



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

Case reference	:	LON/00AQ/OLR/2018/1553
Property	:	Ground Floor Maisonette, 2 Hillingdon Court, Westfield Drive, Harrow, Middlesex HA3 9EG
Applicants	:	(1) Mark John Lanning (2) Paul George Morgan
Representative	:	Ms Elizabeth instructed by Sayers Solicitors
Also in Attendance	:	Mr John Loughran MRICS – of Allied Surveyors and Valuers Ltd
Respondent	:	Mr G Bruce
Type of application	:	Section 50 of the Leasehold Reform, Housing and Urban Development Act 1993
Tribunal members	:	Judge Daley Mr D Jagger FRICS
Date of decision	:	1 May 2019

DECISION

- 1) The appropriate premium payable for the extension of the Applicants' lease is £54,012 in accordance with the calculation set out in the Appendix to this decision.
- 2) The lease shall be granted on identical terms to the original lease.

Background

1. On 22 November 2018, District Judge Holmes, sitting at the Willesden County Court made the following order:-: 1) The Applicants having taken such steps as the Court deemed proper and reasonable to

ascertain the whereabouts of the Respondent, the Court is satisfied that the relevant freeholder of Ground Floor Maisonette at 2 Hillingdon Court, Westfield Drive, Harrow, Middlesex HA3 9EG is missing and cannot be found. (2) The Court dispenses with the need to give notice of the application to the Respondent. (3) A Vesting Order is made to grant a new extended lease in respect of the Ground Floor Maisonette at 2 Hillingdon Court, Westfield Drive, Harrow, Middlesex HA3 9EG pursuant to the Act for an additional 90 years in addition to the current unexpired term under the current Lease or on such terms as may be determined by the First Tier Tribunal (Property Chamber). (4) The Applicant's application be transferred to the relevant First Tier Tribunal for determination of the premium to be paid for the grant of the new Lease and such other matters as they are required to determine pursuant to the Act..."

2. Directions were given by the Tribunal to enable the matter to proceed on the basis of a paper determination. A report was produced to the Tribunal by Mr Gordon Loughran dated 31 December 2018. In a letter dated 16 January 2019 the Tribunal stated that the Valuation Report contained insufficient information for the Tribunal to determine the premium payable for the lease extension. The Tribunal requested the revised report to address three specific points:-
 - To identify the correct valuation date with the revised report reflecting that date.
 - Full details of all comparable market evidence relied upon to be provided.
 - An analysis of the comparables to support opinion of long lease and/or freehold values, with reference to the correct valuation date.
3. Upon consideration of the revised report dated 25.01.2019, the Tribunal by way of letter dated 21 February 2019 sought further clarification of issues identified in his January report. On 1 March 2019 a further report was sent to the Tribunal and the matter was listed for hearing for 1 May 2019.

The Hearing

4. At the hearing the applicants were represented by Ms Elizabeth Dwomoh, Counsel. Also in attendance were the two applicants, and Mr Gordon Loughran MRICS.
5. Counsel had provided a skeleton argument, in which she had identified the issues both to be determined and those upon which the Tribunal requested further information.

6. In her Skeleton Argument she set out that the subject premises comprise a two bedroom ground floor maisonette within a two storey detached building divided into two units. The Premises was constructed in approximately 1965. The premises had a front and rear garden and also included a shared driveway which led to a block of two garages on of which was included in the Applicants demise.
7. The issues that had been identified were-:
 - The correct valuation date with the revised report reflecting that date.
 - Full details of all comparable market, settlement and relativity evidence relied upon.
 - An analysis of the comparables to support opinion of long lease and/or freehold values, with reference to the correct valuation date.
 - Provision of comparables before and after the valuation date on a wider geographic area spread
 - Evidence for the relativity adopted through comparable or graph/graphs with analysis.
 - Justification of the use of the Savills PCL graph and the discount for “No Act Rights”
 - Justification for the departure from the standard 5% deferment rate
 - Schedule of construction and condition of the building at the subject premises.
8. Counsel Ms Dwomoh accepted on behalf of the Applicants, that the correct valuation date was 18 April 2018. Mr Loughran was invited to speak to his report.
9. Mr Loughran spoke to his report and discussed his selection of the comparables that he had used and the reason for their inclusion. He stated that he had searched the Right Move database with a search criteria of 500m and with transaction dates up to 12 months prior to the relevant valuation dated. He had disregarded any comparables which post dated 18 April by more than a few weeks. This had lead to his choosing 3 comparables as the most appropriate to the subject property.
10. In answer to a question concerning the number of comparables that he had produced. He stated that he had followed the RICS Professional Information Paper “Comparable Evidence in Property Valuation. In his

report he described this as “a hierarchy of evidence” This was, transactions of the subject property, transactions of similar properties, recently completed transactions of identical property, recently completed transactions of other similar property, information from published sources or commercial database, historic evidence of the same or similar properties, other indirect evidence, transactional evidence from other property types and locations and asking prices.

11. He stated that he had used the RICS protocol and had thus limited his search to 500m radius of the subject property and that he had “disregarded any comparables outside these parameters.”
12. Mr Loughran produced three comparable properties; 22 Albany Court, 408 Kenton Road HA3 9BH. This property was a purpose built flat, over commercial premises built in 2010, it was sold subject to a 117 year lease, and had the benefit of communal gardens and secure underground parking. It had sold on 15/09/17 at £255,000. Flat 25a Glenalmond Road HA3 9JY was a purpose built maisonette built in 1933, it had the benefit of a garden, there was no garage or dedicated parking space, the premises was sold on 23 August 2018, subject to a 121 year lease term at £295,500. The final flat 43 Brookfield Court Gooseacre Lane HA3 0XZ was built in 1955, it was subject to an 83 year unexpired lease term. The premises benefited from a communal garden, there was no garage or dedicated parking space. The premises sold on 20 April 2018 at £317,500.
13. Mr Loughran had made adjustments to the three comparables to reflect the location and the facilities and conditions which produced a valuation range between, £267,775-£317,500. The average of which was £298,500. In respect of why the valuation had gone down between his September report and the one before the Tribunal in March, Mr Loughran stated that he had started a fresh from the new valuation date, and this together with his comparables had produced this result.
14. Mr Loughran had made a 15% deduction based on his experience of the area and external condition to arrive at a valuation from the maisonette of £255,000. He had made the deduction to reflect the location of the subject premises on a busy road. In his report, he also provided further information about the construction of the premises together with photographs
15. The Tribunal noted that 22 Albany Court, did not appear to the Tribunal to be an appropriate comparator given its age, location and the overall nature of the property as a modern purpose built flat.
16. In respect of his departure from the agreed deferment rate of 5% as set out in *Sportelli*, and his application of a 6% deferment rate to be applied to the reversionary interest he stated that his rate assumed that the new lease would be on substantially similar terms which would

continue to “...inhibit proper maintenance of the exterior parts and common areas being undertaken or to enable recovery of costs of any such work from the other leaseholder...” In his report he described the external structure of the premises to be poorly maintained with the overall impression of the development being dilapidated. He further stated that “...The absent freeholder coupled with the inadequate repairing covenant will give rise to a high risk of the building deteriorating further and there is clear evidence that this will affect future value, saleability and mortgage ability...” He stated that in his view all of these factors were compelling evidence which justified departing from *Sportelli*.

17. In respect of his use of the Savills graph and his relativity of 69.33, Mr Loughran referred to the decision In *Sloane Stanley-v- Munday* [2016] UKUT 0226 and the Tribunal’s disapproval of the use of graphs and preference for real world sales evidence, however in the absence of such evidence it had been suggested by the Upper Tribunal that one approach would be the use of the Savills 2002 enfranchiseable graph to find the ‘real world’ leasehold value and to make a deduction for Act Rights based on experience. He had applied a 10% deduction to reflect the “no Act Rights” and by using the Savills graph which produced a relativity of 75.35% for an unexpired lease term of 45.94 years (and a relativity of 67.45% for the premises being unenfranchiseable) he had then compared this to the Gerald Even graph which indicated a unenfranchiseable relativity of 70.25%.
18. Mr Loughran had then arrived at a range of between 67.45% and 71.21 by use of the published tables and had adopted the mean figure of 69.33%. In her Skeleton Argument, Counsel noted that the table utilised by the applicant’s surveyor was referred to in the case of *Re Midlands Freehold Ltd* and another LRA/13-23/2017, a copy of which was provided to the Tribunal
19. Mr Loughran had used the capitalisation rate of 6% and had applied a 1% adjustment from the freehold value to the long lease. This had given him a valuation of 47,060.34.

The Decision of the Tribunal

20. The Tribunal in reaching its decision agreed the following matters which were accepted from the valuation report of Mr Loughran, the correct valuation date was 18 April 2018, the capitalisation rate of 6% was appropriate and his relativity of 69.33%.
21. However the Tribunal did not consider 22 Albany Court to be an appropriate comparator as it was insufficiently similar to the subject property. The Tribunal therefore used the average of the two comparables, being 25 A Glenalmond Road and 43 Brookfield Court

Gooseacre Lane to arrive at its freehold and long lease valuations. It accepted the 15% discount made by Mr Loughran as appropriate.

22. The Tribunal was not satisfied that the evidence provided was particularly compelling so as to indicate that the *Sportelli* Deferment rate of 5% ought to be departed from. It noted the actual condition of the premises as shown from the photographs provided, and the existence of legal remedies to deal with a property which had maintenance issues.
23. It noted that the leaseholder had not suggested any amendments to the lease terms which could have provided alternative to the current arrangements for maintenance of the premises. Accordingly the Tribunal adopted a deferment rate of 5% as recommended in *Sportelli*.
24. The Tribunal has decided that the premium for the new lease is £ 54,012 a copy of the valuation is appended to the decision.

Name: Judge Daley

Date: 01 May 2019

Appendix A
2 Hillingdon Court, Westfield Drive, Harrow, HA3 9EG
The Tribunal's Valuation
Assessment of premium for a new lease
In accordance with the Leasehold Reform, Housing and Urban Development Act
1993
LON/OOAQ/OLR/2018/1553

Components

Valuation date:	18th April 2018	
Deferment rate:	5%	
Capitalisation rate:	6%	
Freehold value (plus 1%):	£269,503	
Long lease value	£266,808	
Existing leasehold value	£187,143	
Relativity	69.33%	
Unexpired Term	45.94 years	
Ground rent currently receivable	£15.75	
Capitalised @ 6% for 45.94 years	15.52	£244
Reversion to:	£269,503	
Deferred 45.94 years @ 5%	0.1063	<u>£28,648</u>
		£28,892
Less value of Freeholders proposed interest		
Reversion to Freehold value:	£269,503	
Deferred @ 5% for 144.94 years	0.00085	<u>£229</u>
		28,663

Marriage Value

Value of Proposed Interests

Extended leasehold interest	£266,503	
Plus freehold interest	<u>£229</u>	
	£266,732	

Value of Existing Interests

Landlord's existing value	£28,892	
Existing leasehold value	<u>£187,143</u>	
	£216,035	£50,697

Freeholders share @ 50% **£25,349**

LEASE EXTENSION PREMIUM £54,012