

4163



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)

Case reference : LON/00AF/OLR/2014/0376
LON/00AF/OLR/2016/0563

First Property : 13 Andace Park Gardens and garage,
Widmore Road, Bromley Kent

First Applicant : Ms M C O'Halloran

Representative for First Applicant : O'Neill Morgan (not present at Hearing)

Second Property : 5 Andace Park Gardens and car parking
space 27, Widmore Road, Bromley Kent

Second Applicant : Mr D E Gardener

Representative for Second Applicant : Parker Arrenberg (not present at
Hearing)

Respondent in both applications : Mr J H Roberts and Ms J A Thain

Representative : In person

Type of application : Applications to determine the premium payable on a flat lease renewal under section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993

Tribunal member(s) : Judge Pittaway
Mr P Casey MRICS

Date and venue of hearing : 19 July 2016 at 10 Alfred Place, London WC1E 7LR

Date of decision : 29 September 2016

DECISION

Decision of the tribunal

For both First Property and Second Property

The deferment rate	5%
The capitalisation rate for the ground rent	6%

For the First Property

The extended lease value	£255,000.00
The existing lease value	£238,298.00
The premium	£ 16,100.00

For the Second Property

The extended lease value	£330,000.00
The existing lease value	£304,260.00
The premium	£ 22,300.00

The tribunal's valuations are attached at Appendices 1 and 2

Background

1. The applications

- 1.1 By an application dated 7 March 2014 the First Applicant sought a determination pursuant to section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993 (as amended) (the “Act”) as to the premium payable for the extension of the lease of the First Property.

Date of tenant's notice:	26 September 2013
Date of landlord's counter-notice:	14 October 2013
Date of application to Tribunal:	7 March 2014

- 1.2 By an application dated 4 April 2016 the Second Applicant sought a determination pursuant to section 48(1) of the Act as to the premium payable for the extension of the lease of the Second Property.

Date of tenant's notice:	25 November 2015
Date of landlord's counter-notice:	26 November 2015
Date of application to Tribunal:	4 April 2016

2. Details of each tenant's leasehold interest

Term of lease: 99 years from 25 March 1986 (and not as stated in the statement of agreed facts for the First Property)

- 2.1 Ground rent: £200 p.a. reviewed on 25 March 2011, 2036 and 2061 by reference to the Index of Retail Prices.

3. Matters agreed

3.1 The First Property

There was a statement of facts agreed which identified that the following were agreed

- | | |
|---|-------------------|
| (a) The valuation date: | 26 September 2013 |
| (b) Term unexpired at valuation date: | 71.493 years |
| (c) The leasehold/freehold differential in value: | none |
| (d) Internal floor area | 758 square feet |
| (e) No deduction was required for improvements | |

3.2 The Second Property

There was a statement of facts agreed which identified that the following were agreed

- | | |
|-------------------------|------------------|
| (a) The valuation date: | 25 November 2015 |
|-------------------------|------------------|

- (b) Term unexpired at valuation date: 69.33 years
- (c) The leasehold/freehold differential in value: none
- (d) Internal floor area 697 square feet
- (e) No deduction was required for improvements

4. Matters in Dispute

4.1 The Deferment Rate

- (a) Mr Morgan, the valuer for both the First Applicant and the Second Applicant, contended the deferment rate should be 5.25%; and
- (b) the Respondent, appearing in person, contended it should be 5%.

4.2 The Capitalisation Rate

- (a) Mr Morgan contended this should be 7% for both the First Property and the Second Property; and
- (b) Mr Roberts contended this should be 5% for the First Property and 4.5% for the Second Property; to take into account future increases in rent.

4.3 Relativity

- (a) Mr Morgan contended this should be 93.2% for the First Property and 92.5% for the Second Property.
- (b) Mr Roberts contended that this should be 88% for the First Property and 85-88% for the Second Property, but that market evidence is to be preferred.

4.4 The Extended Lease Value

- (a) For the First Property Mr Morgan contended this was £230,000 at the relevant valuation date, while Mr Roberts contends this was £284,000 at that date.
- (b) For the Second Property Mr Morgan contended this was £307,700 at the relevant valuation date, while Mr Roberts contended this was £350,000 at that date.

Evidence

5. For the First Property the Tribunal had before it

5.1 a valuation report of Mr Peter Morgan FRICS (acting for the First Applicants) dated 30 June 2016.

5.2 a witness statement and report of Mr Roberts, one of the respondents, a lawyer not a valuer, dated 29 June 2016.

6. For the Second Property the Tribunal had before it

6.1 a valuation report of Mr Peter Morgan FRICS (acting for the Second Applicants) dated 30 June 2016.

- 6.2 a witness statement and report of Mr Roberts 10 July 2016.
7. Both Mr Morgan and Mr Roberts gave evidence at the hearing, the former as an expert valuer and the latter as a witness of fact and each was cross-examined.
8. The tribunal have had regard to the evidence before them, the cross examination and the other papers before them in reaching their determination and comment on specific aspects of them in their reasons below.
9. The tribunal also had regard to the following cases referred to them;

J H Roberts and J A Thian v M M Fernandez [2015] UKUT 0106 (LC)
Trustees of the Sloane Estate v Mundy & Lagesse [2016] UKUT 0223 (LC)

Inspection

10. The flats are in one of two, four storey blocks built in the late 1980s, of brick with a flat roof and set in attractive grounds including a gymnasium building and an outdoor swimming pool. Between the two blocks and screened at the rear by brick walls is a petrol filling station fronting Widmore Road. There is a passenger lift in the building. Both the flats (no 5 on the ground floor and no 13 on the first floor) have two bedrooms, a sitting room, kitchen and two bathroom/WCs. There is gas fired central heating and double glazed windows which as far as the tribunal could tell were the original double glazed units.
11. No 5 had refurbished the kitchen and the bathrooms, the second of which had a replacement shower for the original bath which allowed sufficient room for laundry facilities. It also had a private patio area at the rear of the flat.
12. The fixtures and fittings in No 13 appeared to us to be the original fittings, though in good condition and it had a balcony at the rear.
13. The block of flats and the individual flats appeared to be in good repair and decorative condition and the common parts and the grounds were well maintained.

Reasons for the Tribunal's decisions.

14. **Deferment Rate**
The earlier UT decision at 5.25% was on the basis of the concession made by Mr Roberts because it was quite clear that otherwise it would have applied the generic rate of 5%. Mr Roberts made no such

concession before the tribunal and it sees no reason why the deferment rate should be other than 5%.

15. **Capitalisation Rate**

15.1 Mr Morgan argued for a rate at which the ground rent was to be capitalised of 7%, on the basis of the UT decision in *J H Roberts and J A Thian v M M Fernandez*, a case in which both valuers had appeared, which relates to another flat in this block and where the Upper Tribunal determined the rate at 7%. This was the rate argued for by Mr Morgan in that case, apparently on the basis of his experience in agreeing many lease renewal claims.

15.2 Mr Roberts in his valuation of flat 13 adopted a rate of 5% and for flat 5 a rate of 4.5%

In *J H Roberts and J A Thian v M M Fernandez*, Mr Roberts had relied entirely on argument, but before this tribunal he produced some evidence by way of valuation reports prepared by Messrs Allsops in respect of the whole property, for bank lending purposes. He further submitted that in his own experience as a ground rent investor there was absolutely no possibility of acquiring a similar investment on a 7% yield.

The problem the tribunal had with the Allsops valuations is that the author was not at the hearing for his valuation opinion to be tested. The tribunal accept that Allsops are a reputable central London based surveying practice and are one of the leading firms of auctioneers whose sales quite regularly include, from the tribunal's own knowledge, sales of freehold blocks of flats subject to leases of in excess of 100 years, usually after the developer has completed the blocks and sold all the flats therein. The capitalisation rate used by Allsops to value the whole block was 4%, in March 2016 (a similar report in 2012 used 5.5%). Their report included brief reference to four auction sales in 2016 of blocks of flats subject to long leases showing yields ranging from 3 to 5% on the ground rent income alone i.e without any adjustment to reflect any reversionary value in the freehold interests.

15.3 Mr Morgan chose not to put any evidence before us relying entirely on the Upper Chamber decision that 7% was appropriate. That decision was reached on the only evidence before the Upper Chamber which was Mr Morgan's evidence of settlements. Mr Robert's arguments for a lower rate were unsupported by any evidence and were dismissed. The decision is not binding on us on this point but it would be very persuasive if there were not now a change in the stance taken by Mr Morgan and Mr Roberts. Whilst the latter repeated his unsuccessful arguments he also produced the Allsops' reports, which Mr Morgan did not challenge. When Mr Roberts put to him that they had agreed some 30 cases at 6% Mr Morgan replied that they had been, "horse deals".

- 15.4 With no opportunity to question the Allsops' reports the most that can be deduced from them is that they suggest strongly that 7% is too high a capitalisation rate. The tribunal are surprised by the volatility shown by a drop from a rate of 5.5% in 2012 to 4% in 2016. From the tribunal's own knowledge and experience of hearing many such cases 7% might be appropriate when valuing a small fixed ground rent, but the rent here is £478.24 pa. The Act requires each freehold to be separately valued and not as part of a block, which is what Allsops have valued.
- 15.5 On the limited evidence before the tribunal it has adopted a capitalisation rate of 6% at both valuation dates.

16. **Extended Leasehold value**

16.1 **The First Property (No 13)**

- (a) Mr Morgan relied on the evidence provided by the sales of two 2 bedroomed flats in Andace Park Gardens to arrive at the extended lease/share of freehold value for No 13 as at 26 September 2013. No 25 sold for £237,000 in June 2013 and No 53 sold for £245,000 as at September 2013. Both had extended leases at a peppercorn ground rent.

He adjusted the price of No 25 using a Land Registry index for flats in Bromley by 2.6% to give a suggested value at the valuation date of £243,255. He adopted the higher sale price of £245,000.00 to which he added £10,000 because No 13 had a garage; the two comparables only have parking spaces. He then deducted £15,000 to reflect the superior condition of the comparables which included double glazing and superior refitted kitchens and bathrooms. He did not mention that No 25 had only a single bathroom while No 13 has two.

All the windows in the block are the same and Mr Morgan agreed in the Statement of Agreed Facts that there were no claimed improvements for No 13. For the quality of fittings in the comparables he is relying entirely on photographs and descriptions in the selling agents' brochures and such matters as kitchen and bathroom replacements are more often than not matters of personal choice which add little if anything to value.

- (b) No 13, on inspection by the tribunal, appears to be in its original format but is in good repair and in the absence of more compelling evidence than sales brochures the tribunal sees no reason to adjust the comparables for condition.

No 53 is a 2 bathroom flat sold at the valuation date at a price which sits comfortably within the picture of sales in the block provided by the extensive list of sales provided with Mr Roberts' statement. That statement however omitted to address how Mr

Roberts approached the extended lease value and when the tribunal asked about this he said it was an oversight and he would leave it to our own knowledge and experience. He did repeat his claim for an adjustment to reflect onerous ground rents paid by some of the comparables, however No 25 and No 53 are on leases at a peppercorn ground rent.

- (c) The tribunal accepts the approach taken by Mr Morgan and determines the extended lease value of Flat 13 in the sum of £255,000.

16.2 The Second Property (No 5)

- (a) For the extended lease/share of freehold value of Flat 5 at the valuation date of 25 November 2015 Mr Morgan relied on 5 comparable transactions within the block, adjusted for time using the Land Registry Index. Two of the transactions are of flats on their existing (original) lease terms, which he adjusted to extended lease values using the relativity determined by Upper Chamber in *J H Roberts and J A Thian v M M Fernandez*.
- (b) The tribunal does not find these transactions helpful other than for showing a general quantum of value. No 60 sold in April 2014 for £250,000 (adjusted for time to £302,276), No 68 sold in June 2014 for £265,000 (£301,028) and No 28 sold in August 2014 for £295,000 (£327,494). Nos 60 and 68 have only one bathroom. All these sales are over a year earlier than the valuation date. The only sale close to the valuation date is of No 64 in August 2015 for £350,000, with a garage, but on the existing lease. Mr Morgan again sought to adjust the comparables for condition but No 5 has been refitted, and it is agreed there are no improvements claimed. Accordingly the tribunal does not think this adjustment is warranted.
- (c) Mr Roberts omitted this part of his case from his statement, but again sought an adjustment for onerous ground rents. Both Nos 60 and 68 pay £478.24 pa but No 28 is at a peppercorn. With no new evidence on the point we can do no more than follow the Upper Chamber which decided that the adjustment was inappropriate.
- (d) The tribunal consider No 28 (sold in August 2014) to be the best comparable, having 2 bathrooms. The sale of No 64 a year later suggests that the index used by Mr Morgan perhaps understates price growth in the block. Also none of the comparables has the Second property's advantage of walking from the patio straight into the gardens and to the pool.
- (e) From the evidence before the tribunal it determines the extended lease value of flat 5 at £330,000.

17. Existing Lease Values

17.1 The First Property (No 13)

- (a) Mr Morgan relies for his existing lease value on the Upper Chamber decision in *J H Roberts and J A Thian v M M Fernandez*, which determined a relativity to the extended lease value of 93.7% with an unexpired lease term of 72 years. The unexpired term for No 13 is 71.49 years and the relativity he adopts is 93.45%.
- (b) Mr Roberts submitted that the tribunal should follow the approach adopted by the Upper Tribunal in the case of *Trustees of the Sloane Estate v Mundy & Lagesse* and use real world transactions with an adjustment for Act rights. He invited the tribunal to consider the sales of No 72 and No 60 as good evidence to support a value of £280,000 at the valuation date. He then made a 2.6% reduction for “Act rights” relying on a report by Savills in June 2016 entitled “Spotlight, Leasehold Enfranchisement”.

No 72 is a 2 bed 2 bath flat with a garage (like No 13) but the sale postdates the valuation date and Mr Roberts gave no evidence of price movements. No 60 according to the sales particulars sold on a new 125 year lease.

Mr Roberts also asked the tribunal to consider a relativity graph produced by a firm, Beckett & Kay, and various other relativity graphs relating to prime central London (PCL). The tribunal note that the former is entirely opinion bases and Bromley is a long way from PCL. Accordingly the tribunal derive little assistance from this evidence.

Finally Mr Roberts asks the tribunal to consider relativities thrown up by sales of 1 bed flats in the development namely

- (i) No 88, 69 years unexpired, sold 31.10.14 for £190,000;
- (ii) No 59, 69 years unexpired, sold 3.6.15 for £176,000;
- (iii) No 26, 159 years unexpired, sold 18.9.15 for £221,000;
- and
- (iv) No 87, 159 years unexpired, sold 25.9.15 for £245,000.

The tribunal note that No 59 however was a sale by a mortgagee in possession. Mr Roberts provided no basis of adjustment for passage of time, nor any agents particulars, accommodation details or indication of condition. Without such information it is impossible to draw any meaningful conclusions from the raw sales' data.

- (c) In these circumstances the tribunal does not consider that it can depart from the Upper Tribunal's earlier decision and Mr Morgan's small adjustment to reflect the slightly shorter lease term.

17.2 The Second Property (No 5)

- (a) Both valuers adopted the same approach as they had taken with the First property, although Mr Morgan reflects the shorter lease term of 69.33 years by reducing the relativity to 92.5% and Mr Roberts added the raw sales details of some 2016 sales.
- (b) The tribunal's comments on the evidence are the same as for the First Property. Sales evidence can be useful, but only if it can be properly adjusted for time and for other factors which impact on value. Without such detail it is of limited assistance to the tribunal.
- (c) The tribunal considers Mr Morgan's adjustment for the reduced lease terms to be somewhat mean, given the difference between the term of the lease of No 13 and the term of the lease of No 5 is over 2 years. The tribunal therefore adopt a relativity of 92.2% having looked at such graphs as are before it.

The Law

1. 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.
2. 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.
3. 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.
4. Para 5 provides for the payment of compensation for loss arising out of the grant of a new lease.
5. Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

Name: Judge Pittaway

Date: 29 September 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 1
LON/00AF/0LR/2014/0376

FIRST TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

S48 Leasehold Reform Housing and Urban Development Act 1993

**Determination for the premium payable for an extended lease of
Flat 13 Andace Park Gardens, Widmore Road, Bromley, Kent BR1
3DH**

Valuation date: 26 September 2013 – Unexpired term 71.49 years

Diminution in Value of Freehold Interest

Capitalization of ground rents for term	£478.24			
71.5 years at 6% years purchase	16.407			£7,846
Reversion to F/H value with VP	£255,000			
Deferred 71.5 years @ 5%	0.03056	£7793		
Less value of F/H after grant of new lease	£255,000			
Deferred 162 yrs @5%	0.0004	£102	£7691	£15,537

Marriage Value

After grant of new lease

Value of extended lease	£255,000			
Plus freehold value	£102	£255,102		

Before grant of new lease

Value of existing lease @93.45% f/h	£238,298			
Plus freehold value	15,639	£253,937		£1,165

50% share to Freeholder

£583
£16,110

Premium Payable Say £16,100

Appendix 2
LON/00AF/0LR/2016/0563

FIRST TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

S48 Leasehold Reform Housing and Urban Development Act 1993

Determination for the premium payable for an extended lease of
Flat 5 Andace Park Gardens, Widmore Road, Bromley, Kent BR1 3DH

Valuation date: 25 November 2015 – Unexpired term 69¹/₃ years

Diminution in Value of Freehold Interest

Capitalization of ground rents for term	£478.24		
69 ¹ / ₃ years at 6% years purchase	<u>16.373</u>		£7,830
Reversion to F/H value with VP	£330.000		
Deferred 69 ¹ / ₃ years @ 5%	<u>0.03396</u>	£11,207	
Less value of F/H after grant of new lease	£330.000		
Deferred 162 yrs @5%	<u>0.0035</u>	£115	£11,092
			<u>£18,922</u>

Marriage Value

After grant of new lease			
Value of extended lease	£330.000		
Plus freehold value	<u>£115</u>	£330.115	
Before grant of new lease			
value of existing lease @92.2% t/h	£304,260		
Plus freehold value	<u>19,037</u>	£323,297	
		<u>£6,818</u>	

50% share to Freeholder			<u>£3,409</u>
			£22,331

Premium Payable Say £22,300