



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

Case Reference : **LON/00BK/OLR/2015/1629**

Property : **12 Old House Gardens, Park Road,
Twickenham, Middlesex TW1 2QB**

Applicant : **Mr Massimiliano Bocchini**

Representative : **Roshan Sivapalan BSc (Hons)
MRICS instructed by Stone Rowe
Brewer LLP**

Respondent : **Brickfield Properties Limited**

Representative : **Robin Sharp BSc FRICS instructed
by Wallace LLP**

Type of Application : **For the determination of the
premium payable for the grant of a
new lease.**

Tribunal Members : **Ms N Hawkes
Mrs H Bowers BSc (Econ) MSc
MRICS**

**Date and venue of
Hearing** : **23rd February 2016 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **24th February 2016**

DECISION

Decision of the Tribunal

The Tribunal determines that the premium payable by the applicant for the grant of a new lease is £32,479.

Background

1. This is an application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act") for the determination of the premium payable for the grant of a new lease.
2. By a notice dated 14th April 2015 pursuant to section 42 of the 1993 Act, the applicant claimed to exercise the right to acquire a new lease of the property. The landlord has served a counter-notice pursuant to section 45 of the 1993 Act which is dated 2nd July 2015.
3. The parties have submitted a joint statement of agreed facts which provides as follows:

Unexpired term:	66.94 years
Determent rate:	5%
Ground rent capitalisation:	6%
Differential for Freehold Vacant Possession Value:	1%

Lease terms:

"The subject lease is dated the 16th August 1996 under which the flat is held for a term of 99 years commencing 25th March 1983 at an initial ground rent payable of £75 per annum for the 33 years, rising to £150 per annum for the following 33 year and finally rising to £300 per annum for the remainder of the term. The passing ground rent as at the date of the initial notice was therefore £75 per annum."

4. During the course of the hearing, the applicant's evidence that the gross internal floor area is 606 square foot was agreed.
5. The only matters remaining in dispute are:
 - a. the extended lease value;
 - b. relativity.
6. The applicant proposes a premium of £30,716 and the respondent proposes a premium of £49,502.

The hearing

7. The applicant attended the hearing and was represented by Mr Roshan Sivapalan BSc (Hons) MRICS. The respondent was represented by Mr Robin Delworth Sharp BSc FRICS.

The evidence and inspection

8. The Tribunal has been provided with a copy of an expert report dated 8th February 2016 prepared by Mr Sivapalan on behalf of the applicant and with a copy of an expert report dated 8th February 2016 prepared by Mr Sharp on behalf of the respondent. The Tribunal also heard oral opinion evidence from Mr Sivapalan and Mr Sharp.
9. During the course of the hearing, Mr Sharp handed up an additional document headed "Further information on the graph produced by Beckett and Kay (as at June 2009)" and the Tribunal adjourned briefly in order to give Mr Sivapalan time to read this.
10. On the afternoon of the 23rd February 2016, the Tribunal inspected the property, in the presence of the applicant. The Tribunal also inspected the exterior of the comparable flats which are referred to in this decision.
11. Old House Gardens is a 1930s development comprising three purpose built blocks containing a total of 16 flats. Each of the outer blocks has three floors with 2 flats on each floor. The inner block has two floors with 2 flats on each floor. A "U" shaped drive provides access to Park Road and is sufficiently wide to accommodate ten or eleven parked cars, although there are neither any designated parking spaces nor any garages.
12. The applicant's property is a ground floor flat, in good condition, which comprises three rooms, a kitchen and a bathroom. The rooms are well proportioned and the flat has the usual modern amenities.

The law

13. Schedule 13 to the 1993 Act provides that the premium to be paid by the tenant for the grant of a new lease shall be the aggregate of the diminution in the value of the landlord's interest in the tenant's flat, the landlord's share of the marriage value, and the amount of any compensation payable to the landlord.
14. 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. The value of the landlord's interest is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) applying the assumptions and requirements set out in clause 3 of Schedule 13 to the 1993 Act.
15. Paragraph 4 of Schedule 13 to the 1993 Act provides that the landlord's share of the marriage value is to be 50% (but that where the unexpired

term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil).

The Tribunal's determination

The extended lease value

Mr Sivapalan's approach

16. Mr Sivapalan assessed the most recent sale of a flat within Old House Gardens as well as three other comparable sales relatively close to the agreed valuation date of 14th April 2015 in order to ascertain the appropriate long lease value.
17. Mr Sivapalan's comparable sales evidence relates to 6 Old House Gardens, Park Road, Twickenham, TW1 2QB (which sold for £365,000 on 22nd January 2014); 12 Beresford Court, Park Road, Twickenham, TW1 2PU (which sold for £490,000 on 17th October 2014); 8 Green Hedges, 1 Riverdale Gardens and Garage 8, Twickenham, TW1 2BU (which sold for £495,000 on 6th March 2015); and 22 Kelvin Court, Kelvin Drive, Twickenham, TW1 2AH (which sold for £469,950 on 25th September 2015).
18. Mr Sivapalan adjusted for time using the Land Registry Index for flats within the London Borough of Richmond upon Thames; he made various more subjective adjustments to take account of differences between the various properties; and he added 5% for quantum. He then took an average of the adjusted prices per square foot and, on this basis, proposed a long lease value of £430,000.
19. Mr Sivapalan stated that this figure is well supported by the most recent adjusted long lease sale from within the development as well as by the comparable sales evidence in the area surrounding the property. 6 Old House Gardens, which is identical in size to the subject property, has an indexed sales value as at the valuation date of £428,675.

Mr Sharp's approach

20. Mr Sharp relied upon comparable sales evidence relating to 5 and 6 Old House Gardens, Park Road, Twickenham, TW1 2QB (5 Old House Gardens sold for £315,000 in July 2011); 17 Queens Keep, Park Road, Twickenham, TW1 2QA (which sold for £460,000 in August 2015); and flats 2 and 22 Kelvin Court, Kelvin Drive, Twickenham, TW1 2AH (2 Kelvin Court sold for £442,000 on 13th March 2015).
21. Mr Sharp has looked at the long lease evidence "in the round", using the Land Registry Index for flats within the London Borough of Richmond upon Thames to adjust for time; "not putting so much

weight on the Savills index”: and putting “more weight” on the 2015 comparables than on historic ones.

The Tribunal’s determination

22. The Tribunal does not place weight on the comparable sales evidence relating to 5 Old House Gardens because it requires a time adjustment approaching 4 years. The greater the time adjustment, the less reliable the comparable, particularly in a rapidly rising market such as has been experienced in the last few years.
23. Further, the Tribunal does not place weight on the comparable sales evidence relating to 8 Green Hedges because that property is modern, has an en-suite bathroom, and differs significantly in style, character and location from the subject property.
24. Accordingly, the Tribunal has relied upon the comparable sales evidence relating to 6 Old House Gardens, 12 Beresford Court, 22 Kelvin Court, 17 Queen’s Keep and 2 Kelvin Court in reaching its determination.
25. As regards 22 Kelvin Court, the Tribunal finds that the benefits of the presence of a store and a bicycle shed are outweighed by the fact that there are significantly fewer parking spaces per flat at Kelvin Court than there are at Old House Gardens. Accordingly, the Tribunal does not accept Mr Sivapalan’s evidence that a deduction of £15,000 is appropriate and finds that there should be no deduction on account of the store and bicycle shed at Kelvin Court.
26. As regards 17 Queen’s Keep, the Tribunal accepts Mr Sharp’s analysis that it is appropriate to make an adjustment of 4.07% on account of the 93 year lease and an adjustment of £12,500 on account of the fact that this property has the benefit of a balcony and a garage on a 52 year lease.
27. Both of the experts have used the Land Registry Data to index the values. Although all of the comparable sales evidence relates to two bedroom flats there is a large differential in size. Accordingly, the Tribunal prefers Mr Sivapalan’s approach of analysing and applying data on a square foot basis.
28. The Tribunal’s analysis of the adjusted comparables is set out in the table annexed to this decision.
29. The price per square foot of £710 when applied to the agreed gross internal floor area of 606 square foot gives an extended long lease value of £430,260 which the Tribunal adopts. The Tribunal finds that the notional freehold value is £434,606, the parties having agreed that 1% must be added.

Relativity

Mr Sivapalan's approach

30. Mr Sivapalan stated that, in the absence of recent transactional evidence within the development for short and long lease sales (without having to make unreasonable adjustment), he has had regard to both his own settlement evidence and the relevant published graphs of relativity. In his view, the Nesbitt graph was the most accurate and reflective of the subject location.
31. Taking into account his own settlement evidence and the Nesbitt graph, Mr Sivapalan proposed relativity of 89.25%.

Mr Sharp's approach

32. Mr Sharp relied upon adjusted market evidence relating to two sales within the block which took place in 2009 and he also placed reliance upon the Gerald Eve graph and the Becket & Kay 2014 graph. He proposed relativity of 81.28%.

The Tribunal's determination

33. The Tribunal has not placed any weight on the market evidence which has been referred to by Mr Sharp because the required time adjustment is so great that this market evidence cannot be relied upon with confidence.
34. At Paragraph 6.7 of his report, Mr Sharp himself notes that the un-extended lease sales are historic and that indices may become less reliable over time.
35. If Mr Sharp had compared short lease prices with extended lease prices for the same period, the Tribunal might have taken a different view but such evidence was not available.
36. The Tribunal does not consider that it is appropriate to rely upon settlement evidence.
37. The Tribunal accepts Mr Sharp's assertion that the Gerald Eve graph includes pre-act data but notes that it relates to settlements and sales in prime Central London and the research report draws a clear distinction between prime Central London on the one hand and Greater London and England on the other.
38. The Tribunal finds that it is not appropriate in the present case to place reliance upon the Gerald Eve graph because the applicant's property is situated outside prime Central London.

39. The Tribunal also finds that it would be dangerous to rely upon the mortgage dependent Beckett & Kay 2014 graph in isolation. We do, however, agree with Mr Sharp that it must be logical to substitute the 2014 Beckett & Kay graph for the 2009 version which is contained in the RICS report.
40. As pointed out in the RICS report, the members of the working group were unable to agree a definitive graph. Each of the relativity graphs is open to criticism for the reasons stated in the report. Perfect evidence of short lease values in a “no act” world is no longer available.
41. In all the circumstances, we consider that the widest possible number of Greater London and England graphs should be considered. That approach, whilst not ideal, reduces the risk of relying upon one or a small number of graphs which may be flawed by balancing out the potential defects of each graph.
42. We have therefore taken an average of the five graphs which do not relate to prime Central London (substituting the 2014 Beckett & Kay graph for that contained in the report). This gives a relativity of 88.44% which we adopt.

Conclusion

43. The Tribunal determines that the premium payable by the applicant for the grant of a new lease is £32,479. A copy of the Tribunal’s valuation is attached to this decision.

Judge N Hawkes

24th February 2016

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).

Long Lease

				Time						Notes
Item	Property	Date	Price	Adjustmer	Size	£/sq ft			£/sq ft	
	12 Old House Gds	Mar-15								
1A	6 Old House Gds	Jan-14	£365,000	£428,675	606	£707	None		£707	
2A	12 Beresford Crt	Oct-14	£490,000	£486,535	749	£650	Quantum	5%	£681	
3A	8 Green Hedges	Mar-15	£495,000		683					Different Type of Block
4A	22 Kelvin Crt	Aug-15	£469,950	£467,074	675	£692	Quantim	5%	£727	
5R	5 Old House Gds	Jul-11	£315,000	£447,385						Too Old
6R	6 Old House Gds	Jan-14	£365,000	£428,674						As Above
7R	17 Queens Keep	Aug-15	£460,000	£444,035	576	£771	See Notes		£773	Lease length, Garage, Balcony Accept Sharp's analysis p240, take £445,113
8R	2 Kelvin Crt	Mar-15	£442,000	£445,083	706	£630	Quantum	5%	£662	
	22 Kelvin Court	Aug-15	£469,950							As Above
	AVERAGE								£710	

**12, Old House Gardens
Park, Road, Twickenham
TW1 2QB**

Long Lease Value (Unimproved)	£430,260
Freehold	£434,606
Existing Lease Value (Unimproved)	£384,366
Deferment Rate	5%
Capitalisation Rate	6.00%

Freeholder's Present Interest

Term

Term 1		
Rent Reserved	£75.00	
YP to 1st review 0.94 years @ 6%	<u>0.8883</u>	£67

Term 2		
Rent Reserved	£150.00	
YP to 2nd review 33 years @ 6%	14.2302	
PV of £1 in 0.94 years @ 6%	<u>0.9467</u>	£2,021

Term 3		
Rent Reserved	£300.00	
YP to reversion 33 years @ 6%	14.2302	
PV of £1 in 33.94 years @ 6%	<u>0.1384</u>	£591

Reversion

FH reversion	£434,606	
PV of £1 in 66.94 years @ 5%	<u>0.0382</u>	£16,602
		£19,281

less

Freeholder's Proposed Interest

FH reversion	£434,606	
PV of £1 in 156.94 years @ 5%	<u>0.0005</u>	£217
		£19,064

Marriage value

Proposed		
Extended lease value	£430,260	
FH in reversion	£217	
less		
Existing		
Freeholder's Interest	£19,281	
Short lease value	£384,366	
Marriage Value	<u>£26,830</u>	
50:50 division		<u>£13,415</u>
Premium for lease extension		£32,479