



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

Case Reference : **CAM/00MC/OLR/2020/00140**

Property : **Flat 2, 71A Hamilton Road and
Garage 13, Reading RG1 5RA**

Applicant : **Peter Ronald**

Representative : **Guy Williams Layton (Solicitors)**

First Respondent : **Matthew Alexander Chambers
Katherine Tilley**

Representative : **Ashfords (Solicitors)**

Second Respondent : **Turner Property Ltd.**

Representative : **Field Seymour Parkes LLP**

Tribunal : **Mr N Martindale BSc MSc FRICS**

Date of Decision : **16 December 2020**

Application	:	Determination of the premium for a lease extension, under S. 48 LRHUDAct 1993
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DECISION

Decision

The premium to be paid by the applicant for the lease extension for Flat 2, 71A Hamilton Road, Reading RG1 5RA is **£20,834**. This figure is for the flat alone. Any additional premium payable in respect of Garage No.13, which forms part of the Property, has already been agreed between the applicant and the second respondent prior to the hearing. The Tribunal has no jurisdiction on that element. The parties did not refer any other aspect of the lease extension for determination.

Background

1. This is an application made under 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 acquisition of an extension to the leasehold interest in the Property. The relevant legal provisions are set out in Appendix to this decision.
2. The Property is on one level, ground level. It is a small studio flat with external ‘balcony’, dating from the 1970’s in a small purpose built two storey block of two studio flats and four, two bedroom flats. The block is located in a residential road towards the main campus of Reading University. The Property includes a garage in a nearby self contained block of garages to the rear of the block and a rear communal garden.
3. The applicant is the long leaseholder of the Property. He holds his interest under the terms of a lease dated 13 November 1973, registered under title number BK127969. That lease was granted by Nellplace Ltd to the tenant Rosemary Weiner.
4. The respondents purchased the freehold of the block title number BK163833 on 9 November 2000, subject to various leases, this being one of them.
5. The lease is for 99 years from 24 June 1973. It reserves an initial ground rent of £5 pa. After 33 years the rent is to be reviewed to the ‘*current market ground rental of the flat*’ (Schedule 3(b)) to be agreed by the parties or referred to arbitration. The first review was due in 2006. The second review is due in 2039. It is understood that at first review although a figure was proposed, the new rent was not agreed.

Directions

6. The Tribunal considered the issue on the papers submitted by the parties, without a hearing, in accordance with directions issued on 14 October 2020. The case was to be determined on or after 16 December 2020.

7. The Directions required, at “*Expert Evidence/ Valuation (1) The parties shall each be entitled to rely on the evidence of one expert valuer whose report, prepared in accordance with Rule 19(5) of the Tribunal Procedure (First Tier Tribunal)(Property Chamber) setting out the substance of his/her evidence shall be served on the other party by 5pm on 11 November 2020.*”
8. The Directions required at “*(2) the valuers shall discuss the case – this may be by way of email correspondence by 25 November 2020 and shall provide to the Tribunal, as part of the bundle, a joint statement setting out which facts and issues are agreed and identifying those which remain in dispute.*”
9. The Directions required at “*(3) each party shall provide to the other parties by 5pm on 2 December 2020 copies of any relevant documents on which it wishes to rely.*”
10. The Directions required at “*(4) the applicant must prepare the bundle and send 1 copy to each respondent and 2 copies to the Tribunal by 14 Days prior to the date set for the determination.*”

Statutory Basis

11. Part 2, Schedule 13 to the Act provides for the price to be paid by the leaseholder, the applicant for the new leasehold interest where there is no intermediary head leaseholder, as here.
12. The premium payable in respect of the grant of a new lease is the total 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.
13. The diminution is: 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.
14. Paragraph 4 of the Schedule, as amended, provides that the freeholder's share of the marriage value is to be 50%, and that any marriage value is to be ignored where the unexpired term of the lease exceeds eighty years at the valuation date. Here it is included as the unexpired term is less than eighty years.
15. Paragraph 5 of the Schedule provides for the payment of compensation for other loss resulting from the enfranchisement.

Applicant's case

16. The applicant failed to provide an expert report that complied with the Directions and in particular complied with FtT Rule 19(5). *“A written report of an expert must- (a) contain a statement that the expert understands the duty in paragraph (1) and has complied with it; (b) contain the words “I believe that the facts stated in this report are true and that the opinions expressed are correct”; (c) be addressed to the Tribunal; (d) include details of the expert’s qualifications and relevant experience; (e) contain a summary of the instructions the expert has received for the making of the report; and (f) be signed by the expert.”*
17. The Tribunal was instead provided by the applicant with a copy of three letters from DC Auger FRICS of Martin and Pole Chartered Surveyors, (arranged out of date order in the bundle). The first dated 4 July 2019, was addressed to the client applicant; the second dated 25 November 2020 to Andrew Cohen MRICS of Talbots Surveying Services Ltd., valuer appointed by the respondents; the third dated 1 December 2020 addressed to the client’s agent Sarah Mansfield of GWL Solicitors who filed the application and who presumably received the Directions and prepared the bundle for the applicant. There are no letters or other reports in the bundle that are addressed to the Tribunal.
18. Although these three letters contain useful background; on the Property, on potential comparable evidence; on the interpretation of such comparable evidence; on the opinions of the valuer on the implications for the level of premium; and include more than one premium calculation; they do not collectively amount to an expert report for the purposes of this determination. Although the Tribunal does not exclude this material, the weight that might be attached to it is considerably diminished.
19. **From the 1st letter 4 July 2019, from DC Auger to the applicant:** The applicant’s valuer identifies; that *“When I started the process, the most recent sales of studios/bedsits in and around Hamilton Road recorded prices of around £150,000. Now even with extended leases they are as low as £116,000.”* And later as the first rent review had not been undertaken; *“I have relied in part of the Ground Rent for 8 Charfield Court which is currently £90 per annum although of course that was not a Market Ground Rent – it was fixed in £90 as a result of a doubling of the Ground Rent/ I have suggested in the case of Flat 2 71A Hamilton Road that the combined Ground Rent for the flat and the garage should be £150 per annum.”* The valuation attached shows £120,000 as the market value for an extended lease of the flat and garage. It adopts a relativity of 80%. It assumes a combined ground rent of £150pa as current and in effect at the second review capitalised at 7% with the landlord’s reversion before and after both deferred at 5%. The total premium for flat and garage is placed at £17,527.

20. **From the 2nd letter 25 November 2020, from DC Auger to Andrew Cohen:** The applicant's valuer confirmed that while a prior separate sale of the garage block to another party at an historic date had taken place; a separate premium figure in respect of the value attributable to the garage has already been separately agreed with the new block freeholder (second respondent). The dispute now centred only on the premium in respect of the flat element. The letter confirms that 25m² is the agreed area of the flat. It is unclear whether this is intended to include the area of the external balcony as no separate figure is given. It also appears to agree that a rent of £150 pa is correct, though it is unclear if in respect of the whole or of the flat element, alone. The letter sets out 'comparables', these being basic details of other flats within 0.25 miles listed on Rightmove as on the market for sale. The asking prices range from £120,000 to £150,000. There are no details of any completed transactions of these listed properties or any others. The letter confirms that the valuer's earlier opinion of value (July 2019) at £120,000 as the market value of the Property albeit unsupported by evidence, should be divided £95,000 (flat), and presumably £25,000 (garage). The letter concludes confirming a relativity of 80% should be applied to reach the short leasehold value of the Property on the basis that "*the central London market is an entirely different market*". A second valuation calculation for the flat alone, is included at £14,000 premium.
21. **From the third letter 1 December 2020, from DC Auger to Sarah Mansfield:** The applicant's valuer summarises their advice to the mutual client. The text suggests that the valuer either did not receive a copy of the Tribunal's Directions or if they did, ignored them either of their own decision or as instructed by the applicant. The letter text appears to confirm that the ground rent passing should be assessed at £150, but does not distinguish value for the flat or the garage. It withdraws earlier valuations and now refers to an appendix II '*My Final Valuation*' of '*a studio apartment without garage*'. The Tribunal takes this letter as the final submission for the purpose of this determination. The calculation shows a passing ground rent of £5 pa in respect of the flat until 23 June 2039 (the second review) and from there onwards a ground rent of £95 pa or 0.1% of the market rent (£95,000). The capitalisation and deferment rates remain at 7 and 5% respectively on an unexpired term of 52.4 years and a proposed term of 142.5 years. The premium is £13,704, for the flat alone. In support of the extended lease capital value at 31 January 2020 (the AVD) the letter includes summary of details for 5 studio flats on the market in January February and March 2020. The asking prices ranged from £120,000 to £150,000. One was currently for sale (at print date) £150,000 the other 4 were not and of these 1 was marked under offer. All 5 had been marketed for periods of several to many months. Four of these referred to off street parking, none to having garages. Lastly appendix III to this letter included a further valuation it appears for comparison only, adopting the relativity of 73.76% as stated to have been used by Andrew Cohen for the respondent. This produced a premium of £16,668 for the

flat alone but, the applicant still contends for £13,704 as set out earlier above.

Respondents case

22. The respondent provides an experts report dated 27 November 2020 from Andrew Cohen MRICS of Talbots Surveying Services Ltd.. It complies with the Tribunals Directions and can be afforded the usual weight given to such expert evidence. The report states that the applicants instructed their valuer on 25 November 2020, when negotiations were to have concluded and that no statement of agreed facts had been settled.
23. The report calculates the area as 270 ft², said to be *'common ground with the Applicant's valuer'*. The report confirms the applicant's valuer's statement that premium attributable to the garage has been dealt with separately leaving this report for the flat only. Mr Cohen confirms that he has been instructed to use a passing rent of £150 pa in his calculations, as that which was proposed, though not agreed at the date of the first review. He also states that *"other flats within the building have paid this sum and I have therefore applied this figure when assessing the value of the term."* He also concludes later that *"...it is reasonable to apply this figure i.e. £150 per annum to our calculations below"*: That is, the £150 should be the ground rent for the flat, alone.
24. The report adopts 7% capitalisation rate for rents passing with prospect of relatively unfettered if widely spread reviews and takes 5% deferment rate for both current and proposed lease terms. Both are in line with the applicant's proposal.
25. The report sets out brief details of sales of 4 comparable sales around the AVD of 31 January 2020. The market being relatively flat around there are no adjustments for time. None have garages. He weights significance of the four sales, equally.
26. Comparable 1. Flat 6 98 London Road is of a flat in a Victorian Conversion sold £165,000, December 2019. It is 334ft, 25% larger, on the top floor with some restricted headspace, and shared off road parking. A long lease with a share of the freehold. He deducts 20% for size, £5k for non-allocated parking, and 1% for share of freehold. Adjusted value £125,000.
27. Comparable 2. Flat 18 Alpha House Flats Kendrick Road a purpose built block from the 1970's. £125,000 January 2020. It is a similar sized studio with allocated parking and a share of the freehold. He deducts £5k for allocated parking and 1% for a share of the freehold. Adjusted value £118,750.

28. Comparable 3. Flat 30 Royal Court Kings Road a modern purpose built block post Millennium but with no communal gardens. £125,000 February 2020. It is slightly larger at 296ft² and on the third floor of a larger block. He deducts 5% for size, £5k for allocated parking and adds 2% for a 94 year lease. Adjusted value £116,000.
29. Comparable 4. Flat 9 Royal Court Kings Road, same block as comparable No.3. £122,500 sold May 2020. He deducts 5% for larger area of 286ft² and 35k for allocated parking. Adjusted value £111,000.
30. Mr Cohen concludes with his opinion of value with an extended lease of £115,000 for the flat and later adds the conventional and undisputed 1% addition, to reflect the value of the equivalent freehold flat.
31. The report notes that there is no disagreement between the parties as to the rates adopted for capitalisation and deferment.
32. The report sets out the expressed preference for actual sales of short leasehold flats in the locality but, concludes that there were none. This being the case the report goes on to refer to what he considers are the 'appropriate freehold relativity graphs'. The Savills graph of 2015, the Gerald Eve 2016 graph and the RICS Research Report on Leasehold Reform Graphs of Relativity 2009.
33. In selecting the most appropriate of these graphs. The report refers to the recent case of The Trustees of the Barry and Peggy High Foundation and Claudio Zucconi and Mirrella Zanre UKUT 0242(LC) UTLC LRA/138//2018. (the Zucconi case). The report also refers to Deritend Investments (Birkdale) Limited v Ms Kornelia Treskonova UKUT 0164 (LC) UTLC LRA/123/2019.
34. In summary the Zucconi decision concluded that, in the absence of comparable short lease sales, the more recent graphs from Savills and GE could not be entirely excluded from consideration of the relativity between short and long lease, to be adopted when considering the RICS graphs in general. In that case the property was located in Barnet, outer North London. The fact that the subject property was outside of the PCL, was not an automatic reason to exclude these graphs from consideration alongside others from the RICS 2009 report collection. A blend of older London and SE graphs with the newer PCL graphs could not be ruled out in such a case.
35. In summary the Deritend decision appeared arguable to move the position regarding the use of the more recent graphs, potentially further on. It concluded that, in the absence of comparable short lease sales, the more recent graphs from Savills and GE should be taken into account and might even take precedence and even no longer be influenced by the RICS 2009 graphs even with adjustment for the no

Act world. In this case the property was located in Surrey. A blend of older London and SE graphs with the newer PCL graphs may not even be necessary; leaving the former 2009 RICS set, perhaps completely excluded.

36. The report also includes informal correspondence to and from some of the authors of the various RICS graphs - Beckett and Kay, Andrew Pridell and the Austin Grey. The report concludes that these “... *indicate that they themselves consider their own graphs to be out of date.*” Although a copy of the 2017 updated Beckett and Kay graph is not referred to in obtaining the relativity percentage here, it is stated to produce a figure much nearer those of Savills and GE than those of the RICS 2009 report. Mr Cohen states “*I have therefore disregarded all the graphs within Section 2 Greater London and England on the basis that they are unreliable, outdated and do not reflect current market for shorter lease properties which is exactly what the UT concluded...*”
37. Mr Cohen therefore relies solely on the percentages from the Savills Graph (2015) and the GE graph (2016). These show 72.76 and 72.42%, averaged to an equally weighted, 72.59%. As these compare short to long leases, he then states that he adds a further 1% to get to the short lease/ freehold relativity of 73.59, though the addition of 1% is to be made to the long leasehold capital value to get the freehold capital value equivalent.
38. However in the valuation at Appendix K, Mr Cohen adopts the slightly lower relativity of 72.36%. No explanation as to how this relates to the average graph derived relativity figure of 72.59% in the main text is provided. The relativity of freehold to short leasehold and long leasehold to short leasehold is dealt with in Appendix K by the conventional use of a freehold capital value 1% higher than the long leasehold capital value derived from the analysed comparable sales and so unlike the main text, no additional 1% is placed by Mr Cohen on the graph derived average percentages used in Appendix K.

Valuation

39. The Tribunal takes account of both sets of representations. The Tribunal did not consider it necessary or proportionate to carry out an inspection of the Property. The failure by the applicant to comply with the specific Direction under FtT Rule 19 leaves the Tribunal with only one expert report to rely on.
40. The Tribunal much prefers the more detailed evidence, reasoning and reference to recent case law received from the respondent. Having considered the contents of the report and the opinions expressed by the respondent’s valuer, the Tribunal is satisfied that the method adopted is appropriate to determine the premium for the new lease for the Property (excluding the garage).

41. The Tribunal places very little weight on the relatively brief representations from the applicant. In particular there are no comparable sales to support the capital value of the flat £95,000 as contended for and no evidence to support to the relativity of 80% adopted.
42. The respondent produces four useful and appropriately adjusted comparable sales and considerable support for the use in this case, of the two PCL based graphs from Savills and GE alone and hence in this case the percentage relativity adopted and applied to the capital value.
43. Recent significant case law appears to encourage, where appropriate, the consideration of the use of the newer PCL based relativity graphs, both in addition to those of the more traditional and established RICS graphs, in some cases to the exclusion of the latter entirely. While a case might still have been made out here for the applicant, in the adoption of a 'blend' of percentages (on a uniform or weighted average) derived from a range of RICS 2009 graphs as well as the modern 2015 and 2016 PCL graphs; it was not.
44. The Tribunal accepts the valuation for the property, as produced by the for the respondent's valuer at Appendix K to the bundle, in all but one respect. It concludes that there was a minor arithmetical error in using a relativity of 72.36% in appendix K rather than using the average percentage relativity set out earlier in the main text derived from the two graphs at 72.59%. A difference of 0.23% resulting in a reduction in the half share of marriage value of £134 and hence a fall of £134 in the final premium from £20,967 to £20,834. As this is the only change to the valuation and is a very minor one at that, the Tribunal has not produced its own valuation, but has determined a slightly lower premium payable.
45. The premium to be paid by the applicant for the lease extension for Flat 2, 71A Hamilton Road, Reading RG1 5RA, is **£20,834. (Twenty thousand eight hundred and thirty four pounds)**. This figure is the premium payable for the flat, alone.

Name: Neil Martindale
BSc MSc FRICS

Date: 16 December 2020

Appendix

Leasehold Reform, Housing and Urban Development Act 1993

S. 48 Applications where terms in dispute or failure to enter into new lease.

(1) Where the landlord has given the tenant—

(a) a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or

(b) a further counter-notice required by or by virtue of section 46(4) or section 47 (4) or (5),

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice or further counter-notice was so given, [the appropriate tribunal] may, on the application of either the tenant or the landlord, determine the matters in dispute.

(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the tenant.

(3) Where—

(a) the landlord has given the tenant such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and

(b) all the terms of acquisition have been either agreed between those persons or determined by [the appropriate tribunal] under subsection (1),

but a new lease has not been entered into in pursuance of the tenant's notice by the end of the appropriate period specified in subsection (6), the court may, on the application of either the tenant or the landlord, make such order as it thinks fit with respect to the performance or discharge of any obligations arising out of that notice.

(4) Any such order may provide for the tenant's notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6).

(5) Any application for an order under subsection (3) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).

(6) For the purposes of this section the appropriate period is—

(a) where all of the terms of acquisition have been agreed between the tenant and the landlord, the period of two months beginning with the date when those terms were finally so agreed; or

(b) where all or any of those terms have been determined by [the appropriate tribunal] under subsection (1)—

(i) the period of two months beginning with the date when the decision of the tribunal under subsection (1) becomes final, or

(ii) such other period as may have been fixed by the tribunal when making its determination.

(7) In this Chapter “the terms of acquisition”, in relation to a claim by a tenant under this Chapter, means the terms on which the tenant is to acquire a new lease of his flat, whether they relate to the terms to be contained in the lease or to the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of the lease, or otherwise.