



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

Case reference : **KA/LON/OOAD/OLR/2019/0937**

Property : **18 Alton Close Bexley Kent DA5 3QJ**

Applicant : **Perry Malcolm Smith**

Representative : **Peter Morgan Chartered Surveyor**

Respondent : **Ault Investments Limited**

Representative : **Wilson Dunsin Chartered Surveyor**

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

Tribunal members : **Judge Professor Robert M. Abbey
Pat Casey MRICS**

Date of determination and venue : **3 December 2019 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **18 December 2019**

DECISION

Summary of the tribunal's decision

- (1) The appropriate premium payable for the new lease is **£56,400**. The basis for this valuation is set out in detail in appendix A to this decision.

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 **18 Alton Close Bexley Kent DA5 3QJ** (the “subject property”).

2. By a notice of a claim 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 of the subject property. The applicant subsequently proposed to pay a premium of £43,275 for the new lease.
3. The respondent freeholder served a counter-notice admitting the validity of the claim and subsequently counter-proposed a premium of £64,024 for the grant of a new lease.
4. On 12 August 2019, the applicant applied to the tribunal for a determination of the premium.

The issues

Matter not agreed

5. The following matter was not agreed:
 - (a) The premium payable.

The hearing

6. The hearing in this matter took place on 3 December 2019. The applicant and the respondent were both represented by their Surveyors as set out above.
7. Neither party asked the tribunal to inspect the subject property and the tribunal did not consider it necessary to carry out a physical inspection to make its determination.
8. The applicant relied upon the expert report and valuation of Mr Peter Morgan FRICS dated 14 October 2019 and the respondent relied upon the expert report and valuation of Mr Wilson Dunsin FRICS dated 19 November 2019.
9. The representatives advised the Tribunal that they had reached agreement on one outstanding issue and consequently confirmed to the Tribunal the agreed freehold value at £293,500.

The tribunal’s determination

10. The tribunal determines that the appropriate premium payable for the new lease is **£56,400**.

Reasons for the tribunal’s determination

11. The single unresolved issue for the tribunal was the calculation of premium for the lease extension including the value of improvements and how these might impact on the possible premium. The two valuers agreed the value of the freehold interest in the flat as mentioned above in the sum of £293,500 but could not agree if the tenant’s improvements claimed by Mr Morgan had added any value within this figure which the Act requires to be disregarded.
12. The Tribunal felt on balance that Mr Morgan’s figure of £30,000 was disproportionate to the value of the flat and thought a figure of £15,000 was the most that could be said to be an appropriate disregard. This assessment made by the Tribunal was informed by a close consideration of the photographs of the replacement kitchen, bathroom and windows (double glazed) now in the property. This gave a freehold value of £278,500. Both surveyor’s treated the extended lease value as being 99% of freehold value so our extended lease value is £275,715.
13. Of the existing lease value, the Tribunal decided that there were three sales comparables (including the subject flat) that provided sufficient open market comparable evidence to value the existing lease without reference to graphs. The Tribunal could not agree with Mr Dunsin’s view that the sales of 18 and 16 Alton Close were too historic to be reliable especially as both used the same Land Registry price movements index to adjust for movements in prices between sale dates and the valuation date. The Tribunal also could not agree with Mr Morgan’s suggestion that the condition of 25 Alton close was poor as it sold for a low price. It seemed to the Tribunal that he couldn’t really be able to know the condition or circumstances of the sale.

These three sales are set out in tabular form below:

Property	Sale Price	Date	Lease Length	Adj	Time Adj	Adj Price
18	£225,000	3/16	50.33 yrs	- 2%	128.6 118.8	£238,690
16	£225,000	2/17	49.33 yrs	- 1.3%	128.6 126.7	£225,405
25	£200,000	7/18	48 yrs	-	-	£200,000
					Average	£221,365

14. The lease length adjustment comes from Savills Enfranchiseable graph and gives an indication of what the sale price might have been if the unexpired lease term of the comparable had been the same as that of the subject flat at the valuation date.

15. The time adjustment reflects movement in the index between time of sale and the valuation date (128.6). The Tribunal did not adjusted 25 Alton as both lease length and date of sale are close enough to the valuation date to make any adjustment insignificant in value terms. No adjustment for condition has been made as we simply don't know what this might have been and averaging smooths out any such effect on value. These are however real-world transactions and reflect the value of rights under the Act. To exclude this and following judicial guidance given in *Mundy v Trustees of the Sloane Stanley Estate [2018] EWCA Civ 35* and looking at the Gerald Eve and Savills graphs of relativity an adjustment of approximately 9½% falls to be made giving £200,335.
16. Whilst we haven't valued by reference to any of the purported graphs it is worth looking at how this figure compares with the most recent of those graphs the Gerald Eve 2016 at 68.31% and Savills Unenfranchiseable at 68.67%. Our existing lease value shows 68.25% of the freehold value agreed by the two valuers.
17. There just remains to deduct the value effect of tenant's improvements on the existing lease value. Obviously, there is less impact as the lease is much shorter so the value of that interest in the flat is less. Allowing approx. 2/3rds (66.7%) of our £15k gives £10,000 and therefore an existing lease value disregarding tenant's improvements of £190,335, but say £190,500.
18. Rights of appeal are set out below.

Name: Judge Robert. M Abbey **Date:** 18 December 2019

**Determination of the premium payable for an extended lease of
18 Alton Close, Bexley, DA53QJ**

Valuation date: 18 February 2019 – Unexpired term 47.34 years

Diminution in Value of Freehold Interest

Capitalization of ground rent pa	£20	
YP for 47.34 years @ 7½ %	<u>12.9</u>	£258
Reversion to F/H value with VP	£278,500	
Deferred 47.34 years @ 5%	<u>0.0993</u>	<u>£27,655</u>
		£27,913
Less value of F/H after grant of new lease	£278,500	
Deferred 137.34 years @5%	<u>0.00123</u>	<u>£342</u>
		£27,571

Marriage Value

After grant of new lease

Value of extended lease	£275,715	
Plus freehold value	<u>£342</u>	£276,057

Before grant of new lease

Value of existing lease	£190,500	
Plus freehold value	<u>£27,913</u>	<u>£218,413</u>
		£57,644

50% share to Freeholder

£28,822
£56,393

Premium Payable Say £56,400

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).