



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

Case reference : **LON/00AW/OLR/2021/0984**

HMCTS code : **P: CVPREMOTE**

Applicant : **Toby Charles Burgess**

Representative : **Mr Buckpitt of Counsel**

Respondents : **(1) Mountview Estates PLC
(2) KCG Residents Association
Limited**

Representative : **Mrs Muir of Counsel**

Type of application : **Section 48 of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal members : **Tribunal Judge I Mohabir
Mr R Waterhouse FRICS**

Dates of hearing : **21 June and 13 July 2022**

Date of decision : **5 September 2022**

DECISION

Summary of the Tribunal's decision

(1) The appropriate premium payable for the new lease is **£2,931,089**.

Background

1. This is an application made by the applicant leaseholder 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 for

the grant of a new lease of Flat 4, Kensington Court Gardens, Kensington Court Palace, London, W8 5QR (the “property”).

2. By a notice of claim dated 22 April 2021 (“the notice”), served pursuant to section 42 of the Act, the Applicant exercised the right for the grant of a new lease in respect of the property. The notice proposed a premium of £1,908,902.
3. At the time, the Applicant held the existing lease dated 7 August 1959 for a term of 70 years from 24 June 1959 (“the lease”). The Applicant purchased the lease on 29 April 2021 for £967,000. The lease had an unexpired term of 8.17 years on the valuation date, being the date of the notice of claim. The Applicant has subsequently carried out refurbishment works to the property and as at the date of the hearing was on the market at an asking price of £5,950,000.
4. On 26 May 2021, the First Respondent freeholder, as the competent landlord, served a counter-notice admitting the validity of the claim and counter-proposed a premium of £4,022,050 for the grant of a new lease.
5. The parties were unable to agree the premium payable and the Applicant made an application for a determination of those terms on 23 November 2021.

The issues

Matters agreed & Not Agreed

6. These are set out in the statement agreed by the respective valuers instructed by the parties, which is annexed hereto. As will be noted, both valuers rely on the same “basket” of comparable properties for their valuation.

The hearing

7. The hearings in this matter took place on 21 June and 13 July 2022. The Applicant was represented by Mr Buckpitt of Counsel and the Respondent by Mrs Muir of Counsel.
8. The property was inspected subsequently by the Tribunal member Mr Waterhouse only on 29 July 2022. Access to the property was provided by the Appellant’s estate agent, Russell Simpson.
9. The property is in a raised position compared with the street level by some four steps to the communal entrance hall for the block. The property was on the same level, other than flooring to the communal entrance hall. In terms of security there are windows opening directly

to the front of the building, with a gap and railings in between. The rear of the property has bedroom and kitchen windows opening to the street. There is additionally access through a lower ground floor courtyard area, which is a fire escape route, communal, from a door with Banham locks from the kitchen area. The concierge to the building has a position outside the subject premises front door.

10. The Applicant relied upon the expert report and valuation of Mr Symington MA MRICS dated 14 June 2021 and the Respondent relied upon the expert report and valuation of Mr Georgiou BSc (Hons) PGDipSurv MRICS dated 14 June 2022.

Discussion, Findings & Conclusion

Property interest to be valued

11. The unimproved demise, from state originally let in 7 August 1959. The Act requires the property to be valued to be in compliance of the lease terms, that is, in repair. Sub-ordinate parts such as heating, wiring and plumbing will naturally during this period fall to be renewed. So, the property to be valued is not in a high specification improved state nor is it to be considered unliveable. It is in repair to the extent envisaged in 1959 within the bounds of reasonable specified replacement subordinate parts. The absence of photographs pre-refurbishment is regrettable, but it is not impossible to envisage the condition and layout envisaged for the Act.

Market

12. The Tribunal notes that the market being considered is prime central London. As such certain features of a wider market may be more pronounced there. In almost all markets developers will be able to operate. At a fundamental level a developers bid is made on the basis that their costs are exceeded by the value created. Additionally, that there are purchasers demanding properties that have a new build status, in this case not lived in post the refurbishment. The market will also contain owner occupiers those wishing to either fully refurbish at the start of their occupancy or others subject to the condition of the property wishing to reside as in the condition purchased. Whilst both developers and owner occupiers act economically rationally, there is a proportion of owner occupier purchasers who will bid more than the value return. The market in Kensington comprises a significant proportion of international buyers alongside buyers from the UK. At the date of valuation April 2021, the Covid pandemic was still causing economic uncertainty.

Potential Market

13. International and national – there was no agreement as to the proportion of international buyers between the parties but at date of valuation these, the international ones, as Mr Symington said were increasing. It was agreed that international buyers were at the valuation date a significant proportion of prospective purchasers. The relevance of the distinction between international and national buyers, was that international may leave the property unoccupied for significant periods, and so increased attention for security thus rendering the ground floor less attractive.

Sales particulars

14. The sales particulars for the property when purchased by the Appellant were prepared by the vendor's agent, JD Wood. The particulars gave an indication of the amount of the premium required to extend the lease. There is little weight that can be attributed to this piece of evidence other than to note three things. Firstly, JD Wood are the authors of a number of relativity graphs used in lease enfranchisement work. Secondly, it is not in the interest of the vendors to overstate the sum and, thirdly, we have no understanding of the diligence attached to calculating the figure.

Comparables

15. Valuation by comparable is most robust when the comparables require least adjustment. Adjustments here mainly centre on lease length, specification, repair, floor level with location of relevance. The Tribunal considered the agreed list of comparables and the respective approaches taken by the Appellant and Respondent valuers. The respective valuers took differing approaches over adjustments, which are considered each in turn below.

Lease Length

16. Mr Symington, for the Applicant, sought to use the sales of short leases as valid evidence. Mr Georgiou, for the Respondent, noted in his report that “the short lease sale price in this case is of little evidential use.” The Tribunal considers short lease value to have some weight, particularly within the subject block.

Specification and Repair

17. Mr Symington contended the property was in a poor and unrefurbished condition. There are no photographs of this condition. He further contended that any works needed to put the property in repair or compliance with lease would be wasted, as a purchaser would undo this. Mr Georgiou contended that the property should be assumed under the Act to be in repair in compliance with lease as the basis of the valuation. He adjusted sales figures of the comparable flats on basis of

value attributed to the difference in quality. For flats 7, 12 and 25 these were considered to be in better condition and a deduction of £50 psft was made. For flats 10 and 11 these were considered to be in a less “tenantable condition” and £100 psft was added to them.

18. In evidence, Mr Georgiou noted that the deductions were of value rather than strict cost and that cost did not equate directly with value. The form of the layout demanded from purchasers' changes over time and many of the properties with short leases are undergoing layout improvements in addition to increased specification and repair, bathroom layout being an example.
19. Mr Georgiou also noted that the provision of additional bathrooms is of benefit and so, where a comparable has one or more bathrooms ensuite, a deduction of 2% is made.
20. The comparables have been adjusted by deducting cost of works, to take them back to the unimproved state of the property. There are a number of challenges to the approach of cost deduction, cost does not always equate to condition. Additionally, there is no direct evidence of the condition of the subject property as at the date of valuation.
21. The Tribunal finds that the Act requires the property to be considered in repair, but not improved or any layout changes envisaged. The Tribunal finds, on balance, that within the subject market it is unlikely that modest superficial improvements to properties in this market would have a positive value impact. The deduction of costs to repair and improvement is an approach to which weight can be given. The further away from the envisaged property condition reduces the reliability of this adjustment process.

Floor levels

22. Mr Symington had applied a scale of discount for the ground floor as compared with the other floors. The discount rates proposed by him are derived from his analysis of a number of comparables. These were flat 12 on the fourth floor to ground floor (18%), flat 20 on the first floor to ground floor (12%), and flat 9 on the third floor to ground floor (16%).
23. Mr Georgiou noted that a lift serves all floors and the ceiling heights are the same. The approach he took was to deduct 1% for the upper floors and 2% on the 3rd floor to cater for views, which was applied to flats 10, 12 and 25. Flat 11 does not have the additional 2% applied for the view because the block opposite is of the same height.
24. The Tribunal, making what it can of the evidence and applying its own knowledge finds that a ground floor property will trade at a discount to higher floors. In some cases, outside space mitigates but purely on the question of floor level there is a discount. Height in a building is generally attractive as it reduces interference of amenity value from matters such as noise, pollution, privacy and security. The Tribunal

preferred the evidence of Mr Symington in terms of the general approach, but considered the discount too excessive.

Comparables in the Block

4 Kensington Court Gardens – sales particulars of short lease sale

25. For the reasons set out at paragraph 14 above, the Tribunal attached little or no weight to this.

4 Kensington Court Gardens – pre refurbishment sale

26. The property was acquired by the Appellant for £967,000 on an 8.17 year unexpired lease, which equates to £365 psft. The property was unmodernised. Mr Symington, applying the Savills indices (with rights), shows this will trade at 28.94 % of freehold vacant possession value. This would place a freehold value of £ 3,341,000 on the property.
27. Mr Georgiou, stated that the transaction levels attributed to short lease were very unreliable and so no further consideration was made.
28. The Tribunal considers that a transaction on the subject property carries considerable weight in the absence of any indications to the contrary.

4 Kensington Court Gardens – marketing figure

29. The property was at the date of hearing being marketing at £5,950,000 and has had around 35 viewings without agreement of a sale price. The Appellant is a developer and £339 psft has been expended on the property covering reconfiguration and refurbishment. The costs exclude stamp duty, mortgage interest and profit. Mr Symington considered the property's marketing figure to be ambitious and that the real value stands at £5,150,000 equivalent to £1948 psft. He then made an adjustment of £600 per square foot, and to 97.5% to reach unimproved freehold value of £3,654,008.
30. Mr Georgiou considered the marketing price of a property and the associated costs of refurbishment contain so many variables as to render it unreliable.
31. The Tribunal considered the process, which contains a number of variables including actual costs by specific owner, and an unknown sale price some distance in time from the valuation date. The Tribunal, therefore, afforded it a little weight in context setting only.

9 Kensington Court Gardens – under offer and exchanged pre completion

32. This property was marketed by Savills at £1,400,000 and went under offer on 9 May 2022 at £1,050,000. The unexpired lease term was 8.4 years. The property is on the third floor, slightly larger than the subject property at 2435 ft, which equates to £423 psft. Mr Symington informed the Tribunal that, as at the date of the second hearing, the property had exchanged contracts. He drew from the relationship between the subject property and this one that the ground floor would trade at a discount of 16%.
33. Mr Georgiou contended this did not amount to a reliable piece of evidence because the purchaser could still withdraw.
34. The Tribunal agrees that it provides evidence of some weight for the floor level, albeit not without adjustment.

20 Kensington Court Gardens – sale

35. This flat, which is slightly larger than the subject premises, was purchased in June 2019 for £1,325,000 equivalent to £488 psft, with an unexpired term of 11.3 years. Indexing the sale cost for time resulted in £409 psft. Mr Symington negotiated a lease extension for a premium of £ 2,758,000. Compared with the subject property, the he believes that this shows the ground floor trades at a 12% discount from the first.
36. Mr Georgiou considered short lease transaction very unreliable and does not seek to extrapolate from them.
37. The Tribunal notes the analysis in terms of floor levels and places some weight on it.

12 Kensington Court Gardens

38. This is a fourth floor flat and sold on a 145-year lease close to the valuation date. Mr Symington had adjusted for floor level to go from fourth to ground at a discount of 18%. Furthermore, the property was in reasonable condition. He believed that it required only a new kitchen and bathroom and redecoration to reach the standard of the refurbishment of the subject property. To this an allowance of £200 psft when applied. This produces a value of £1343 psft.
39. Mr Georgiou applied a 1% adjustment for tenure, deducted £50 psft for condition, 6% for floor level, and 2% for ensuite facilities. The rate derived was £1646 psft.
40. The Tribunal noted that this comparable has previously been reconfigured, along the lines of the work undertaken in the subject premises. The subject premises is to be valued as in its pre reconfigured state. In order to make a similar comparison the comparable would

similarly need to be in a pre-reconfigured state. The Tribunal, therefore, reduced the weight attached to this comparable accordingly.

41. The Tribunal preferred Mr Symington's floor discount and considered Mr Georgiou's value adjustment too light.

10 Kensington Court Gardens

42. This third floor comparable flat has the benefit of a shared garage and store room. Mr Symington had deducted £80,000 for these, which was agreed with Mr Georgiou. Analysis shows a value of £1373 psft. Mr Symington applied a discount of 16% to the value to reach the value of the ground floor.
43. Mr Georgiou, in addition, noted an addition adjustment of £100 psft and a deduction of 5% floor level. A value of £1647 psft is derived.
44. The Tribunal gave weight to this comparable by virtue of its location and prefers the floor level discount and the condition adjustment.

7 Kensington Court Gardens

45. This flat is on the second floor and has previously been reconfigured and refurbished. Mr Symington considered the end quality "disappointing" and after applying a discount of 14% to adjust from second to ground floor. A further £200 psft is applied to reach the unimproved value of £1531 psft.
46. Mr Georgiou adjusted for condition a deduction of £50 psft, floor level 2% and ensuite facilities a further deduction of 2%. The value derived is £1853 psft.
47. The Tribunal preferred the evidence of Mr Symington and the approach taken by him on this comparable.

11 Kensington Court Gardens

48. This flat is on the fourth floor. Mr Symington made no adjustment for condition, but adjusted for floor level applying a discount of 18% from fourth to ground floor. This results in a figure of £1256 psf.
49. Mr Georgiou considered an addition of £100 psft for condition, and a deduction of 4% for floor level. From this a freehold rate of £1566 psft is derived.
50. The Tribunal preferred the floor level adjustment and considered the addition for condition useful.

25 Kensington Court Gardens

51. This flat is on the fourth floor. The condition is such that it has been previously refurbished with marble in bathrooms and wooden floors. Mr Symington made an adjustment of 18% to the value to reflect the ground floor. Resulting in a figure of £1333 PSF.
52. Mr Georgiou adjusted for relative condition £50 psft, floor level at 6% and ensuite facilities at 2%, reaching £1481 psft.
53. The Tribunal preferred the floor adjustment of Mr Symington, and considered the condition, specification allowance made by Mr Georgiou too light.

Summary of the comparables in the building

54. Mr Symington noted a range from £1256psft to £1531psft, which produced an average of £ 1367psft giving a value of £3,619,348. Mr Georgiou, noted range of £1481psft to £1853psft and average £1639 psft.

Comparables outside the block.

81 Iverna Court London W8

55. This property was sold with a share of freehold September 2020 for £2,850,000, which equates to £1192 psft. Mr Symington believed the location is slightly poorer and the block is less prestigious and so 5% allowance for each is made. This produces £1320 psqft.
56. Mr Georgiou believed an addition for condition of £150 psft to reflect the dilapidated condition and a 7.5% addition for the layout was required, deriving a value of £1447 psft.
57. The Tribunal considered the addition of £150 psft to be excessive, given the likely extensive refurbishment that the condition of the subject premises would attract in the market.

31 Campden Hill Gate, Duchess of Bedford Walk , London W8

58. This ground floor flat was sold for £2,500,000 in February 2021, which equates to £1519 psft. Mr Symington, believed the location and block to be superior and has adjusted the comparable by 5% to reflect the subject property of £1370 psft.
59. The Tribunal considered the numerical lack of adjustments renders this a reliable comparable and weight is attached to it.

30 Abingdon Court, Abingdon Villas, London W8

60. This comparable is a 2-bedroom ground floor flat. Mr Symington adjusted using 15% because it is more prestigious and sold for £1940,000 equating to £1152 psft. Mr Georgiou's adjustment for time, location and nature of the block provides £1332 psft. He noted that, as a two bedroom flat, it is in a different market.
61. The Tribunal agreed with Mr Georgiou and placed little weight on this comparable.

2 Hale House, 34 De Vere Gardens W8

62. Mr Symington adjusted for preferred block and location at 10% and £400 psft for high standard of finish giving an adjusted value for the subject premises at £1353 psft.
63. Mr Georgiou adjusted for condition at £200 psft and made a 7% allowance for ensuite facilities deriving a value of £1620 psft.
64. The Tribunal considered that the number and magnitude of adjustments rendered this comparable not to be reliable.

4 Cornwall Mansions, Kensington Court, London W8

65. This comparable is a ground floor flat, within a period mansion block. Mr Symington contended that the common parts are in good but inferior condition. Additionally the property exhibits an "awkward footprint". The condition of the property is better than the subject property in the condition proposed so an allowance of 150 psft was applied. The transaction price was £2,750,000, which equates to £1486 psft, in October 2019 resulting in a value of £1445 psft.
66. The Tribunal placed weight on this comparable given the floor level and condition.

3 Hale House, De Vere Gardens London W8

67. This property is a ground floor flat, recently refurbished to a high specification, including air conditioning, wood flooring with a good quality kitchen and bathroom. Mr Symington submitted that the property has a "feeling of a basement flat", for which a 15% allowance had been applied. Additionally, in order to adjust for condition a reduction of £200 psft was been applied with the resulting value being £1321 psft.
68. Mr Georgiou considered the condition warranted a £50 psft adjustment, and an addition of 5% for lack of privacy.

69. The Tribunal found the reduction from ground floor made by the Mr Symington to be excessive, and considered Mr Georgiou's condition adjustment to be too light.

15 Kent House, 34 Kensington Court London W8

70. This comparable is a ground floor flat with a significant outside space. Whether the space was part of the demise was clarified, as being part of the demise during the reconvene hearing. Mr Symington derived a value of £1404 psft.
71. Mr Georgiou adjusted for condition at £75 psft, the "patio" at 5% allowance, ensuite facilities at 2% deduction and ceiling height an addition of 3%.
72. The Tribunal considered the property to be of a different nature to the subject property and in a different block, and as such the Tribunal placed little weight on it.
73. In summary, Mr Symington arrived at a value for the £3,650,000 for the subject property amounting to £1380 psft. Mr Georgiou contended for a FHVP value of £4,230,000 based on £1600 psft. He concluded that the rate adopted from outside blocks of £1548 psft supports the sales within the block of £1600 psft.
74. Considering the amendments to the adjustments made by the Tribunal and weight applied to the evidence, the Tribunal determines a rate of £1500 psft, which leads to FHVP value of £3,966,000. This in turn leads to a premium of **£2,931,089**.
75. Accordingly, the Tribunal determines the appropriate premium to be **£2,931,089**. A copy of its valuation calculation is annexed to this decision.

Name: Tribunal Judge I Mohabir **Date:** 5 September 2022

Value of Headlessee's Ground Rent £3,966,000.00

Diminution in value of landlord's interest in accordance with paras 2(a) & 3:

1. Loss of Ground Rent Rights of appeal

Loss of rental income			£75		
YP	8.17 yrs @	6.000%	6.31	£473	
plus					
1 st Review			£75		
YP	0.00 yrs @	6.000%	0.0027		
PV £1 in	8.17 yrs @	6.000%	0.6213	£0	
plus					
				£473	
					£473

Value of Freeholder's Interest

1. Loss of Current Reversion to Capital Value					
Freehold Vacant Possession		£3,966,000			
PV £1 in 8.17 yrs @	5.00%	0.6713	£2,662,375		
				£2,662,375	
Less					
2. Reversion to Future Capital Value					
Freehold Vacant Possession		£3,966,000			
PV £1 in 98.2 yrs @	5.00%	0.008315	£32,977		
				£32,977	
					£2,629,398
					£2,629,871

Landlord's Share of Marriage Value

In accordance with paras 2(b) & 4

1. Extended Interests			
	Reversion to Future Capital Value	£32,977	
	Extended Lease Value	£3,866,850	
			£3,899,827
Less			
2. Existing Interests			
	Value of <u>Headlessee's</u> Ground Rent	£455	
	Value of Freeholder's Interest	£2,662,375	
	Existing Lease Value (16% of FHVPV)	£634,560	
			£3,297,390
	Marriage Value (difference)		£602,437
	Landlord's share @	50%	£301,218

Premium

Freeholders Interest		£2,629,871	
Landlords share of marriage value		£301,218	
			£2,931,089

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).