



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

<b>Case reference</b>	:	<b>LON/00BF/OLR/2018/1575</b>
<b>Property</b>	:	<b>53 Beechwood Court, West Street Lane, Carshalton Surrey SM5 2QA</b>
<b>Applicants</b>	:	<b>Mr Craig Dews and Ms Nicola Dews (acting as Executors of the Late Michael Hugo Kelly)</b>
<b>Representative</b>	:	<b>Mc Millian Williams Solicitors- and Mr Wilson Dunsin FRICS of Dunsin Surveyors appearing on behalf of the Applicants</b>
<b>Respondent</b>	:	<b>Pierpont Capital Limited</b>
<b>Representative</b>	:	<b>Malcolm Dear Whitfield Evans LLP solicitors – and Mr Patel of Manisures Limited appearing on behalf of the Respondents</b>
<b>Type of application</b>	:	<b>Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993</b>
<b>Tribunal members</b>	:	<b>Judge Daley Mr D Jagger FRICS</b>
<b>Date of determination and venue</b>	:	<b>30 April 2019 at 10 Alfred Place, London WC1E 7LR</b>
<b>Date of decision</b>	:	<b>30 April 2019</b>

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**DECISION**

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**The tribunal's decision**

- (1) Upon hearing from the parties, the tribunal determines that the relativity rate is 78.71%, the appropriate premium payable for the new lease is £45,082.

- (2) This application is made under the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act') for a determination of the premium payable for the grant of a new lease of 53 Beechwood Court, West Street Lane, Carshalton Surrey SM5 2QA ('the subject property').

### **The background**

- (3) The subject property is a purpose built flat on the second floor of a 4 storey block part of a private gated development of 78 units, built in approximately 1920. The property comprises a hallway, lounge, kitchen, two bedrooms and bathroom with WC, of 749 sq ft.
- (4) The subject property has a lease which was granted on 7 June 1976 for a term 99 years from 1 January 1972 to 31 December 2070, at a Ground Rent of £25 per annum doubling every 25 years.
- (5) By notice dated 3 September 2018, the Applicants asserted the right to the grant of a new extended lease at a premium of £37,200.00. By way of a counter notice dated 25 September 2018, the premium and lease terms were both disputed, with the Respondent landlord proposing a premium of £59,700.00.
- (6) The Respondent landlord also disputed the terms upon which the extended lease was to be granted, however at the hearing on 30 April 2019, it became apparent that the terms of the lease had been agreed, and that although the application had asked the disputed terms to be adjudicated on by the Tribunal, the parties had subsequently agreed on the terms and a draft lease had been provided in the bundle.

### **The issues**

- (7) The Tribunal noted that there was very little disagreement between the parties upon most of the issues and where matters were disagreed the parties were able to agree the issues upon all of the matters save the short/existing lease value. The matters which were agreed in the Statement of Agreed Facts and Disputed issues, and those matters subsequently agreed at the hearing are set out below:
- Date of valuation: 3 September 2018
  - Unexpired Term: 52.33 years
  - Marriage value: 50%
  - Relativity between Freehold Vacant Possession Value and Extended lease value: 99%

- Deferment Rate: this was agreed at the hearing as being 5%
  - Capitalisation Rate: this was agreed at the hearing as being 6.5%
  - Extended Lease Value/ Freehold Vacant Possession Value: It was noted by the Tribunal that there was very little difference between the parties, and both surveyors were prepared to agree a value of £313,675.80
- (8) As all of the other matters had been agreed the Tribunal focused solely on the valuers' evidence in respect of the existing leasehold value (and following on from this relativity).

### **The hearing**

- (9) Both parties were represented by their valuers who had produced reports and gave oral evidence to the Tribunal.
- (10) Mr Dunsin spoke to his comprehensive report dated 16 April 2019. In paragraphs 5.03.36 & 5.03.37. He stated:- Flat 14 Beechwood Court is the best transaction evidence comparable for the determination of the Existing Lease Value of the subject property. It is an identical two bedroom purpose built flat in the same development. It currently has a short unextended lease. 5.03.37 Flat 14 Beechwood Court was sold with a short lease on 30<sup>th</sup> January 2018 by British Home Sellers for £195,000. It was then resold, also with the same short lease less than five months later on 11 June 2018 by Ushers Estate Agents for £285,000.
- (11) In his evidence before the Tribunal Mr Dunsin set out all of the factors which in his view, made the January sale evidence of Flat 14 Beechwood unreliable. He stated that the seller British Home Seller specialised at achieving a quick discounted sale. In his view this meant that they did not meet the criteria set out by the Royal Institution of Chartered Surveyors of a *Market Value* which was defined as “... *the estimated amount for which an asset or liability should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing and where the parties had acted knowledgeably, prudently and without compulsion.*” (2.02 of his report).
- (12) He referred the Tribunal to office copy entries which he had obtained from the Land Registry which supported his contention that the lease

was of a similar term. He pointed to the sale in June 2018, which was by an established estate agent in the area as being more reliable for the short lease value with a sale having been achieved at £285,000 by Usher Estate Agent. At paragraph 5.03.41 he stated that -: The Land Registry House Price Index for Sutton equates the sale price of £285,000 as at 11 June 2018 to a value of £283,849 as at the valuation date of 3<sup>rd</sup> September 2018. I have applied the Value of Act Rights deductions of 6.50% to arrive at the Existing Lease Value (Without the Value of Act Rights) of £265,399.

- (13) He had also for the sake of completeness used the shorthand method set out by the Upper Tribunal in paragraph 60 of Sinclair Gardens set out in paragraphs 5.03.42 to 5,03.44 to arrive at the deduction of 6.5 to reflect the Value of Act Rights.
- (13) Mr Dunsin had also carried out an alternative method of valuation using an average of 5 relativity graphs, he explained that he had used the five Greater London and England Graphs and although he noted that they had their shortcomings he considered that collectively they are the best basket of evidence available for the determination of relativity in Greater London in the absence of Transactional evidence. By taking the average of the five graphs he arrived at a Relativity of 78.71%.
- (14) Mr Patel contended that the first sale in January 2018 of 14 Beechwood could and should be relied upon by the Tribunal as the existing lease value, and that as a result the landlord submitted that the correct premium was £72,378.00. In paragraph 4.4 of his valuation he stated that-: When the section 45 notice was submitted in 25 September 2018, we did not have price information available on the sale of the short lease at 14 Beechwood Court on 30<sup>th</sup> January 2018, 14 Beechwood Court was a short lease of 52.9 years was sold for £195,000. It was sold with the benefit of a s42 Notice served by the qualifying leaseholder. Although we were previously aware of the sale we were not aware of the price. We believe an existing lease value can be reliably taken at £195,000 as this was an arm's length transaction.
- (15) Mr Patel did not accept that British Home Seller had produced a quick sale, he pointed out that the property had been on the market for 7 months prior to the January sale, and he also referred to the rating of British Home Sellers as "Great" or "Excellent" by Trust pilot.
- (16) He used the evidence of the January sale to produce a Relativity of 61.53%. In answer to questions from the Tribunal he produced a copy of the deed of Assignment dated 30 January 2018, as evidence of a Notice of the Tenant's Claim having been served on the landlord on 15 January 2018.

- (17) The Tribunal after a short adjournment accepted a letter dated 30 April 2019 as confirmation that the lease of 14 Beechwood Court had been sold in June 2019 with the benefit of a lease renewal ( the premium having been paid on 13 April 2018) even though this deed had not been registered with the Lands Registry.
- (18) Mr Patel informed the Tribunal that the landlord had accepted a premium of £42,500 for this lease extension.
- (19) In closing Mr Dunsin asked that the Tribunal reject the evidence of the January 2018 sale as unreliable, he pointed out that the use of the sale price of £195,000( less the No Act Rights Adjustment) would produce a relativity of 57% which was too low and out of sync with the evidence produced by applying of the Relativity Graphs. He referred the Tribunal to his alternative basis of calculation at appendix15B of his report.
- (20) Mr Patel contended that there was reliable market evidence before the Tribunal of a sale of a short hold interest in 14 Beechwood; he contended that the Tribunal could use this evidence in determining the short leasehold value.

### **Tribunal Decision and Reasons for the tribunal's determination**

- (21) In reaching its decision, the Tribunal decided not to rely on the 14 Beechwood Court as Market evidence of the short lease value. Although the Tribunal noted that the length of lease term and the date of sale made this evidence superficially attractive. The Tribunal noted the increase in value in the sale price between January and June just little over a 5 month period. In the Tribunal's experience, without any other evidence was outside the norm of what was happening in the market.
- (22) The only explanation for the increase in sale value between January 2018 and June 2018 of £90,000 was that the property was substantially under valued at the date of sale in January 2018. Mr Patel informed the Tribunal that the Rights to extend the lease had been assigned in January, and although the Tribunal does not have any detailed evidence on this point as the deed of assignment provided was incomplete, this also cast doubt on the sale price as having been reliable and evidence of what was achievable in the market at that time. Accordingly the Tribunal are satisfied that this evidence is inherently unreliable.
- (23) The Tribunal accepts that British Home Sellers are predominantly used to achieve a quick sale. We place no reliance on the degree of satisfaction expressed by reviewers. The Tribunal has noted that in the absence of information concerning why this seller was used, and why a significantly higher sale price was achieved in June, that it would be

unreliable to accept the sale price in January as being anything other than out of kilter, with what was happening in the market

- (24) The Tribunal accordingly have decided that the appropriate method of valuation is the use of the average of the 5 outer London graphs. The Tribunal in his case have agreed with Mr Dunsin that the Savills Prime Central London Grade is not appropriate. The Tribunal noted that Mr Patel did not provide an alternative basis for valuation, and subject to the matters that were agreed at the Tribunal and in the Statement of agreement, the Tribunal has decided that the appropriate premium is as set out below.

### **The premium**

The tribunal determines the appropriate premium to be is **£45,082**  
A copy of the tribunal valuation is attached.

**Name:** Judge Daley

**Date:** 30 April 2019

### **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).

CASE REFERENCE LON/00BF/OLR/2018/1575

**First-tier Tribunal  
Property Chamber (Residential Property)  
Appendix one**

**Appendix A  
53 Beechwood Court, West Street Lane, Carshalton, Surrey SM5 2QA**

**The Tribunal's Valuation**

**Assessment of premium for a new lease  
In accordance with the Leasehold Reform, Housing and Urban Development Act  
1993  
LON/OOBF/OLR/2018/1575**

**Components**

Valuation date:	3rd September 2018	
Deferment rate:	5%	
Capitalisation rate:	6.5%	
Freehold value (plus 1%):	£316,758	
Long lease value	£313,590	
Existing leasehold value	£249,320	
Relativity	78.71%	
Unexpired Term	52.33 years	
Ground rent currently receivable	£50	
Capitalised @ 6.5% for 3.33 years	2.9104	£146
Ground rent to be received	£100	
Capitalised @ 6.5% for 25 years	12.1979	
PV £1 in 3.33 years @ 6.5%	0.8108	<u>£989</u>
Ground rent to be received	£200	
Capitalised @ 6.5% for 25 years	12.1979	
PV £1 in 3.33 years @ 6.5%	0.1680	<u>£409</u>
		£1544
Reversion to:	£316,758	
Deferred 52.33 years @ 5%	0.07783	<u>£24,653</u>
		£26,197
Less value of Freeholders proposed interest		
Reversion to Freehold value:	£316,758	
Deferred @ 5% for 142.33 years	0.00096	<u>£304</u>
		<b>25,893</b>

**Marriage Value**

**Value of Proposed Interests**

Extended leasehold interest	
Plus freehold interest	£313,894

**Value of Existing Interests**

Landlord's existing value	£26,197	
Existing leasehold value	<u>£249,320</u>	
	£275,517	£38,377

Freeholders share @ 50% **£19,189**

**LEASE EXTENSION PREMIUM £45,082**

