



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

Case Reference : LON/00AG/OLR/2020/0870

HMCTS : V: CVPREMOTE

Property : Flat 60, Trinity Court, 254 Gray's In Road,
London, WC1X 8JZ

Applicant : Taormina Limited

Representative : Ian Davidson MRICS

Respondent : Deritend Investments (Birkdale) Ltd

Representative : Robin Sharp FRICS

Type of Application : Enfranchisement

Tribunal Members : Judge Robert Latham
Kevin Ridgeway MRICS

**Date and venue of
Hearing** : 27 April 2021 at
10 Alfred Place, London WC1E 7LR

Date of Decision : 21 May 2021

DECISION

The Tribunal determines that the premium payable by the Applicant in respect of the extension of its lease at Flat 60, Trinity Court, 254 Gray's Inn Road, London, WC1X 8JZ is £54,800. The calculation is annexed to this decision.

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The parties have provided a Bundle of Documents for the hearing.

Introduction

1. This is an application made pursuant to Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the premium to be paid and the terms for a new lease.

Background

2. The background facts are as follows:
 - (i) The flat: at Flat 60, Trinity Court, 254 Gray’s In Road, London, WC1X 8JZ ;
 - (ii) The subject flat currently comprises a living room with kitchen, bedroom and en-suite bathroom.
 - (iii) Date of Tenant’s Notice: 3 December 2019;
 - (iv) Valuation Date: 3 December 2019;
 - (v) Date of Application to the Tribunal: 13 August 2020;
 - (vi) Tenant’s leasehold interest:
 - Date of Lease: 11 March 1985;
 - Term of Lease: 99 years from 24 June 1979, with an unexpired term of 58.55 years;
 - Ground Rent: the current ground rent is £100 pa, rising to £200 pa in June 2045.

The Hearing

3. The hearing of this application took place on 27 April 2021. The Applicant, tenant, was represented by Mr Davidson BSc MRICS. The Respondent, landlord, was represented by Mr Robin Sharp, BSc, FRICS. Both experts provided written reports and gave evidence.
4. On 3 December 2019, the Applicant served its Section 42 Notice of Claim proposing a premium for a lease extension of £35,000. On 20 February 2020, the Respondent served its Counter-Notice proposing a premium of £122,300. This is almost twice the amount for which the landlord now contends.
5. The parties have now agreed the following:
 - (i) Valuation Date: 3 December 2019;
 - (ii) Unexpired Term: 58.55 years;
 - (iii) Deferment Rate: 5%;
 - (iv) There should be a 1% uplift to the long lease value to determine the NFV;
 - (v) The GIA of the subject flat is 36.3 sq m; 391 sq ft;
 - (vi) The terms of the new lease.

6. There had been an issue between the parties as to the capitalisation rate for the ground rent. However, the parties agree to split the difference and accept 6.5%.
7. The following issues are in dispute:
 - (i) The long leasehold value: Mr Davidson contends for £378,787; Mr Sharp for £460,606.
 - (ii) The relativity rate: Mr Davidson contends for 82.25%; Mr Sharp for 74.69%.

Mr Davidson computes a premium of £43,907; Mr Sharp one of £67,144.

Issue 1: Notional Freehold Value

The Subject Property

8. Trinity court was constructed over 9 floors between 1934 and 1935 in the modernist “sun trap” style in front of St Andrew’s Holborn burial garden to designs of Taperell and Haase. There are 90 flats, all of which were originally studio flats. It is within a conservation area. It is approximately ½ mile to the south of the Kings Cross development.
9. The subject flat is on the 6th storey (5th floor). The flat faces east overlooking St Andrews Gardens and south east towards the city which gives interesting views, particularly at night. There is a communal entrance at street level and the flat can be accessed by a lift or stairs. There are two cage style lifts at either end of the building which have been retained in their “art deco” style. There is an on-site porter. The building is managed by the residents.
10. The flat now comprises a living room with kitchen, bedroom and ensuite bathroom. Between 1979 and 1984, the Freshwater Group of companies converted many of the studio/bedsits into one bedroom flats. Lessees have subsequently converted bedsits into one bedroom flats. Others, have changed the layout of the one bedroom flats to suit modern/personal tastes and styles.
11. The Applicants have spent some £79,000, including professional fees and VAT to convert it to a one bedroom flat. A plan of the original layout is at p.164, and the conversion at p.166. The conversion seeks to make the maximum benefit of the natural light.
12. Mr Sharp suggested that there appeared to be little difference between the value of repaired and decorated one bedroom flat arrangement and its

equivalent repaired and decorated studio. Mr Davidson argued that an adjustment of at least £35,000 should be made for improvements.

13. We agree that a purchaser would pay more for a one bedroom conversion. We would assess this at £25,000.

The Best Comparable

14. Both experts agreed that the best comparable is Flat 24 and we do not consider it necessary to consider any of the other flats in the building. Flat 24 is a one bedroom flat on the 2nd floor. It faces north towards a wall and a public entrance into the gardens. It is 406 sq ft and is therefore slightly larger than the subject flat. There is a plan of the flat at p.226. The conversion is less satisfactory, the bedroom being only 11'1" x 4'10". The flat sold for £450,000 in October 2019.
15. We start with a psf of £1,108. We do not consider that it is necessary to make any adjustment for time. We have been provided with the Land Registry Camden Flat and Maisonette Index at p.324 of the Bundle. This shows a modest fall of £106 to 105.6 between October and December 2019. We prefer this index to the Nationwide Index Price Calculator upon which Mr Davidson sought to rely.
16. We are satisfied that we should make a 2.5% adjustment for the location of the flat in the building. We accept that the subject flat has a better outlook. This increases the psf to £1,136, and gives a value for the subject flat of £444,209. From this, we make a deduction of £25,000 for the improvements to the subject flat giving a long leasehold value of £419,209. We increase this by 1% to £423,401 to give the Notional Freehold Value.

Issue 2: Relativity - The Unimproved Existing Lease Value

17. We have regard to the guidance given by the Upper Tribunal in *The Trustees of the Sloane Stanley Estate v Mundy* [2016] UKUT 223 (LC); [2016] L&TR 32, a decision subsequently upheld by the Court of Appeal reported at [2018] EWCA Civ 35; [2018] 1 P&CR 18. The three cases considered by Mr Justice Morgan and Mr Andrew Trott FRICS involved Prime Central London. At the end of an extensive judgment, the UT gave guidance for future cases at [163] – [170]. We are assisted by the following passages:

“168. Fourthly, in some (perhaps many) cases in the future, it is likely that there will have been a market transaction at around the valuation date in respect of the existing lease with rights under the 1993 Act. If the price paid for that market transaction was a true reflection of market value for that interest, then that market value will be a very useful starting point for determining the value of the existing lease without rights under the 1993 Act. It will normally be

possible for an experienced valuer to express an independent opinion as to the amount of the deduction which would be appropriate to reflect the statutory hypothesis that the existing lease does not have rights under the 1993 Act.

169. Fifthly, the more difficult cases in the future are likely to be those where there was no reliable market transaction concerning the existing lease with rights under the 1993 Act, at or near the valuation date. In such a case, valuers will need to consider adopting more than one approach. One possible method is to use the most reliable graph for determining the relative value of an existing lease without rights under the 1993 Act. Another method is to use a graph to determine the relative value of an existing lease with rights under the 1993 Act and then to make a deduction from that value to reflect the absence of those rights on the statutory hypothesis. When those methods throw up different figures, it will then be for the good sense of the experienced valuer to determine what figure best reflects the strengths and weaknesses of the two methods which have been used.

170. In the past, valuers have used the Savills 2002 enfranchisable graph when analysing comparables, involving leases with rights under the 1993 Act, for the purpose of arriving at the FHVP value. The authority of the Savills 2002 enfranchisable graph has been to some extent eroded by the emerging Savills 2015 enfranchisable graph. The 2015 graph is still subject to some possible technical criticisms but it is likely to be beneficial if those technical criticisms could be addressed and removed. If there were to emerge a version of that graph, not subject to those technical criticisms, based on transactions rather than opinions, it may be that valuers would adopt that revised graph in place of the Savills 2002 graph. If that were to happen, valuers and the tribunals might have more confidence in a method of valuation for an existing lease without rights under the 1993 Act which proceeds by two stages. Stage 1 would be to adjust the FHVP for the property to the value of the existing lease with rights under the 1993 Act by using the new graph which has emerged. Stage 2 would be to make a deduction from that value to reflect the absence of rights under the 1993 Act on the statutory hypothesis.”

18. The Upper Tribunal (Martin Rodger QC, Deputy Chamber President and Mrs Diane Martin MRICS FAAV) has most recently given guidance in *Deritend Investments (Birkdale) Limited v Ms Kornelia Trekonova* [2020] UKUT 164 (LC) (“*Deritend*”), a case involving a flat in Sutton Surrey. The Tribunal concluded:

“56. In our judgment the FTT was wrong as a matter of valuation practice to rely on an average of the RICS 2009 graphs and to ignore

the more recent graphs for PCL, and the appeal is therefore allowed. We set aside the FTT's determination.

57. In view of the relatively modest sum in issue we will reach our own conclusion on the basis of the material before the FTT, rather than remitting the issue to it for further consideration.

58. The guidance given by this Tribunal endorses the use of the Savills and Gerald Eve 2016 graphs where there is no transaction evidence, notwithstanding that the subject of the valuation is outside PCL. If persuasive evidence suggests that the resulting relativity is not appropriate for a particular location a tribunal would be entitled to adjust the figure suggested by the PCL graphs. The RICS 2009 graphs do not provide that persuasive evidence and, if it is to be found, it is likely to comprise evidence of transactions; if those are available it may be unnecessary to make use of graphs at all. In any event, no such persuasive evidence was presented to the FTT.

59. We are satisfied that the outcome justified by the evidence provided to the FTT was a determination based on the average of the two 2016 PCL graphs. For the reasons we have already explained we do not endorse Mr Sharp's averaging of the resulting relativity figure by reference to the Beckett and Kay 2017 graph."

19. Mr Sharp asks us to have regard to the sale of Flat 40, an identical flat in studio layout, which sold in good modern condition on 18 February 2020 (two months after the valuation date) for £375,000. Its unexpired term was 58.43 years, compared to 58.55 for the subject flat. The ground rent is noticeable, being £724 pa and reviewed in June 2045 to 1/500 proportion of the long lease value. An adjustment needs to be made for 1993 Act rights, and he takes a figure of 8.265%. He justifies this figure at [7.5] of his report, it being an average of his usual deduction of 10% and the figure of 6.53% indicated in the Savills 2016 research. At [7.6] of his report, he summarises the 1993 Act benefits for which an adjustment must be made. We accept his approach, and accept his short lease value of £344,006 (namely £375,000 less 8.265%). Mr Sharp derives a relativity of 74.99% for 58.55 years based on his NFV of £460,606.
20. Mr Sharp (at [8.2]) also has regard to the Gerald Eve 2016 Graph and the Savills Unenfranchiseable which gives figures of 77.16% and 77.24% respectively, the average being 77.2%. He then takes an average of his market figure of 74.99% and 77.2% from the graphs to compute his final figure of 75.945%.
21. We prefer the approach adopted by Mr Sharp to that adopted by Mr Davidson at Section 6 of his report. Mr Davidson first considers the four sets of graphs at p.175-176 of the Bundle. Two of these include the 2009

RICS Graphs for Central London and Greater London and England. The Upper Tribunal has disapproved of use of these graphs. The third table refers to published research which predates 2009. We are satisfied that if we are to have regard to graphs, the most relevant are those to which Mr Sharp has referred. At [6.7] of his report, Mr Davidson refers to the market transaction of the sale of Flat 61 for £240,000 in February 2018. However, he does not explain the adjustments which he has made.

22. Our starting point is therefore the short lease value of £344,006 to be derived from the sale on Flat 40. However, this must be divided by our NFV of £423,401. This gives a relativity of 81.25% for 58.55 years.
23. This figure is higher than that to be derived from the Gerald Eve 2016 Graph and the Savills Unenfranchiseable which give an average of 77.2%. We therefore adopt the approach suggested by Mr Sharp and take an average of the market transaction figure of 81.25% and 77.2%. This gives a relativity of 79.23% which is the figure which we adopt.

Conclusions

24. We make the following determinations on the issues in dispute:

- (i) The Long Leasehold Value is £419,209;
- (ii) The Notional Freehold Value is £423,401.
- (iii) The relativity rate: 79.23%;

We determine the premium payable to be £54,800. Our working calculation is set out in the Appendix.

Judge Robert Latham
24 May 2020

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 Tribunal 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 s 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 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.
4. 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.

Valuation for lease extension

Flat 60, Trinity Court, 254 Gray's Inn Road, London WC1 8JZ

Valuation Date	05/12/2019			
Lease Commencement	24/06/1979			
Lease Term	99.00	years	Expiry Date	23/06/2078
Unexpired Term	58.55	years		
Long Lease value	£419,209			
Freehold VP value	£423,401		+1% long lease value	
		Term 1	Term 2	Term 3
Ground rent	£100.00	£200.00	£0.00	
Reversion years	25.55	33.00	0.00	
Capitalisation rate	7%			
Deferment rate	5%			
Compensation	£0.00			
Relativity	79.23%			

Diminution of Landlord's interest

Ground rent				£100	
YP	25.55	yrs @	6.50%	<u>12.30636342</u>	
					£1,231
Rent Review 1				£200	
YP	33.00	yrs @	6.50%	13.4590885	
PV of £1	25.55	yrs @	6.50%	<u>0.200086377</u>	
					£539
Rent Review2				£0	
YP	0.00	yrs @	6.50%	0	
PV of £1	58.55	yrs @	6.50%	<u>0.02504266</u>	
					£0
Reversion to VP value				£423,401	
PV	58.55	yrs @	5.00%	<u>0.05746012</u>	
					<u>£24,329</u>
Value existing freehold					£26,098

L/ord's interest on reversion of new lease

FH VP				£423,401	
PV	148.55	yrs @	5.00%	<u>0.00071175</u>	
					<u>-£301</u>
					£25,797

Landlord's share of Marriage Value

Val. Tenant's interest new long lease				£419,209	
Val. l/lord's interest after reversion of new lease				£301	
				<u>£419,510</u>	
Less					
Val. tenant's interest existing lease	Relativity	79.23%	£335,440		
Val. l/lord's interest existing lease			<u>£26,098</u>		
				<u>£361,537</u>	
				<u>£57,973</u>	
Marriage Value at Compensation	50%				£28,986
					<u>£0</u>
PREMIUM					£54,783
				Say	£54,800