



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

Case Reference : LON/00BH/OLR/2020/1009

HMCTS : V: CVPREMOTE

Property : Flat 13, Harvey Court, 6 Yunus Khan Close,
London, E17 8XD

Applicant : Beverley Anne Millan

Representative : Daniel Reese BA

Respondent : Susan Mary Ashton

Representative : Richard Bottomley

Type of Application : Enfranchisement

Tribunal Members : Judge Robert Latham
Anthea Rawlence MRICS

**Date and venue of
Hearing** : 18 May 2021 at
10 Alfred Place, London WC1E 7LR

Date of Decision : 15 June 2021

DECISION

The Tribunal determines that the premium payable by the Applicant in respect of the extension of its lease at Flat 13, Harvey Court, 6 Yunus Khan Close, London, E17 8XD is £17,920. 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: Flat 13, Harvey Court, 6 Yunus Khan Close, London, E17 8XD
 - (ii) The subject flat currently comprises an entrance lobby, living room with bed area (and a window), kitchen and bathroom.
 - (iii) Date of Tenant’s Notice: 18 February 2020;
 - (iv) Valuation Date: 18 February 2020;
 - (v) Date of Application to the Tribunal: 28 September 2020;
 - (vi) Tenant’s leasehold interest:
 - Date of Lease: 22 January 1988;
 - Term of Lease: 99 years from 7 November 1996, with an unexpired term of 65.72 years;
 - Ground Rent: £120pa for 32.72 years, increasing to £180pa for the remainder of the term.

The Hearing

3. The hearing of this application took place on 18 May 2021. The Applicant, tenant, was represented by Mr Daniel Reese BA, who is employed by Abbeymove Limited, a firm of estate agents. He has considerable experience in marketing properties in this area and dealing with lease extensions. He has inspected the flat. Mr Reese gave evidence and was cross-examined.
4. The Respondent, landlord, was represented by Mr Richard Bottomley. He relied upon the report of Mr Stephen Hall BSc MRICS. He has been carrying out valuations for lease extensions for more than 16 years. Although his office is in Chertsey, Kent, he also has considerable experience of flats in this locality and has acted for a number of landlords. Mr Bottomley gave evidence and was cross-examined.
5. On 18 February 2020, the Applicant served its Section 42 Notice of Claim proposing a premium for a lease extension of £12,250. On 29 April 2020, the Respondent served its Counter-Notice proposing a premium of £24,111.
6. The parties have agreed the following:
 - (i) Valuation Date: 18 February 2020;

- (ii) Unexpired Term: 65.72 years;
- (iii) Deferment Rate: 5%;
- (iv) Capitalisation Rate: 6.5%;
- (iv) There should be a 1% uplift to the long lease value to determine the NFV;
- (v) The GIA of the subject flat is 29.4 sq m; 316 sq ft;
- (vi) The terms of the new lease.

7. The following issues are in dispute:

(i) The long leasehold value: Mr Reese contends for £213,194; Mr Hall for £225,000.

(ii) The relativity rate: Mr Reese contends for 91.60%; Mr Hall for 82.08%.

Mr Reese computes a premium of £13,244; Mr Hall one of £24,741.

Issue 1: Long Leasehold Value

8. Harvey Court is a purpose built block of flats built in 1986 by Fairview New Homes. It is on the ground floor of a three storey block. The flat is a studio flat and comprises a hallway, an open plan lounge and bedroom area, kitchen and bathroom. There is a window in the bedroom area. The tenant has installed a relatively modern kitchen and bathroom. The flat is serviced by a storage heater and an electric immersion heater. The windows were originally single glazed timber frames and have been improved by the tenant with UPVC double glazing. The flat has access to a front and rear communal garden. The flat has the right to use one undesignated car parking space together with undesignated spaces for visitors. The estate is adjacent to a railway line which is situated in a cutting.
9. There are three blocks in Yunus Khan Close, namely Harvey Court, Selwyn Court, and Claypole Court. There is a similar development less than a mile away at Luther King Close which consists of Nathaniel Court, Adams Court and Flanders Court. There is thus no shortage of comparables.
10. The valuation date predates Covid-19. However, in the period before this, there was considerable uncertainty in the local market arising from Brexit and the political situation. Both experts agreed that we should rely on the Land Registry Price Index for Waltham Forest. This shows that the average price of flats and maisonettes decreased by 3.46% between February 2018 and February 2019 and by a further 2.07% between February 2019 and February 2020. The local market is driven by buy to let investors. Mr Reese suggested that there had been a “Boris bounce”, but this was not fully reflected in this Index.

11. A number of tenants have added a door to separate the bedroom from the living space. This is a minor alteration. Mr Reese sought to argue that there was an uplift of some 6.25% in the value of flat where this had occurred. Mr Hall rather sought to argue that the critical factor was whether there was a window in the bedroom area, as in the subject flat. If there is, the conversion works as there is natural ventilation in the bedroom area. If not, the conversion is no satisfactory.
12. There is a considerable overlap between the comparables of sales of flats with long lease terms adopted by both experts. We have concluded that the following four are the most relevant and have assessed a long leasehold value of £222,139:

Address	Type	Sale Date	Price	HPI Adjustment	Adjusted Price	Size Sq ft	£ PSF
8 Adams Court	1 b/r	Dec 2019	£216,000	-1.22%	£213,358	323	£661
19 Harvey Court	Studio	Sept 2017	230,000	-5.19%	218,062	339	643
24 Nathaniel Court	1 b/r	Nov 2019	230,000	-1.05%	227,593	338	673
11 Harvey Court	Studio	Sept 2019	230,000	-0.20%	229,545	336	683
Average:					£222,139		£665
Subject Property: £665 x 316: £210,140							

13. We make the following observations on the comparables which we have selected:
- (i) The Table suggests that there is no discernible difference between the studio flats and the one bedroom flats where a door has been added.
- (ii) We have taken the adjustments for time from Tables A and B in Mr Reese's report.
- (iii) We have made adjustment for size from Table 1 in Mr Hall's report. However, Mr Hall suggests that 8 Adams Court is 283 sq ft, a figure which he had taken from Rightmove. This figure, which seems unduly small, was challenged by Mr Reese who has inspected a number of flats in this block. Mr Reese suggested a size of 323 sq ft, the figure which we accept.
- (iv) Neither expert has made any adjustment for condition or floor level. Mr Reese suggested that 11 Harvey Court had been developed to sell with a new kitchen, bathroom, heating system and windows. However, he did not suggest any adjustment for this.
- (v) We have not taken 21 Harvey Court into account. Mr Reese relies on a sale in November 2017 for £251,000 (adjusted value: £240,602); Mr Hall on the more recent sale in July 2019 for (£270,000 (adjusted value:

£277,613). No explanation has been provided for the difference in value between these two sales. Whilst the later sale would be the more relevant, the sale price is considerably outside the range of the other comparables. Mr Reese suggested that this was an anomaly.

(vi) We have not considered the sale of 14 Flanders Court on which Mr Hall relies as the sale was in October 2020 and would be affected by Covid-19.

(vii) We have included 19 Harvey Court albeit that the sale was in September 2017. This is also a studio flat and is in the same block as the subject flat.

Issue 2: Relativity - The Unimproved Existing Lease Value

14. 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.”

15. 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:

“41. The data in the RICS 2009 graphs is not only historic, but suffers variously from limitations of scale and source. The 2009 Beckett and Kay graph used opinion data, with no defined geographical area other than non-PCL. The South East Leasehold graph used analysis from 1997 of transaction data for flats in Bromley and Beckenham. The Nesbitt and Co graph used evidence of some 250 settlements and LVT decisions, for predominantly flats, between 1995 and 2008 in Greater London and a proportion of provincial towns. The Austin Gray graph used a mix of pre and post 1993 transactions, settlements and LVT decisions for some 250 flats, predominantly in Brighton and Hove. The Andrew Pridell Associates graph used a mix of opinion, settlements, transactions and LVT and Tribunal decisions for 500 flats in the south east and suburban London.

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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 Hall's averaging of the resulting relativity figure by reference to the Beckett and Kay 2017 graph."

16. Mr Hall considers that there is no evidence of local transactions. He therefore has regard to the Savills Unenfranchiseable Graph and the Gerald Eve 2016 Graph gives figures of 81.98% and 82.19% respectively for a lease with an unexpired term of 65.72 years (see p.91). This gives an average of 82.08%. This is the average which was approved by the Upper Tribunal in *Trustees of Barry and Peggy High Foundation v Claudio Zucconi & Anor* [2019] UKUT 242 (LC).
17. Mr Reese addresses relativity at Section 19 of his report. At Table E, he has identified four sales of short leases, albeit that these are all some time before the valuation date. We disregard the sales of 25 Swell Court (sale in December 2016 for £251,500; adjusted value £250,815) and 23 Swell Court (sale in December 2016 for £251,000; adjusted value £244,484), because these are higher than the long lease value that we have assessed. We note that these sales suggest that in this locality there is a much smaller discount for short lease sales than one might normally expect.
18. We have regard to the sales of 21 Selwyn Court (sale in June 2018 for £200,000; adjusted value £196,144) and 13 Swell Court (sale in June 2017 for £214,000; adjusted value £210,433). The average of these two short leases is £203,288. We divide this by our long lease value of £212,241 to compute a relativity of 95.58%. However, we must make an adjustment for "Act Rights". We make a reduction of 3.81% which is the difference between the Savills Enfranchiseable and Unenfranchiseable Graphs. From this we compute a relativity of 91.97%.

19. Mr Reese had computed a figure of 91.60% based on his computation considering all four sales. He sought to make separate calculations for (i) studio flats; and (ii) those where a door had been installed to create a separate bedroom. We have found that this approach is not justified by the evidence. He made no adjustment to reflect the “No Act” world. He then had regard to the 2019 RICS Greater and London and England Graphs (at p.91). He has particular regard to the South East Leasehold Graph which gives a figure of 91.29%. He considers that this supports his figure of 91.60%. The average of the five 2019 RICS Greater and London and England Graphs is 89.79%.
20. In *Deritend*, the Upper Tribunal disapproved of the use of the 2019 RICS Greater and London and England Graphs. Any comparison should rather be with the Savills Unenfranchiseable Graph and the Gerald Eve 2016 Graph give an average of 82.08%. This is considerably lower than the figure of 91.97% which we have computed from the evidence of local transactions.
21. The evidence that we have had to consider merely highlights the problems that we face on a daily basis, as an expert tribunal, in assessing relativity. There are a number of relevant comparables in this case, and we must have due regard to these. Doing the best that we can on the basis of the evidence that has been adduced before us, we consider that it is appropriate to take an average of 91.97% (based on the transactional evidence) and 82.08% (based on the graphs which are currently favoured by the Upper Tribunal). We therefore adopt a figure for relativity of 87.025%.

Conclusions

22. We make the following determinations on the issues in dispute:
 - (i) The Long Leasehold Value is £210,140;
 - (ii) The Notional Freehold Value is £212,241;
 - (iii) The relativity rate: 87.025%.

We determine the premium payable to be £17,920. Our working calculation is set out in the Appendix.

Judge Robert Latham
15 June 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.

Appendix: Valuation of Flat 13 Harvey Court 6 Yunus Khan Close E17 8XD					
Relevant Date 18 February 2020					
Unexpired Term 65.72 years					
Notional Freehold	212,241				
Extended Lease	210,140				
Relativity	87.025%				
Existing Lease	£184,703				
Term					
Initial ground rent		£120			
YP 32.72 years @6.5%		13.42	£1,610		
Increased ground rent		£180			
YP 33 yrs @6.5%	13.46				
PV £1 in 32.72 years @6.5%	0.13	1.71	£309		
Reversion					
Freehold VP	£212,241				
PV £1 in 62.72 years 5%		0.04	£8,489.64	£10,408.64	
Less Freeholder reversion on extension					
After extension	£212,241				
PV of £1 155.72 years at 5%		0.0005	£106.1205	£10,302.52	£10,302.00
Diminution					
Marriage Value					
Value after lease extension	£210,140				
Freeholder's extended lease value	£106				
Total			£210,246		
less					
existing freeholder's interest	£10,302				
existing leaseholder interest	£184,703		£195,005		
			£15,241		
landlord share 50%				£7,620.50	£7,620
Lease Extension Premium					17922
				say	£17,920