



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

Case reference	:	LON/00BG/OLR/2015/0315
Property	:	16A East India Dock Road, London E14 6JJ
Applicant	:	Mr Vivien Blossier
Representative	:	Stephensons, solicitors
Respondent	:	Dr Patrick Enechukwu
Type of application	:	Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993
Tribunal members	:	Judge Timothy Powell Mr Duncan Jugger MRICS
Date of determination and venue	:	16 June 2015 at 10 Alfred Place, London WC1E 7LR
Date of decision	:	13 July 2015

DECISION

Summary of the tribunal's decisions

- (1) The tribunal determines that the applicant is entitled to a lease extension of a further 90 years from the expiry of the current term of his lease, at a peppercorn rent and in the terms of the deed of variation at pages 88 to 95 of the applicant's bundle, at a premium of **£11,755**; and
- (2) The tribunal declines to make an order for costs under rule 13 of the Tribunal Procedure Rules.

Background

1. This is an application made by the applicant leaseholder, Mr Blossier, 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 16A East India Dock Road, London E14 6JJ (the “property”).
2. By a notice of a claim dated 10 November 2014, 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 1 December 1995 for a term of 99 years from 1 April 1995 at an annual ground rent of £100 per annum for the first 33 years, £200 per annum for next 33 years and £300 per annum for the remaining years of the term. The applicant proposed to pay a premium of £10,300 for the new lease.
3. By letter dated 29 November 2014, the respondent freeholder, Dr Enechukwu, served a counter-notice admitting the validity of the claim and counter-proposing a premium of £57,000 for the grant of a new lease.
4. On 9 February 2015, the applicant applied to the tribunal for a determination of the premium and the terms of acquisition of the extended lease.
5. In his counter-notice, the respondent gave an address in Düsseldorf, Germany, where he was living and an e-mail address. The tribunal sent a copy of the application to the respondent in Germany by letter dated 10 February 2015. In the absence of a request for a deferment by both parties, the tribunal issued directions for the conduct of the case on 25 February 2015, which directions were sent to the respondent by post in Germany and by e-mail.
6. The respondent failed to comply with directions despite reminders, so that, on 10 April 2015, notice was given pursuant to section 9(3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, giving the respondent formal warning that he will be barred from taking any further steps in the proceedings if he failed to respond to the tribunal and to the applicant by 30 April 2015. The notice was again sent to the respondent both by post and e-mail.
7. In the absence of any reply, an order was made by the tribunal on 1 May 2015, barring the respondent from taking any further part in the proceedings.

The hearing

8. The hearing took place on 16 June 2015. The applicant was represented by Mr Chris Green, as agent for the applicant's solicitors, and Mr Jatinder Dhanoa, MRICS. There was no appearance by the respondent.
9. 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. The applicant's surveyors report contained eight clear photographs of the property and a floor plan.
10. The applicant relied upon the expert report and valuation of Mr Jatinder Dhanoa dated 15 May 2015.
11. In addition to seeking a determination of the premium and terms of the new lease, the applicant sought an order for costs under rule 13 of the Tribunal Procedure Rules in the sum £8,403.36 inclusive of VAT and disbursements, on the basis that the respondent had acted unreasonably in defending or conducting the proceedings.

The tribunal's determinations

12. The tribunal determines that the applicant is entitled to a lease extension of a further 90 years from the expiry of the current term of his lease, at a peppercorn rent and in the terms of the deed of variation at pages 88 to 95 of the applicant's bundle, at a premium of £11,755.
13. The tribunal declines to make an order for costs under rule 13 of the Tribunal Procedure Rules.

Reasons for the tribunal's determinations

14. The property is a two bedroom flat spread over raised ground and lower floors, located within four storey, mid-terrace 19th century building, housing three flats in total. The flat has sole access to and use of a very small courtyard at the rear, which is surrounded by a six foot brick wall and a door which leads to a rear public footpath. The flat is 65.6 square metres (706 square feet) in size. Access to the flat can be gained by the communal entrance to the building, directly from a narrow hallway which leads to a common staircase accessing the upper flats.
15. The property is located on the very busy arterial East India Dock Road, also known as the A13. It is close to the junction with West India Dock Road which leads into Canary Wharf, approximately three quarters of a mile away. The nearest public transport station is Westferry, which is

on the DLR line and provides very quick journey times into central London.

16. Mr Dhanoa utilised a capitalisation rate of 6% and a deferment rate of 5%, both of which are standard and both of which were accepted by the tribunal.
17. When considering the current long lease value of the flat, Mr Dhanoa explained that it has been very difficult to find suitable comparables. The area contains a lot of ex-council properties and lot of new, purpose-built flats in the area but not a sufficient number of similar properties to the subject flat. Mr Dhanoa had therefore approached the issue by considering four different methods, none of which, he said, was definitive of value. The first was a comparison method with other flats sold in the vicinity over the past 12 months. One of these had secure car parking and was in better condition, another was in a very modern purpose-built block of flats and a third was basement flat, with no information about lease length or condition. Mr Dhanoa agreed with the tribunal that these comparables were not really very good; and yet they were the best available.
18. The second method was to consider flats that were for sale both at the valuation date and also at the time of writing a report but, once again, one was in a purpose-built council block and the other was in a modern purpose-built block with over a 100 years remaining on the lease. His third approach was to index the actual purchase price of the subject flat, which the applicant had purchased in September 2012, utilising the Land Registry house price index for flats in Tower Hamlets. However, Mr Dhanoa accepted that the indexation figure is based on all types of flats in all locations within the borough, and so is not totally accurate. Lastly, he included within his report two valuations recently obtained from two local estate agents, who had both inspected the subject property.
19. Having considered all of these parameters, Mr Dhanoa valued the flat with a long lease at £317,500 and the tribunal, doing the best it can on the information that was provided and also relying upon its own general knowledge and experience of property prices in the area (but having no specific knowledge of any other potentially comparable property), accepted Mr Dhanoa's assessment.
20. With regard to relativity, Mr Dhanoa relied upon the graphs of relativity published by the Royal Institution of Chartered Surveyors (RICS) in October 2009, taking an average of the Knight Frank, John D Wood and Co and Charles Boston graphs (from the Prime Central London (PCL) relativities) and the Southeast Leasehold, Nesbitt and Co and Andrew Pridell Associates graphs (from the Greater London and England relativities).

21. When asked by the tribunal why he had included any PCL relativities at all, Mr Dhanoa answered that the area was not PCL, but it was walking distance to Canary Wharf and an investor would take that into account when valuing the property. In his view, the property should be treated as being somewhere between PCL and non-PCL and, therefore, he had given an extra percentage weighting to the non-PCL graphs. He had excluded graphs that related predominantly to properties on the south coast and he had also excluded the Beckett and Kay graph, because it contained mostly opinion evidence.
22. Taking the average of just the relevant Greater London and England graphs provides a relativity of 96.55%. The average of the relevant PCL graphs equates to 92.99%, so Mr Dhanoa reduced the relativity to 95.55%, to allow for the fact the location is not quite prime London, but is close to Canary Wharf and has good transport links.
23. The tribunal was satisfied that Mr Dhanoa had prepared a thorough report on the basis of the material before him and that he had dealt with all of the issues in a transparent and measured way. Accordingly, the tribunal was willing to accept and endorse his assumptions and findings and to approve his valuation for the premium in the sum of **£11,755**.
24. The terms of the lease extension, namely 90 additional years at a peppercorn rent on the same terms save as to rent as the existing lease, are specified by statute and are uncontroversial. The terms of the draft deed of variation at pages 88 to 95 of the applicant's bundle reflect the statutory provisions and, for this reason, were approved by the tribunal.

Rule 13 costs application

25. The complaints made by the applicant were that: the respondent had not engaged with the proceedings; he had failed to comply with any directions; he had failed to provide a proper valuation and/or enter into any meaningful negotiations; and, as a result, the applicant had incurred significant costs, not only of a hearing but also in requiring Mr Dhanoa to attend the hearing. All of those costs could have been avoided if the respondent had taken his own advice, participated and/or negotiated.
26. The relevant parts of rule 13 of the Tribunal Procedure Rules are as follows:
 - 13.—(1) The Tribunal may make an order in respect of costs only— [...] (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—[...] (iii) a leasehold case; [...]

27. While the tribunal is satisfied on the balance of probabilities that the application and the tribunal's directions must have come to the attention of the respondent, and while it deprecates the failure of the respondent to engage with the proceedings, the tribunal declines to make a rule 13 cost application for four reasons:
- (i) The tribunal is first and foremost a no-cost jurisdiction;
 - (ii) In the circumstances of this case, the respondent does not fall within the definition rule 13(1)(b), because he cannot be said to have "acted", whether unreasonably or otherwise, in "defending or conducting proceedings" - because he took no part in them whatsoever;
 - (iii) If the respondent had engaged with the proceedings to a full extent and had fought the matter through to a hearing, but lost because he had a weak case, that would have been his right under 1993 Act; and the failure of the weak case, in itself, would not have amounted to acting unreasonably in defending or conducting proceedings; and
 - (iv) The sanction applied for the respondent's non-cooperation was being barred from taking any further part in the proceedings with effect from 1 May 2015, at which point a determination of the tribunal became inevitable; and it is not appropriate to visit a further sanction on the respondent in the form of a costs order after the barring order had been made.

The premium

28. The tribunal determines the appropriate premium to be **£11,755**. A copy of the approved valuation calculation is annexed to this decision.

Name: Judge Timothy Powell **Date:** 13 July 2015

Appendix: Valuation setting out the tribunal's calculations

16A East India Dock Rd, E14 6JJ

VALUATION UNDER THE 1993 ACT (as amended)

Valuation Date: 30 November 2014
 No. Flats in Building: 3 Flats
 No. Flats participating: 1

2014

Capitalisation Rate: 6.00%
 Deferment Rate: 5.00%

Unexpired term on lease	79.38 years	162.38 years	Freehold VP	Relativity
Schedule of Flat Values	Share Lease Value	Extended lease value	Freehold VP value	
Flat 1	£329,218	£317,500	£320,875	95.50%

More affects the marriage value calculation as the lease of the property will be improved by the substantial increase in market value of the flat of the participating leaseholders only.

INPUT

LEASE TYPE A

Lease start date: 01/04/1995 Start year: 1995
 Term (in years): 99 Term
 Lease expiry date: 31/03/2094 Expiry year: 2094
 Review pattern (frequency in years): 37 of fixed ground rent EITHER length of lease!

No. years unexpired at valuation date: 79.38 years

Fixed ground rent	£100.00 pa
Ground rent 2nd period	£200.00 pa
Ground rent on 3rd period	£300.00 pa
Ground rent on 4th period	£0.00 pa
Ground rent on 5th period	£0.00 pa
Ground rent on 6th period	£0.00 pa

Total pattern of rent review rate	Year of Rent Review falls due	No. years part of the level
1995	1995	1
2028	2028	30
2061	2061	30
2094	2094	0
No further rents	2127	0
No further rents	2160	0
No further rents	2193	0
No further rents	2226	0
No further rents	2259	0
No further rents	2292	0
No further rents	2325	0
No further rents	2358	0
No further rents	2391	0
No further rents	2424	0
No further rents	2457	0
No further rents	2490	0
No further rents	2523	0
No further rents	2556	0
No further rents	2589	0
No further rents	2622	0
No further rents	2655	0
No further rents	2688	0
No further rents	2721	0
No further rents	2754	0
No further rents	2787	0
No further rents	2820	0
No further rents	2853	0
No further rents	2886	0
No further rents	2919	0
No further rents	2952	0
No further rents	2985	0
No further rents	3018	0
No further rents	3051	0
No further rents	3084	0
No further rents	3117	0
No further rents	3150	0
No further rents	3183	0
No further rents	3216	0
No further rents	3249	0
No further rents	3282	0
No further rents	3315	0
No further rents	3348	0
No further rents	3381	0
No further rents	3414	0
No further rents	3447	0
No further rents	3480	0
No further rents	3513	0
No further rents	3546	0
No further rents	3579	0
No further rents	3612	0
No further rents	3645	0
No further rents	3678	0
No further rents	3711	0
No further rents	3744	0
No further rents	3777	0
No further rents	3810	0
No further rents	3843	0
No further rents	3876	0
No further rents	3909	0
No further rents	3942	0
No further rents	3975	0
No further rents	4008	0
No further rents	4041	0
No further rents	4074	0
No further rents	4107	0
No further rents	4140	0
No further rents	4173	0
No further rents	4206	0
No further rents	4239	0
No further rents	4272	0
No further rents	4305	0
No further rents	4338	0
No further rents	4371	0
No further rents	4404	0
No further rents	4437	0
No further rents	4470	0
No further rents	4503	0
No further rents	4536	0
No further rents	4569	0
No further rents	4602	0
No further rents	4635	0
No further rents	4668	0
No further rents	4701	0
No further rents	4734	0
No further rents	4767	0
No further rents	4800	0
No further rents	4833	0
No further rents	4866	0
No further rents	4899	0
No further rents	4932	0
No further rents	4965	0
No further rents	4998	0
No further rents	5031	0
No further rents	5064	0
No further rents	5097	0
No further rents	5130	0
No further rents	5163	0
No further rents	5196	0
No further rents	5229	0
No further rents	5262	0
No further rents	5295	0
No further rents	5328	0
No further rents	5361	0
No further rents	5394	0
No further rents	5427	0
No further rents	5460	0
No further rents	5493	0
No further rents	5526	0
No further rents	5559	0
No further rents	5592	0
No further rents	5625	0
No further rents	5658	0
No further rents	5691	0
No further rents	5724	0
No further rents	5757	0
No further rents	5790	0
No further rents	5823	0
No further rents	5856	0
No further rents	5889	0
No further rents	5922	0
No further rents	5955	0
No further rents	5988	0
No further rents	6021	0
No further rents	6054	0
No further rents	6087	0
No further rents	6120	0
No further rents	6153	0
No further rents	6186	0
No further rents	6219	0
No further rents	6252	0
No further rents	6285	0
No further rents	6318	0
No further rents	6351	0
No further rents	6384	0
No further rents	6417	0
No further rents	6450	0
No further rents	6483	0
No further rents	6516	0
No further rents	6549	0
No further rents	6582	0
No further rents	6615	0
No further rents	6648	0
No further rents	6681	0
No further rents	6714	0
No further rents	6747	0
No further rents	6780	0
No further rents	6813	0
No further rents	6846	0
No further rents	6879	0
No further rents	6912	0
No further rents	6945	0
No further rents	6978	0
No further rents	7011	0
No further rents	7044	0
No further rents	7077	0
No further rents	7110	0
No further rents	7143	0
No further rents	7176	0
No further rents	7209	0
No further rents	7242	0
No further rents	7275	0
No further rents	7308	0
No further rents	7341	0
No further rents	7374	0
No further rents	7407	0
No further rents	7440	0
No further rents	7473	0
No further rents	7506	0
No further rents	7539	0
No further rents	7572	0
No further rents	7605	0
No further rents	7638	0
No further rents	7671	0
No further rents	7704	0
No further rents	7737	0
No further rents	7770	0
No further rents	7803	0
No further rents	7836	0
No further rents	7869	0
No further rents	7902	0
No further rents	7935	0
No further rents	7968	0
No further rents	8001	0
No further rents	8034	0
No further rents	8067	0
No further rents	8100	0
No further rents	8133	0
No further rents	8166	0
No further rents	8199	0
No further rents	8232	0
No further rents	8265	0
No further rents	8298	0
No further rents	8331	0
No further rents	8364	0
No further rents	8397	0
No further rents	8430	0
No further rents	8463	0
No further rents	8496	0
No further rents	8529	0
No further rents	8562	0
No further rents	8595	0
No further rents	8628	0
No further rents	8661	0
No further rents	8694	0
No further rents	8727	0
No further rents	8760	0
No further rents	8793	0
No further rents	8826	0
No further rents	8859	0
No further rents	8892	0
No further rents	8925	0
No further rents	8958	0
No further rents	8991	0
No further rents	9024	0
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No further rents	9123	0
No further rents	9156	0
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No further rents	9222	0
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No further rents	10443	0
No further rents	10476	0
No further rents	10509	0
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No further rents	10608	0
No further rents	10641	0
No further rents	10674	0
No further rents	10707	0
No further rents	10740	0
No further rents	10773	0
No further rents	10806	0
No further rents	10839	0
No further rents	10872	0
No further rents	10905	0
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No further rents	12918	0
No further rents	12951	0
No further rents	12984	0
No further rents	13017	0
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No further rents	13116	0
No further rents	13149	0
No further rents	13182	0
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No further rents	13908	0
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No further rents	13974	0
No further rents	14007	0
No further rents	14040	0
No further rents	14073	0
No further rents	14106	0
No further rents	14139	0
No further rents	14172	0
No further rents	14205	0
No further rents	14238	0
No further rents	14271	0
No further rents	14304	0
No further rents	14337	0
No further rents	14370	0
No further rents	14403	0
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No further rents	14469	0
No further rents	14502	0
No further rents	14535	0
No further rents	14568	0
No further rents	14601	0
No further rents	14634	0
No further rents	14667	0
No further rents	14700	0
No further rents	14733	0
No further rents	14766	0
No further rents	14799	0
No further rents	14832	0
No further rents	14865	0
No further rents	14898	0
No further rents	14931	0
No further rents	14964	0
No further rents	14997	0
No further rents	15030	0
No further rents	15063	0
No further rents	15096	0
No further rents	15129	0
No further rents	15162	0
No further rents	15195	0
No further rents	15228	0
No further rents	15261	0
No further rents	15294	0
No further rents	15327	0
No further rents	15360	0
No further rents	15393	0
No further rents	15426	0
No further rents	15459	0
No further rents	15492	0
No further rents	15525	0
No further rents	15558	0
No further rents	15591	0
No further rents	15624	0
No further rents	15657	0
No further rents	15690	0