



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

Case reference : **LON/00AL/OLR/2020/0491**

HMCTS code (paper, video, audio) : **V: CVPREMOTE**

Property : **148b Westmount Road London SE9 1XA**

Applicant : **Mr C James**

Representative :

Respondent : **City and Country Properties Limited**

Representative : **Mr R Sharp FRICS**

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 determination and venue : **26 January 2021 at 10 Alfred Place, London WC1E 7LR (Remote)**

Date of decision : **8 February 2021**

DECISION

Covid-19 pandemic: description of hearing

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 two electronic bundles totalling 228 pages.

Summary of the tribunal's decision

(1) The appropriate premium payable for the new lease is **£21.790**.

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 148B Westmount Road London, SE9 1XA ("the property").

2. By a notice of claim dated 29 July 2019, served pursuant to section 42 of the Act, the applicant exercised the right for the grant of a new lease in respect of the property. At the time the applicant held the existing lease granted on 2 March 1982 for a term of 99 years from 25 December 1980 at an annual ground rent of £50 for the first 33 years, £75 for the next 33 years and £100 for the final 33 years.

3. The applicant proposed to pay a premium of £12,000 for the new lease.

4. On 2 October 2019, the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £44,650 for the grant of a new lease.

5. On 24 March 2020, the applicant applied to the tribunal for a determination of the premium.

The issues

Matters agreed

6. The following matters were agreed:

(a) The property is a self-contained one bedroom flat on the top floor within a 3 storey purpose-built block consisting of commercial premises on the ground floor and two floors of flats above. The block was constructed in about 1920 or 1930 and contains 12 flats of a similar kind. It is in good condition;

(b) The gross internal floor area: 485 square feet;

(c) The valuation date: 30 July 2019;

(d) Unexpired term: 60.402 years;

(e) Ground rent: £75 for the next 28.204 years and thereafter £100 throughout the rest of the term;

(f) Freehold (unimproved) value is 1% over the long leasehold (unimproved) value;

(g) Ground rent: £1,231.

(h) Deferment rate: 5%.

Matters not agreed

7. The following matters were not agreed:

(a) Whether (i) the installation of new combination boiler serving gas

fired central heating and (ii) the installation of new uPVC double glazed windows are to be regarded as improvements in the statutory valuation;

(b) The “no-Act world” short leasehold (unimproved) value: the applicant contending at the hearing for £146,895 and the respondent contending for £134,486;

(c) The freehold (unimproved) value: the applicant contending for £173,737 and the respondent contending for £182,403;

(d) Relativity: the applicant contending for 84.55% and the respondent contending for 73.73%; and

(e) The premium payable: the applicant contending for £17,600 and the respondent contending for £28,467.

The hearing

8. The hearing in this matter took place remotely on 26 January 2021. The applicant, who is a solicitor, represented himself. The respondent was represented by its expert witness, Mr R Sharp FRICS.

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.

10. The applicant relied upon the expert report and valuation of Mr Mandeep Jhita MRICS dated 11 January 2021 and the respondent relied upon the expert report and valuation of Mr Sharp FRICS dated January 2021.

Improvements

11. The issues relating to improvements are whether (a) the installation of a new combination boiler serving gas fired central heating and (b) the installation of new uPVC double glazed windows are to be regarded as improvements in the statutory valuation.

12. In a letter dated 5 September 2019, Mr Swann, the respondent’s property manager, wrote, *Recently we removed the water tanks from the roof space, and all flats should now be controlled by their own Combi boiler. If this is not the case can you please contact me as soon as possible.*

13. The windows appear, from the evidence, to fall under repair/replacement, done by the respondent in 2016. Since the same window works were carried out to both the property and the comparable referred to immediately below, it does not seem to us that it is necessary to decide whether those works were or were not improvements as the same deductions would need to be made to both flats. As far as the boiler is concerned, the need for this arose because the respondent removed the water tanks from the roof space. We consider that these works were partly repairs and partly improvements, so we will allow a £1,500 deduction.

Long leasehold value

14. The only long lease comparable relied upon by the parties at the hearing was 142B Westmount Road which is a one bedroom flat on the second floor within the same block. It is only slightly smaller at 452 square feet. It has an unexpired term of 149 years. This flat sold for £180,000 in September 2020.

15. We do not consider that we should make any allowance for the fact that the comparable flat was sold in September 2020. We were quoted the Land Registry Greenwich flats and maisonettes index for market movement (“the index”). However, at the present time, because of the coronavirus epidemic, these figures generally fluctuate to such an extent as to be of no real help. We therefore arrive at a value of £178,500 taking into account the improvements.

Freehold value

16. Adding 1% of this figures leads to a freehold vacant possession value of £180,285.

Short lease value/ Relativity

17. It was common ground that because of the location of a Dry Cleaner and an Indian Restaurant on the ground floor, the property was not mortgageable and would only be of interest to a cash buyer.

Mr Jhita

18. Mr Jhita relies upon 142A Westmount Road (“142A”) which had an under offer figure of £167,000 as at December 2020. At the time of sale it had about 59.07 years unexpired on its lease.

19. 142A is more or less identical in its layout, size and condition to the sale of 142B sold a few months earlier on a long lease.

20. The first adjustment he made to the sale of 142A was for ‘no Act world’ which according to the ‘Graphsofrelativity’ website, is 5.17% for a property with 59.07 years unexpired. By contrast, Savills Enfranchisable Table (82.93% relativity) and Savills Unenfranchisable table (77.66% relativity), shows an adjustment of 5.27% is required for the ‘no Act world’. Being pragmatic, he adopted the average of these two figures at 5.22% to adjust for the ‘no Act world’.

21. Deducting this amount from the agreed sale price of £167,000 gave an adjusted ‘no Act world’ short-lease value of £158,283 for 142A.

22. Using the sale price of 142B (long-lease) of £180,000, adjusted up by 1% for the freehold value to £181,818, this suggests a relativity of 87.06% for a flat with 59.07 years unexpired. The average of the Greater London graphs of relativity for the same unexpired term is 85.08%, with the range between 82.44% (Nesbitt & Co) and 89.07% (South East Leasehold). To this end, he considers his adjusted open market evidence sits well within this range.

23. Mr Jhita concludes that the relativity for the property, which has a longer unexpired term of 60.40 years, would be 1% higher than 87.06% and could therefore be 88.06%.

24. 148A Westmount Road (“148A”) is a one bedroom flat located within the subject terrace and beneath the subject property. It sold to a cash-buyer via auction in January 2020 for a price of £142,000 and had a short lease of circa 60 years. Using the above adjustments, the relativity is 74.02%. This appears to be completely out of sync with other relativities for 60 years unexpired.

25. Nevertheless Mr Jhita does not consider it to prudent to dismiss the evidence of 148A completely. He considers it would be sensible to adopt a weighting of 75% to

the relativity of 88.06% and 25% to the relativity of 74.02%, which in turn, suggests a blended relativity of 84.55%.

Mr Sharp

26. Mr Sharp makes the point that 142A has not been sold and so should be ignored. He relies on 148A, which we have said was sold to a cash-buyer via auction in January 2020 for a price of £142,000 and had a short lease of circa 60 years. He adjusted it by 0.3% for the lease term, and applying the index produced a figure of £143,230 at the valuation date. He also says that there should be a 10% deduction for “no Act world”. This produces a figure of £128,907.

27. Mr Sharpe’s figure for the freehold value of the property was £182,403. Therefore the relativity value which is produced is 70.67%, which he acknowledged is fairly low. He accepts in this case the will never be a body of evidence to show a regular pattern of unextended lease sales.

28. He therefore turned to the graphs, and cited a number of Upper Tribunal decisions (although it should be said that these would all have turned on their own particular facts). He relied principally on Beckett and Kay as the most reliable suburban graph (72%), and the averaging of Savills 2016 and Gerald Eve 2016 graphs outside the centre (78.52%). However, these graphs are mortgage dependent.

29. In conclusion, Mr Sharp took an average of three figures set out above and reached a figure of 73.73%.

Discussion

30. By and large we prefer the methodology of Mr Jhita to that of Mr Sharp, although we recognise the force of his comments in respect of 142A. Mr Sharp relied heavily on the Beckett and Kaye chart which is mortgage dependent. He also placed a great deal of weight on the findings made in other decisions, but these are all fact sensitive. On the other hand, Mr Jhita relied upon a blended set of charts which in our view gives a fairer picture, and which more accurately reflect the value of the subject property which both parties agree is unlikely to be purchased by a buyer requiring a mortgage.

31. In our view, the best approach is to focus on the 2015 data compiled from seven different tables (set out on page 97 of the first bundle) which uses an average relativity 80.7% and this is figure which we adopt.

The premium

x. The tribunal determines the appropriate premium to be £21,790. A copy of its valuation calculation is annexed to this decision.

Name: Judge Simon Brilliant

Date: 8 February 2021

Appendix:

Valuation setting out the tribunal’s calculations

Matters Agreed

Valuation date 30th July 2019.
Term 60.402 years
Value of ground rent £1,231
Yields 6.5% and 5%

Matters Determined

Extended lease value £178,500
Freehold £180,285
Existing lease £145,490
Relativity 80.70%

<u>Ground Rent</u>	£ 1,231	
<u>Reversion</u> £180,285		
60.402 years 5% 0.0525	<u>£ 9,465</u>	
	£10,696	
<u>Less</u> £180,285		
150 years 5% 0.0007	<u>£ 126</u>	£10,570

Marriage Value

Proposed	£178,500	
	<u>£ 126</u>	
<u>Less</u>		
Existing	£ 10,696	
	<u>£145,490</u>	
	£ 22,440	<u>£11,220</u>
	50%	
<u>Premium</u>		<u>£21,790</u>

Rights of appeal

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