Neutral Citation Number: [2025] UKUT 78 (LC)

Case No: LC-2025-29

IN THE UPPER TRIBUNAL (LANDS CHAMBER)
APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL PROPERTY CHAMBER
FTT Ref: AGR/LON/00BJ/0LR/2023/0836

7 March 2025

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LEASEHOLD ENFRANCHISEMENT – FLAT – premium for extended lease – absent landlord – whether development value of completed loft conversion should be included in the premium – whether it should be deferred until the reversion – paras. 3 and 5, Sch. 13, Leasehold Reform, Housing and Urban Development Act 1993 – appeal allowed

BETWEEN:

GARY EDWARD HANSON (1)
JULIE HANSON (2)

Appellants

-and-

DESMOND THEORORE HARDING (1)
PONNUDURAI BALENDRAN (2)
UMAKANTHI BALENDRAN (3)

Respondents

36 Charlmont Road,
London,
SW17 9AJ

Mrs Diane Martin TD MRICS FAAV
Determination on written representations

Mr Sam Madge-Wyld, instructed by Buckles Solicitors, for the appellants

The following cases are referred to in this decision:

Earl Cadogan v Sportelli [2007] 1 EGLR 153

Watton v The Trustees of the Ilchester Estates (2002) LRA/21/2001 (unreported);

Introduction

1. The appellants, Mr Gary Hanson and Mrs Julie Hanson, are the registered owners of a long leasehold interest in a first floor flat at 36 Charlmont Road, London SW17 9AJ ("the property"). The respondent freeholders of the property, Desmond Thoedore Harding, Ponnundurai Balendran and Umakanthi Balendran cannot be found.

2. On 8 June 2023 the appellants issued a Part 8 Claim at the County Court in Wandsworth for a vesting order for a new lease under section 50(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"). Section 50 of the 1993 Act concerns claims for a lease extension where the landlord cannot be found and enables the court to make a vesting order in respect of any interests of the landlord which are liable to acquisition.

3. On 4 September 2023 the County Court ordered that the matter be transferred to the First-tier Tribunal (Property Chamber) ("the FTT") for the purpose of determining the new lease terms and any premium payable under Schedule 13 of the 1993 Act in respect of the grant of the new lease.

The decision of the FTT

4. The FTT was provided with an expert valuation report by the Appellants' valuer, Mr Ghulam Yasin BSc MRICS, in which he stated his opinion that the premium payable for the lease extension of 90 years was £10,000. The loft of the property had been converted by the leaseholders, since the grant of the lease, to provide two bedrooms and a shower room/WC. Mr Yasin assessed the value added to the freehold vacant possession value ("FHVP") of the property by the conversion to be in the region of £58,000, but the value of that conversion was to be ignored for this valuation because it was a tenant's improvement. However, Mr Yasin considered that a sum of £20,000, approximately one third of the added value, should be included in the unimproved FHVP value to reflect the potential of the loft space for conversion. In his calculations of the premium payable, the value of the freehold receivable on reversion after the end of the lease was deferred at 5%. The effect of this was that the inclusion of £20,000 deferred at 5%, for an additional period of 90 years beyond the 85.87 years remaining on the lease, made a minimal difference to the calculation of the premium.

5. In the FTT's decision dated 12 November 2024 it was stated at paragraph 10(iii):

> "Mr Yasin acknowledges in his report that a lease extension of this property would include compensation to the freeholder for development value. It is his opinion the uplift value arising from the two bedroom extension is around £60,000. He includes a sum of 1/3 or £20,000 of the uplift value as compensation. Under the prescribed valuation method this sum is assessed at the valuation date and is payable as part of the premium on grant of a new lease. The Expert in his premium calculation has deferred the payment of this sum to the reversionary date and this does not comply with statutory guidance. The tribunal includes the compensation sum for loss of development of £20,000 as a separate compensation head in their premium calculation."

6. The FTT assessed the premium payable at £10,584, to which it added the sum of £20,000 for loss of development value to reach its determination of a premium payable at a £30,580.

The appeal

7. The appellants sought permission to appeal the FTT's decision on the following grounds:

a. The FTT decision that the sum of £20,000 was payable in full and should not be adjusted to take account of the fact that vacant possession of the flat would not be available until the end of the term was wrong as a matter of established valuation practice (Ground 1).

b. The FTT did not give sufficient reasons explaining why the sum of £20,000 was payable in full and should not be adjusted to take account of the fact that vacant possession of the flat would not be available until the end of the term (Ground 2).

8. Permission to appeal had been refused by the FTT on 9 January 2025, including with that refusal reasons which expanded on the original decision. It was stated that it was not conclusive that the roof space of the property was part of the demise; that the lease required the approval of the freeholder to undertake structural alterations; that because the works had been completed the loss of development value was to be assessed at the valuation date. In conclusion it was stated:

> "It is the role of the Tribunal to act on behalf of the missing landlord and secure appropriate compensation for the parties in their absence.
>
> It is manifest the hypothetical flat has the development potential of the roof space conversion. The expert told Tribunal the development value amounts to £20,000 as at the valuation date. This value is not challenged by Tribunal.
>
> Any freeholder would seek this sum in compensation in return for the grant of consent to the works to the hypothetical property. This sum forms part of the premium payable for the grant of a new lease. The 1993 Act and the statutory prescribed valuation method do not specify or require the deferment of the development value portion of the premium."

9. The Tribunal granted permission to appeal on 29 January 2025.

The legal background

10. Schedule 13 of the 1993 Act provides for the determination of the "Premium and other amounts payable by tenant on grant of a new lease". Paragraph 2 provides:

> "2 The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate of—
>
> (a) the diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 3,
>
> (b) the landlord's share of the marriage value as determined in accordance with paragraph 4, and
>
> (c) any amount of compensation payable to the landlord under paragraph 5."

11. Paragraph 3 provides:

> 3 (1) The diminution in value of the landlord's interest is the difference between—
>
> (a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease; and
>
> (b) the value of his interest in the flat once the new lease is granted.
>
> (2) Subject to the provisions of this paragraph, the value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) is the amount which at the relevant 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 following assumptions—

(a) on the assumption that the vendor is selling for an estate in fee simple or (as the case may be) such other interest as is held by the landlord, subject to the relevant lease and any intermediate leasehold interests;

(b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;

(c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and

(d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which the relevant lease has effect or (as the case may be) is to be granted."

Paragraph 3(2)(c) is of particular significance in respect of a tenant's improvements.

12. In view of the suggestion by the FTT that the roof space in which the leaseholders have extended their living accommodation may not be within the area demised to them by their lease, paragraph 5 may also be relevant; it provides:

"5 (1) Where the landlord will suffer any loss or damage to which this paragraph applies, there shall be payable to him such amount as is reasonable to compensate him for that loss or damage.

(2) This paragraph applies to—

(a) any diminution in value of any interest of the landlord in any property other than the tenant's flat which results from the grant to the tenant of the new lease; and

(b) any other loss or damage which results therefrom to the extent that it is referable to the landlord's ownership of any such interest.

(3) Without prejudice to the generality of paragraph (b) of sub-paragraph (2), the kinds of loss falling within that paragraph include loss of development value in relation to the tenant's flat to the extent that it is referable as mentioned in that paragraph.

(4) In sub-paragraph (3) "development value", in relation to the tenant's flat, means any increase in the value of the landlord's interest in the flat which is attributable to the possibility of demolishing, reconstructing, or carrying out substantial works of construction affecting, the flat (whether together with any other premises or otherwise)."

Submissions on behalf of the appellants

13. Mr Madge-Wyld submitted that whether the value of £20,000 was included in the diminution in value of the landlord's interest in the flat, or as additional compensation for loss of development value, it ought to be uncontentious that it was not a value that was immediately realisable by the landlord. The grant of a new lease did not infringe on the ability of the landlord to develop the flat's roof space and the value would only be realisable once the landlord was in possession of the flat at the end of the term. Therefore the value should be included as part of the FHVP value of the flat, deferred to the reversion at a rate of 5%. The principle of deferment had been explained in the case of *Earl Cadogan v Sportelli* [2007] 1 EGLR 153 at [2]:

> "...The [value of vacant possession at the end of the term] has been arrived at by ascertaining the open market value of the freehold interest with vacant possession as at the valuation date and then adjusting that value to reflect the fact that vacant possession will not be available until the end of the term. The adjusting factor is called the "deferment rate". The valuers in the present cases explain it thus: it is "the annual discount applied, on a compound basis, to an anticipated future receipt (assessed at current prices) to arrive at its market value at an earlier date" [that is to say the valuation date]."

14. Mr Madge-Wyld also cited a decision of the Lands Tribunal (PR Francis FRICS) in *Watton v The Trustees of the Ilchester Estates* (2002) LRA/21/2001 (unreported) as authority that additional value for conversion which is not realisable until the reversion to FHVP should be deferred as an addition to FHVP on reversion.

15. It was the appellants' case that the premium payable should be £10,884, which was the sum assessed by the FTT before adding on development value, less the costs summarily assessed by the County Court.

Discussion

16. It was uncontroversial that the additional £60,000 in value which had been created at the property by the loft conversion was to be treated as a tenant's improvement and disregarded from FHVP value as provided by paragraph 3(2)(c) of schedule 13. But unlike an improvement carried out by a leaseholder at their own expense, the *potential* for improvement is an attribute of the property and can properly be taken into account in determining its value.

17. The appellants' valuer attributed a value of £20,000 to the potential for conversion of the property in an unimproved state and included this within his assessment of the unimproved FHVP value due to the landlord on reversion. He did not use the term development value.

18. It was in the FTT's decision at paragraph 10(iii) that the amount of £20,000 was described as development value and treated separately as a figure that would (by implication only, because it was not stated) fall under paragraph 5 of schedule 13. No authority or reason was cited for treating the figure as development value. The only justification for doing so might be that the space in which the improvement was carried out was not demised by the lease, but the FTT did not say that was the case, and in its refusal of permission to appeal it said only that it was "not conclusive" that the roof space of the property was part of the demise. If the roof space was not demised then its value might be taken into account under paragraph 5(2)(a). If it was demised, as seems more likely, then the proper assessment of the potential to undertake the improvement would be considered under paragraph 3.

19. The decision in *Watton* is not on all fours with this case because the appeal concerned the lease extension of an improved ground floor flat in a building which had additional value for re-conversion from four flats back to a single house. The additional value did not arise from the improvements, or the potential to carry them out. The value of the improvements was disregarded, whilst a proportionate share of the additional value for reconversion was deferred until the reversion as compensation for other loss suffered by the landlord.

20. The Law Commission explained at paragraph 14.44 of its Consultation Paper 238 on leasehold home ownership (20 September 2018) that the purpose of the assumption that a tenant's improvement is to be disregarded is to prevent the leaseholder having to pay a price which reflects a value in the property for which he or she has already paid.

21. It is hard to reconcile the approach taken by the FTT in this case with that purpose. The outcome of the FTT's decision is that not only would the leaseholders have paid already for the improvement (either by making it themselves or by purchasing the improved property) but they would then be required to pay again for the potential to carry out that improvement. In principle that is not right.

22. In the reasons for refusing permission to appeal, but not in the decision, the FTT referred to the lease terms, which included a requirement for lessor's consent to structural alterations, such consent not to be unreasonably withheld. Since in this case the improvements had not received consent (presumably because the landlords could not be found) the FTT stated that the sum of £20,000 was compensation in return for grant of consent, forming part of the premium for the grant of a new lease. This has the appearance of justification after the event, rather than a reason for making the original decision. When it considers an application for permission to appeal, the FTT has no power to add additional reasons, which were not those which it had in mind when it made its decision. The appellants will not obtain consent for the improvements as a result of being granted a new lease (although, it is likely that any breach of covenants in the original lease, which will cease to exist, will become of only historic significance). If the FTT considered that the absence of consent to the loft improvement was a relevant consideration it ought to have explained why in its decision.

23. The FTT also stated in the reasons for refusal of permission to appeal that it was not conclusive that the roof space was part of the demise. The implication was that any development value of an undemised part of the property belonged to the landlord. In fact, clause 1(d)(i) of the lease describes what is included in "the Upper Flat" and makes reference to the "..roof of the Building...". It is apparent that the roof, and therefore the roof space beneath it, were part of the demise.

24. In my judgment the potential to carry out the improvement should be recognised as an attribute of the property and should be taken into account in the valuation under paragraph 3(1). The value of the landlords' interest in the tenant's flat prior to the grant of the new lease includes the value of the opportunity to improve it at the end of the lease in 86 years' time. The value of their interest in the flat once the new lease is granted will include the value of that opportunity in 176 years' time. The current value of the opportunity is £20,000 so the diminution in value of the landlords' interest as a result of the grant of the new lease will be the difference between £20,000 deferred for 86 years and the same sum deferred for 176 years.

Determination

25. For the reason I have given the FTT's decision was wrong and I set it aside.

26. This Tribunal has power on an appeal to make any decision which the FTT could have made (section 12(4), Tribunals, Courts and Enforcement Act 2007). There is no need for any additional evidence and therefore no reason to refer the matter back to the FTT for the decision to be re-made.

27. I therefore determine that the premium payable under Schedule 13, 1993 Act for the grant of the new lease is £10,884.

Mrs Diane Martin TD MRICS FAAV
7 March 2025

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.