



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

Case Reference : **LON/00AZ/OLR/2018/1401**

Property : **Flat 1 Perry Mansions Catford Hill
London SE6 4PP**

Applicant : **Oluseyi Adedayo Ajayi**

Representative : **Mr P L W Morgan FRICS MCI Arb**

Respondent : **Orchidbase Limited**

Representative : **Mr L A Nesbitt FRICS MCI Arb**

Types of Application : **Lease extension**

Tribunal Members : **Mrs E Flint FRICS
Mr L Jarero BSc FRICS**

**Date and venue of
Hearing** : **14 March 2019
10 Alfred Place, London WC12 7LR**

Date of Decision : **9 April 2019**

DECISION

Decisions of the tribunal

- I. The premium payable for an extension of the lease for the subject property is £22,435 (twenty two thousand four hundred and thirty five pounds).
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The application

1. This is an application made by the Applicant lessee under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act) seeking a 90 year extension at a peppercorn ground rent of the lease dated 28 January 1980, granted for a term of 99 years from 29 September 1978, with an unexpired term of 59.46 years at a current ground rent of £60 per annum rising to £90 per annum from 29 September 2044 for the remainder of the term.
2. A section 42 Notice was served on the freeholder on 13 April 2018, offering a premium of £12,000 for a 90 year lease extension and the reduction of the ground rent to a peppercorn. The freeholder served a counter notice quoting a premium of £35,300.

The premises

3. Perry Court which was built in the 1930's comprises fourteen flats in three blocks, two front the main road and originally comprised ground floor shops with flats above; the shops have since been converted into flats. The subject flat is on the first floor overlooking the main road and comprises three rooms, kitchen and bathroom/wc.

The hearing and evidence

4. At the hearing the Applicant was represented by Mr Peter Morgan FRICS MCI Arb and the Respondent by Mr Laurence A Nesbitt FRICS MCI Arb.
5. Prior to the hearing the parties had agreed the following:
 - (i) the valuation date – 13 April 2018
 - (ii) the tenant's improvements: central heating
 - (iii) the capitalisation rate – 6.5%
 - (iv) the deferment rate – 5%

6. Therefore, the issues requiring the tribunal's determination were the value of the freehold reversion and the long lease value, the short lease value and the premium payable.

The Applicant's case

7. The Applicant was represented by Mr. Morgan who described the block as being one of the worst he had inspected. He noted that the flat faces onto the South Circular Road. The block was constructed with solid brick walls and single glazed Crittall windows.
8. Mr Morgan considered that the standard of the original kitchen and bathroom was poor, the single glazed windows resulted in condensation, there was no central heating at the commencement of the lease. The flat has been modernised but only to a basic standard.
9. Mr Morgan relied on the sales of two flats in the block and one on Stanstead Road:
 - (i) Flat 5, a modernised flat sold in July 2015 for £180,000 with 90 years unexpired. This was the best comparable. He updated the sale price using the Land Registry Index for flats in Lewisham, the adjusted price was £212,500, he then deducted £25,000 for improvements giving a value of £187,500 at the valuation date.
 - (ii) Flat 10, a fully refurbished flat including double glazing on the ground floor of the side block with a rear garden sold in March 2016 for £240,000 with approximately 156 years unexpired. He made the following deductions: -10% garden; -5% side road access, and -35% improvements. The updated sale price of £253,000 was then adjusted to £180,000 to compare with the subject flat.
 - (iii) 339c Stanstead Road, a modernised flat in a converted period house sold in July 2018 for £250,000 with 113 years unexpired. The flat is larger than the subject flat, the sale price equates to £354 per sq ft.
10. He took the average adjusted sale price of £369 per sq ft, applied it to the floor area shown on the EPC, the resultant value was £183,000 and said that he was of the opinion that the extended lease value was 1% less at £181,500. Although modernised flats achieved at least £250,000, older, unmodernised flats in poor blocks were worth much less; he had recently dealt with a flat which was sold for £150,000.
11. He considered that the market value of the improvements was probably more than he had allowed. Under cross examination however he confirmed that his estimates were based on experience and was not able to breakdown the deductions in any detail or provide any evidence in support of his opinion.

12. He referred to the sale of 4 Perry Mansions which had been sold with the benefit of a S42 Notice for £150,000 in 2015 with 61.7 years unexpired. He was of the opinion that the price paid was an unreliable guide to the value of a short lease because a prospective purchaser would be only too well aware of the cost of extending. He confirmed that a premium of £20,000 had been paid for the lease extension in 2016.
13. Mr Morgan referred to the various methods of arriving at the correct relativity of the short leasehold value including the outer London graphs, tribunal decisions and transactions in other blocks. In addition, he sought to persuade the tribunal that an alternative method based on a sinking fund approach should be used to provide the correct relativity. He carried out several calculations using different rates for the sinking fund to illustrate the relativity obtained in each case. In conclusion Mr Morgan said that he considered that a sinking fund at 3.5%, giving a relativity for this lease of 85% was the most appropriate. He confirmed that he considered the sinking fund method the most reliable.
14. Based on a freehold value of £183,300 and existing lease value of £155,805 Mr Morgan said the premium payable was £19,300.

The Respondent's case

15. Mr. Nesbitt said he had used similar comparables to Mr Morgan. He was of the view that converted flats were more valuable in this location than the flats in this block.
16. He said that he had not differentiated between the extended lease value and the freehold, the difference was de minimis and subsumed in the normal range for valuation tolerance. Mr Nesbit had valued the extended lease and freehold at £250,000 and the existing lease at £192,500 based on the limited market evidence and his experience. During the hearing he reduced the freehold value to £240,000 following further information becoming available in relation to the comparables.
17. 10 Perry Mansions, he had assumed to be unimproved although during the hearing he accepted that central heating had been installed by the tenant. He agreed that its location in the side road merited a 5% adjustment and considered the garden to be worth a further 5%, £7,000 in total was appropriate for the double glazing, central heating and kitchen fittings. He thought the flat was a similar size to the subject flat.
18. He agreed that 339c Stanstead Road was a useful comparable, the standard of modernisation was not particularly high but it did have two double bedrooms; this was offset by an open plan living room/kitchen.

19. He also referred to 29D Exbury Road which was a one bedroom flat, of similar size sold with a share of the freehold in August 2018 for £220,000.
20. In arriving at relativity, he had considered the sale of 4 Perry Mansions which he had inspected for the lease extension, it had secondary glazing and central heating but was otherwise unimproved. The sale price of £150,000 compares with the sale price of £180,000 for 5 Perry Mansions. He had also looked at his own graph to determine the difference between unexpired terms of 61.7 and 59.46 years: the difference was 2.02%. He preferred to use transaction evidence, as it is more reliable, this had given him a relativity of 77%. In support of using a single transaction as a starting point he referred to the decision of *Mallory and Others v Orchidbase 2016 UKUT 0468 (LC)* (Mallory).
21. He had made an adjustment for rights under the Act of 5% as in the Mallory decision referred to earlier.
22. Mr Nesbitt was of the opinion that the sinking fund method was inappropriate and gave the wrong answer. He referred to the risk-free rate in *Sportelli* and also *Nailrile*. He said using 2.25% would produce a relativity of 35.9% which clearly was not supported by any market evidence.

The tribunal's decision and reasons

23. The tribunal finds that the most useful comparables are those situated in Perry Mansions itself since although the flats are described as two bedroomed, the second bedroom is very small and the layout is poor in that the bathroom is off the kitchen.
24. The Tribunal accepts the deduction of 5% for Act rights.
25. Flat 5 requires adjustment for improvements. The Tribunal determines the amount of the adjustment to be £8,000 giving an unimproved value of £204,500.
26. Flat 10 requires adjustment for location, agreed at 5%; in respect of the rear garden, the Tribunal accepts Mr Nesbitt's deduction of 5% and modernisation and adjusts the updated sale price of £253,000 to £208,000 to reflect all these matters.
27. The Tribunal did not find the Stanstead Road comparable as helpful because although it is above a parade of shops, on a main road the layout and size of the bedrooms make it a more attractive unit of accommodation. There is no information available as to whether the double glazing and central heating are reflected in the sale price.
28. On the limited evidence available the Tribunal determines the value of the extended lease at £195,700 i.e. £206,000 less 5% for Act rights.

29. The Tribunal is mindful of the decision of the Upper Tribunal in Mallory where it was stated “*we are satisfied that there is sufficient market evidence to render unnecessary any reference to graphs of relativity. Not only is there a market transaction on one of the appeal flats, there are also, fortuitously, two market transactions on very similar properties with virtually identical unexpired terms to that required to be assumed for the calculation on the appeal flats.*”
30. The Tribunal is not persuaded that the sinking fund approach is a reliable method upon which to assess relativity. It was clear at the hearing that small changes in the interest rate produced significant variations in the relativity. There was no evidence to support the appropriate interest rate to be applied.
31. The Tribunal finds that the sale of one long and one short lease is a starting point but is insufficient to determine relativity without regard to the graphs as a cross check. The Tribunal is mindful that there is limited information available in respect of the condition of both flats and the sales were a few months apart at a time of a rising market. Therefore, it is appropriate to consider in addition the Nesbitt and Co and Andrew Pridell graphs. The sales represent a relativity of 83.33% unadjusted for time, the graphs indicate 82.7% and 85.62%. The Tribunal determines a relativity of 83%.
32. The premium payable is £22,435 as shown on the valuation attached.

Signed: Evelyn Flint

Dated: 9 April 2019

Value after enfranchisement		
Freeholders interest	£0	
Tenant's interest	£195,700	
	£195,700	
Value before enfranchisement		
Freeholders interest from above		£11,601
Tenant's interest	£162,431	
	£174,032	
Marriage value	£21,668	
Divide equally between parties		
	£10,834	
		Premium payable to freeholder
		£22,435