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

Case reference	**:**	**LON/00AY/OLR/2020/1152**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Subject property	**:**	**Flat 1, 13 Saltoun Street, London SW2 1EN**
Applicant	**:**	**Ms C Wimhurst**
Representative	**:**	**Mr M Stapleton FRICS**
Respondent	**:**	**Mr K Buckingham**
Representative	**:**	**Mr A Cohen MRICS**
Type of application	**:**	**Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal members	**:**	**Judge S Brilliant Ms M Krisko FRICS**
Date of hearing and venue	**:**	**25 August 2021 at 10 Alfred Place, London WC1E 7LR (Remote)**
Date of decision	**:**	**03 September 2021**

DECISION

<u>Covid-19 pandemic: description of hearing</u>

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was by video V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same. The documents that we were referred to are in an electronic bundle totalling 129 pages.

Summary of the Tribunal's decision

(1) The appropriate premium payable for the new lease is £29,513.00.

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 1, 13 Saltoun Street, London SW2 1EN ("the subject property").

2. By a notice of claim dated 29 April 2020, served pursuant to section 42 of the Act, the applicant exercised the right for the grant of a new lease in respect of the subject property. At the time the applicant held the existing lease granted on 12 October 2007 for a term of 175 years from 25 March 2007, and at an annual ground rent which is set out below.

3. The applicant proposed to pay a premium of £17,365 for the new lease.

4. On 28 May 2020, the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £90,000 for the grant of a new lease.

5. The applicant duly applied to the Tribunal for a determination of the premium. Directions were given on 03 August 2021.

6. At the hearing the applicant contended for a premium of £27,175. The respondent contended for a premium of £53,140.

The hearing

7. The hearing in this matter took place remotely on 25 August 2021. The applicant was represented by her expert witness, Mr M Stapleton FRICS. The respondent was represented by his expert witness, Mr A Cohen MRICS.

8. Neither party asked the Tribunal to inspect the subject 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 Stapleton dated 09 June 2021. The respondent relied upon the expert report and valuation of Mr Cohen dated 08 February 2021.

Location and description

10. The subject property is a two bedroom converted flat on the ground floor of a three-storey centre terraced Victorian house in Brixton.

The issue

11. Unusually, there is only one issue for us to determine and that is the capitalisation rate.

Matters agreed between the experts

12. From an agreed statement of facts and the experts' reports, by the hearing the following matters were agreed:

(1) The valuation date is 30 April 2020.

(2) The unexpired term at the valuation date was 161.90 years.

(3) The freehold value is £625,000.

(4) The deferment rate is 5%.

(5) The value of the reversion is £232.

(5) There is no marriage value as the current lease has more than 80 years to run.

<u>The provision for ground rent</u>

13. Clause 3 of the lease provides as follows

The Lessee shall pay a yearly rent of £200 from the 25th day of March 2007 (commencing from the date of this Lease and apportioned as may be necessary and required by the Lessor) until the 24th day of March 2017 and thereafter subject to upwards only review as follows and on the following terms:-

(a) The rent payable hereunder in respect of each of the next ten year periods of the said term commencing on the 25th day of March 2017 the 25th day of March 2027 and each subsequent tenth anniversary for the remainder of the term shall be reviewed and calculated as hereinafter set forth

(b) The rent payable for the period from the 25th day of March 2017 to the 24th day of March 2027 shall be either a yearly sum equal to one six hundredth of the capital value of the demised premises at the date of review (being the date on which the said period commences) or a sum which is 50% above that charged before the review takes place whichever is the greater

(c) The rent payable for the period from the 25th day of March 2027 to the 24th day of March 2037 shall be either a yearly sum equal to one six hundredth of the capital value of the demised premises at the date of review or a sum which is 50% above that charged before the review takes place whichever is the greater

(d) and thereafter for the residue of the said term (subject to review every 10 years in accordance with this clause) the rent payable shall be either a year1y sum equal to one six hundredth of the capital value of the demised premises at the date of review or a sum which is 50% above that charged before the review takes place whichever is the greater

14. It is common ground between the valuers that the 50% increase at each review will always be higher than the capital value calculation, so the latter can be ignored.

15. The penal nature of the ground rent review can be shown by the following table:

Review 1	£1,100.00
Review 2	£1,650.00
Review 3	£2,475.00

Review 4	£3,712.50
Review 5	£5,568.75
Review 6	£8,353.12
Review 7	£12,529.68
Review 8	£18,794.53
Review 9	£28,191.79
Review 10	£42,287.69
Review 11	£63,431.54
Review 12	£95,143.50
Review 13	£142,715.25
Review 14	£214,072.87
Review 15	£321,109.31
Review 16	£481,663.96
Review 17	£722,495.94

Mr Stapleton's evidence

16. Mr Stapleton draws attention to the fact that, in his words, the final review is a staggering amount.

17. He says that whilst the traditional approach to valuing ground rent income has been to apply a fixed yield throughout the term, such an approach tends to be restricted to either valuing far more palatable ground rents, or ground rents that have a review, for example to RPI or similar.

18. In this case he thinks a more rational approach is required to reflect what a hypothetical investor might logically pay to receive the income. Accordingly he has taken what he believes to be the correct approach by valuing the current income stream using a 6.5% capitalisation yield and then increasing the yield by 0.25% until the sixth review and thereafter until the end of term he values the remaining income using a 10% capitalisation yield.

19. Whilst the method he has used may not be completely conventional, he says the Tribunal needs to be aware that it is not valuing a normal ground rent stream and therefore in his opinion the hypothetical investor, would adjust the yield, to reflect the various risks.

20. These risks are as follows:

(1) A significant prospect of Government intervention in the valuation process, which could prescribe yields and may in any event disregard the valuation of onerous rent streams many years after the lease commencement.

(2) Potential default of the tenant in future years when the rent becomes such a financial burden that the tenant cannot afford to make the payments.

(3) A significant number of developers and investors with freehold interests incorporating doubling ground rents have now agreed to convert the doubling feature to RPI based reviews and with increasing political pressure the hypothetical purchaser may well find that the review as it stands at the moment is so onerous upon the tenant that they may well be obliged to do the same.

21. As a final check he has looked at how his valuation reflects as an equivalent yield, against the initial income and this equates to a year's purchase multiplier of 24.7; ie an initial yield of just over 4%, which he feels would adequately reflect an investor's perception of the value of this income.

22. On the basis of this analysis, and using the appropriate years' purchase and discount for early receipt, his figures are as follows:

Review 1	6.50%	£5,963.76
Review 2	6.75 %	£7,470.58
Review 3	7.00%	£5,540.09
Review 4	7.25%	£3,923.15
Review 5	7.50%	£2,652.78
Review 6	10.00%	£587.56
Review 7	10.00%	£339.79
Review 8	10.00%	£196.51
Review 9	10.00%	£113.64
Review 10	10.00%	£65.72
Review 11	10.00%	£38.01
Review 12	10.00%	£21.98
Review 13	10.00%	£12.71
Review 14	10.00%	£7.35
Review 15	10.00%	£4.25
Review 16	10.00%	£2.46
Review 17	10.00%	£1.41
Total		£26,941.75

23. Based on these figures, and the matters agreed above, Mr Stapleton arrives at a premium of £27,175

Mr Cohen's evidence

24. Mr Cohen takes a different approach. He uses the more traditional approach of examining comparables. When assessing what rate to apply, he considered the yields obtained from sales of similar type ground rent investments sold in auction.

25. His research was conducted via EIG (Essential Information Group) and covered all auction sales within the M25 between 1st April 2020 and 31st May 2020. He only considered investments that had unexpired lease terms in excess of 110 years as shorter leases would distort the yields as the reversion would have value.

26. Mr Cohen calculated the following equated yields from his comparables (in the final two columns we show the remaining number of reviews and the maximum ground rent to be achieved for that property):

Flats 1 -4, 87 Antill Road, Bow, E3 5BT	6.30%	5	£9,600.00
14 Arundel Terrace, Barnes, SW13 BOP	6.15%	5	£12,009.00
111 Axminster Road, Holloway, N7 6BT	6.62%	3	£4,000.00
36 Bonfield Way, Lewisham, SE13 6BX	6.20%	5	£9,600.00
4 Albion Way, London, SE13 6BT	6.20%	5	£9,600.00
17 & 19 Burwood Avenue, Bromley, BR2 7BH	6.00%	5	£2,400.00

27 . The average of the above yields is 6.24%. All these ground rents double every 25 years which gives an annual rate of increase of 2.81%.

28. The ground rent of the subject property will rise annually by 4.14% meaning it is considerably more attractive and therefore a higher value and a lower yield is appropriate. He therefore adjusted this to 6% to reflect the higher growth rate.

29. On the basis of this analysis, and using the appropriate years' purchase and discount for early receipt, his figures (to the nearest pound) are as follows:

Review 1	6.00%	£6,069.00
Review 2	6.00%	£8,124.00
Review 3	6.00%	£6,805.00
Review 4	6.00%	£5,700.00
Review 5	6.00%	£4,774.00
Review 6	6.00%	£3,999.00
Review 7	6.00%	£3,349.00
Review 8	6.00%	£2,805.00
Review 9		*[1]
Review 10	6.00%	£1,968.00
Review 11	6.00%	£1,648.00

[1] Mr Cohen misses out the figure for review 9 (£2.348.00), but his total is the correct one with that figure included.

Review 12	6.00%	£1,381.00
Review 13	6.00%	£1,156.00
Review 14	6.00%	£969.00
Review 15	6.00%	£811.00
Review 16	6.00%	£680.00
Review 17	6.00%	£326.00
Total		£52,912.00

Discussion

30. We do not consider that Mr Cohen's comparables carry very much weight. As the table in paragraph 26 above shows, the maximum number of reviews is five, whilst there are 17 in the instant case. In all but one of his comparables the reviews take place every 25 years and not every 10 years, and the maximum rent on review in any of the comparables is £12,009.00, a far cry from £722,495.94.

31. We also regard Mr Cohen to be too sanguine in respect of future Parliamentary intervention.

32. We have to consider the position, of course, on 29 April 2020, and not at today's date. Nevertheless, there was a groundswell of opinion against extortionate ground rents well before that date. For example, in 2019 Mr Eddie Hughes MP introduced in Parliament the Ground Rents (Leasehold Properties) Bill regulating existing leases to have ground rents set at 0.1 per cent of the present value of a property, up to a maximum of £250.00 per year which stays constant.

33. Although no such legislation has yet been passed, it is more likely than not that such a control of excessive ground rents will be introduced in the mid, if not short, term. We therefore do not accept that a landlord would be as attracted to these high yields as is suggested.

34. For these reasons we prefer a modified version of the approach taken by Mr Stapleton. In our view the appropriate capitalisation rate for the first two reviews is 6.00%, for the third and fourth reviews it is 6.50%, for the fifth review it is 7.50% and thereafter it is 10%. This produces a value for the ground rents of £29,281.00 to the nearest £.

35. Accordingly, the premium is:

Ground Rents	£29,281.00
Freehold	£232.00
Total	£29,513.00

Name: Judge Simon Brilliant **Date:** 03 September 2021

Appendix:

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Subject 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 subject 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).