

4262



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

**Case Reference** : **BG/LON/00AW/OLR/2015/1357**

**Property** : **192 Chatsworth Court, Pembroke Road,  
London, W8 6DD**

**Applicant** : **Vistra Fiduciary Limited  
("the Landlord")**

**Representative** : **Burlingtons Legal LLP, solicitors**

**Appearances** : **(1) Kevin Birchard, solicitor  
(2) Mr Ian Asbury, MRICS**

**Respondent** : **Mr John Patrick McGowan  
("the Tenant")**

**Representative** : **Bishop & Sewell, solicitors**

**Appearances** : **(1) Mark Chick, solicitor  
(2) Mr Timothy Lee, FRICS**

**Type of Application** : **Application under Section 48 of the  
Leasehold Reform, Housing and Urban  
Development Act 1993**

**Tribunal** : **1. Mr A Vance, Tribunal Judge  
2. Mr R Shaw, FRICS**

**Date and venue of Hearing** : **2 December 2015  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **23 December 2015**

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**DECISION**

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## **Decision of the tribunal**

1. The Tribunal determines that the premium payable by the Applicants under Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") on the grant of a new lease of the subject property is £83,042. The reasons for the Tribunal's decision are set out below.
2. The terms of the new lease as agreed by the parties is approved.

## **Background**

3. This is an application under section 48 of the Leasehold Reform Housing and Urban Development Act 1993 (the "1993 Act").
4. The Respondent is entitled to a new lease of 192 Chatsworth Court, Pembroke Road, London, W8 6DD ("the Property") under Chapter II of the 1993 Act.
5. The Respondent served notice of a claim to take a new lease of the Property on Fiduciary Management Limited on 4 March 2015.
6. Fiduciary Management Limited served a counter-notice dated 6 May 2015 admitting the Applicant's entitlement but disputing the proposed terms of acquisition.
7. Fiduciary Management Limited changed its name to Vistra FML Limited on 28 January 2015 and then to Vistra Fiduciary Limited on 31 March 2015. Certificates confirming this were produced to the Tribunal on the day of the hearing. The parties' representatives confirmed that neither were arguing that the initial notice of claim or the counter-notice were defective.
8. Vistra Fiduciary Limited subsequently applied to this Tribunal for the determination of the disputed terms.

## **The Lease**

9. The Respondent holds an underlease of the Property His leasehold interest was registered on 28 February 2012. The price stated to have been paid on 24 February 2012 was £170,000. The following are particulars of his leasehold interest:
  - (a) Date of lease: 28 January 1972.
  - (b) Term of lease: 85 years commencing on 25 March 1971.
  - (c) Ground rent: £15 per annum rising to £60 from 25 March 2031.

10. The Applicant is his immediate landlord and holds its interest under the terms of a lease dated 7 August 2007 granted for a term of 999 years commencing 1 December 2006. Its leasehold interest was registered at HM Land Registry on 12 September 2007. It appears that the Property was owned by a non-participating owner at the time of the enfranchisement of the Building and that the Applicant purchased a share of the freehold and a 999 reversionary interest in the Property.
11. The freehold owner of Chatsworth Court (“the Building”), in which the Property is located, is Chatsworth Court Freehold Company Limited.
12. The Applicant’s proposed premium before the Tribunal was £94,300.
13. The Respondent's proposed premium was £70,500.
14. **Matters agreed**
15. The following were agreed between the parties:
  - (a) A valuation date of 4 March 2015;
  - (b) A capitalisation rate for the ground rent of 7%;
  - (c) That the appropriate deferment rate to be used for calculation of the Landlord’s reversionary interest is 5% per annum;
  - (d) That the unexpired term at the valuation date was 41.06 years;
  - (e) A relativity rate between the extended lease value and the freehold value of 99%;
  - (f) That the Property was in an unimproved state when the Tenant purchased his leasehold interest in the Property.
  - (g) The terms of the new lease (except for the amount of the premium to be paid for the new lease).
16. There was also no material dispute as to the location and description of the Property. It is a lower ground floor flat located at the front of Chatsworth Court (“the Building”), a purpose built block of flats built in the 1930’s. Its outlook is to the front light well retaining wall. There are extensive communal gardens to the rear of the block and limited off street residents’ car parking to the front.
17. The Property had been converted from a studio flat to a one-bedroom flat by a previous tenant. Mr Lee believes this took place in about 1959/60. With the

Landlord's consent, the layout of the Property was rearranged by the Tenant who also renovated the flat. He replaced the Crittall windows with new double-glazed uPVC units, refitted the kitchen and bathrooms, removed stud walls to make an open plan kitchen/sitting room and changed the position of the doorway to the bathroom. The Property now comprises an entrance lobby, open plan kitchen and sitting room, a small bedroom and an en-suite bathroom/WC. The gross internal area of the flat was agreed by the parties to be 336 sq ft (31.22 sq m).

### **Inspection**

18. The Tenant requested that the Tribunal inspect the Property during the course of the hearing. Mr Chick suggested that this would assist the Tribunal in understanding the locality including the level of nearby traffic and so that it could see for itself the improvements the Tenant had made to the Property.
19. The Tribunal did not, however, consider an inspection to be necessary or proportionate to determine the matters in dispute between the parties. Good quality photographs had been provided by the Tenant showing the Property before the works had commenced, during the course of the works and after the works were finished. In addition, both members of the Tribunal were familiar with the general locality of the Property and had a good idea of the level of traffic in the area. As the hearing was only listed for one day an inspection would have had to take place on another day. This was likely to result in the Tribunal not being able to determine this application until after the Christmas period. Bearing in mind all these points, and the limited resources of the Tribunal, we considered it was not proportionate to inspect.

### **Matters in Dispute**

20. The following matters of valuation were in dispute:
  - (a) The unimproved freehold vacant possession value of the Property as at the valuation date;
  - (b) The value of the Tenant's interest in the Property under the proposed new lease as at the valuation date;
  - (c) The premium payable for the grant of the new lease.

### **The Law**

21. Schedule 13 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.

22. 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.
23. 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.
24. Para 5 provides for the payment of compensation for loss arising out of the grant of a new lease.
25. Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

### **The Hearing**

26. The Landlord relied upon Mr Asbury's valuation report dated 17 November 2015.
27. The Tenant relied upon Mr Lee's report dated 26 November 2015 and his supplemental report dated 1 December 2015.
28. The tribunal heard oral evidence from both Mr Asbury and Mr Lee.
29. The following documents were provided to the Tribunal on the day of the hearing and admitted in evidence with neither party objecting:
  - (a) A photographic schedule provided by the Tenant; and
  - (b) Certificates of the Landlord's change of name to Vistra Fiduciary Limited

### **The current freehold vacant possession value of the Property**

30. An assessment of the virtual freehold vacant possession value of the Property ("FHVP") as at the valuation date is required in order to value the present value of the Landlord's reversionary interest and the value of the long leasehold interest in the Property once extended.
31. The parties were in agreement that the value of the long leasehold interest in the Property once extended by 90 years would be equal to 99% of the FHVP.
32. In assessing the FHVP value both parties had regard to sales of comparable flats within the Building as well as in the vicinity.

### The Applicant's Position

33. Mr Asbury's starting point was evidence of recent sales of studio flats in the Building namely flats 97, 18, 38 and 111 which sold between January 2014 and June 2015. He adjusted these to take into account the time between the date of sale and the valuation date by using the Savills Research Prime London Residential Statistical Supplement (Central Flats). He focused as far as possible on flats held on long leases with in excess of 95 years unexpired and where he considered sales of shorter lease flats he made adjustments using the Savills table of Leasehold Values as a Proportion of Freehold.
34. The sale prices average £373,126 (£1,232 per sq ft once adjusted for time). However, he suggested that these flats were inferior to the Property as their physical characteristics prevented them from being rearranged into one-bedroom flats.
35. As the Property is now arranged as a one-bedroom flat Mr Asbury also considered evidence of sales of one bedroom flats in the Building which sold between February 2014 and July 2015. These were flats 32, 114, 84 and 104. The sale prices average £642,500 (£1,253 per sq ft if adjusted for date).
36. He also considered evidence of sales of several lower ground floor studio flats in the vicinity which sold between February 2014 and July 2015 as well as evidence of sales of other studio flats elsewhere in central Kensington, having particular regard to flats in other inter-war purpose built blocks.
37. Finally, he considered the price paid by the Tenant for the flat (£170,000) when he purchased it with 44.08 years of the lease term unexpired. Adjusting the purchase price by the Savills indices to the valuation date produces a March 2015 value of £187,824/£559 per sq ft. This, he suggests is very low when compared to the sales of the comparables he examined and is the reason why he is reluctant to rely on the adjusted 2012 purchase price of the Property in order to establish the extended lease value as at the valuation date.
38. It was his opinion that most purchasers would prefer a flat with a separate bedroom rather than a studio flat. There will, he suggested, be purchasers who have a preference for a one bed flat over a studio but who cannot afford a conventional one bed flat in the Building. Such purchasers would be attracted to the Property as it possesses good natural light and has a window in every room. This means that it has the potential to be rearranged as a one-bedroom flat at fairly low cost. In his view it would be more attractive to a purchaser than a smaller or similarly sized ground floor or upper floor studio flat which did not allow for the creation of a separate bedroom. This despite the fact that it has the disadvantage of being a lower ground floor flat which does not overlook the communal gardens.
39. He stated that his valuation of the subject flat must disregard the value of any improvements and made an allowance of £10,000 for two improvements

carried out by the Tenant, namely the reconfiguring of the internal accommodation and the installation of double glazing. The other works he considered to be works of renewal rather than improvement.

40. Mr Asbury's conclusion is that the FHVP, disregarding any value attributable to improvements made by the Tenant or his predecessors in title, is £415,000/£1,235 per sq ft.
41. It was his view that whilst inferior to the 'true' one-bedroom flats on the upper floors of the Building, which are larger and more satisfactorily arranged, his valuation indicates that the Property is better value than the other studio flats and one bedroom lets in the Building and in the vicinity.

#### The Respondent's Position

42. Mr Lee's comparable evidence focused on sales of recently sold flats in the Building, primarily lower ground and ground floor flats although he did consider some sales of flats on the upper floors. He also considered comparable evidence of flat sales near the Building. He adjusted for time by using the Savills Prime London Residential Capital Values Index for Central London Flats. He also adjusted for short lease lengths by using the Savills 2002 Market Relativity Index.
43. He stressed that there was a distinct difference in desirability and value between a lower ground flat at the front of the Building, such as the Property, whose outlook was on to a high wall in a four feet wide basement well and those upper floor flats that overlooked or had direct access to the attractive communal gardens. He considered that ground floor flats were worth about 20% more than the Property and flats above the first floor were worth about 25% more.
44. He also contended that the Property had the disadvantages of being next to a parking space, being visible to passers-by who could look into the flat from street level and being subject to a large volume of traffic noise from the nearby Pembroke Road.
45. He also considered the Property to be relatively small at 336 sq ft and that much larger flats sell at lower rates per sq ft than much smaller flats.
46. Mr Lee therefore made percentage adjustments to the sale prices of his comparables to reflect: floor level; whether or not the flat overlooked or had direct access to the communal gardens; repair and condition; and for size differential.
47. Like Mr Asbury, he also had regard to the price paid by the Tenant for the flat (£170,000) when he purchased. By applying the Savills PCL Residential Capital Index for Central London Flats he considers the sale price realised now, as if it had an extended lease, would equate to about £249,750 (£746 per sq ft).

- 48.** Mr Lee considered that the best comparables were flats 190, 195, 18 and 38 Chatsworth Court. The other flats in his schedule were either: fully modernised and therefore prone to subjective adjustment (flat 97); more historic sales (flats 18A, 13, 19, 191), and flats where exchange of contracts had not yet occurred (flat 198).
- 49.** However, he considered the best comparable of all was the sale of the Property. Adjusting for time to the valuation date (a 13.86% increase) and allowing for a 44 year lease to be equivalent to about 77.5% of an extended 999 year lease with a share of the freehold he arrives at a sale price of £249,750/£743 per sq ft as if it had an extended lease. Allowing £10,000 to bring the Property up to an “in repair” condition his overall adjusted figure for the extended lease value is £260,000/£774 per sq ft. In cross examination he conceded that this figure was not supported by the other comparable evidence he relied upon and that his final assessment of the FHVP was much higher.
- 50.** Mr Lee also emphasised that in his view the works carried out by the Tenant were a major refurbishment. As well as adjusting the layout of the flat he had refitted the kitchen, bathroom and sitting/living room; installed high quality double glazing; boxed in unsightly heating pipes creating a useful storage space above and stripped off and replaced the flooring with good quality engineered oak flooring.
- 51.** Mr Lee concludes, from an examination of all of his comparables, that the FHVP is £350,000/£1,042 per sq ft from which he deducts the sum of £35,000 to reflect the uplift in value due to the Tenant’s improvements

#### Decision and Reasons

- 52.** We consider the best comparable properties for valuation purposes to be those within the Building. We do not accept, as suggested by Mr Lee that the sale of the Property is a useful comparable. This is because, as pointed out by Mr Asbury, the sale price, adjusted for time, is very low when compared to the sales of the other comparables in the Building relied on by the parties. In our view this discrepancy renders it an unreliable comparable. We derive support for that conclusion from the fact that Mr Lee’s final assessment of the FHVP is considerably higher than his adjusted figure of £260,000/£774 per sq ft based on the historic sale price of the Property.
- 53.** We have had regard to the evidence provided by the parties in respect of properties in the vicinity of the Building when reaching this decision. However, those within the Building are the most relevant and we have the benefit of having a considerable number available to us. The evidence regarding comparable sales within the Building can be summarised in the following tables. We have corrected an error made by Mr Lee in respect of Flat 18 and amended the figure in the adjusted price column from £279,002 to £270,002 and the price per sq ft from £1,304 to £1,261.



**Mr Asbury's Comparable sales**

(a) Chatsworth Court – Studio flats – comparable sales – for Valuation Date 4 March 2015

Flat	Sale date	Lease	Floor	Orientation	Sq ft	Sale price	£/sq ft	£/sq ft to DOV	£/sq ft adj to 999 yrs
97	6/15	900+ yrs + Share of F/H	3 <sup>rd</sup>	North	263	£372,500	£1,416	£1,413	£1,413
18	4/15	900+ yrs + Share of F/H	Ground	Garden	214	£270,002	£1,261	£1,261	£1,261
38	6/14	900+ yrs + Share of F/H	3 <sup>rd</sup>	Garden	364	£475,000	£1,305	£1,246	£1,246
111	1/14	96 years	3 <sup>rd</sup>	Garden	366	£375,000	£1,025	£998	£1,008
									AV £1,232

(b) Chatsworth Court – One bedroom flats – comparable sales – for Valuation Date 4 March 2015

Flat	Sale date	Lease	Floor	Orientation	Sq Ft	Sale price	£/sq ft	£/sq ft to DOV	£/sq ft adj to 999 yrs
32	No details given								
114	4/15	900+ yrs + Share of F/H	3 <sup>rd</sup>	Garden	525	£650,000	£1,238	£1,237	£1,237
84	12/14	900+ yrs + Share of F/H	2 <sup>nd</sup>	Garden	527	£630,000	£1,195	£1,173	£1,173
104	2/14	900+ yrs + Share of F/H	1st	North	517	£640,000	£1,238	£1,196	£1,196
									Av £1,202

**Mr Lee's Comparable sales**

Chatsworth Court – All comparable sales – for Valuation Date 4 March 2015

Flat	Sale date (exchange)	Lease	Floor	Orientation	Sq ft	Sale price	£/sq ft	£/sq ft to DOV	£/sq ft adj to 999 yrs	Adj for orientation and floor	Adj for condition	Adjusted rate psf
<b>190 (1 bed)</b>	10/12	900+ yrs + Share of F/H	Lower ground	Garden	485	£390,000	£804	£880	£880	- 5% location	- £50 psf	£787
<b>195 (1 bed)</b>	Under offer 2/12/15	900+ yrs + Share of F/H	Lower Ground	Garden	547	£550,000	£1,005	£1,015	£1,015	- 5% location	0	£964
<b>18 (Studio)</b>	3/15	900+ yrs + Share of F/H	Ground	Garden	214	£270,002	£1,261	£1,261	£1,261	- 20% floor, - 5% location, - 5% size	+ £93 psf	£790
<b>38 (studio)</b>	6/14	900+ yrs + Share of F/H	1st	Garden	364	£475,000	£1,305	£1,254	£1,254	- 25% floor, - 5% location	- £55 psf	£823
									AV £1,102			Av £841

54. In our view the evidence suggests that there is no distinguishable difference between the value of studio and one bedroom flats in the Building. The £/sq ft adjusted values shown in Mr Asbury's analysis are very similar. Mr Lee's analysis to date of valuation shows an unadjusted £/sq ft value of £1,005 for flat 195 (a 1-bed property) which is less than the two studio flats he relies upon, flat 18 (£1,261 per sq ft) and flat 38 (£1,254 per sq ft).
55. Nor does the evidence suggest that flats that overlook or have direct access to the communal gardens, or flats which are above lower ground floor level, command a higher sale price. In reviewing Mr Asbury's studio flat comparables, number 97 overlooks the road on the third floor and analyses to a higher £/psf than number 38 on the same floor but has garden view. His one-bedroom flats (excluding number 32) are on three different floors, two on the garden side and one on the road side. They show little difference in his analysis. However, he makes no adjustment for condition. Mr Lee analyses numbers 18 and 38 to similar amounts before any adjustment for floor, orientation or condition. However, numbers 190 and 195, the lower ground floor one-bedroomed flats, at date of valuation, do adjust to lower £/psf than higher floor studios. The evidence is not clear and we are not persuaded that any value adjustment should be made to take account of which floor a flat is situated on nor on which side of the Building.
56. In our view there is no substantive evidence before us to support Mr Asbury's contention that the physical layout of the Property renders it more attractive to a purchaser than a smaller or similarly sized ground floor or upper floor studio flat which allows for the creation of a separate bedroom. On the contrary, the evidence shows that there is little difference between the value of a 1-bed flat and the value of a studio flat in this particular Building.
57. The average of Mr Lee's analysis of the £/sq ft long lease value, before deductions is £1,102. Mr Asbury's is £1,232 (for studio flats) and £1,202 (for one-bed flats). However, some adjustment needs to be made to his analysis of flats 97 and 38 to reflect their improved condition. We also attach less evidential weight to the sales of flats 111 and 190 (as on, the face of it these appear to be on the low side when compared to the other realised sales) and also to flat 195 (which should be treated with caution as contracts have not yet been exchanged on the sale).
58. In the absence of any evidence of actual costs of improvement works to the comparables relied upon by Mr Asbury we take a broad view on the effect of these works to his analysis. We also give less weight to the three afore mentioned sales of flats 111, 190 and 195. Making no adjustment for floor or garden side it is our view that a £/sq ft value of £1,150 is appropriate. However, a further 5% deduction should be made for the outlook of the Property which we accept is unattractive, and must impact on value, looking out, as it does, on to a blank wall. The resulting figure is £1,093 per sq ft which equates to a FHVP of £367,250.

## The Existing Leasehold Value

59. Both parties relied upon graphs of relativity when calculating the existing leasehold value and there was little difference between the two experts. Mr Lee argued for 67.72%, adopting a figure based on the average of all the RICS graphs for central London following the decision in the case of *Kosta v Carnwath & Ors [2014] UKUT 319 (LC) (03 July 2014)*. Mr Asbury used the average of the Gerald Eve, Knight Frank, Charles Boston, Cluttons (flats), Savills (1992), John D Wood and W A Ellis relativity graphs. These average 67.24% but he has rounded down to 67%. He has excluded the Cluttons 'House' graph.
60. We accept that it is appropriate to have regard to graphs of relativity given the lack of suitable transactional data. We prefer Mr Asbury's approach, and consider that the inclusion of the Savills graph is appropriate. Mr Lee relies on the approach taken in *Kosta* but this is yet to be argued before the Upper Tribunal. We prefer Mr Asbury's approach as he has used well-established graphs which are geographically suitable for the Property. However, the actual average of 67.24 % should be used rather than the rounded down figure of 67%.
61. The FHVP determined above is £367,250 and the extended lease value is £363,578 (applying the 1% differential agreed by the parties which we consider appropriate).
62. Applying 67.24% to the FHVP of £367,250 results in an existing lease value of £246,939.

## Valuation

63. The diminution in the value of the landlord's interest in the Property is represented first by the capitalised value of the ground rent receivable under the lease which will be surrendered and replaced by a peppercorn rent under the terms of the Act. The parties agreed the value of the capitalised ground rent at £520.
64. Next, the effect of the grant of the new lease will be to defer the landlord's freehold reversion for a further 90 years, thereby for practical purposes depriving the landlord of the current value of the freehold reversion indefinitely. The present value of the reversion is determined by applying a deferment rate to the FHVP of £367,250. The parties accept that the deferment rate appropriate for leasehold flats in Central London is, as was authoritatively determined to be 5% in the case of *Earl Cadogan v Sportelli (2006) LRA/50/2005*. Marriage value is the difference between (on the one hand) the aggregate value of the interests of the leaseholder and the landlord before the new lease; and (on the other) the aggregate value after the grant of the new lease. It is to be shared equally between the parties, as required by the Act.

**65.** The premium payable by the Applicants under Schedule 13 of the Act on the grant of a new lease of the Property is £83,042. A copy of the Tribunal's valuation is attached to this decision.

**New Lease**

**66.** The terms of the new lease as agreed by the parties is approved.

**Name:** Amran Vance

**Date:** 23 December 2015

Sheet1

**Appendix**

New lease claim	Valuation date	04-Mar-15	
Present lease	85 Years	From	25-Mar-71
Years unexpired		41.06	
Long lease value	£363,578	Freehold	£367,250
Existing lease value	£246,939	Relativity	67.24%

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

Value before grant of new lease			
Capitalisation of ground rent agreed			520

Reversion			
Flat value (F/H)		£	367,250
Deferred	41.06 yrs @5%	0.13489	49,538
			50,058

**Less value after grant of new lease**

Term			
New lease at a peppercorn rent			0

Reversion			
Flat value (F/H)		£	367,250
Deferred	131.06 @5%	0.00167	613
			-613

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

**49,445**

**Marriage value**

Aggregate of values of interests after grant of new lease			
Landlord's interest		613	
Tenant's proposed interest		363,578	
		364,191	
<b>Less</b> Aggregate of values prior to grant of new lease			
Landlord's interest		50,058	
Tenant's interest		246,939	
		296,997	
Marriage value		67,194	
		50.00%	<b>33,597</b>
		<b>Premium</b>	<b>83,042</b>