



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

Case reference : **RC/LON/00BC/OLR/2020/0108P**

Property : **Ground Floor Flat, 61a Balfour Road
Ilford Essex IG1 4HR**

Applicants : **Mr Warren Jade Semper**

Representative : **Thirsk Winton LLP Solicitors,
Woodford Green, Essex**

Respondent : **Mr Peter Hardy (Missing Landlord)**

Type of application : **Section 50 sand 51 of the Leasehold
Reform, Housing and Urban
Development Act (as amended) (“the
Act”) for a determination of the terms
and price for the grant of a new lease**

Tribunal member : **Mr Charles Norman FRICS (Valuer
Chairman)**

Date of decision : **8 November 2020**

Determination based on Written Representations

DECISION

- (1) This has been a remote determination on the papers which has not been objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face to face hearing was not held because it was not practicable, no-one requested the same, and all issues could be determined on paper. The documents that the Tribunal was referred to are in a bundle of 224 pages and a supplemental bundle of 35 pages the contents of which the Tribunal has noted. The Decision made is set out at Paragraphs (2) and (3) below.

Decisions of the Tribunal

- (2) The Tribunal determines that the appropriate sum to be paid into Court for the freehold of the property known as 61a Balfour Road Ilford Essex IG1 4HR pursuant to Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”), is **£33,700** (thirty three thousand seven hundred pounds).
- (3) The terms of the draft surrender and re-grant of the lease as supplied to the Tribunal are approved.

Reasons

Introduction

1. This matter relates to an application made under section 50 and 51 of the Leasehold Reform, Housing and Urban Development Act (as amended) (“the Act”) for a determination of the terms and premium for the grant of a new lease of the property known as Ground floor flat, 61a Balfour Road Ilford Essex IG1 4HR (“the property”).
2. By proceedings brought under CPR Part 8 and issued on **11 October 2019 (“the valuation date”)**, the Applicant applied for an order dispensing with the requirement to serve a section 42 initial notice upon the respondent and for other relief. By an Order made by District Judge Lightman sitting in the County Court at Central London dated 24 June 2020, the application for dispensation was granted. The matter was transferred to the Tribunal for the determination of:
 - (a) The form of the new lease and
 - (b) The sum to be paid into court in accordance with section 51(5) of the Act.
3. The Tribunal issued directions on 18 August 2020 requiring bundles to be provided by 29 September 2020, which were provided. The applicant was given an opportunity to request a remote video hearing, but has not done so and the matter has therefore come before me for determination based on written representations, in accordance with rule 31 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (“the rules”). The Tribunal is not currently carrying out inspections

except in special circumstances and I did not consider that an inspection was necessary or proportionate in this case.

Expert Evidence

4. An experts' valuation report was provided by Mr Richard Murphy Dip Surv, MRICS of Richard John Clarke Chartered Surveyors dated 25 September 2020. Mr Murphy has been qualified for 26 years and established his firm in 1998. His report is correctly addressed to the Tribunal and contains the declarations required from expert witnesses by the Tribunal and the RICS. I am satisfied that Mr Murphy is suitably qualified to give expert evidence and fully understands his duties to the Tribunal.
5. The substantive valuation sections of the report may be summarised as follows. Mr Murphy inspected the property on 14 July 2020. The property comprises a converted ground floor flat within a two-storey semi-detached house dating from about 100 years ago. The conversion dates from the 1983 when the lease was granted. The property is of solid brick with pebbledash under pitched tiled roofs. There are UPVC windows. The internal arrangement is one bedroom, reception room, kitchen and bathroom. The floor area is 59.6 sq. m. (641 sq. ft.). An exterior photograph was included. There is a single parking space in the front. The property is within 0.3 mile of Ilford station and close to the town centre. Mr Murphy described the condition as generally good.
6. Mr Murphy asserted that various tenants' improvements had been carried out the effect of which fell to be disregarded: new UPVC windows, new kitchen, and new bathroom.
7. The lease commenced on 3 November 1983 for a term of 99 years at an initial annual ground rent of £25 rising by £25 every 25 years of the term. At the valuation date, there were 63.06 years unexpired.
8. Mr Murphy adopted 7% for the capitalisation rate and 5% for the deferment rate relying on *Nicholson v Goff* and *Sportelli*, respectively.
9. As to what Mr Murphy described as freehold vacant possession value (meaning virtual freehold vacant possession value) Mr Murphy relied on three comparables, details of which were provided.
10. 83 De Vere Gardens sold for £270,000 on 24 January 2020. From agents' details this was described as a 1 bedroom ground floor converted flat. The floor area is stated as 54 sq. m. Adjusting for the Land Registry House Price Index for Flats and Maisonettes gave an unimproved extended lease value ("UELTV") of £264,374.
11. 99 Balfour Road sold on 12 March 2019 for £281,500. The floor area was 56 sq. m (603 sq. ft.). This was described as a similar style of property being a ground floor flat with garden. It was described as being in good condition with improved bathroom, UVPC windows and doors and a

landscaped rear garden. Mr Murphy made an allowance of £5000 in respect of these items. After applying indexation, the UELV was £277,483. Agents' details were provided.

12. 114b Empress Ave Ilford was sold for £260,000 on 12 October 2018. This was a ground floor flat similar to the subject property. After indexation, the UELV was £246,629. Agents' details were also provided.
13. An average of these figures gave £262,828 which Mr Murphy rounded up to £263,000. He added 1% to arrive at the virtual freehold value of £265,657.
14. I identified that each of the three comparables were smaller than the subject property and caused a letter to be sent inviting Mr Murphy to comment on this and, if he considered appropriate, to amend his valuation. I also asked for evidence of the unexpired lease length terms to be provided, in accordance with the standard directions.
15. Mr Murphy provided a supplemental report dated 15 October 2020 in which he provided a further analysis of his comparables. He calculated that the value of the subject property based on floor area was £304,386 as against his previous analysis of £262,828 which did not directly reflect floor areas. Mr Murphy opined that "it is clear that the market makes an adjustment for size although in this market it is unusual for prices to be quoted on a price per square foot basis." He then took as his valuation the average of the two approaches, being £283,607 which he rounded up to £284,000. Mr Murphy amended his valuation to £22,750. Land registry evidence of the unexpired terms for the comparables was also provided showing that they each had unexpired terms in excess of 950 years.

Relativity of Existing Short Lease to Virtual Freehold Value

16. Mr Murphy was unable to identify any market transactions to assist. He arrived at a relativity of 88.01% based on taking an average of five relativity graphs concerned with Greater London and the remainder of England. In so doing he had relied on an earlier decision of this Tribunal in relation to the first floor flat of the building, 61a Balfour Road (LON/00BC/OLR/2018/ 0379), dated 25 April 2018 where that approach was accepted. He also relied on *Sloane Stanley Trustees v Carey-Morgan* [2011] UKUT 415 (LC) and *Coolrace Limited* [2012] UKUT 69(LC).
17. Mr Murphy also referred to *Deritend v Treskonova* [UKUT] 0164 (LC) UTLC which was promulgated on 1 July 2020. Mr Murphy submitted that this decision would have been unknown as at the valuation date and was based on written submissions only. In his opinion the relevant graphs accepted in that case should not be used outside Central London.

Decision

18. I agree with the deferment and capitalisation rates put forward.
19. I agree with Mr Murphy that converted flats in Ilford are not normally sold on a price per square foot basis but nevertheless floor areas are a factor in valuation. I therefore consider that taking the average of the two approaches is reasonable and appropriate in this case.
20. In relation to 99 Balfour Road, I accept that the bathroom and garden landscaping are improvements but consider that the window replacement is a repair. I have not received a breakdown of the amount claimed or any invoices for expenditure and would allow £3000 rather than £5000 in respect of improvements. However, in view of Mr Murphy's rounding this would not affect his revised long leasehold valuation of £284,000, which I accept.
21. I agree with the 1% adjustment for freehold as against long leasehold value.
22. I accept that there is no reliable market evidence to establish relativity and that graphs must be used. However, I do not accept the submission that *Deritend* does not apply to this case. The Tribunal is required to consider the law as at the date of its decision. In *Deritend* it was said:

39. The two PCL graphs are still rightly regarded as the most reliable and recent graphs of relativity. They provide objective evidence of relativity, based on a very large data set, and have been revised in light of close scrutiny by the Tribunal in *Mundy*. They should be considered as a starting point where no, or insufficient, transactional evidence has been submitted by the parties. They are not ideal, particularly for property outside PCL, but for the time being they provide the only treatment of relativity which can be regarded as reliable. Their use is always preferable to the use of an average of the RICS 2009 graphs.

56. In our judgment the FTT was wrong as a matter of valuation practice to rely on an average of the RICS 2009 graphs and to ignore the more recent graphs for PCL, and the appeal is therefore allowed. We set aside the FTT's determination.

58. The guidance given by this Tribunal endorses the use of the Savills and Gerald Eve 2016 graphs where there is no transaction evidence, notwithstanding that the subject of the valuation is outside PCL. If persuasive evidence suggests that the resulting relativity is not appropriate for a particular location a tribunal would be entitled to adjust the figure suggested by the PCL graphs. The RICS 2009 graphs do not provide that persuasive evidence and, if it is to be found, it is likely to comprise evidence of transactions; if those are available it may be unnecessary to make use of

graphs at all. In any event, no such persuasive evidence was presented to the FTT. (emphasis added)

23. The decision in *Deritend* is binding on this Tribunal and I am required to follow it. The effect of that decision is that where relativity graphs are used, outside Central London, this Tribunal should rely on the Savills 2016 unenfranchiseable graph and the Gerald Eve 2016 unenfranchiseable graph. The Tribunal must not rely on the RICS 2009 graphs.
24. The appropriate relativities from Savills and Gerald Eve are respectively 80.3% and 80.35%. I round the average up to 80.35%, which I adopt.
25. I therefore find that the premium is £33,700 and my valuation is appended.
26. The terms of the draft surrender and re-grant of the lease are approved.

Name: Mr Charles Norman FRICS **Date:** 8 November 2020

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.

APPENDIX

IN THE MATTER OF 61 BALFOUR ROAD ILFORD ESSEX
VALUATION BY THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

Date of Valuation	11-Oct-2019
Lease expiry date	02-Nov-2082
Unexpired Term 60.3 years	63.06
Unimproved long leasehold value	£ 284,000
Virtual Freehold Value of Flat	£ 286,869
Value of 63.06 year lease @ 80.35 % of virtual freehold value	£ 230,499
Ground rent capitalisation rate	7.00%
Reversionary deferment Rate	5.00%
Premium Payable	£33,700

Diminution in Value of Freeholder's Interest

Term 1

Ground rent	£	50	per annum	
14 Years' Purchase @ 7.00%		8.76		£ 438

Term 2

Ground rent	£	75	per annum	
25 Years' Purchase @ 7.00%				
PV £1 in 14.06 years @ 7.00%		4.5		£ 338

Term 3

Ground rent	£	100	per annum	
24 Years' Purchase @ 7.00%				
PV £1 in 39.06 years @ 7.00%		0.82		£ 82

Reversion

Value of virtual freehold	£	286,869		
Present Value of £1 in 63.06 years time @ 5%		0.04611		
			£	13,228
Freeholder's present interest			£	14,085

Less

Freeholder's Proposed Interest

value of virtual freehold	£	286,869		
Present Value of £1 in 153.06 years time @ 5%		0.00057		£ 164

Diminution in Value of Freeholder's Interest £ 13,921

Calculation of Marriage Value

Value of Proposed Interests

Leaseholder	£	284,000
Freehold after sale	£	164
Total Value of Proposed Interests	£	284,164

Value of Present Interests

Existing lease	£	230,499
Freeholder (see above)	£	14,085

Total Value of Present Interests £ 244,584

Hence Marriage Value, Difference Between Proposed and Present Interests £ 39,580

Divide Marriage Value equally between the Parties £ 19,790

Premium Payable £ 33,711

say £ 33,700