



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

Case reference : **LON/00AM/OLR/2021/0917**

HMCTS code : **P: PAPERREMOTE**

Property : **Flat B, 39 Horton Road, London,
E8 1DP**

Applicant : **Kiri Dean Witton**

Representative : **Thompson Snell & Passmore LLP,
Solicitors**

Respondent : **Steven David Phillips**

Representative : **Not represented**

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

Tribunal members : **Judge I Mohabir
Mrs E Flint FRICS**

Date of decision : **25 January 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers, which has been consented to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

Summary of the tribunal's decision

- (1) The premium payable by the Applicant for the new lease is **£44,917**.

Background

1. This is an application made by the Applicant qualifying tenant 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 Flat B, 39 Horton Road, London, E8 1DP (the “property”).
2. By a claim form issued on 3 August 2021 under action number H02EC299 in the County Court at Clerkenwell & Shoreditch the Applicant sought an order under section 50(1) of the Act pursuant to which the Claimant be granted a new lease of 90 years plus the remainder of the term of the existing lease on terms to be determined by the First Tier Tribunal (Property Chamber) on the basis that the Respondent could not be found.
3. By Order of Deputy District Judge Martynski dated 11 October 2021 the Court recorded that it was satisfied that the Respondent could not be found and made the vesting order sought. It ordered, *inter alia*, that the matter be transferred to the Tribunal for a determination of the price to be paid for the freehold interest.
4. On 2 November 2021, the Tribunal issued Directions, which included a direction that its determination would be based solely on the basis of the documentary evidence filed by the Applicant.
5. The valuation evidence relied on by the Applicant is set out in the report prepared by Mr Colin Ross MSc AssocRICS dated 14 January 2021.

Decision

6. The determination in this matter took place on 25 January 2022 and was based solely on the valuation evidence contained in the report of Mr Ross.

7. The Tribunal relied on the description of the property internally given in Mr Ross's report and refer to second page of that report for the description. The Tribunal did not carry out an inspection.
8. The existing lease is dated 18/12/1987 and is for a term of 99 years from 29/09/1987 and expiring on 29/09/2086. As at the date of valuation, 29/08/2021, the correct date of Notice of Issue in the County Court there were approximately 65.11 years unexpired. The current ground rent payable is £200 which is subject to fixed increases as follows: from 29/09/2053, to £300 and fixed for the remainder of the term.
10. Because the lease has less than 80 years to run, marriage value at 50 per cent is payable. Compensation under the Act does not arise. In respect of (any) arrears of rent, the landlord has not served demands in statutory form, so no arrears of rent are payable.
11. We agreed with Mr Ross that the value of the ground rent should be capitalised at 6.5% per annum. We agree with Mr Kyte's figure on the basis that this ground rent would be fairly modest and this accords with the Tribunal's own knowledge of market values for this type of investment.
13. We agree with Mr Kyte's use of 5% for the deferment of the reversion, which is in accordance with the decision in *Sportelli*.
14. To arrive at a value for the existing lease and the freehold, Mr Ross used the following methodology.
15. As to relativity, Mr Ross took the mean average of the Savills 2015 Unenfranchisable Graph and the Gerald Eve 2016 Graph, which at 64.94 years unexpired yields the following relativities:
Savills 2015 Unenfranchisable Graph – 81.59%
Gerald Eve 2016 Graph – 81.78%
Mean Average – 81.68%
16. We found Mr Ross's failure to properly analyse his comparable flats in relation to the freehold value at Flat 1, 43 Horton Road and Flat 3, 43 Horton Road to be unhelpful. He simply made reference to these properties, adjusted for time using the House Price Index for Flats and Maisonettes in the Borough of Hackney to August 2021 and having regard to the poor external condition of the property, arrived at a freehold value of £404,040 and an Extended Lease Value - £400,000 (being 99% of Freehold Value). The lack of floor plans for the subject premises and sales details of the comparables meant it was difficult to analyse the comparable sales evidence. These and a detailed and properly considered analysis would have assisted the Tribunal further.

17. Mr Ross concluded *“We have based our terms upon a freehold vacant possession value of £404,040 (with a long lease value of £400,000 being 99% of this figure), a term yield of 6.5%, a reversionary yield of 5%, and a relativity /differential of 81.68%, which produces a premium of £44,917 payable to the freeholder”*.
18. Whilst we considered that Mr Ross’s valuation of the extended lease value for the property to be on the high side, we nevertheless accept his valuation on the basis that it was the only valuation evidence before the Tribunal and using its expert knowledge and experience it did not appear to be outside the credible range of values based on the limited evidence available .
19. The terms of the draft Deed of surrender and re-grant appearing at page 259 in the hearing bundle are approved.

Costs

20. The costs claimed by the Applicant in the statement of costs dated 14 January 2022 are £10,145 including VAT and disbursements. The Tribunal’s summary assessment of the costs is as follows.
21. In relation to the work done on documents, item 1 is reduced to 3 hours by the Grade C fee earner at £235 per hour. The work done by the Grade D fee earner is disallowed as not being reasonably incurred.
22. Item 2 is reduced to 1.5 hours. Items 3 and 4 are allowed as claimed. Item 5 is reduced to 2 hours by the Grade C fee earner. The attendance claimed for the Grade B fee earner is disallowed as not being reasonably incurred.
23. Counsel’s fee is reduced to £650 plus VAT.
24. The valuer’s fee is reduced to £600 plus VAT, especially having regard to the Tribunal’s criticism of the adequacy of the report.
25. Accordingly, the Applicant’s costs are summarily assessed in the sum of £5,571.20 including VAT and disbursements. Pursuant to paragraph 3 of the order dated 11 October 2021, this sum is to be deducted together with the Applicant’s conveyancing costs from the premium of £44,917 to be paid into Court.

Name: Tribunal Judge I Mohabir **Date:** 25 January 2022

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).