



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

**Case reference** : **LON/00AF/OLR/2018/1417**

**Property** : **Flat 2 Pembroke Court, 41  
Wickham Road, Beckenham, BR3  
6NA**

**Applicant** : **Ms H Ellwell**

**Representative** : **Judge & Priestley LLP**

**Respondent** : **Holdenbridge Limited**

**Representative** : **PJH Solicitors Limited**

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

**Tribunal members** : **Judge Pittaway  
Ms M Krisko FRICS**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **26 March 2019**

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**DECISION**

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## **Summary of the tribunal's decision**

- (1) The appropriate premium payable for the new lease is **£28,340.00**

## **The application**

1. This is an application made by Ms Ellwell pursuant to section 48 (1) Leasehold Reform Housing and Urban Development Act 1993 (“**the 1993 Act**”) for a determination of the premium to be paid for a lease extension, or other terms of acquisition of the lease of Flat 2 Pembroke Court, 41 Wickham Road Beckenham Kent BR3 6NA (the “**Property**”).
2. By a notice of claim dated 16 May 2018, served pursuant to Section 42 of the Act, the applicant exercised the right to claim a new lease of the property and proposed to pay a premium of £15,000 for the new lease.
3. On 4 July 2018 the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £35,300 for the new lease.
4. On 29 October 2018 the applicant applied to the tribunal for a determination of the premium.

## **The issues**

### **Matters agreed**

5. The following matters were agreed
  - (i) The subject property is a 3 bedroom one bathroom (with separate WC) ground floor flat with a gross internal area of 1250 sq ft (116 sq m). It is in a small block of purpose built flats constructed in late 1960s/early 1970s. The windows have been replaced with UPVC double glazed units.
  - (ii) The valuation date is 16 May 2018
  - (iii) Details of the tenants' leasehold interest:
    - (a) Date of lease 6 March 1990
    - (b) Term of lease from 24 June 1989 to 23 June 2088

(c)	Ground rent	£27.10 per annum
(d)	Unexpired term at valuation date	70.1 years
(iv)	Capitalisation of ground rent	6.5%
(v)	Deferment rate	5%

### **Matters not agreed**

6. The following matters were not agreed

- (i) The extended leasehold value;
- (ii) The value of improvements;
- (iii) The freehold value;
- (iv) The existing leasehold value; and
- (v) The premium payable

### **The hearing**

- 7. The hearing took place on 19 March 2019. Mr P L W Morgan FRICS MCI Arb of Morgans Chartered Surveyors gave evidence for and made submissions on behalf of the applicant. Mr P Gosden MRICS of Hindwoods chartered surveyors gave evidence for and made submissions on behalf of the respondent.
- 8. Neither party asked the tribunal to inspect the property and the tribunal did not consider it necessary to carry out a physical inspection to make its determination.
- 9. The applicant relied upon the expert report and valuation of Mr Morgan dated 7 February 2019 and the respondent relied upon the expert report and valuation of Mr Gosden dated February 2019 (without a specific date in that month specified).

### **The tribunal's determination**

The tribunal made its decision having regard to the evidence before it and the submissions made on behalf of both parties, to which it refers, as appropriate, in the reasons for its decision given below.

## **Reasons for the tribunal's determination**

### **The extended leasehold value**

10. Mr Morgan provided four comparables to the tribunal although he invited the tribunal to ignore the comparable 8 Kelsey Court, as being in a gated development and overlooking the lake. Ignoring Kelsey Court his three comparables time adjusted, by reference to the Land Registry index for flats for the local area, to the valuation date of the Property provided an average price per square metre of £4,011 per sq. m. On the basis of the flat having a gross internal area of 116.4 square metres he submitted that this gave a freehold value of £466,880, say £467,000, from which he deducted £20,000 to reflect improvements that should be disregarded. Mr Gosden questioned whether 4 Chichester Court had actually been marketed (Mr Morgan stated that it had); put to Mr Morgan that 8 Kelsey Court was not in a gated development, and that 5 Chichester Court and 2 Churstonville Court required refurbishment.
11. Mr Gosden provided 8 comparables to the tribunal, of which four were stated by him to be “under offer” rather than sold. He had not time adjusted the sale prices referred to to reflect the time difference of the respective sale dates from the valuation date for the property. Of his comparables Mr Morgan put to him that 12 Lakeside should be disregarded as it was significantly smaller than the Property and would therefore achieve a greater price per square foot; that 4 Claire Court had actually sold but for £530,000 and not £550,000 which was the “under offer” price given by Mr Gosden in his schedule of comparables. Mr Gosden’s did not take an average price per square foot of his comparables but looked at the price per square foot achieved by his comparables in Wickham Road, and the price achieved for those of his comparables that had three bedrooms and one bathroom. He also considered the relative attractiveness of Wickham Road to Kelsey Park Avenue and Courts Down Road. In his submission a flat on the ground floor (as the property is) is more attractive than one on an upper floor. He therefore ascribed a value of £405 per square foot to the Property to achieve an extended lease value of £505,000, from which he deducted £15,000 to reflect the value of tenent’s improvements.
12. The tribunal prefers the comparables offered by Mr Morgan. He had limited his comparables to flats which had been sold and had time adjusted the prices achieved with reference to the valuation date of the Property. The tribunal were concerned that Mr Gosden had included comparables where the properties in question had not been sold, and one property which was significantly smaller than the Property. The tribunal is not persuaded that a ground floor flat would command a higher price than one on an upper floor.

13. However, the tribunal do not consider, on the basis of the evidence put to them, that 8 Kelsey Court should have been excluded from Mr Morgan's comparables; nor was there any evidence put to it that the sale prices of his comparables were in fact for the freehold values of the properties (and no evidence was provided to it at the hearing in this regard).
14. The tribunal have therefore adopted a value of £380 per square foot (based on an average of Mr Morgan's four comparables) for the extended leasehold value, giving an extended leasehold value for the Property, as improved, of £475,000.

### **Improvements**

15. Mr Morgan argued for a deduction of £20,000 to reflect the improvements undertaken by the applicant to the Property. He referred in particular to the modernised kitchen, the installation of patio doors, the replacement of all windows (including the patio doors) with double glazing, built-in wardrobes in bedrooms 2 & 3 and the bathroom having been refitted and tiled, as being agreed improvements with further improvements being listed in his report.
16. Mr Gosden in his report submitted that the only agreed improvements were the installation of UPVC double glazing and the installation of the patio doors, to which he attributed a value of £15,000.
17. While the tribunal is not persuaded that all the works listed by Mr Morgan amount to improvements (rather than replacements) it does consider that the improvements included more than just the double-glazing and the installation of the patio doors, and that the tenant had undertaken overall modernisation which had added value to the Property. Accordingly, it has adjusted the value of the extended lease by £20,000, to £455,000.

### **The freehold value**

18. The valuers agreed a 1% differential between the value of the extended lease and the value of the freehold.
19. The tribunal accordingly determine the freehold value of the Property to be £459,550.

### **The existing lease value.**

20. Both valuers agree that the use of direct comparables was the preferred method of ascertaining the existing lease value.

21. Mr Morgan referred the tribunal to the recent sale of flat 6 Pembroke Court which sold with a lease of a similar term unexpired to that of the Property for £440,000. As the flat had been modernised he deducted £20,000 from that price to reflect improvements. He calculated the freehold (sic) value of the unimproved value of flat 6 to be £420,000 and that the difference between the unimproved freehold value of flat 2 and the unimproved existing lease value of flat 6 to be £27,000, or 6%. He then proposed a further deduction of 1.5% to reflect the existence of a “No Act World” to give a relativity percentage of 92.5%. Mr Morgan also referred the tribunal to the average of the graphs for non-Prime Central London in the RICS report of October 2009: Leasehold Reform: Graphs of Relativity, which give an average relativity for a 70.08 year lease of 92.59%; and in particular referred the tribunal to the SE Leasehold graph (which is for properties mainly in the London Borough of Bromley) which shows a relativity of 93.03%. Mr Morgan therefore proposed a relativity of 92.5%, using an average of his market evidence and the SE Leasehold graph.
22. Mr Gosden queried the value of the evidence provided by the sale of flat 6, where he submitted that the sale had been with the possibility of a lease extension (outside the Act) for a term of 123 years at a premium of £21,750 at a ground rent of £140 per annum rising to £140 plus .05% of the then market value of the property on every 25<sup>th</sup> anniversary of the term. Mr Gosden also queried whether the suggested premium was realistic. He referred the tribunal to the Upper Tribunal decision in ***Reiss v Ironhawk [2018] UKUT 0311*** (decided after service of the notice and counter-notice in this application) where the tribunal preferred to use Savills 2015 enfranchisable graph (based on Prime Central London) for a property not in Prime Central London, in preference to unreliable market evidence. Mr Gosden therefore produced two possible valuations, one based on the Savills enfranchisable graph and one on the evidence afforded by the sale of flat 6. The valuation that he then put to the tribunal was the one based on graph evidence, not that based on the sale of flat 6, because of the uncertainty of the evidence provided by the sale of flat 6.
23. The tribunal accept that there are uncertainties surrounding the sale of flat 6 and therefore the evidence it provides should not be relied upon. It has therefore considered the alternative graphs proposed by the two valuers. The SE Leasehold graph, one of the five graphs in the RICS 2009 report is based on evidence collected primarily in the area in which Property is located, and on over 1000 transactions in that area. In such circumstances the tribunal determine that this is the most appropriate graph to adopt. It gives a relativity of 93%. However Mr Morgan's evidence was that 93% was too high and both valuers suggested a lower figure.
24. Mr Morgan argued (in relation to flat 6) for an adjustment of 1.5% to reflect the “No Act World”, without providing evidence to substantiate this adjustment. Mr Gosden argued for a reduction of 3 or 3.5%,

referring the tribunal to the 3.5% reduction used by the Upper Tribunal in *Roberts and anor v Gardener and anor [2018] UKUT 0064*. The tribunal consider a reduction of 1.5% to be too small and have elected to accept a deduction of 3%, noting that this is the differential adopted by Savills to differentiate between enfranchisable and non-enfranchisable leases in its 2015 graphs. It has therefore adopted a relativity of 90%.

### **The premium**

The valuation setting out the tribunal's calculations is set out in the Appendix

**Name:** Judge Pittaway                      **Date:** 26 March 2019

### **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).

TRIBUNAL VALUATION  
FLAT 2, PEMBROKE COURT, 41 WICKHAM ROAD, BECKENHAM, KENT

Valuation Date 16th May 2018.

Term 70.1 years

Existing lease £413,595

Extended lease £455,000

Freehold £459,550

Relativity 90%

Ground Rent: Agreed £ 412

Reversion: £459,550 70.1 years @ 5% £15,046

Freehold interest £15,458

Less:

Landlord's future interest:

£459,550 160.1 years @ 5% £ 184

£15,274

Marriage value:

Extended lease £455,000

Future interest: £ 184

Less:

Existing lease £413,595

Freehold interest £ 15,458

£ 26,131

50% £ 13,066

Premium £ 28,340