



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

**Case Reference** : **CAM/26UG/OLR/2020/0019**

**HMCTS code** : **A:BTMMREMOTE**

**Property** : **Flat 24 and Garage, Wickwood Court Sandpit Lane, St Albans AL1 4BS**

**Applicant** : **David Taylor as personal representative of Barbara Helen Taylor (deceased)**

**Representative** : **Tim Palmer BSc(Hons) MRICS**

**Respondent** : **Fodbury Properties**

**Representative** : **Andrew Cohen BSc FRICS IRRV**

**Type of Application** : **Determination of the premium to be paid for a new lease - Leasehold Reform Housing & Urban Development Act 1993**

**Tribunal Members** : **Mrs M Hardman FRICS IRRV (Hons)**

**Hearing date** : **17 June 2020**

**Date of Decision** : **8 July 2020 (amended 12 August 2020 to correct first name of Mr Cohen only.**

---

**DECISION**

---

## **Covid-19 pandemic: description of hearing**

This has been a remote [audio] hearing which has been consented to by the parties. 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 I was referred to are in a bundle of 202 pages, the contents of which I have noted.

## **Decision of the Tribunal**

**The Tribunal determines that the premium payable for the new lease for the property at Flat 24, Wickwood Court Sandpit Lane, St Albans is £70,275 and for Garage Ground Sandpit Lane St Albans is £4049.**

## **Background**

1. This is an application for a determination of premium of the new lease under section 48 of the Leasehold Reform Housing and Urban Development Act 1993 (the Act)
2. On 10 June 2019 the Applicant David Taylor, as personal representative of Barbara Helen Taylor (deceased), gave notice to the Respondent, Fodbury Properties Ltd under section 42 of the Act seeking a new lease to the Property. The notice of claim under section 42 indicated a proposed premium of £46,000 in respect of the grant of the new lease and £2,880 by way of other amounts in relation to the garage.
3. On 1 August 2019 the Respondent landlord served a counter notice under section 45 accepting the tenant's right to a new lease. They, however, rejected the proposal for the premium, instead suggesting a proposed premium of £70,000 for the flat and £4,000 in relation to the garage.
4. A copy of the Lease dated 23 February 1979 between Clubcourt Ltd and John Lawrence Johnson and Edith Johnson for a term of 99 years from 24 June 1973 was provided. The Applicants acquired the lease on 2 April 1991 under title number HD118974. The lease for the garage, which is similarly 99 years from 24 Jun 1973 is registered under the same title number.
5. Matters could not be agreed and an application was made to the Tribunal on 28 January 2020 under section 48 of the Act seeking a determination as to the premium to be paid.
6. A directions order was issued by the Tribunal indicating that the matter would be dealt with by means of an inspection and a hearing, the date to be advised in due course
7. However, following government guidelines in respect of face to face hearing due to the coronavirus, the tribunal wrote to parties to explain that the planned inspection of the property would no longer take place. It invited the parties to submit photographic evidence and said that the tribunal may conduct an external inspection of the property. It stated that the application could be dealt with on the papers if consent to do so was given by each party. Both parties requested a hearing and a remote hearing by telephone was arranged for 17 June 2020.

8. The premium for the extended lease remains in dispute.

### **The Law**

9. The method of calculation of the premium under section 48 of the Leasehold Reform Housing and Urban Development Act 1993 is by reference to Schedule 13 of the Act.

### **The Property**

10. Valuation reports provided by Mr Tim Palmer BSc(Hons) FRICS of McNeill Lowe and Palmer, Chartered Surveyors for the Applicant and by Mr Andrew Cohen BSc FRICS IRRV of Talbots Surveying Services Ltd, for the Respondent describe the property as a ground-floor flat within a three-storey conversion built in the early 1900's. The development is of traditional brick construction with a pitched tiled roof.
11. The accommodation comprises a hall, living room, kitchen, 2 bedrooms and bathroom /wc. The property has a small enclosed garden to the side with access to the communal gardens. It has a single garage in a separate block within the development.

### **Matters agreed**

12. The following matters have been agreed
  - Property description and accommodation
  - Date of Valuation – 10 June 2019
  - Unexpired term – 53.033 years
  - Ground rent for flat £60pa and for garage £5pa
  - Capitalisation rate – 7%
  - Deferment Rate – 5%
  - Freehold value of flat - £439,350
  - Long Leasehold value of flat - £435,000
  - Freehold value of garage - £25,250
  - Long leasehold value of garage- £25,000

### **Matters to be determined**

13. The matters that could not be agreed and that require to be determined are
  - Existing Lease Value of flat
  - Existing Lease Value of garage

And therefore, the Premium payable for the new lease.

### **Applicant's Evidence**

14. Mr Tim Palmer for the Applicant explained that he had been unable to find any evidence of sales of comparable flats with short leases. Therefore, he had approached

arriving at the valuation of the existing lease value by reference to relativity graphs and tables together with his own 'Test of Relativity'.

15. In respect of the graphs of relativity he considered both the Prime Central London graphs which for 55 years (he did not interpolate) ranged from 74.5% to 84%, the average being 78.25% He also looked at the Greater London and England graphs, which again, adopting the 55-year point, ranged from 79% to 85% with an average of 81.35%.
16. He felt that the Greater London and England graphs were the most appropriate given the location of the property which was some 20 miles north of London.
17. He had also used his knowledge and experience of dealing with numerous lease extension cases, mainly on behalf of the tenant applying what he described as his 'Ten stage test of relativity' which was set out in his submission. He also provided evidence of a First-tier Tribunal (FTT) decision in March 2017 of a property next door to the subject property, 21 Wickwood Court, where he said the tribunal had arrived at a relativity of 82.33% for a lease of 56.04 years. In this case had acted for the tenant and Mr Cohen for the landlord.
18. He quoted two further FTT decisions, one on a property in Northampton in April 2019 where he said the tribunal had arrived at a relativity of 81.9% for 52.22 years outstanding. In the other in Harrow in December 2018 where the lease was 69.16 years, he said that Mr Cohen had acted for the tenant and he had acted for the landlord. He reported that the tribunal had supported Mr Cohen's use of the average of three of the five relativity graphs for Greater London and England and that the Savills graphs were found not to be appropriate in this case.
19. He did not accept that the use of the Savills 2015 graph was appropriate for this property and believed that they were based on 5000 leasehold flat transactions in Prime Central London. (PCL) and that no subsequent analysis had been done. He found it frustrating that there was increasingly a lack of willingness from surveyors for landlords to negotiate premiums.
20. He felt that a 7.5% reduction in the adopted relativity, when compared to the decision in 21 Wickwood Court could not be justified, given that the lease was only 2.5 – 3 years shorter.
21. With reference to these factors he had arrived at a relativity of 82% which he said was slightly higher than the Greater London and England graph (81.3%) for an unexpired term of 55 years. He did not make an explicit 'no act world' adjustment.
22. He had applied this to the Freehold Value of the flat (£439,350) to arrive at the existing lease value of £360,267. He had applied the same relativity to the freehold value of the garage (£25,250) to give an existing lease value of £20,705. Applying the agreed factors gave a premium payable of £54,100 for the flat and £3,120 for the garage.
23. He was aware of the recent case of *The Trustees of Barry and Peggy High Foundation and Claudio Zucconi and Mirella Zanre (2019)* UKUT 0242 (Zucconi) and said that as a result of this the majority of valuers acting for landlords have adopted the Savills Unenfranchiseable graphs in the absence of sales evidence.

24. In questioning from Mr Cohen, Mr Palmer accepted that he could have adopted the actual lease term of 53.03 years when arriving at the relativity to adopt from the Greater London and England graph rather than the 55 he had adopted but felt that the difference was marginal.
25. He did not agree that the decision in the Zucconi case (see para 23 above) found that the Savills 2015 graph could be used outside PCL. He did not believe that they were appropriate and that there was no evidence of how they had been arrived at or how the transactions were analysed. He felt that as a result of the Upper Tribunal determination and the inflexibility of landlords and their valuers that tenants of properties in Greater London and England had been significantly disadvantaged both financially and in certainty.
26. He felt that, as the earlier RICS graphs indicated a difference between relativities in PCL and elsewhere, that there was no reason why that didn't still apply.
27. He had not adopted the updated Beckett and Kay 2017 when considering the 5 Greater London and England graphs as had not looked at any in isolation and there was no published average using the later graph.
28. In response to questions from the tribunal he said he had looked at the tribunal decision on 21 Wickwood Court, which showed a relativity of 82% for a 56.04-year lease and felt that even though the lease was 3 years longer than the subject lease, that 82% was appropriate for the subject lease.
29. He also accepted that the decision in the Northampton property was actually based on market evidence, but felt that the fact it analysed at 81.9% for 52.22 years meant it fitted in with the subject property.

### **Respondent's evidence**

30. Mr Cohen for the Respondent said that he was not aware of any sales evidence of flats with similar length leases and had therefore considered published graphs.
31. He had considered the judgment handed down in the recent tribunal decision of *The Trustees of Barry and Peggy High Foundation and Claudio Zucconi and Mirella Zanre (2019)* in respect of a property in Whetstone as well as a number of other decisions to include *Re Midland Freeholds Ltd and Speedwell Estates Ltd.'s Appeal*, *Reiss v Ironhawk* and *Mundy*. He felt the Upper Tribunal had said in these decisions that the 5 Greater London and England graphs should no longer apply.
32. He had provided the tribunal with e mails from the authors of the Beckett and Kay, Pridell and Austin Gray which suggested that they believed their graphs were out of date.
33. He believed that the Gerald Eve and the Savills Unenfranchiseable graphs were the primary evidence as being the most up to date. He felt that there was no evidence that relativities in St Albans will be any different to those of Central London. On the basis of these he was of the opinion that the appropriate freehold relativity was 74.64% (and not 74.55% as shown in the Statement of Agreed Facts). He had not taken account of the more recent Gerald Eve 2016 graph.

34. Adopting the relativity of 74.64% resulted in a value of the tenants existing interest of £327,931 for the flat and £18,847 for the garage. Applying the agreed factors of the valuation this gave a premium payable of £70,172 for the flat and £4,044 for the garage.
35. In questioning from Mr Palmer in respect of a lack of evidence of comparable lease extensions given his submission said that he had undertaken around 10,000 cases involving Leasehold Reform legislation, he said that settlements were highly subjective and that he did not believe they were of any evidential value.
36. He accepted that in a previous case that he had dealt with in December 2018 where he acted for the tenant and Mr Palmer for the landlord he had looked to support his valuation using the average of the 5 Greater London and England graphs. He had done this following the FTT finding in the case of 21 Wickwood Court that this was the preferred approach and he adopted this accordingly.

### **Determination**

37. The Tribunal notes that neither valuer was able to provide direct comparable sales evidence in respect of short leases of similar properties, which is not unusual.
38. Mr Palmer had looked at the RICS Greater London and England graphs with no separate deduction for no act world' – which for the 55 years he adopted gave an average relativity of 81.35% - although the average is actually 79.4% for the lease term of 53.033 years. He then provided a number of negotiated settlements as support to include an FTT decision on 21 Wickwood Court, an adjacent flat to arrive at his adopted relativity of 82%.
39. Mr Cohen adopted a relativity based on Savills Unenfranchiseable 2016 and the original Gerald Eve graph and arrived at a relativity of 74.64%.
40. The tribunal agrees that evidence an FTT decision in the same block can be useful as part of the overall picture but such a decision is based on the evidence that was put before the tribunal and, in the absence of comparables, likely to be influenced in terms of relativities by decisions that have gone before. In the case of 21 Wickwood Court the decision of the FTT in March 2017 pre- dates a growing body of recent Upper Tribunal decisions which favour the use of the more recent Savills and Gerald Eve tables of relativity in the absence of comparable evidence.
41. It is little influenced by the comparable in Northampton provided by Mr Palmer given the tribunal has none of the facts before it and it was based on market evidence.
42. Therefore, in the absence of any other useful evidence, the tribunal must look to relativities and of the different approaches taken by the experts in this case, we prefer that of Mr Cohen to that of Mr Palmer in that we are more inclined, in the absence of evidence of short leasehold sales to favour the more recently published graphs of relativity. We therefore determine a relativity of 74.64% as proposed by Mr Cohen.
43. The Tribunal determines that, on the basis of the elements of the valuation set out above the premium payable for the lease extension of the flat is £70,275 and of the garage is £4,049.

<b>Tribunal's valuation</b>							
<b>Value of Flat</b>							
Valuation date		10/06/2019					
Unexpired term - years		53.033					
Ground rent		£60					
Capitalisation rate		7%					
Deferment rate		5%					
Extended lease value		£435,000					
Freehold value		£439,350					
Relativity		74.64%					
Existing Lease value		£ 327,931					
<b>Diminution of freehold</b>							
							£0
Loss of ground rent		£60					
Years Purchase	53.033	years @	7%	13.8907	£833		
<b>Reversion to Freehold</b>							
		£ 439,350			£33,043		
Present value of £1 in	53.033	years @	5%	0.0752	£33,876		
<b>Less Freehold reversion after extension</b>							
Freehold value		£439,350					
PV £1 deferred 143.033years		@	5%	0.0009	£395		
							<b>£33,481</b>
<b>Marriage Value calculation</b>							
<b>Value of proposed interests</b>							
Freeholder			£395				
Leaseholder			£435,000				
<b>Value of existing interests</b>							
Freeholder			£33,876		£435,395		
Leaseholder			£327,931				
Sub-Total					£361,807		
<b>Total marriage value</b>							
					£73,588		
Landlords share @ 50%							<b>£36,794</b>
<b>Enfranchisement Price for Flat</b>							<b>£70,275</b>

<b>Value of Garage</b>							
Valuation date		10/06/2019					
Unexpired term - years		53.033					
Ground rent		£5					
Capitalisation rate		7%					
Deferment rate		5%					
Extended lease value		£25,000					
Freehold value		£25,250					
Relativity		74.64%					
Existing Lease value	£	18,847					
<b>Diminution of freehold</b>							
							£0
Loss of ground rent		£5					
Years Purchase	53.033	years @	7%	13.8907	£69		
<b>Reversion to Freehold</b>							
		£ 25,250			£1,899		
Present value of £1 in	53.033	years @	5%	0.0752	£1,968		
<b>Less Freehold reversion after extension</b>							
Freehold value		£25,250					
PV £1 deferred 143.033years		@	5%	0.0009	£23		
							<b>£1,945</b>
<b>Marriage Value calculation</b>							
<b>Value of proposed interests</b>							
Freeholder					£23		
Leaseholder					£25,000		
<b>Value of existing interests</b>							
Freeholder					£1,968		
Leaseholder					£18,847		
Sub-Total					£20,815		
<b>Total marriage value</b>							
					£4,208		
Landlords share @ 50%							<b>£2,104</b>
<b>Enfranchisement Price for Garage</b>							<b>£4,049</b>

## **ANNEX 1 – RIGHTS OF APPEAL**

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.