



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

**Case Reference** : **LON/00AC/OLR/2020/0526  
CVP Video Remote**

**Property** : **7B The Market Place Falloden Way  
London NW11 6LB**

**Applicant Tenant** : **Mr A Dmitreiv**

**Representative** : **Mr S Gerrard MA FNAEA MRICS**

**Respondent  
Landlord** : **Metropolitan Property Realizations Ltd**

**Representative** : **Mr R Sharp BSc FRICS**

**Type of Application** : **S.48 Leasehold Reform Housing and  
Urban Development Act 1993**

**Tribunal Members** : **Mrs F J Silverman MA LLM  
Ms M Krisko FRICS**

**Date of Hearing** : **12 May 2021**

**Date of Decision** : **19 May 2021**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was CVP: REMOTE . 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 the Tribunal were referred to are in electronic bundles, the contents of which have been noted and are referred to below.

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## DECISION

**The Tribunal determines that the premium to be paid by the Applicant for an extended lease of the property is £49,601 as shown on the attached valuation.**

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### Reasons

1. The Applicant seeks a determination pursuant to s.48 Leasehold Reform Housing and Urban Development Act 1993.
2. The hearing of this matter took place at a remote video hearing before a Tribunal sitting on 12 May 2021 at which Mr R Sharp BSc FRICS represented the Respondent landlord and Mr S Gerrard MA FNAEA MRICS represented the Applicant tenant. The freeholder, Hampstead Garden Suburb Trust Ltd did not appear and was not represented. Page references below refer to the numbered pages in the agreed bundles of documents prepared for the Tribunal.
3. The Applicant and Respondent had agreed between them a number of material facts (Appendix B) and the only matters which the Tribunal was asked to decide were relativity (reflecting the existing leasehold and vacant possession value) and the premium to be paid by the Applicant for the lease extension.
4. On behalf of the Respondent the Tribunal heard evidence from Mr Sharp and for the Applicant evidence was given by Mr Gerrard.
5. The Tribunal considered that it would not be proportionate to inspect the subject property and was not asked by the parties to do so.
6. The occupational underlease which is the subject of this application was made between the Respondents(1) and K S and AB Wimalasundera (2) on 26 October 1983 for a term of 105 years from 25 March 1969. The interest which the Tribunal is being asked to value is a 56.604 year reversionary period.
7. The Tribunal understands that the subject property is a second floor flat comprising a living room, kitchen, bathroom and two bedrooms situated above retail premises in a parade of shops slightly set back from a busy dual carriageway which leads to the North Circular road. Access to the property is via a staircase and walkway at the rear of the shops. The front door to the subject property at first floor level opens on to a hallway and a further staircase to the second floor on which all the living space is situated. There is no allocated parking and no outside space.

8. Although the demised term runs from 1969 the lease is dated 1983 and for the purpose of considering improvements the 'original' state of the property was taken to be as dating from 1983. One of the major differences between the parties' valuers assessment of the subject property lay in their respective treatment of improvements. Mr Gerrard made considerable allowances in his valuation for a replacement kitchen and bathroom and for new double glazed windows whereas Mr Sharp had made no allowances at all for these items. Mr Sharp's reasoning was that the replacement of a dated but serviceable kitchen or bathroom was a renewal or repair and not an improvement and in any event would not be a top priority for the typical buyer of this type of property which because of its location had a limited appeal for purchasers. He pointed out that the property was both in a conservation area and listed and therefore the replacement of the original Crittall windows with new UPVC double glazed units was not a possibility. Photographs of the subject property, included in the bundles suggest that the condition of the property was fair, liveable and useable but not ultra-modern. Mr Gerrard's contention that the addition of central heating to the property was an improvement was not substantiated by evidence that the property had lacked heating in 1983. Not only does the Tribunal consider that the Mr Gerrard's allowances were over generous for a property of this type and in this condition, it accepts Mr Sharp's view that the mere replacement of kitchen and bathroom units does not of itself constitute an improvement. Mr Gerrard's position on the replacement windows is untenable given the listing constraints which would be applicable to the subject property. For these reasons the Tribunal accepts Mr Sharp's arguments on improvements in preference to those of Mr Gerrard.
9. The parties' surveyors had taken similarly varying views when selecting their comparables.
10. For the Applicant Mr Gerrard had considered a range of properties all within 0.6 mile of the subject property but in the Tribunal's opinion only one could be considered to be a true comparable (Ap 22, Market Place flat). None of the remaining comparables was situated above a shop, one (Lyttelton Road) was a three bedroom property which had been sold at auction, a property in Fallosen Way had 4 bedrooms, two properties had balconies, two had gardens, two had share of the freehold and one had portage, two reception rooms and was a 1920's curved Art Deco building. Although Mr Gerrard presented the Tribunal with an interesting range of alternative properties, and even accepting that adjustments can be made to equate them with the subject property, the Tribunal considers that with the exception of the Market Place flat the values of the remaining comparables would need very substantial adjustments to bring them into line with the subject property, some of which would necessarily be subjective eg the value of portage, rendering the comparisons less reliable than where an adjustment is made on a statistical basis eg floor size. It was also unclear to the Tribunal how Mr Gerrard had calculated some of his adjustments (see page A 15). He appears in several cases to have opted for a blanket percentage allowance of between 10 and 20 percent, without explaining how that decision was reached (eg 15% on Monarch Court). He has assumed a need for an upgraded heating system (£5,000 allowed on every comparable) allowed £5,000 for UPVC windows which are not a feasible alternative in the listed subject property and has, in the Tribunal's opinion, made over generous allowances for new kitchens ( eg

£8,000 on Belvedere Court) and bathrooms given the nature and size of the subject property.

11. Mr Gerrard felt that Mr Sharp's comparables were inappropriate being situated at a greater distance from the subject property than those chosen by him. However, on closer scrutiny, it appears that there was little to choose between the distance of Mr Sharp's comparables and Mr Gerrard's furthest property both of which were approximately 0.6 mile from the subject property. Mr Sharp had limited his selected comparables to flats above a parade of shops which bore a close resemblance to the type and situation of the subject property. He said that he had done this because flats of this type were a special market with a limited appeal.
12. All of Mr Sharp's comparables were all situated on the upper floors of the same parade of shops and all had extended terms under the 1993 Act. The agreed size of the subject property at 605 sq ft is very close to the average of Mr Sharp's comparables (590 sq ft). The average size of Mr Gerrard's comparables was 957 sq ft. The position of the subject property is also similar to Mr Sharp's comparables in that all are flats above a parade of shops (including in both cases food and take away outlets) on a busy road. The parties agreed that the road in front of the subject property is the busier of the two but, as Mr Sharp observed, one of his comparables had an entrance way directly by a bus shelter which might be viewed as disadvantageous, potentially giving rise to late night disturbance. The fact that the subject property had a separate entrance on the first floor but all the accommodation was on the second floor had both advantages (ability to store eg a pushchair on the first level, no noise from upstairs neighbours) and disadvantages (carrying shopping up two staircases).
13. Mr Sharp had made no allowances for improvements saying that the kitchen and bathroom replacement (as opposed to re-design) were repairs or renewals and not improvements. He suggested that buyers of this type of property would not consider that the installation of a new kitchen or bathroom was a high priority provided the existing units were serviceable. He made no allowance for UPVC windows because such a change would not be authorised by the freeholder or local authority; nor for heating, maintaining that there was no evidence that the property had not had a system when the lease was granted in 1985. None of his comparables had outside space and therefore no adjustment for that had been needed. He considered that too many adjustments were needed to Mr Gerrard's proposed properties to make them valid comparables and offered no further analysis of them.
14. Having considered both parties' comparables the Tribunal prefers those offered by Mr Sharp to those of Mr Gerrard. It finds the latter too dissimilar in location, size and amenities to the subject property to be useful as valid comparables in his case. Mr Sharp used the local Barnet Land Registry index for his time adjustment but made no further adjustment to his comparable evidence to allow for the superior condition of these flats. Generally they all had better and more modern kitchens and bathrooms, as well as double glazing, possibility central heating, and a quieter location. Mr Sharp's calculations resulted in an average value for his comparables of £591 psf. The tribunal consider that a reduction of 15% is reasonable to

allow for the superior condition of the comparables compared to the existing condition of the subject. This results in a value of £503 psf and gives a long lease value of £304,315.

- 15 In relation to relativity Mr Sharp had taken the conventional approach as endorsed by *Sloane Stanley v Mundy* [2016] UKUT 223 (LC) and confirmed for use outside Prime Central London in *Mallory v Orchidbase Ltd* [2016] UKUT 468 (LC). Using an average of the latest Gerald Eve and Savills graphs (adjusted for time) produced a relativity of 74.3%.
- 16 Mr Gerrard had taken a novel approach to relativity, for which method there is currently no judicial comment. He felt that using the PCL graphs was inappropriate for non-PCL property, a view with which the Tribunal sympathises. He had therefore used the Nesbitt graph which has always concentrated primarily on North London properties, and updated that by the same percentage rate that is used to update the Gerald Eve and Savills PCL graphs. This calculation resulted in a relativity rate of 76.97%. He had not however tested his conclusion against the results obtained by any other conventional method of assessment. While the Tribunal commends Mr Gerrard for his pragmatic approach to the problem, it does not feel able to accept his results which stand untested and unsupported by complementary evidence. With some reluctance therefore, the Tribunal accepts Mr Sharp's assessment of 74.3% as the correct relativity figure to be applied in this case.
- 17 After discussion, the parties' respective representatives agreed the capitalisation figure at £2,077.
- 18 Having considered the evidence put forward by both parties the Tribunal prefers the Respondent landlord's approach to the issues in dispute in the valuation and using the figures set out above assesses the premium to be paid by the Applicant tenant for the extended lease to be £49,601 as shown on the attached valuation ( Appendix A ).

### **The Law**

19. Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993 (The 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 for other loss.

The value of the landlord's interests before and after the grant of the new lease is the amount which at the valuation 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) on the assumption that the tenant has no rights under the Act to acquire any interest in any premises containing the tenant's flat or to acquire any new lease.

Para 4 of the Schedule, as amended, provides that the landlord's share of the marriage value is to be 50%, and that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil. Para 5 provides for the payment of compensation for loss arising out of the grant of a new lease.

Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

Judge F J Silverman  
As Chairman

.....19 May 2020 .....

Note:

#### **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rplondon@justice.gov.uk](mailto:rplondon@justice.gov.uk).
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX A  
TRIBUNAL VALUATION

7B THE MARKET PLACE, FALLODEN WAY, LONDON, NW11 6LB

Valuation date 16<sup>th</sup> August, 2019.

Existing lease value	£228,367
Extended lease value	£304,315
Freehold value	£307,358
Relativity	74.30%

<u>Ground rent</u> – value agreed	£ 2,077
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<u>Reversion</u> £307,358	
54.604 years 5% 0.0697	£ 21,422

<u>Less</u>		
Future reversion £307,358		
147 years 5% 0.0008	£ 246	<u>£23,253</u>

Marriage Value

Landlord's proposed interest	£ 246
Lessee's proposed interest	<u>£304,315</u>

<u>Less</u>		
Landlord's existing interest	£ 23,499	
Existing lease value	<u>£228,367</u>	
	£ 52,695 50%	<u>£26,348</u>

<u>Premium</u>		<u>£49,601</u>
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STATEMENT OF AGREED FACTS

Leasehold Reform, Housing and Urban Development Act 1993

In the First Tier Tribunal (Property Chamber)

Reference AB/LON/OOAC/OLR/2020/0526

7B THE MARKET PLACE, FALLODEN WAY, LONDON NW1 1  
6LB

Agreed Facts -

Date of section 42 Notice: 24<sup>th</sup> July 2019

Date of Section 45 Notice: 26<sup>th</sup> September  
2019

Effective date of valuation: 1 August 2019

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Title No: NGL468471  
Date of Occupational / Under lease: 26<sup>th</sup> August 1983  
Term of Claimants Occupational /  
Under lease: 105 years from 25/3/1969  
Unexpired Term of Claimant's  
Occupational / Under lease: 54.604 years  
Claimant's present rent passing £1 20 rising on the 25/3/2041 to £1 80 for  
the residue of the term

Demise of Occupational Lease: Second Floor Flat 7b Market Place  
Lessee of Occupational Lease: Andrei Dmitriev  
Original Lessee of Occupational lease: K S Wimalasundera & A B Wimalasundera  
Lessor of Occupational Lease: Metropolitan Property Realizations Limited

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Title No: NGLI 82598  
Date of Superior lease to

Occupational lease : 30<sup>th</sup> December 1969  
Term of Superior lease: 1992 years from 25/3/1969

Demise of Superior lease I : I-1 1B (odd) 15 to 15B The Market Place ...  
Lessee of Occupational Lease: Metropolitan Property Realizations Limited  
Immediate Lessor of Occupational Lease: Ashdale Land and Property Company  
Limited  
Superior Lessor to intermediate lessor: Suburb Leaseholds Limited

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Freehold adjustment Plus 1%

Demise



As referenced in the lease: All that the flat numbered 7b and being on the Second Floor, of the buildings consisting of the blocks of flats and all structures ancillary there to known as Market Place, Falloden Way.

For clarity: Including an entrance from a private front door at first floor level accessed from a communal balcony / terrace.

Gross Internal Area: 605 Ft2


Accommodation: Two Bedroom Second floor flat, reception room, kitchen, & bathroom

### Disputed Matters

- (1) Tenants Improvements — if any
- (2) Unimproved freehold vacant possession value
- (3) Capitalisation rate of the rent under the Occupational lease
- (4) Deferment rate payable on the reversion of the Occupational lease
- (5) Occupational / Under-lease's Relativity
- (6) Premium to be paid

\_\_\_\_\_  
Mr Saul Gerrard MA FNAEA MRICS  
For the Applicants

Date: \_\_\_\_\_ 1 March 2021 \_\_\_\_\_

  
\_\_\_\_\_  
Mr Robin Sharp Bsc FRICS  
For the Respondent

Date: \_\_\_\_\_ 11/3/21 \_\_\_\_\_



Assessment of premium for a new lease (an additional 90 year term at a peppercorn ground rent) in accordance with Schedule 13 of the Leasehold Reform, Housing and Urban Development Act, 1993, as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act, 2002.

**INPUT SUMMARY**

Original Term Lease Length:	139.00	
From Date:	29/09/1937	
Date of Valuation:	18/03/2019	
Capitalisation Rate:	7.00%	
Deferment Rate:	5.00%	
Extended Lease Reduction:	1.00%	
Relativity:	72.00%	
First Period (years):	23.27	£50.00 rent
Second Period (years):	34.27	£75.00 rent
<b>Total (years):</b>	<b>57.54</b>	

Unimproved Value: £212,121.00

**A. DIMINUTION IN VALUE OF LANDLORD'S INTEREST**A1 Ground Rents Receivable:

23.27 years @ £50	£50	
YP 23.27yrs @ 7%	11.3267	
		£566
34.27 years @ £75	£75	
YP 34.27yrs @ 7%	12.8799	
PV of £1 in 23.27years	0.2071	2.6678
		£200

A2 Reversion to freehold in possession:

	£212,121	
PV of £1 in 57.54 yrs @ 5%	0.0604	
		£12,804

Freeholder's Present Interest: £13,571

A3 Landlord's interest after grant of new147.54 year lease:

	£212,121	
PV of £1 in 147.54 yrs @ 5%	0.0007	
		£159
Diminution thus (rounded):		£13,412

**B. CALCULATION OF MARRIAGE VALUE**

## Value of proposed interest after grant of new

## 147.54 year lease:

Landlord's:	£159	
Tenant's (Less 1% Extended Lease Reduction):	£210,000	£210,158

**LESS**

Value of existing interests:		
Freehold:	£13,571	
Leasehold (72% X 212121):	£152,727	£166,298
Marriage Value thus:		£43,861
50% attributable to Landlord:		£21,930
<b>TOTAL</b>		<b>£35,342</b>

ESTIMATE OF PREMIUM PAYABLE FOR NEW LEASE, say: £35,340  
(plus statutory recoverable costs)

