

4239



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

**Case reference** : LON/00AN/OLR/2015/1503

**Property** : 53a Quarrendon Street, London  
SW6 3ST

**Applicant** : Mr Charles Brougham

**Representative** : Mr Kevin Broadhurst,  
Jackson Green & Preston

**Respondent** : Ms Carmen Florensa

**Representative** : In person

**Type of application** : Section 48 of the Leasehold  
Reform, Housing and Urban  
Development Act 1993 (the "Act")

**Tribunal members** : Judge Pittaway  
Mr N Martindale FRICS

**Date of determination  
and venue** : 28 January 2016 at  
10 Alfred Place, London WC1E 7LR

**Date of decision** : 11 February 2016

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**DECISION**

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## **Summary of the tribunal's decision**

The appropriate premium payable for the new lease is **£224,071.00**.

### **Background**

1. This is an application made by the applicant leaseholder pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the premium to be paid for the grant of a new lease of 53a Quarrendon Street, London SW6 3ST (the "**property**").
2. By a notice of a claim dated 20 January 2015, served pursuant to section 42 of the Act, the applicant exercised the right for the grant of a new lease in respect of the subject property. At the time, the applicant held the existing lease granted on 25 March 1959 for a term of 99 years from 25 March 1959 at an annual ground rent of £6.30. The applicant proposed to pay a premium of £150,000.00 for the new lease.
3. On 19 March 2015, the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £341,600.00 for the grant of a new lease.
4. On 16 September 2015 the applicant applied to the tribunal for a determination of the premium.

### **The issues**

#### **Matters agreed**

The following matters were agreed and/or not disputed by either party at the hearing:

1. The subject property is a self-contained maisonette on the first and second floors of a house converted into two flats on the Peterborough Estate in Fulham;
2. The gross internal floor area is 1221 square feet;
3. The valuation date: 20 January 2015;
4. Unexpired term: 43.14 years;
5. Ground rent: £6.30 throughout the term;

#### **Matters not agreed**

The following matters were not agreed:

1. Capitalisation of ground rent;
2. Deferment rate;

3. The existing leasehold value;
4. The extended lease value;
5. Relativity; and
6. The premium payable.

### **The hearing**

1. The hearing in this matter took place on 26 January 2016. The applicant was represented by Mr Kevin Broadhurst MRICS. The respondent was unrepresented.
2. The applicant relied upon the expert report and valuation of Mr Kevin Broadhurst dated 18 January 2016. The respondent relied upon the valuation of the first tier tribunal in the case Ms C Stobbs v Ms R Denholm LON/00BK/OLR/2014/0601 dated 26 November 2011 relating to Upper Maisonette, 12 Needham Road London W11. The tribunal heard oral evidence from both Mr Broadhurst and Ms Florensa.
3. At the tribunal's request the applicant provided to the tribunal and to the respondent following the lunch adjournment, copies of the cases referred to below and which were not in the bundles before the tribunal at the start of the hearing.
4. The tribunal inspected the property on 27 January 2016.

### **The law**

1. Schedule 13 of the 1993 Act provides that the premium to be paid by the tenant for the grant of the 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 to the landlord.
2. The diminution in the value of the landlord's interest is the difference between (a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease and (b) the value of his interest in the flat once the new lease is granted. The value of the landlord's interest is the amount which at the relevant date that interest might be expected to realise if sold in the open market by a willing seller (with neither the tenant nor any owner of an intermediate interest buying or seeking to buy) applying the assumption and requirements set out in paragraph 3 of Schedule 13 to the Act.

3. Paragraph 4 of Schedule 13 to the Act provides that the landlord's share in the marriage value is to be 50%, except where the unexpired term of the residue exceeds 80 years at the valuation date when the marriage value shall be taken to be nil.

### **Inspection**

The tribunal inspected the property on the morning of 27 January 2016. It is currently let. The tribunal agrees with Mr Broadhurst's description of the condition; that it is in a reasonable condition but would benefit from rewiring, a new fitted kitchen and cosmetic improvements.

The tribunal also viewed the exterior of the five comparables offered by Mr Broadhurst.

### **The evidence**

#### **Mr Broadhurst**

1. **Capitalisation and deferment rates**

Mr Broadhurst submitted that the term rent should be capitalised at 7% and applied a deferment of 5%. Contrary to his initial valuation he now was of the opinion, in light of the decision in *Roberts v Fernandez [2015] UKUT 106 (LC)*, that there was no evidence in this case to justify a departure from the capitalisation and deferment rates set down in *Sportelli*.

2. **Relativity**

In the absence of evidence from sales of flats with similar lease lengths to the subject property Mr Broadhurst used the Leasehold Advisory Service graph of relativity to ascertain the existing lease value as a percentage of the freehold vacant possession value, adopting a relativity of 74% for a lease with a remaining term of 43.14 years. He had cross checked this percentage against the average of the relativities for a lease of this term obtained from the South East Leasehold graph (75.69%), the Nesbitt & Co graph (70.51%) and the 2002 Savills graph (77.02%), which average was 74%.

3. **Deduction for risk that vacant possession might not be obtained**

Mr Broadhurst submitted that the valuation should take into account the statutory right of the tenant to remain in occupation at the end of the contractual term of the existing lease, with particular reference to the decision of the Upper Tribunal (Lands Chamber) in *Midlands*

*Freehold Limited [2014] UKUT 0304 (LC)* where the rationale of this concept was accepted to apply to cases under the Act as well as under the Leasehold Reform Act 1967.

As to the amount that should be deducted, Mr Broadhurst referred to the 4% discount allowed in the *Midlands case*, where the remaining term was 59 years, and the discount of 20% allowed in the *Clarise Properties Limited Appeal* where the remaining term was 24 years. He submitted that an appropriate deduction in relation to this property, with a remaining contractual term of 43.14 years was 7%.

#### 4. Extended lease value

To establish this Mr Broadhurst considered a number of comparable transactions, adjusting the sale prices achieved for “non-physical features” (e.g. lease length and relativity) and “physical features” (e.g. decorative condition and quality of kitchens/bathrooms).

Mr Broadhurst provided five comparables. He submitted that the two flats in Chiddingstone Street provided the best comparables by reason of their equivalent location to the property, the comparables in Crondace Street and Bradbourne Street to be the least good, and the comparable in Bowerdean Street to rank between the above. Once he have established an adjusted price per square foot per flat he attributed a weighting to each so that to establish an average rent per square foot he took 30% of the rents for Chiddingstone Street, 20% for Bowerdean Street and 10 % for for Crondace Road and Bradsbourne Street to achieve an average rate per square foot of £986.21. This he multiplied by the square footage of the flat to achieve an extended lease value of £1,204,162.41 which he took at £1,200,000.

As to his comparables Mr Broadhurst relied on information provided to him by the selling agents and their particulars as to the sale price achieved, the terms of the leases of the comparables and their condition. The physical features which he considered included decorative condition, quality of the kitchens and bathrooms and the age of the electrics. He did not consider there to be any difference between the comparables and the property as to central heating or the bathrooms. He was unable to comment as to the existence or otherwise of double glazing in the comparables; the property does not have double glazing.

As to whether a property is freehold or leasehold Mr Broadhurst considered there to be a marginal difference in value, the freehold being more valuable, because of the obligations on a tenant in a lease. He did not consider that the term of the lease, if in excess of 80 years was a consideration that needed to be taken into account.

In Mr Broadhurst's opinion between £50,000 and £60,000 needed to be spent on the property to bring it up to a condition equivalent to the comparables.

## **Ms Florensa**

Ms Florensa, not having the benefit of an expert witness, did not approach the valuation in the same manner as Mr Broadhurst had.

5. Ms Florensa objected to the premium being offered because it was significantly less than the initial premium of £341,600.00 that she had been advised by her surveyor that she might achieve. From the evidence given to the tribunal at the hearing it appeared that her surveyor had been disinstructed when he advised her to accept a premium of £230,000.
6. Ms Florensa sought to rely upon the valuation from the First-tier Tribunal decision in relation to 12 Needham Road London W11 *LON/00BK/OLR/2014/0601*, which valuation she included (without the decision itself) in the papers she handed to the tribunal at the start of the hearing. The applicant provided the tribunal with a copy of the decision itself. Ms Florensa considered this valuation to be the basis upon which the tribunal should reach its decision, because the valuation showed that the existing lease was for a term of 43.37 years and that the existing leasehold value was similar, at £881,790. On being questioned by the tribunal as to whether Notting Hill was a good comparable for a property in Fulham Ms Florensa insisted that it was. Mr Broadhurst did not agree, referring to the different location, the different deductions that were made and that it was a different type of property (being above a shop).

## 7. **Premium**

On the basis of the above Mr Broadhurst provided the tribunal with a valuation showing the premium payable for the extended lease to be £218,663.04, say £218,000.00.

## **The tribunal's determination**

### 1. **Capitalisation and deferment rates**

The tribunal agrees with Mr Broadhurst's suggested capitalisation rate of 7% and deferment rate of 5%.

### **Reasons for the tribunal's determination**

There is no reason on the facts of this case to depart from the deferment rate set out in *Sportelli*.

## 2. Relativity

The tribunal agrees with Mr Broadhurst's relativity of 74%.

### Reasons for the tribunal's determination

There was no submission before the tribunal to adopt any other rate.

## 3. Deduction for risk that vacant possession might not be obtained

The tribunal did not accept Mr Broadhurst's submission that a deduction should be made of 7% to reflect the risk to the landlord that she might not be able to obtain vacant possession at the end of the unextended lease term.

In passing they note that if such a deduction had been made it should have been made from the unexpired lease term and not the from the extended lease value as Mr Broadhurst had done in his valuation.

### Reasons for the tribunal's determination

In the *Midland Freeholds Limited* case the Upper Tribunal determined that the discount for such a deduction needs to be decided on the particular facts of each case.

The tribunal considered that such a deduction in this case would be extremely speculative, both as to the percentage deduction suggested and the possibility that the landlord did not obtain vacant possession at the end of the of the existing lease term. There would only be a loss to the landlord if a tenant remained in occupation paying no rent.

## 4. Extended lease value

The tribunal determine that the unimproved freehold value of the flat is £1,209,335; there being no difference between this and the improved freehold value, and the unimproved leasehold value to be 1% less.

### Reasons for the tribunal's determination

There was no difference in this application between the unimproved and the improved freehold value there is therefore no difference between the unimproved and the improved extended leasehold value.

They accepted Mr Broadhurst's deduction of 1% to reflect the difference between the freehold and leasehold value.

Having inspected the comparable properties offered by Mr Broadhurst the tribunal agreed with him that the two properties in Chiddingstone Street offered the best comparables, as adjusted by him in his Expert Report. The tribunal however considered that 35 Bowerdean Street was a less good comparable, being a ground floor flat with a garden, than 8b Bradbourne Street and therefore adjusted the weightings of these two properties from 20% and 10 % respectively to 10% and 20%.

The tribunal accepted Mr Broadhurst's adjustments in respect of each of the comparable properties. They preferred his submission that a buyer would be unlikely to replace a new good quality kitchen to Ms Florensa's submission that any buyer would replace an existing kitchen whatever its condition.

#### **5. Existing leasehold value**

Applying the relativity of 74% to the extended leasehold value the tribunal determine the short leasehold value to be £894,908.

#### **6. The premium**

The tribunal determines the appropriate premium to be **£224,071.00**. A copy of its valuation calculation is annexed as the Appendix to this decision.

**Name:** Judge Pittaway

**Date:** 11 February 2016

#### **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).

## APPENDIX

### Quarrendon Street 53a, SW6 3ST

#### FLAT - Lease Extension

|   |            |
|---|------------|
| Freehold - improved                                 | £1,209,335 |
| Freehold - unimproved                               | £1,209,335 |
| Long LH - unimproved 133.14 yrs (FH -1%)            | £1,197,361 |
| Valuation Date                                      | 20-Jan-15  |
| Expiry of existing lease                            | 24-Mar-58  |
| Existing Term unexpired                             | 43.14      |
| Capitalisation rate                                 | 7.00%      |
| Deferment rate                                      | 5.00%      |
| Relativity  | 74.00%     |
| Short Leasehold value (unimproved) before extension | £894,908   |

#### Diminution of Landlords Interest

##### Landlords Present Interest

###### Term

|                          |       |     |
|--------------------------|-------|-----|
| Ground Rent              | £6.30 |     |
| YP for 43.14 years at 7% | 13.51 | £85 |

###### Reversion

|                           |            |          |
|---------------------------|------------|----------|
| Freehold unimproved       | £1,209,335 |          |
| PV £1 in 43.14 years @ 5% | 0.1219     | £147,418 |

###### Total

**£147,503**

##### Landlords Proposed Interest

###### Reversion

|                            |            |        |
|----------------------------|------------|--------|
| Freehold                   | £1,209,335 |        |
| PV £1 in 143.14 years @ 5% | 0.0015     | £1,814 |

##### Landlords Present less the Proposed

**£145,689**

#### Marriage Value

##### Tenants Proposed Interest

|                                 |          |            |
|---------------------------------|----------|------------|
| Add Landlords Proposed Interest |          | £1,197,361 |
| Less Tenants Present Interest   | £894,908 | £1,814     |
| Less Landlords Present Interest | £147,503 |            |

Total £1,042,411

**Marriage Value** **£156,764**

50% share of marriage value **£78,382**

#### Lease Extension Premium

Landlords Present - Proposed + Marriage share **£224,071**