



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

Case reference	:	LON/00AY/OLR/2017/0342
Property	:	Flat 2, 127 Upper Tulse Hill, London SW2 2RD
Applicant	:	Bluegate Housing Limited
Representative	:	Mr S Gallagher – Counsel with Ms Jacqueline Alpert BSc (Hons) MRICS
Respondent	:	The Mayor Alderman and Burgesses of the London Borough of Lambeth
Representative	:	Ms J Petrenko – Counsel with Mr Hugh Tippet Dip Arb FRICS MCI Arb
Type of application	:	Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993
Tribunal members	:	Judge Dutton Mr A Harris LLM FRICS FCI Arb
Date of determination and venue	:	24 May 2022 at By video
Date of decision	:	31 May 2022

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was, V: CVPEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we was referred to are in a bundle of 153 pages, the contents of which we have noted.

Summary of the tribunal's decision

- (1) The appropriate premium payable for the new lease is **£327,253 (see below)**

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 Flat 2, 127 Upper Tulse Hill, London SW2 2RD (the “property”).
2. By a notice of a claim dated 1 July 2016, 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 granted on 29 March 1973 for a term of 51 years less the last 10 days from 25 December 1972 at an annual ground rent of £25. The applicant proposed to pay a premium of £214,550 for the new lease.
3. On 7 September 2016, the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £421,000 for the grant of a new lease.
4. On 3 March 2017, the applicant applied to the tribunal for a determination of the premium.

The issues

Matters agreed

5. The following matters were agreed:
 - (a) The subject property is a self-contained flat on the ground floor within a 2/3 storey block of flats constructed in about the 1920’s and containing 5 similar flats;
 - (b) The gross internal floor area is 68 square metres, which equates to 732 square feet;
 - (c) The valuation date: 1 July 2016;
 - (d) Unexpired term: 7.46 years;
 - (e) Ground rent: £25 throughout the term;
 - (f) Long leasehold (unimproved) value: 99% of the freehold (unimproved) value;
 - (g) Capitalisation of ground rent: 6.5% per annum; and
 - (h) Deferment rate: 5%.

Matters not agreed

6. The following matters were not agreed:

- (a) The “no-Act world” short leasehold (unimproved) value: the applicant contending at the hearing for £68,768.38 and the respondent contending for £92,257;
- (b) The freehold (unimproved) value: the applicant contending for £328,250 and the respondent contending for £445,410; and
- (c) The premium payable.

The hearing

- 7. The hearing in this matter took place on 24 May 2022. The applicant was represented by Mr Gallagher of counsel, and the respondent by Ms Petrenko also of counsel. The valuation evidence was given by Jacqueline Alpert for the applicant, Bluegate Housing Limited and by Hugh Tippett for the respondent.
- 8. Neither party asked the tribunal to inspect the property although Mr Gallagher suggested that a ‘drive by’ viewing of the comparable properties suggested by both valuers would be of benefit. In fact, the properties had been viewed using Google Street view and Mr Tippett had provided photographs from Estate Agents particulars of the comparables he relied upon.
- 9. In a helpful Respondent’s note of Issues, Ms Petrenko had set out the history of the property and the notices served under the Act. There had been some confusion as to which lease was the head lease and which was the one under which the applicant held ownership. This was clarified at the hearing, and all concerned accepted the appropriate lease was that dated 29 March 1973. This case has an unusual valuation date, being nearly some 6 years before the matter came before us. It seems that there had been County proceedings relating to the validity of the counter notice, which had taken an inordinate length of time to resolve, which resulted in the matter not coming before us until 24 May 2022.
- 10. The evidence of Ms Alpert was set out in her report dated 9 May 2022. It was succinct. It set out her experience, confirmation that she had inspected the property in February 2022 and details of its location. We noted the description of the property, its construction, the accommodation, and the lease terms which are not in dispute. Agreed matters and those in dispute were set out. The premium payable is recorded as being £240,870 and the report finishes with an experts declaration.
- 11. In the appendices we had a photograph of the front of the property and a location plan. At Appendix 2 was a list of 7 comparable properties giving a date for sale, in all but one case where an offer dated April 2016 is recorded, the price achieved and a brief description. The third appendix was the valuation showing how the premium had been calculated. From this we were able to glean that the market value for the freehold, being 1% more than the extended lease value, was

£3289,250. Relativity was applied, it seems to the freehold value at 20.95%, giving a current lease value of £68,768.38.

12. For the respondent we had the report of Mr Tippett, which was dated 9 May 2022, and which had been updated the day before to include £3,831 as the extended lease reversion, which had been omitted from the first valuation.
13. The report gave the same information, although more fully, to that set out in Ms Alpert's report. Where the two reports differed was in the details given of the comparable properties relied upon by Mr Tippett. He listed seven comparable properties, none common to those put forward by Ms Alpert. He had taken the sale price and adjusted for the passage of time. His report gave more information on each comparable and in most cases included estate agents particulars, which in turn provided some photographic evidence. He was of the view that there was 'clear blue water' between subject property and flats in Council owned blocks to the south of Upper Tulse Hill, which appeared to form the basis of Ms Alpert's comparables.
14. He concluded that the long lease value of the flat was £441,000, with a 1% uplift for the freehold. Applying a relativity of 20.92 gave a short lease value of £92,257 and a premium of £327,250.
15. For the applicant, Mr Gallagher confirmed that the terms of the new lease were agreed and that the statement of agreed facts accurately set out the position. The difference in relativity was so minor that we were asked to split the difference. He drew to our attention that the existing lease contained, in his view, some unusual restrictions. At clause 2(8) was a prohibition against alterations. At Clause 2(11) a restriction on assignment and underletting, both without consent, not to be unreasonably withheld, but also only to 'a respectable and responsible person'. Finally, clause 2(16) had a limitation on user which would inhibit subletting to a group of friends, or students, for example.
16. He asked if we could undertake a 'drive by' inspection but we confirmed that a view on Google Street view had been undertaken by Mr Harris.
17. He called Ms Alpert to speak to her report, which she did, by telephone as it seemed she did not have a functioning camera. She was asked if she had investigated the comparable properties put forward by Mr Tibbett. She said she had and that apart from the first two, a property at Weymouth Court and 113 Upper Tulse Hill, the others were period properties, with private gardens in quieter locations. As to the price index for Lambeth, she thought this was a too broad-brush approach including a number of different styles of property across a large Borough. It was not specific enough.

18. On the question of the lease terms, she considered that the landlord might request payment for their release and that the inclusion may affect mortgagability.
19. Ms Alpert was then asked questions by Ms Petrenko. In answer to her view on high rise blocks she suggested that anything above 10 storeys would be high rise, with medium rise flats being between 4 and 10 storeys. Asked about her comparable properties she confirmed that she had not visited each one and apologised for not supplying photographs of the properties. There was some discussion on service charges and the control of the buildings and in the case of the subject property she considered that it was similar to Local Authority housing, with utilitarian common parts.
20. Ms Alpert was then asked why she had not applied any adjustment for time, especially in respect of the first four properties, which were all sold in 2015. She said that any adjustment was difficult and did not take into account location or the character of the property. Whilst she accepted that the market may have moved but not greatly and left it to the tribunal.
21. On a more detailed review of her comparables she conceded that 18 Mackie House was something of an outlier. She did not know how many flats there may have been in each block she relied upon and if parking was not mentioned then the comparable did not have any. One comparable at 1 Gaywood Close was included as being under offer at April 2016. She did not know whether it had completed. She was asked whether any of the comparables were similar to the subject property. She confirmed that they were all local municipal properties. A point was raised that she had calculated the current lease value by reference to the freehold value, when it should have been against the extended lease value, which she appeared to accept, although saying that she had always dealt with relativity in that fashion.
22. In answer to us she told us that she had adopted a square footage rate of £444, although she accepted that this was not stated in her report. It was, it seemed, an average of the comparable properties she had submitted. She said she had no preferred comparable.
23. We then heard from Mr Tippett. He confirmed the contents of his amended report. As to the lease terms he was of the view that they would have no impact on the valuation as they were not unusual, the more so where the flats were owner occupied, although it seems the subject property was sublet.
24. Mr Gallagher had some questions for him. On the lease terms Mr Tippett maintained that he did not consider them to impact on value. He doubted that a landlord would go thorough each letting to determine whether the potential tenant was respectable and

responsible person. As to alterations he considered that in the context of the subject property there was little scope for alterations.

25. Discussions took place concerning the indexation. It was Mr Tippetts view that it was better to attempt adjustments using the Land Registry indices as a failure to do so where there is a rising market will give the wrong impression. He accepted there was no perfect way, and that Lambeth was something of a 'broad church'. Asked about using experience he accepted that was relevant but, in this case, they were required to look back 8 years, which was a problem.
26. He was then taken through the comparable properties he had relied upon. He thought his comparables were more appropriate than post-war high-rise blocks. He had, he said, cast his net in a tight group around SW2 and accepted that there were not that many comparable properties for him to consider some 8 years ago. He accepted that having inspected this year he was not able to say with any certainty what the subject property may have looked like in 2016. The garden could have been better maintained and the common parts not so dated. He accepted that the subject property had room for improvement.
27. In answer to us he confirmed that he had taken the rate per square foot of £600 as being the below the average figure in his comparables.
28. In closing submissions Mr Gallagher said this was an unusual case with a valuation date so far in the past and no common comparables. He suggested that the properties put forward by Mr Tippet were not of assistance and grossly overstated the value. In contrast Ms Alpert had applied her knowledge and used considerable thought and judgment, an approach the tribunal should follow.
29. For the respondent Ms Petrenko commented that Ms Alpert's report did not state a square footage figure and only put this forward at the hearing. She did not know whether some comparables had parking and had not produced photographs of the properties she relied upon. In Ms Petrenko's view Mr Tippet's report was to be preferred.

The tribunal's findings

30. We accept that this case has posed problems for the valuers given the historic valuation date. The provision of comparable evidence has proved difficult, although we are surprised that there was not one comparable common to both.
31. Both valuers have utilised a square foot rate although Ms Alpert kept her rate close to her chest, not revealing it until the hearing, and then by taking the simple expedient, it seems, of the average of the comparables, ignoring date. Mr Tippet had also taken the average of his comparable properties but had both adjusted for time and made an additional allowance to reach the rate of £600 per square foot.

32. We have considered the lease terms, which whilst being perhaps somewhat dated do not, in our finding affect the value. The prohibition against alterations would not have any impact, given the nature of the property. The restriction on user does not appear to have prevented a subletting, albeit to a family and we agree with Mr Tippett that the 'respectable and responsible' person is not likely to impact on any letting arrangement.
33. We found the evidence of Mr Tippett preferable to that of Ms Alpert. He had not chosen council blocks, had provided photographic evidence of the nature of the comparable and attempted to adjust for time, which is contrary to the path taken by Ms Alpert. We consider that he had put more effort into achieving a report to assist us in this determination. Although the freehold is owned by Lambeth Council the block has never been run by them as rented housing. We consider that the evidence from the private sector better reflects the property.
34. We have reviewed the valuation schedule and made an allowance to reflect the position on relativity. We find that the premium payable for the subject property is £327,253. Neither side addressed us on the question of the intermediate landlord's interest. Such interest appears, by reference to the initial and counter notices to be de minimis. We have come to the conclusion that the value attributable to this is included in the premium we have assessed and as the respondent suggest a figure of £450 that should be settled on the intermediate landlord by the respondent from the premium we have found to be payable. If anyone disagrees with this approach, they must let us know within 14 days of the date this decision is sent to the parties and tell what sum they say is appropriate, and why and we will review this element only.

Name: Judge Dutton

Date: 31 May 2022

Appendix: Valuation setting out the tribunal's calculations

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/00AC/OLR/2014/0106

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

**Valuation under Schedule 13 of the Leasehold Reform Housing and
Urban Development Act 1993**

**Premium payable for an extended leasehold Interest in Flat 2, 127, Upper
Tulse Hill, London SDW2 2RD**

Basic Information							
Valuation Date	01 July 2016						
Existing lease Expiry Date	14 December 2023						
Years unexpired	7.46						
Length of new lease	97.46						
Existing Ground Rent	£25.00						
Capitalisation Rate	6.50%						
Deferment Rate	5.00%						
Long lease Figure figure	£441,000						
F/H to Long lease change	99%						
Freehold Figure	£445,410						
Relativity Figure	20.935%						
No Act Lease Value	£92,323						
EXISTING FREEHOLD VALUE							
TERM VALUE							
	Rent	Years	Yield	Cap Rate	P/V	Multiplier	Term Value
Term 1	£25.00	7.46	6.50%	5.7672	1	5.7672	£144
REVERSION VALUE							
	Capital Value	Years to Reversion	Deferment Rate	P/V	Reversion Value		
	£445,410	7.46	0.05	0.6949	£309,519		
							£309,664
FUTURE FREEHOLD VALUE							
	Capital Value	Years to Reversion	Deferment Rate	P/V	Reversion Value		
	£445,410	97.46	0.05	0.0086	£3,834		
MARRIAGE VALUE CALCULATION							
Value of Freeholders Current Interest						£309,664	
Value of Leaseholders Current Interest						<u>£92,323</u>	
							£401,987
Value of Freeholders New Interest						£3,834	
Value of Leaseholders New Interest						<u>£441,000</u>	
							£444,834
						Difference	£42,847
						50% of Difference	£21,424
CALCULATION OF PAYMENT BY LEASEHOLDER							
	Freeholders Current Value					£309,664	
	Freeholders New Value					-£3,834	
	Share of Marriage Value					£21,424	
						£327,253	