



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

Case reference : **LON/00AK/OLR/2022/0699**

Property : **Upper Maisonette, 29 Bowood Road, Enfield EN3 7LH**

Applicant : **Resonance RLPF2 GP Limited and Resonance RLPF2 Nominee Limited**

Representative : **Winckworth Sherwood Solicitors**

Respondent : **George Flavien**

Representative : **N/A**

Type of application : **Section 50(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ('missing landlord')**

Tribunal members : **Judge Tagliavini
Mrs Sarah Redmond FRICS**

Date of determination and venue : **1 November 2022 at
10 Alfred Place, London WC1E 7LR
(paper remote)**

Date of decision : **1 November 2022**
corrected : **8 November 2022**

DECISION

*Corrected pursuant to rule 50 of The Tribunal Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013*

Summary of the tribunal's decision

(1) The appropriate premium payable for the new lease is **£18,286**.

Background

1. This is an application made by the applicant leaseholder pursuant to section 50(1) of the Leasehold Reform, Housing and Urban

Development Act 1993 (“the Act”) in respect of the Upper Maisonette, 29 Bowood Road, Enfield EN3 7HLthe “property”). Nos. 29 and 31 Bowood Road comprise a semi-detached 1930’s purpose-built block of two maisonette flats, being one flat on the ground floor (No.31) and one flat on the first floor (No. 29), each with a private entrance door and section of rear garden.

2. On 16 November 2021, a Part 8 claim was made to the County and Family Court sitting at Edmonton under Claim No. HO1ED275 seeking a vesting order, the determination of the new lease terms and the premium payable. In an order dated 23 June 2022 made by DDJ Lucarotti sitting at the County Court at Edmonton on 5 May 2022 it was ordered that:
 - (i) There shall be a vesting order under section 50(1) of the Act.
 - (ii) The Claimants may make an application to the first Tier Tribunal (Property Chamber) for determination of the lease terms together with the sums payable under section 51(5) of the Act.
3. The county court also made an order that the costs of the application should be off set against the premium payable and this matter remains outstanding.

The applicant’s evidence

4. The tribunal determined this matter on the documents provided by the applicants who relied upon the expert valuation report of Mr Daniel John Walmsley BSC (Hons) MRICS FAAV dated 18 October 2022. In this report, Mr Walmsley concluded a premium of £19,050 is payable by the applicants.
5. Mr Walmsley described the premises as comprising a private entrance on the ground floor leading to stairs to the first floor, landing and corridor, living room, main double bedroom, single bedroom with cupboard, kitchen and bathroom with WC. On inspection Mr Walmsley found the premises to be in a fair decorative condition and with basic but serviceable white kitchen units and bathroom fittings and wall mounted central heating radiators served by a combi-boiler.
6. The lease for the premises is dated 31 August 2000, granting a term of 99 years with effect from the same date thereby leaving 77.87 years unexpired as at the valuation date of 16 November 2021. The current ground rent is £100 per annum increasing to £200 per annum from 31 August 2033 and the increasing again to £400 per annum from 31 August 2066 for the remainder of the term.

7. Under the terms of the lease the demised premises includes the whole top half of the building including the roof structure covering the flat together with a portion of the rear garden. The tenant of the premises is required to contribute 50% towards the cost of keeping the foundations of the building in good and substantial repair. Similarly, the tenant of the ground floor flat is similarly obliged to contribute 50% towards the costs of keeping the roof in good and substantial repair.
8. In carrying out his valuation, Mr Walmsley assumed the layout of the flat remains substantially unchanged since the commencement of the term and that there are no tenant's improvements to be disregarded.

Capitalisation rate

9. Mr Walmsley adopted a capitalisation rate of 7.5% having regard to sales of similar properties at 14 & 16 Bowood Road; 18 & 20 Bowood Road; 21 & 23 Bowood Road and 22 & 24 Bowood Road. The first and third of these sales realised a capitalisation rate of 7.5% and the second and fourth sales realised a capitalisation rate of 1.5% and 4.5% respectively. Mr Walmsley sought to justify the choice of 7.5% by reference to the market evidence and his experience of lease extension settlement.

Freehold vacant possession value (FHVP)

10. Mr Walmsley stated that in assessing the freehold vacant possession value of the flat he had regard to four similar sized two-bedroom flats in the vicinity of the subject premises by using the details provided on Rightmove.co.uk and Land Registry data and by carrying out an external inspection. Mr Walmsley stated he adjusted for time by using the Land Registry House Price Index for the London Borough of Enfield -flats and maisonettes.

Deferment rate

11. Mr Walmsley adopted the rate of 5% following the decision in *Cadogan v Sportelli* [2007] EWCA Civ 1042.

Value of existing lease/relativity

12. Mr Walmsley referred to the starting point as looking at comparable short lease sales and sales of the subject property itself, if relevant. and referred the tribunal to the approach taken in *Munday v Trustees of the Sloane Stanley Estate* [2018] EWCA Civ 35. Mr Walmsley stated that the most recent sale of the subject premises took place in August 2017 when it sold for £263,750 when the lease had 82 years unexpired. However, Mr Walmsley stated he had disregarded the use of this sale as being too far from the valuation date. As he was unable to find sales of

sort leases of comparable properties he relied upon the Savills 2016 Graphs of Relativity.

13. By using this methodology, Mr Walmsley concluded that for an unexpired term of 77.87 years, the Savills 2016 Enfranchisable Relativity graph is ~~80.96%~~ 89.96% and the corresponding Savills 2016 Unenfranchisable Relativity graph (i.e., disregarding 'Act rights') is 88.44% which figure he adopted to provide an existing lease value of £250,133.

Marriage value

14. Mr Walmsley calculated the marriage value as £10,815 being 50% of the total marriage value (value of newly extended lease of £280,000 minus the diminution in value of the freeholder's interest (term and reversion) producing a total marriage value of £21,630.

Premium payable

15. Mr Walmsley concluded by stating that the premium payable is £19,052 (say £19,050).

The tribunal's decision and reasons

16. The tribunal found Mr Walmsley's valuation approach in his report helpful in establishing the premium to be paid and accepted the majority of his report. However, the tribunal considered Mr Walmsley to have omitted any reference to the case of *Deritend* where the Upper Tribunal set out the approach that should be adopted where a non-PCL property is being valued.
17. The guidance provided by *Deritend Investments (Birkdale) Ltd v Treskonova* [2020] UKUT 164 (LC) requires the average of Savills 2016 and the Gerald Eve 2016 unenfranchisable graphs to be utilised and not simply the figure of 88.44% used by Mr Walmsley. The tribunal finds the Gerald Eve table provides a figure of 89.52% for 77.87 years unexpired and an average of this and the 88.44% used by Mr Walmsley produces an average of 88.98%. Applying this figure to a FHVP figure of £282,828 FHVP results in a value of £251,660 for the unexpired term ignoring the Act rights and a resulting premium payable of £18,286. Although, this is slightly lower than the figure put forward by Mr Walmsley, the tribunal is satisfied that this accurately reflects the premium to be paid.

The premium

18. Therefore, tribunal determines the premium payable is £18,286 as set out in the valuation annexed below.

Lease terms

19. The tribunal was also required to consider the proposed lease terms in the form of a draft lease submitted by the applicants. This has incorrectly referred on the cover page to the subject property as the 'lower maisonette' and therefore this should be corrected to read the 'upper maisonette'.
20. Having considered the draft lease and the terms of the original lease, the tribunal approves the terms of the draft lease (subject to the correction in paragraph 18 above) including the proposed amendment to clause 4.2 of the original lease and the substitution of the word 'upper' for a reference to the 'lower' flat, thereby ensuring any future lessee of the lower flat is bound by the same covenants as the lessee of the upper flat.
21. The tribunal now remits this application to the county court at Edmonton for any further matters to be determined and the appropriate orders made.

Name: Judge Tagliavini **Date:** 2 November 2022 &
8 November 2022

Appendix: Valuation setting out the tribunal's calculations

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

CASE REFERENCE LON/00AC/OLR/2014/0106

**First-tier Tribunal
Property Chamber (Residential Property)**

**Valuation under Schedule 13 of the Leasehold Reform Housing and
Urban Development Act 1993**

Premium payable for an extended leasehold Interest in [Property]

Valuation date: 16 November 2021

LEASE EXTENSION

per Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 as amended

29 Bowood Road ENFIELD EN3 7LH

Facts and matters agreed and determined:

Upper floor maisonette with garden 527 sq. ft

Valuation date: 16/11/2021

Capitalisation Rate: 7.50%

Deferment rate: 5.00%

Uplift to freehold value: 1%

Extended lease value: £280,000

Lease: expires 24/3/2075 Unexpired Term: 77.87 years

Ground Rent per annum: £100 rising to £200 from 31/8/2033 and £400 from 31/8/2066

Existing lease value: £251,661

Marriage Value: 50%

Relativity: 88.98%

Calculation of premium:

Diminution in value of Freeholder's interest:

Current Ground Rent	100		
YP @7.5% for 11.87 years	7.6824	768	
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Ground Rent at Review	200		
YP @ 7.5% for 33 years	12.1074		
deferred 11.87 years @ 7.5%	0.4239	1,026	
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Ground Rent at Review	400		
YP @ 7.5% for 33 years	12.1074		
deferred 44.87 years @ 7.5%	0.039	189	
	<hr/>		
			1,983
Existing interest:			
Reversion to Freehold	282,828		
Deferred 77.87 years at 5%	0.0224	6,335	6,335
	<hr/>		
			8,318
Less Retained interest:			
Reversion to Freehold		282,828	

Deferred 167.87 years @ 5%		0.0003	85
		<hr/>	
Diminution in Freeholder's interest:			8,233
Calculation of Marriage Value:			
Proposed interests:			
Freeholder:		85	
Leaseholder:		280,000	280,085
		<hr/>	
Less Existing interests:			
Freeholder:		8,318	
Leaseholder:		251,661	259,979
		<hr/>	
Total Marriage Value:			20,106
Attributable to Landlord @ 50%			<hr/> 10,053
Total Premium payable:			18,286