



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

Case Reference	:	CAM/33UG/OLR/2021/0071
Property	:	Flat 12, Bishop Pelham Court, Keswick Hall, Keswick, Norwich NR4 6RS
Applicant	:	Jake Gibson (Leaseholder)
Representative	:	Leather Prior
Respondent	:	Freehold Managers (Nominees) Ltd.
Representative	:	JB Leitch Real Estate
Type of Application	:	Determination of terms of lease extension (missing landlord)
Tribunal Members	:	Mr N Martindale FRICS
Date of Decision	:	11 January 2022

DECISION

Decision

1. The premium to be paid by the applicant for the lease extension for Flat 12 Bishop Pelham Court, Keswick Hall, Keswick, Norwich, NR4 6RS (the Property) under HM Land Registry title number NK63444 is therefore the premium to be paid by the applicant for the new lease of the Property is therefore **£12,374, (Twelve Thousand three hundred and seventy four Pounds)**.

2. All other terms are agreed between the parties and are therefore outwith the jurisdiction of the Tribunal.

Introduction

3. This is an application made under S,48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the premium to be paid and the terms of an acquisition of an extension to the leasehold interest in the Property. A S.42 Notice was served on 23 September 2020, the valuation date.

Property

4. The Property is a ground floor flat with bedroom, bathroom, kitchen and living room. Windows are upvc double glazed, storage heating electric, with mains water and drainage. Parking of vehicles is communal and no spaces are reserved to any particular flat. There are no exclusive outside stores, garages or other spaces reserved to this Property.
5. The building is part of a low rise block within the sizeable grounds of the former large C19th country house, known as Keswick Hall also converted into residential flats at around the same time in the mid 1980’s. Keswick Hall is on the southern outskirts of Norwich. It was requisitioned in the 2nd WW and became a teacher training college post war and new blocks of buildings were added. There is open communal parkland and an outdoor swimming pool.

Lease

6. The lease was for 99 years from 1 January 1987 at £200 pa after 33 years and £400 pa after 66 years. Notice to extend the lease was served on 21 September 2019. There were no tenant’s improvements, nor any development value.
7. The parties confirmed at the start of the hearing that the value of the short leasehold (existing leasehold) had been agreed at £92,044. Discussion of relativity which had been addressed by both parties to that point in their reports, was no longer required. Both parties confirmed that they had come to their long leaseholder (extended leasehold) values by direct reference to other long leasehold sales and not by any reference to short leaseholds, graphs and the ‘No Act’ World. Similarly the parties had helpfully agreed the capitalisation rates for the term valuation.
8. The parties confirmed that other than the premium, all other matters in the new draft lease were not disputed or had been agreed.

Applicants Case

9. The applicant's valuer, Watsons, submitted a report dated July 2021, prepared by Mr J Laughlin but, signed off by Mr R Smith FRICS. The report made two arguments, firstly their brief analysis of comparable long leasehold flat sales and secondly; as to the correct deferment rate to apply to this value for the remainder of the existing and proposed lease. While other comparables of sales of short leaseholds were provided these were not further referenced and these were excluded from consideration.
10. The applicant's valuer identified 3 sales and 1 non-sale of a flat in the estate. All were said to have the same accommodation as the Property. Although they considered a fifth – 2 College Lane, they discounted this as an 'outlier' in poor condition and did not include it further. Of these 4 comparables, the exact location within the site, their floor level, their floor area, their conversion/ new build nature, any improvements, condition, time etc. were not factors for which adjustments were said to be required. The applicant's Valuer made no adjustments to any.
11. **14 Bishop Pelham Court:** The long lease at a peppercorn rent, of a one bed flat with an agreed floor area of 46.28m². It was said to have sold for £102,000 on 6 January 2020.
12. **10 Quintin Gurney House:** The long lease at a peppercorn rent, of a one bed flat with an unagreed floor area of 37m². It was said to have sold for £98,000 on 15 October 2020.
13. **45 Quintin Gurney House:** The long lease of at a small £100 pax but rising rent of £200 pax wef 2026, £300 wef 2059, £400 wef 2092, and £500 wef 2121. The agreed floor area of this one bedroom flat was 40.85m². It was said to have sold for £100,000 on 3 July 2020.
14. **19 Quintin Gurney House:** The long lease of at a peppercorn rent, of a one bed flat with an unagreed floor area of 37m². A sale was reported as agreed STC but did not complete, for £96,250 on 5 February 2020.
15. The applicant's valuer took a broad brush approach to their analysis. He added them up and divided by four to reach a figure of £99,062.05 rounded down to £99,000 for the long leasehold. He then applied the agreed adjustment uplift of 1% to reach the virtual freehold value for the subject Property of £100,000.
16. The applicant's valuer then referred to the calculation of the landlord's reversionary interest and in particular the deferment rate to be applied. The valuer referred to *Zuckerman v trustees of the Calthorpe Estate* [2009] UKUT 235. He explained that they began with the Sportelli 5%,

added 0.5% to reflect the poorer growth prospects for capital values in Norwich compared with those in Prime Central London. They were convinced *“that capital growth in South Norfolk would be significantly lower than that experienced in Prime Central London and that the difference is substantial enough that any investor would seek to reflect this in their bid.”*

17. They supported this view by comparing the 47 year Nationwide House Price Index and 25 year HM Land Registry index capital value price growth. The Nationwide was quoted as showing a London growth of 37.43x; the latter an East Anglian growth of 23.90x for the period 1973 to 2020. The HMLR showed a Kensington and Chelsea growth of 7.12x and South Norfolk 3.86x in the value of ‘flats and maisonettes’, for the period 1995 to 2020.
18. They supported the view that the greater scope and risk of management would justify the addition of a further 0.25% in yield for the investor. *“This is a complex proposition for management, and will clearly require a more in-depth approach and greater degree of management than a small block in PCL”,* and *“Quite simply there is significantly more to be managed by the freeholder and as a result, significantly greater risk and scope for complex and costly repairs and maintenance.”* They quoted their own estate management difficulties in running the development on completion and sale of the units, for some years after completion. They were content to release the work back to the client at the first management contract renewal because of this.

Respondents Case

19. The respondent’s Valuer Mr N. Plotnek LLB, prepared a valuation report on 31 July 2021. He also dealt with the same two issues. Firstly the analysis of comparable long leasehold flat sales and secondly; as to the correct deferment rate to apply to this value for the remainder of the existing and proposed lease. While other materials including comparables of sales of short leaseholds in the development were provided these were not further referenced by him.
20. The respondent’s Valuer identified 2 sales of other flats on the estate. Both were said to have the same accommodation type, though not size, as the Property.
21. **14 Bishop Pelham Court:** The long lease at a peppercorn rent, of a one bed flat with an agreed floor area of 46.28m². It was said to have sold for £102,000 on 6 January 2020. The comparable was described as in average condition. No adjustment was made for that. The respondents valuer confirmed a long lease of 156 years unexpired at a peppercorn rent. The valuer added 0.69% for time (116.7 + 115.9) and add a further 3.96% for size, (48.05m² + 46.22m²). The valuer made

no downward adjustment on the rate per square meter for the larger flat however. The final figure for the subject Property was £106,770 (£2558.6/m²).

22. **45 Quintin Gurney House:** The long lease of at a small £100 pax but rising rent of £200 pax wef 2026, £300 wef 2059, £400 wef 2092, and £500 wef 2121. The agreed floor area of this one bedroom flat was 40.85m². It was said to have sold for £100,000 on 3 July 2020. The comparable was described as in good condition, rather than improved, for which a spot figure of £3,500 was deducted. The respondent's valuer confirmed a long lease of 122.3 years at a rising rent as described by the applicants valuer. For this rising rent an addition was made of £3,075 based on calculations shown in the report. The valuer deducted 2.1% for time (116.7 + 119.2) and added a further 17.63% for size (40.85ms + 46.22 m²). The valuer made no downward adjustment on the rate per square meter for the larger flat however. The final figure for the subject Property was £114,670 (£2807.1/m²).
23. The respondent's valuer considered the deferment rate appropriate as 5%. He referred to several other non PCL settlements and determinations where the rate was also 5% and saw nothing unusual about the situation at the subject Property to depart from that rate. He also referenced para 114 of the Sportelli decision: *"It is, we think, appropriate that we should be rather more explicit about the status of our present decision on the deferment rate. The starting point is to observe that it is the function of the Lands Tribunal, as a specialist tribunal with an England and Wales jurisdiction, to promote consistent practice in the application of the law in decisions that are made within its particular jurisdictions. The purpose of the Tribunal was to provide "a single consistent jurisdiction" in relation to those matters assigned to it."*
24. He added *"I have seen no evidence from the tenant's valuer in support of a move away from a deferment rate of 5% other than the two cases to which I was referred Trott v Humble [2012] UKUT 0291 (LC) and Utley v Trott CAM/33UG/OLR/2013/0022. I believe we have moved on from that position in the intervening 8 or 9 years, and in any event I would submit that not only is this evidence insufficient to warrant a departure from the Sportelli rate of 5.0%, but that it is any event incorrect to do so."*

Decision

25. A photograph of the front exterior and parts of the interiors of the Property and of comparables were included in the two reports. The Tribunal did not consider it necessary or proportionate to carry out an inspection of the Property.

26. Part 2, Schedule 13 to the 1993 Act provides that the price to be paid by the leaseholder, the applicant for the new leasehold interest where there is no intermediary head leaseholder, applies here.
27. The premium payable in respect of the grant of a new lease is the total of: (a) the diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 3, (b) the landlord's share of the marriage value as determined in accordance with paragraph 4, and (c) any amount of compensation payable to the landlord under paragraph 5.
28. The (a) diminution is: 3(1) The diminution in 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.
29. Paragraph 4 of the Schedule, as amended, provides that the freeholder's share of the (b) marriage value is to be 50%, and that any marriage value is to be ignored where the unexpired term of the lease exceeds eighty years at the valuation date. Here it is included as the unexpired term is less than eighty years.
30. Paragraph 5 of the Schedule provides for the payment of compensation for other loss resulting from the enfranchisement. Neither side contended for this.
31. The valuation date prescribed by section 51(1) of the Act is the date of the applicants' application to the court and the unexpired residue of the lease for the Property is agreed at 65.27 years.
32. The Tribunal notes the agreement that a 1% adjustment uplift to be made to the long leasehold value to get to the freehold for the Property.
33. The diminution in the value of the landlord's interest in the Property is represented first by the capitalised value of the ground rent receivable under their lease.
34. Next, the effect of the lease extension will deprive the landlord of the property for a further 90 years in addition to the current unexpired term. The present value of that delayed reversion is determined by applying a deferment rate to the freehold value of the flat.
35. The broader brush approach by the applicant's valuer inclined away from the agreement to, let alone use of floor areas of either the subject Property or of comparables. The flat was inspected by the applicant's Valuer on 19 November 2019 who confirms in this report and that it had an overall floor area of 54m², though it is unclear if they measured it. The respondent's valuer assessed the floor area at 48.05m². The

area remained unagreed by the parties and there is no registered EPC on which either party may refer. As it was the respondent who used the floor areas and had proposed the smaller area of some 48m², the Tribunal therefore accepted that this is the correct area for the purpose of this valuation.

36. Of the comparable sales of long leasehold flats from each party, the Tribunal declined to make use of the unsold flat No.19 Quinton Gurney. This left 3 from the applicant and 2 from the respondent, two of which were the same and the basic facts were agreed. Of these the Tribunal agreed with the more careful approach of respondent's valuer in attempting to fine tune the sale prices to get to the long leasehold value of the subject. The Tribunal therefore rejected the use of the applicants second comparable as there was no agreed floor area. This left the same two comparables from each valuer for consideration.
37. **14 Bishop Pelham Court:** The long lease at a peppercorn rent, of a one bed flat with an agreed floor area of 46.28m². It was said to have sold for £102,000 on 6 January 2020. The comparable was described as in average condition. No adjustment was made for that. The Tribunal accepted the time index addition of 0.69% and made a slightly smaller size addition (reflecting a marginal kiosk effect) of 3.5%. This left total additions of 4.19%. The value of the Property from this comparable was £106,274 (Overall £2211/m²).
38. **45 Quintin Gurney House:** The long lease of at a small £100pax but rising rent of £200 pax wef 2026, £300 wef 2059, £400 wef 2092, and £500 wef 2121. The agreed floor area of this one bedroom flat was 40.85m². It was said to have sold for £100,000 on 3 July 2020. The comparable was described as in good condition for which a spot figure of £3,500 was deducted. The applicant's valuer had felt that no adjustment was necessary as these rents and increases were not at levels that would affect lenders. The respondents valuer confirmed a long lease of 122.3 years at a rising rent as described by the applicants valuer. For this rising rent an addition was made of £3,075 based on respondent's valuers calculations shown in the bundle. The valuer deducted 2.1% for time (116.7 + 119.2). All of these adjustments were accepted save for the size addition of 17.63%. The Tribunal again took a lower unit rate for the notably larger flat as for the first comparable, for which the valuer and added a further 17.63% for size (40.85ms + 48.05 m²). The valuer made no downward adjustment on the rate per square metre for the larger flat however and the Tribunal reduced this arithmetic addition to 13.25% to again reflect a higher 'kiosk effect'. The final figure for the subject Property was £110,725 (Overall £2304/m²).
39. Adopting the simple average of the applicant's valuer (£106,274 and £110,725) without there being any clear justification for weighting these

two sales differently, the Tribunal came to a long leasehold value of £108,500 for the Property.

40. As for the correct deferment rate: The development is relatively large and contains more than the average communal areas. It may or may not also contain additional management risks and management costs. However it is a three way lease. Freeholder, leaseholder and management company. Risks in the management of the estate and the additional cost rising, if any, fall to the leaseholder through the service charges, failing which the management company shareholders meet them. No added tangible risk falls on the freeholder with this arrangement.
41. In *Cadogan & Anor v Sportelli & Anor* [2006] EW Lands LRA_50_2005 at para 123 the Upper Tribunal states: *“The application of the deferment rate of 5% for flats and 4.75% for houses that we have found to be generally applicable will need to be considered in relation to the facts of each individual case. Before applying a rate that is different from this, however, a valuer or an LVT should be satisfied that there are particular features that fall outside the matters that are reflected in the vacant possession value of the house or flat or in the deferment rate itself and can be shown to make a departure from the rate appropriate.”* The Tribunal accepts the respondent’s representations on the deferment rate. On the evidence provided for 5.75% contended for by the applicant’s valuer, this Tribunal is not content to depart from the use of 5% as the deferment rate on this occasion.
42. The premium to be paid by the applicant for the new lease of the Property is therefore **£12,374, (Twelve Thousand three hundred and seventy four Pounds)**.

Name: Neil Martindale FRICS Date: 12 January 2022