term in excess of 100 years. When adjusted for time, using the Land Registry Index, an extended lease valuation of £142,613 was produced. In cross-examination, he conceded that he had used the same comparable at the last hearing and he accepted that this property and his other comparables were better properties than the subject property and did not suffer from the same levels of social nuisance.
23. Mr Fanshawe further argued that the subject property could be regarded as a two-bedroom flat and would, in his view, be marketed as such by an estate agent. Therefore, if valued on this basis based on another of his comparables (Cedar House), an adjusted valuation of £162,865 was obtained. In the alternative, he said that if the Tribunal decided that the subject property could only be used as a one-bedroom flat, then he contended for an extended lease value of between £135-140,000.



24. Mr Fanshawe concluded that, having spoken to four local estate agents in the locality and taking their advice, also taking into account the transaction information provided from his comparables and the previous Tribunal decision, the value of the subject property on a freehold basis (including the condition of the building) would be £140,000.
25. Mr Fanshawe then discounted 1% from the freehold value to arrive at an extended lease value of £138,600. Although this had not been accepted by the earlier Tribunal, he nevertheless maintained that it was especially important for a leaseholder to have a say in the running of this building and a differential in the valuation for the freehold interest should be made.
26. As to the existing lease value, Mr Fanshawe accepted that there was no direct market evidence of "no Act" world transactions regarding short leases of this kind. Conventionally, the existing lease value is now expressed as a percentage of relativity figure of the freehold value. To arrive at this figure, Mr Fanshawe adopted three approaches.
27. Firstly, Mr Fanshawe had regard to the earlier decision when the relativity figure agreed between himself and Mr Chapman was 58%. The present lease is now 2.19 years shorter. The relativity charts in his report (at Appendix 9) indicated a reduction of just over 1% per annum should be applied, which produced a relativity figure of 56%.
28. Secondly, Mr Fanshawe also had regard to various relativity tables and charts (also found at Appendix 9). Of these, he placed greatest reliance on the Beckett and Kay "Graph of Graphs", which indicated a relativity figure of 56%. He had made no adjustment for "rights under the Act" because, in his view, this could not be done accurately and would distort any valuation. Mr Fanshawe accepted that there was a "London bias" to the Graph of Graphs.
29. Finally, Mr Fanshawe also considered agreements reached by his colleagues regarding flats on similar lease lengths in similar suburban locations. An analysis of five transactions produced relativities varying from 60% to 51%.

Taking all of the above evidence into consideration, it was Mr Fanshawe's opinion that a lease with an unexpired term of 25.47 years would have a relative value of 56% to the freehold value.

30. Based on the conclusions reached in his report, Mr Fanshawe's opinion was that a premium of £50,200 should be paid by the Applicant for the grant of a new lease.

### ***Decision***

#### ***Freehold Value***

31. At paragraph 19 of the earlier decision, the Tribunal had rejected the same argument advanced by Mr Fanshawe that a 1% adjustment should be made as between the freehold and extended lease values. In that instance, the Tribunal concluded that it was not appropriate because the flats that were the subject matter of that application were small and low value properties. In the present case, the subject property is virtually identical and for the same reasons, the Tribunal concluded that no adjustment should be made in value between the freehold and extended lease values.

#### ***Extended Lease Value***

32. It was incumbent on the Tribunal to decide in principle whether the subject property should be regarded as a one or two-bedroom flat. Mr Fanshawe had contended, in the alternative, that the subject property could be regarded as a two-bedroom flat. Mr Fanshawe had advanced the same argument at the previous hearing. At paragraph 15 of the earlier decision, the Tribunal had firmly rejected that argument on the basis that it was not appropriate to the floor area of available and the increased pressure placed on the kitchen and living area by this usage. Again, given that the subject property is identical, the Tribunal had little difficulty in concluding, for the same reasons, that its determination should be based on the fact that it should be regarded as a one-bedroom flat.
33. For the avoidance of doubt, the Tribunal placed no reliance on the evidence given by Mr Chapman regarding the extended lease value. Principally, he

appeared to rely on the determination made in the earlier decision to contend for a value of £110,000. Mr Chapman had made little or no attempt to obtain and analyse any market evidence and had simply asserted that market values have increased and decreased in the interim. His valuation evidence was merely based on his perceived knowledge and experience and "feeling". Moreover, Mr Chapman had made no adjustment the time to reflect his valuation as at the valuation date. In the Tribunal's view, to place any reliance on his evidence, or lack of it, would make any finding unsafe. Therefore, the Tribunal primarily had regard to the evidence of Mr Fanshawe on this issue and adopted his use of the Land Registry Index to adjust for time, being the only evidence before it to do so.

34. The Tribunal had regard to two of the comparables relied on by Mr Fanshawe. These were 176 The Sandlings and 7 Gardener Court (Appendix 4). The transaction details of the former have already been set out above earlier. The latter is a one bedroom first-floor flat and is subject to a lease with an unexpired term in excess of 100 years. It was sold in September 2008 for £137,000.
  
35. The Tribunal considered these two comparables to be the most relevant because they were nearest in location to the subject property. In addition, the Tribunal considered that location was an important factor for a one-bedroom flat, such as the subject property, because convenience of transport for the tenant of such a flat was an important feature. On balance, this outweighed the noise nuisance from the nearby bus station, which was not, on inspection, intolerable. In the Tribunal's view, both of these comparables were equally matched. Therefore, adjusting their respective purchase prices to the valuation date using the Land Registry Index produced valuations of £132,674 (Gardener) and £138,974 (Sandlings). The average of these two figures provides a valuation of approximately £135,000. The Tribunal then considered that a further deduction of £10,000 was necessary to reflect the presence of squatters, their inevitable effect on the common part and the overall external condition of the building. The Tribunal determined, therefore, the extended lease value of the subject property was £125,000.

***Existing Lease Value***

36. Again, the Tribunal please no reliance on the evidence of Mr Chapman that of the existing lease value of £70,000. This figure had no evidential basis whatsoever. Therefore, the Tribunal only had regard to the evidence adduced by Mr Fanshawe on this issue. The Tribunal concluded that, whilst the use of relativity tables and charts was unsatisfactory, as was expressed by the Lands Tribunal in *Arrowdell*, nevertheless this was the best evidence available to the Tribunal. He did not consider an analysis of settlement evidence to be appropriate because, inevitably, these settlements take place in the "Act world" and are tainted by such factors as the *Delaforce* effect. Accordingly, using the Beckett and Kay Graph of Graphs, the Tribunal determined that a relativity of 56% should be applied to the freehold value thereby providing a valuation figure of £106,343 for the existing lease value.
37. Having regard to the findings made above, the Tribunal determined that the premium to be paid by the Applicant to the Respondent for the grant of a new lease is **£45,672**. The Tribunal's valuation is annexed to this Decision.

Dated the 9 day of June 2009

CHAIRMAN.....

Mr I Mohabir LLB (Hons)

## Lease surrender and re-grant - Valuation

16 Langham Close, Langham Road, London N15

Valuation date 3 October 2008

### Notes

Unexpired term 25.47 years at ground rent £25 pax, to be surrendered

Total new lease length 115.47 years at peppercorn, to be granted.

Value of tenant's interest with new lease in condition at valuation date, £125,000.

Present value with existing lease @ 56% (Beckitt and Kay) of £104,000; £70,000.

Term yield 8%

Reversion yield 5%

Landlords share of marriage value 50%

### Value of landlord's existing interest

<b>Term</b>			
GR	£25		
YP 25.47 years @ 8%	10.7396x		
		£268	
<b>Reversion</b>			
Capital Value (extended lease)	£125,000		
PV £1 in 25.47 years @ 5%	0.2886		
		£36,075	
<b>Total</b>			<b><u>£36,343</u></b>

### Marriage Value after new lease grant

Value of tenant's interest with new lease	£125,000		
Value of landlord's interest with new lease	£ 0		
<b>Total value of interests after new lease</b>		<b>£125,000</b>	
Value of tenants' existing interest	£ 70,000		
Value of landlord's existing interest	£ 36,343		
<b>Total value of existing interests</b>		<b>£106,343</b>	
Total Marriage Value		£ 18,657	
<b>Landlord's share of marriage value @ 50%</b>			<b><u>£9,329</u></b>

**Premium to be paid for Landlord's interest now** **£45,672**