



FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)

Case reference : LON/00AJ/OLR/2014/1256

Property : Flat 5, 38 The Mall, London W5 3TJ

Applicant : Ms C S Bobinski

Representative : Mr J R Crosbie FRICS  
Brendons

Respondent : Perpetuity Properties Limited

Representative : Mr A Bassi MSc MRICS  
Edifice, surveyors

Type of application : Applications to determine the premium payable on a flat lease renewal under section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993 and for costs under Rule 13(1) The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Tribunal member(s) : Judge Pittaway  
Mr W R Shaw FRICS

Date and venue of hearing : 10 March 2015 at 10 Alfred Place,  
London WC1E 7LR

Date of decision : 28 April 2015

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DECISION

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## **Decisions of the tribunal**

1. The tribunal determines that the premium payable by the applicant for the extension of her lease of Flat 5, 38 The Mall is **£16,766.00**. A copy of the Tribunal's valuation is attached as Appendix 1.
2. The Tribunal makes no order for costs under Rule 13 (1) of the Tribunal Procedure Rules.

## **The applications**

1. By an application dated 29 July 2014 the applicant seeks a determination pursuant to section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993 (as amended) (the "**Act**") as to the premium payable for the extension of her lease of Flat 5, 38 The Mall.
2. By an application received by the tribunal on 9 March 2015 the respondent made an application for costs under Rule 13(1) The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

## **Background**

### **1. The Property**

Flat 5, The Mall, Ealing, London W5 3TJ

The property is described as located on the second floor of a four storey terraced building (with a rear fifth floor), being one of eight flats in the building. Seven of the flats share a communal entrance. The eighth, Flat 1, has its own separate entrance. There is a language school in the lower ground floor under Flat 1.

### **2. Background**

- 2.1 Date of tenant's notice: undated in the bundle.
- 2.2 Date of landlord's counter-notice: 19 February 2014
- 2.3 Date of application to Leasehold Valuation Tribunal: 29 July 2014
- 2.4 Valuation date: agreed as 6 December 2013
- 2.5 Tenant's proposed premium: £16,470.00
- 2.6 Landlord's proposed premium: £22,955.00

### **3. Details of tenant's leasehold interest**

- 3.1 Date of lease: 15 July 1988
- 3.2 Term of lease: 99 years from 25 March 1983

- 3.3 Ground rent: £50 p.a. rising to £100 after 33 years and £150 pa after 66 years

#### 4. **Matters agreed**

- 4.1 While there was no statement of agreed facts signed by both parties there were various versions of a statement of facts in the bundles before the tribunal. The parties at the hearing confirmed that the following matters were agreed

- |   |                 |
|---|-----------------|
| (a) The valuation date:                           | 6 December 2013 |
| (b) The Capitalisation rate:                      | 6 %             |
| (c) The Deferment rate:                           | 5%              |
| (d) The leasehold/freehold differential in value: | 1%              |

- 4.2 Shortly before the hearing the parties' surveyors agreed the square footage of the flat to be 437.5 square feet.

#### 5. **Matters in Dispute**

- 5.1 The Matters were

- (a) The freehold vacant possession value; and
- (b) Relativity.

- 5.2 The applicant's valuer valued the freehold at £250,000 (which was unchanged by the agreed variation in the floor area of the flat). The respondent's valuer had valued the freehold value at £289,250 at the date of his valuation, revised to £278,296 at the hearing because the floor area of the flat had been agreed at 437.5 square feet.

- 5.3 The relativity applied by the applicant's valuer 91%. The respondent's valuer applied a relativity of 87.48%.

- 5.4 The statements of fact did not refer to the unexpired term. Mr Bassi made his valuation on the basis of an unexpired term of 68.34 years. Mr Crosbie took graphs of relativity based on an unexpired term of 68.29 years.

#### 6. **Rule 13 Costs**

- 6.1 Mr Bassi made an application, received by the tribunal on the day before the hearing for costs pursuant to Rule 13(1) (b) of the Tribunal Procedure Rules 2013 on the basis of the "unreasonable" behaviour of the applicant, which he identified at the hearing as being

- (a) Failure to agree a statement of agreed facts;
- (b) Delay in exchanging experts' reports and that Mr Crosbie's was unsigned;
- (c) The withdrawal of the agreement of a freehold value of £270,000;
- (d) A general failure by Mr Crosbie to respond to Mr Bassi; and
- (e) The form of the bundle index and some of the content.

6.2 The tribunal gave SLC, the applicant's solicitor until 20 March to make submissions in response to this application, with Mr Bassi having a right of reply by 27 March. Submissions were received by the tribunal from SLC on 20 March. Mr Bassi's counter submissions were received by fax on 27 March 2015.

## 7. Evidence

7.1 The Tribunal had before it the valuation report of Mr Crosbie dated 15 December 2014. This was unsigned in the bundle but Mr Crosbie offered to sign it at the hearing and it was accepted as his report by Mr Bassi. The Tribunal also had the valuation of Mr Bassi for the respondent dated 22 December 2014.

7.2 Both expert valuers gave evidence at the hearing and were each cross-examined by the other.

7.3 The tribunal have had regard to this evidence and cross examination in reaching their determination and comment on specific aspects of it in their reasons below.

7.4 In relation to the application for costs the tribunal had regard to the Mr Bassi's submissions at the hearing, the applicant's submissions received by the tribunal on 20 March and Mr Bassi's counter submissions received by the tribunal on 27 March 2015.

## 8. The Law

8.1 Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993 (The Act) provides that the premium to be paid by the tenant for the grant of a new lease shall be the aggregate of the diminution in the value of the landlord's interest in the tenant's flat, the landlord's share of the marriage value, and the amount of any compensation payable for other loss.

The value of the landlord's interests before and after the grant of the new lease is the amount which at the valuation 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 assumption that the tenant has no rights under the Act to acquire any interest in any premises containing the tenant's flat or to acquire any new lease.

Para 4 of the Schedule, as amended, provides that the landlord's share of the marriage value is to be 50%, and that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil.

Para 5 provides for the payment of compensation for loss arising out of the grant of a new lease.

Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

- 8.2 The Tribunal had regard to the following legal decision (referred to by the parties)

*Mr K Bobinski v Perpetuity Properties Limited*  
LON/00AJ/OLR/2013/1540.

- 8.3 The tribunal also had regard to Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

9. **Reasons for the Tribunal's decisions.**

**Unexpired lease term at valuation date**

- 9.1 The Tribunal calculates this to be 68.29589, say 68.3 years.

**Freehold value**

- 9.2 Both valuers referred to Flat 1 in the same property as Flat 5 as a comparable. Mr Bassi also referred to the previous decision of the tribunal in respect of Flat 4 in the same building and the sale in December 2013 of Flat 5 itself.

Mr Crosbie's report set out a number of comparables without any supporting evidence to enable the tribunal to substantiate the accuracy of the information given. In cross examination Mr Bassi questioned the usefulness of a number of these by reason of their distance from the property, which Mr Bassi submitted is in a "town centre" location. Mr Bassi's valuation referred to Flat 4, College Court but he did not seek to rely on this as a comparable, the sale having fallen through.

The tribunal consider that the most appropriate comparables are those in the building of which Flat 5 forms part, namely Flats 1, 4 and the sale of Flat 5 itself to the applicant.

- 9.3 There was a measure of disagreement between the surveyors as to whether Flat 5 had been marketed on the open market before being sold to the applicant for £230,000.00 in December 2013. The tribunal note that in Mr Crosbie's valuation he refers to an earlier sale of the flat to another prospective purchaser at £275,000.00 having fallen through. The tribunal also note that during negotiations Mr Crosbie was prepared to agree a freehold valuation of £270,000 proposed on a "without prejudice" basis by Mr Bassi, which agreement was withdrawn when Mr Bassi increased the value he attributed to the freehold by reason of updated indexation information.

- 9.4 Flat 4 had been the subject of an application to a previous tribunal for the determination of the premium for an extended lease determined in

early 2014. That tribunal had determined the freehold value of that flat to be £327,500 which was adjusted by Mr Bassi to reflect the difference in square footage and different valuation dates to produce a freehold value for Flat 5 of £278,296. Both valuers agreed with this tribunal's comment that decisions of previous tribunals were not binding on this tribunal but were useful to it. Mr Bassi submitted that the value of the freehold of Flat 4, as determined by the previous tribunal was prima facie evidence of the freehold value of Flat 5. In cross examination he accepted that each tribunal assesses freehold value on the basis of the evidence before it, but submitted that weight should be given to the previous tribunal determination by reason of the shortness of time between that determination and the valuation date for Flat 5.

Both surveyors' reports refer to Flat 1 which sold in August 2013 for £300,000.00, with an unexpired lease term of 95 years (according to Mr Bassi) or 91 years (according to Mr Crosbie). This flat has an area of 534 square feet.

- 9.5 The parties were unable to agree on the appropriate sale price index to use to adjust value to the valuation date. Mr Bassi preferred to take the average of the Nationwide and Halifax indices for London; while Mr Crosbie preferred the Land Registry data for Ealing.

The tribunal accept Mr Bassi's approach to indexation with reference to the London indices of Nationwide and Halifax as they are based on a wider area, of which Ealing is a part. A more localised index may be distorted by unknown anomalies in the data. However Mr Bassi's calculations based on his preferred indices appear to be incorrect. He adopted the wrong starting quarter for the Nationwide index, Q2 not Q3. The increase from Q3 2013 to Q4 2013 was 5.4%. His calculation of the increase in the Halifax index at 6.69% is wrong. It rose 2.8% between Q3 and Q4. The average increase in these two indices is 4.2%.

- 9.6 The tribunal consider the best comparable to be Flat 1 and agree that its value requires further adjustment. Mr Crosbie submitted that this flat was in a better location within the property than Flat 5 because it has a separate access. Mr Bassi submitted that its capital value should be discounted by reason of it being immediately above the language school. On the basis of the evidence before it the tribunal preferred Mr Bassi's deduction of £5,000 to Mr Crosbie's deduction of £28,060.
- 9.7 Both surveyors worked on a multiple of the floor area of the flat by a price per square foot to achieve their freehold valuation; Mr Bassi valuing the freehold at £278,296 (i.e. £636 per square foot). Mr Crosbie valuing the freehold at £256,375.00 (i.e. £586 per square foot) but reducing this to £250,000, submitting that the SDLT threshold of £250,000 should be taken into account.

The tribunal do not consider the impact of SDLT thresholds to be relevant to the current exercise of establishing a notional freehold value for the purposes of ascertaining a long leasehold value for the flat.

- 9.8 On the basis of the above the tribunal has taken an adjusted value of Flat 1 of £576 per square foot, giving a long leasehold value for Flat 5 of £252,000.

### **Relativity**

- 9.9 On relativity Mr Bassi relied on that of the previous tribunal in relation to flat 4 of 87.48% and placing no reliance upon any relativity graphs. Conversely Mr Crosbie relied on an average of the relativity graphs for Greater London and England, which with or without the inclusion of South East Leasehold and Austin Grey produced a relativity in the region of 91%. In giving his evidence Mr Crosbie explained that in obtaining this average he had used the 2009 edition of the Beckett and Kay graph rather than the most recent edition as he considered this to be more representative. The tribunal note that the previous tribunal included the Beckett and Kay (2<sup>nd</sup> revision, 2013) in reaching their average of 87.48%.
- 9.10 In light of the Upper Tribunal having previously approved the use of relativity graphs, and their not accepting the use of previous decisions as good evidence, the tribunal have determined a relativity of 90% based on the use of the relativity graphs of Nesbitt (89.31%), Pridell (91.31%) and Moss Kaye (88.97%). The average of these graphs is 90.08%, say 90% and this is the relativity that the tribunal has adopted.

The tribunal have not taken into account the relativity graph of the SE Leasehold, which Mr Crosbie had also disregarded. The tribunal have also not taken into account the Beckett & Kay graph, because it has been revised several times and they therefore question the reliability of any particular version, nor the Austin & Gray graph, which is based on data from Brighton and Hove.

### **Rule 13 costs**

- 10.
- 10.1 Under Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the tribunal may only make an order for costs
- (a) under section 29(4) of the Tribunals, Courts and Enforcement Act 2007; or
  - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in, inter alia, a residential property case.
- 10.2 Mr Bassi's submission was that the applicant had acted unreasonably in making the application.
- 10.3 The tribunal do not consider that Mr Crosbie acted unreasonably. That there is a previous determination in respect of another flat in the property does not preclude a further application in respect of another

flat in the building, and the conduct highlighted by Mr Bassi (and set out above) does not amount to the applicant having acted unreasonably in either bringing or conducting the proceedings. The tribunal do not consider this application to have been “a means of surreptitiously appealing the Tribunal Decision on Flat 4” as alleged by Mr Bassi in his counter submission. It is not unreasonable behaviour not to sign a statement of facts if you do not agree that it accurately reflects what you consider to be agreed, nor does Mr Crosbie's behaviour otherwise amount to unreasonable behaviour.

The tribunal consider that it is unfortunate that Mr Crosbie did not take greater care in ensuring that the detail of the proceedings was complied with; it was his responsibility to ensure that his report reached the respondent's valuer and his responsibility to sign his report but this does not amount to unreasonable conduct within the meaning of Rule 13 (1) (b).

- 10.4 The tribunal note that in the applicant's submissions SLC reserve the right to apply for costs under Rule 13 against the respondent. This is not a matter before this tribunal to determine.

Name: Judge Pittaway

Date: 28 April 2015



Appendix 1

New lease claim			
Present lease			
Valuation date	06/12/2013	Years unexpired	68.3
Long lease value	252,000	Freehold value	254,520
Existing lease value	Relativity 90%	229,068	
YP=	6%	PV=	5%

**Diminution in value of Landlord's interest**

Value before grant of new lease			
Ground rents	as valuations	1,623	
Reversion			
Flat value	254,520		
Deferred 68.3 yrs @ 5%	0.035708	9,088	
			10,711
Less value AFTER grant of new lease			
Term			
New lease at a peppercorn rent			0
Reversion			
Flat value (FH)	254,520		
Deferred 158.3yrs @5%	0.000442		-112

**Diminution in value of Landlord's interest 10,599**

**Marriage value**

Aggregate of values of interests after grant on new lease			
Landlord's interest		112	
Tenant's proposed interest		252,000	
			252,112
Less aggregate of values prior to grant of new lease			
Landlord's interest		10,711	
Tenant's interest		229,068	
			239,779
Marriage value			12,333
		50%	6,167
		<b>Premium</b>	<b>16,766</b>