

2904



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

**Case Reference** : **GM/LON/00AP/OLR/2013/1658**

**Property** : **Flat 2A, 19 Shepherds Hill, London N6 5QJ**

**Applicant** : **Ms Maria Inmaculada Rios-Ternero (1)  
Mr Ricardo Tejero-Trujeque (2)**

**Representative** : **Mr Andrew Lester MRICS**

**Respondent** : **Eurotop Enterprises Limited**

**Representative** : **Mr Alan Cohen FRICS and  
Mr Andrew Cohen MRICS**

**Type of Application** : **Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993**

**Tribunal Members** : **Mr Jeremy Donegan (Tribunal Judge)  
Mr Richard Shaw FRICS (Valuer Member)**

**Date and venue of Hearing** : **29 April 2014  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **09 June 2014**

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**DECISION**

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## **Decision of the tribunal**

- (1) The tribunal determines in accordance with section 48 and schedule 13 of the Leasehold Reform, Housing and Urban Development Act (the 1993 Act) that the premium payable in respect of the grant of a new lease for Flat 2A, 19 Shepherds Hill, London N6 5QJ (the Flat) is £24,303 (twenty four thousand three hundred and three pounds)**
- (2) A schedule setting out the tribunal's calculation of the premium is attached at Appendix 1.**

## **The background**

1. The Applicants are the leaseholders of the Flat. The Respondent is the freeholder of 19 Shepherds Hill, London N6 (the Property), which is four-storey detached, Victorian house that has been converted into five flats.
2. On 17 May 2013 the Applicants served a notice of claim on the Respondent pursuant to section 42 of the 1993 Act, seeking a new lease of the Flat. The notice proposed a premium of £14,310 for the new lease.
3. On 10 July 2013 the Respondent served a counter-notice admitting that on the relevant date the Applicants were entitled to a new lease of the Flat. The counter-notice proposed a premium of £38,000.

## **The application**

4. On 12 December 2013 the Applicants submitted an application to the Tribunal pursuant to section 48 of the 1993 Act, to determine the premium and other terms of acquisition for the new lease. Directions were issued on 30 December 2013.
5. The application was listed for hearing on 29 and 30 April 2014. By the time of the hearing the parties had agreed all of the terms of acquisition save for the premium for the new lease.

## **The hearing**

6. The Applicants were represented by Mr Andrew Lester of AML Surveys and Valuations Limited, who acted as their advocate and expert witness. He qualified as a Chartered Surveyor in 1985 and has considerable experience of valuing properties, including enfranchisement valuations, in the North London area. Mr Lester had

produced two valuation reports, a main report dated 14 April 2014 and an addendum dated 28 April 2014. He also gave oral evidence to the tribunal.

7. The Respondents were represented by Mr Alan Cohen with assistance from Mr Andrew Cohen, both of Talbots Surveying Services Limited. They had produced a joint valuation report dated 15 April 2014. Originally the Respondent instructed Mr Andrew Cohen to act as its expert witness. However he was unfit to appear at the hearing on his own, due to recent surgery. For this reason Mr Alan Cohen appeared as the Respondent's advocate and expert at the hearing.
8. Mr Alan Cohen and Mr Andrew Cohen also have considerable experience of valuing properties in North London. Mr Alan Cohen is a very experienced general practitioner Chartered Surveyor undertaking various types of professional work. Mr Andrew Cohen worked as an estate agent in various areas from 1986 to 2001, when he became qualified as a Chartered Surveyor. He specialises in enfranchisement valuations.
9. The tribunal members were supplied with a hearing bundle that included copies of the application, directions, lease, notice of claim, counter-notice and a statement of agreed facts and matters in dispute. The tribunal were also supplied, separately, with copies of the valuation reports.

### **Inspection**

10. Following the hearing the tribunal inspected the Flat in the presence of the First Applicant. They also inspected the internal common-ways at the Property and viewed the exterior of the property and the comparable properties put forward by the experts, namely 22 Hillside Gardens, 23 Shepherds Hill, 28 Shepherds Hill and 15 Milton Avenue.
11. The Flat consists of an entrance hall, reception room, kitchen, bathroom/wc and two bedrooms and is situated on the raised ground floor, at the rear of the Property. It is approximately 200 metres from Highgate tube station and 1 kilometre from Highgate Village.
12. The interior of the Flat is in good condition but the bathroom and second bedroom are both very small. The exterior of the Property requires redecoration and the internal common-ways are cramped and in poor condition.
13. The Property has a communal rear garden, which is accessed from the side. There is no direct access from the Flat. There is off street parking at the front of the Property, which is used by the leaseholders on a first come, first served basis.

## **The issues**

14. By the time of the hearing the only issues in dispute were the capital value of the flat and the relativity rate. The following matters had been agreed:

Valuation date	17 May 2013
Lease term	99 years from 25 March 1982
Unexpired lease term	67.85 years
Ground rent	£100pa rising to £150pa on 25 March 2029 for the remainder of the term
Capitalisation rate	7%
Deferment rate	5%
Uplift (long lease to freehold)	1%
Gross internal floor area	52 square metres (560 square feet)
Works by leaseholders	re-siting of bathroom and kitchen
Discount for improvements	£0

15. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the disputed issues as set out below.

## **Capital value of the flat**

### **The Applicant's evidence**

16. In his main report, Mr Lester values the premium for the new lease at £19,300. This is based on a long leasehold value for the Flat of £345,000 and a freehold vacant possession value of £348,485, as at the valuation date.
17. Mr Lester makes the point that the Flat is the size of a conventional one bedroom flat for the area and that the two bedrooms have been created by dividing the main room at the rear of the Flat. This means that the bedrooms are rather cramped. Mr Lester also refers to the poor condition of the exterior of the Property and the internal common-ways, which are "in need of an overhaul".

18. Mr Lester also points out that the layout of the flat has changed from that shown on the lease plan in that kitchen is now where the bathroom was. He considers this to be an improvement to the layout, as the kitchen is now larger and closer to the reception room. Leaseholder's improvements are to be ignored when valuing flats under the 1993 Act.
19. Mr Lester expressed the opinion that properties to the west of Archway Road are more desirable and valuable, being within Highgate Village, than those to the east (where the Property is situated). He also pointed out the disadvantage of being close to Archway Road and that Shepherds Hill is a main road, with heavy traffic during rush hour times.
20. Mr Lester relies on the following comparables:

<u>Address</u>	<u>Floor Area (feet<sup>2</sup>)</u>	<u>Sale Date</u>	<u>Sale Price</u>
Flat 2, 28 Shepherds Hill	729	05/03/13	£419,500
Flat 7, 15 Milton Avenue	599	21/05/13	£344,000
Flat 4, 19 Shepherds Hill	1,063	10/06/13	£486,000
22B Hillside Gardens	677	02/07/13	£470,000
Flat 2A, 28 Shepherds Hill	612	22/08/13	£445,000
Flat 3A, 28 Shepherds Hill	640	August 2013	£420,000

21. Mr Lester has analysed the comparables and made various adjustments to reflect their condition, length of lease, location, whether they come with a share of freehold and whether they have access to parking and communal gardens. He has also calculated the price per square foot for the various comparables, which ranged from £457.20 for Flat 4, 19 Shepherds Hill to £734.07 for Flat 2A, 28 Shepherds Hill. Mr Lester's valuation of the Flat at £345,000 would give a price per square foot of £616 (£345,000/560).
22. Mr Lester considers Flat 4, 19 Shepherds Hill to be the best comparable, as it is within the Property, has access to the same amenities as the Flat and sold only a month after the valuation date. Flat 4 is on the 2<sup>nd</sup> floor of the Property, with better views and is almost double the size of the Flat. It was described in the sales particulars, as having "panoramic views".
23. In his addendum, Mr Lester gave information regarding the sale of Flat 4 that he had obtained from one of the current occupants, Mr Chris

Scott. The sale was prolonged for various reasons including the poor condition of the exterior of the Property and the short lease term. The buyer established that major works were required to the Property that will cost in the region of £70,000. The Respondent has recently started a consultation procedure under section 20 of the Landlord and Tenant Act 1986, with a view to undertaking these works. The buyer negotiated a lease extension with the Respondent at a premium of £36,000. Land Registry entries for Flat 4 reveal that the lease was extended to 189 years from 25 March 1982, on 07 June 2013 and this was a statutory extension under the 1993 Act.

24. In his oral evidence, Mr Lester pointed out that the Property is on the north side of Shepherds Hill. As the Flat is at the rear of the Property, it has a north facing outlook and is fairly dark.

### **The Respondent's evidence**

25. Mr Alan Cohen (referred to as Mr Cohen from now on) values the premium for the lease extension at £33,624. This is based on a value of the Flat, with an extended lease, of £430,000.
26. Mr Cohen only relied on comparables in Shepherds Hill, pointing out that some of Mr Lester's comparables were in inferior locations. He also relied on Flats 2, 2A and 3A, 28 Shepherds Hill. Mr Lester provided a third comparable, namely the sale of Flat 3, 23 Shepherds Hill at £498,000 in April 2013. This property is a raised ground floor flat with two bedrooms, measuring 766 square feet, is in good order and has a share of the freehold.
27. After making various adjustments, Mr Cohen has calculated the prices per square foot for his comparables, as follows:

Flat 2, 28 Shepherds Hill	£590
Flat 2A, 28 Shepherds Hill	£725
Flat 3A, 28 Shepherds Hill	£675
Flat 3, 23 Shepherds Hill	£654

28. Mr Cohen, in referring to one of Mr Lester's comparables, said he is familiar with Flat 4 at the Property and pointed out that it has pitched ceilings, which reduces the usable area in the flat. He described the flat as "extremely dull" and in "very poor condition". Mr Cohen also pointed out that being on the second floor mean that occupants of the flat had to climb an additional flight of stairs. The views from the flat are unlikely to affect the value, as prospective buyers look at "the

overall package". Mr Cohen accepted that flats in the same building are normally good comparables. However the various deficiencies in Flat 4 means that is not as strong a comparable, as those he relies upon.

29. Mr Cohen's approach when valuing properties is to stand back and consider whether the price is realistic, rather than being "overly mathematical". He does not think the location of the Property on the north side of Shepherds Hill makes any difference. Further Mr Cohen is of the view that most flat owners are not interested in communal gardens.
30. Mr Cohen made the point that many of the sales relied upon by Mr Lester would have been agreed in late 2012. By the valuation date, the market had improved considerably. Adopting a "stand back" approach, he considers that the flat would have achieved £430,000 if marketed in May 2013 with a long lease.

### **The tribunal's decision**

31. The tribunal determines that the capital value of the Flat with an extended lease, as at the valuation date, was £366,800.

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

32. The tribunal concluded that the properties in Shepherds Hill were the best comparables (including the sale of Flat 4 at the Property). The condition of the exterior of the Property is inferior to that at 23 and 28 Shepherds Hill. Further the flats at 23 and 28 Shepherds Hill flats are larger and these properties are more attractive.
33. The need for costly major external works will have an impact on the value of flats at the Property, as demonstrated by the low price per square foot achieved on the sale of Flat 4. Furthermore the internal common-ways are in poor condition and this will deter prospective buyers.
34. Having regard to the comparables in Shepherds Hill, the tribunal concluded that the appropriate price per square foot was £655, which gives a flat value of £366,800 (£655 x 560).

### **Relativity**

#### **The Applicants' evidence**

35. Mr Lester contends that relativity of 92% should be used. He referred the tribunal to the comments on relativity graphs made by the Upper Tribunal *Cooltrace Limited and others [2012] UKUT 69 (LC)*.

36. Mr Lester makes the point that the Flat is not in Prime Central London (PCL). He supports the view expressed by the RICS that different relativity rates apply in PCL to the rest of the country.
37. In the absence of helpful market evidence, Mr Lester has relied on various relativity graphs. He referred to the graphs included in the Research Paper by the RICS Leasehold Relativities Group in October 2009, including the LEASE graph. He also referred to the Pure Tribunal Graph produced by John D Wood & Co (JDW).
38. The LEASE graph gives a figure of 92.43% for a lease of 67.85 years. The LEASE graph includes some properties in PCL, so should be adjusted upwards. The JDW graph gives a figure of 88%. Mr Lester does not know the precise makeup of the properties analysed by JDW but assumes that most were in PCL. Again this figure should be adjusted upwards.
39. Mr Lester also worked out the average of various graphs referred to in the RICS Research Paper, including the LEASE graph, which gives a figure of 92.12%. He feels that this figure should also be adjusted upwards slightly, as the LEASE graph includes some PCL cases.
40. Based on the figures and adjustments referred to at paragraphs 36 and 37, Mr Lester believes that relativity of 92% is appropriate.

### **The Respondent's evidence**

41. Mr Cohen has used a relativity of 88.5%. He accepts that the Flat is not geographically within PCL but feels that it comes within "Prime London Residential". He pointed out that there are a number of very high value properties nearby, including those in Kenwood and the Bishops Avenue.
42. Mr Cohen's view is that you cannot apply the same relativity rate to all properties in PCL or all properties outside PCL. Rather you need look at various factors including the type of property, location and value. The Flat is in the London Borough of Haringey but you cannot treat all properties in this Borough in the same way. Properties at the higher value end in Highgate and Crouch End cannot be "lumped together" with properties at the lower value end in Tottenham.
43. Mr Cohen has also analysed various relativity graphs, which he has separated into two categories - PCL and Greater London and England. The former gives an average relativity for 67.85 years of 86%. The latter gives an average of 90.98%. Mr Cohen also referred to the JDW graph (87.8%) and the Moss Kay graph (88%).



44. Mr Cohen has based his relativity rates on the various graphs, which he has adjusted on the basis that flat values in Highgate are much more comparable to those in the PCL graphs. He considers that the appropriate freehold relativity is 87.5%.

### **The tribunal's decision**

45. The tribunal determines that the appropriate relativity is 90%.

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

46. Not surprisingly the parties have been unable to produce market evidence on relativity. It follows that it is for this tribunal to determine relativity based on the various graphs referred to by the experts. Unfortunately no composite graph has been uniformly agreed, as suggested by the Upper Tribunal in *Coolrace*.
47. The experts' figures ranged from 86% to 92.43%. The lower figures relate to properties in PCL. The tribunal accepts that you need to look at the particular features of a property when determining relativity. The Flat is in a sought after location but is some distance from central London. Further the external condition of the Property is poor and the value of the Flat is relatively modest, compared with properties in PCL. Taking these factors into account the tribunal has determined the relativity at 90%.

### **Summary**

48. Having determined the capital value of the Flat at £366,800 and the relativity at 90%, the tribunal determines that the lease extension premium is £24,303, as detailed in the schedule attached.

**Name:** Jeremy Donegan

**Date:** 09 June 2014

## Appendix 1

### New Lease Claim

Present lease	99 years from 25 March 1982		
Valuation Date	17/05/2013	67.85 years unexpired	
Long lease value	£366,800	Virtual freehold	(+1%) £370,500
Existing lease value	90.00%	£333,450	
YP = 7%	PV = 5%		

### Diminution in value of Landlord's interest

Value before grant of new lease			
Term			
Rent	£100		
YP 15.85 yrs @ 7%	9.3973	940	
Rent	£150		
YP 52 yrs @ 7%	13.8621		
Deferred 15.85 Yrs @ 5%	0.4615	960	
Reversion			
Flat value	370,500		
Deferred 67.85 yrs @5%	0.0365	13,523	
			<b>15,423.00</b>
LESS value after grant of new lease			
Term			
New Lease at a peppercorn rent			
		0	
Reversion			
Flat value	370,500		
Deferred 157.85 yrs @ 5%	0.000452	167	-167
			<b>15,256.00</b>

### Marriage Value

Aggregate of values of interests after grant of new lease			
Landlord's interest	167		
Tenant's proposed interest	366,800	366,967	
Less Aggregate of values prior to grant of new lease			
Landlord's interest	15,423		
Tenant's interest	333,450	348,873	
	Marriage value	18,094	
	50%		<b>9,047</b>
	<b>Premium</b>		<b>24,303</b>