



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

Case reference : LON/00AQ/OLR/2021/0542

HMCTS code : V: VIDEOREMOTE

Property : 18 Archery Close, Stuart Road,
Wealdstone, and parking space 30,
HA3 7RT

Applicant : Ann Marie Stephens

Representative : Mr Saul M Gerrard MA FNAEA
MRICS

Respondent : Castle Lane Securities Limited

Representative : Mr Richard Clarke, counsel

Type of application : Section 48 of the Leasehold
Reform, Housing and Urban
Development Act 1993

Tribunal members : Judge Tagliavini
Mr K Ridgeway MRICS

**Date of determination
and venue** : 1 February 2022 at
10 Alfred Place, London WC1E 7LR

Date of decision : 2 February 2022

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: VIDEOREMOTE A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing/on paper].

The documents that the Tribunal were referred to are in a bundle of 255 pages, the contents of which have been taken into consideration.

Summary of the tribunal's decision

- (1) The appropriate premium payable for the new lease is **£38,100**.
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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 [Address] (the “property”).
2. By a notice of a claim dated 3 December 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 5 November 1982 for a term of 99 years from 25 December 1981 at an annual ground rent of £120 rising to £180 on 5/11/2047. The applicant proposed to pay a premium of £26,181.00 for the new lease.
3. On 5 January 2021, the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £41,000.00 for the grant of a new lease.
4. In an application dated 18 June 2021 the applicant applied to the tribunal for a determination of the premium.

The issues

Matters agreed

5. The following matters were agreed:
 - (a) The subject property is a self-contained flat on the 2nd floor within a three-storey block of 9 flats constructed in about 1980's and forming part of an estate of 99 flats of similar kinds;
 - (b) The gross internal floor area is 47.98 square metres, which equates to 516.5 square feet;*

- (c) The valuation date: 3 December 2020;
- (d) Unexpired term: 60.06;
- (e) Ground rent: £120 per annum rising to £180 per annum on 5/11/2047 for the remainder of the term.
- (f) Long leasehold (unimproved) value: 99% of the freehold (unimproved) value.

****GIA subsequently agreed by the parties' valuers.***

Matters not agreed

- 6. The following matters were not agreed:
 - (a) Tenant's improvements
 - (b) Unimproved extended leasehold value.
 - (c) Relativity.
 - (d) Capitalisation rate.
 - (e) Premium to be paid.

The hearing

- 7. The hearing in this matter took place on 1 February 2022. The applicant was represented by Mr Saul Gerrard, valuer and the respondent by Mr Richard Clarke, counsel.
- 8. Neither party asked the tribunal to inspect the property and the tribunal did not consider it necessary or proportionate to carry out a physical inspection to make its determination.
- 9. The applicant relied upon the expert report and valuation of Mr Saul Gerrard MA FNAEA MRICS dated 20 January 2022 and the respondent relied upon the expert report and valuation of Mr Stephen Jones BA (Hons) MRICS dated 20 January 2022.

The tribunal's determinations and reasons

- 10. Having heard the oral evidence of the parties' valuers and considered their reports as well as all of the other documentation relied upon in the hearing bundle, the tribunal makes the following determinations.

Tenant's improvements

- 11. The tribunal determines that the installation of UPVC double glazed windows does not constitute an improvement.

Reasons for the tribunal's determination

12. Mr Gerrard contended that the installation of UPVC double-glazing constitute an improvement as it was low maintenance and energy efficient. Mr Jones contended that UPVC double glazing constituted maintenance as a block of some 40 years would ordinarily require replacement of the windows and UPVC was a cost-effective alternative to single glazed windows.
13. The tribunal could see from the photographs provided that the subject block as well as the neighbouring blocks forming part of the estate all had similar windows. This strongly suggested that a window replacement major works scheme had been carried out at some time by the landlord under the terms of the lease which required the landlord to 'maintain redecorate repair renew' the block in which the subject flat is situate (*Part IV of lease*). Consequently, the tribunal determines the replacement of windows does not constitute an improvement but rather maintenance for which no deduction under the 1993 Act is provided.

Unimproved extended leasehold value

14. The tribunal determines that £285,000 is the unimproved extended leasehold value.

Reasons for the tribunal's determination

15. Mr Gerrard contended that £225,000 reflected the unimproved extended leasehold value of the subject property. Mr Gerrard reached this figure by relying on a number of comparable sales both on the subject estate (*5, 26 and 48 Archery Close*) as well as further afield (*Flats 4 and 6 Louise Court, Byron Road HA3 7TB*). Mr Gerrard made a number of adjustments to reflect differences in size and condition in order to reach an average figure of £225,000 although accepted that the comparable provided by 48 Archery Close provided the best evidence of sales having discounted the 2018 sale of 5 Archery Close.
16. In contrast Mr Jones relied on the sales of comparable flats at 5, 48 and 86 (and parking space) at Archery Close the average sale figure achieved was £284,852 (adjusted for time and 'hypothetical share of freehold'). Mr Jones also agreed that 48 Archery Close provided the best comparable sales evidence and did not seek to rely upon any off-estate sales and consequently arrived at an average figure of £285,000.
17. The tribunal preferred the approach of Mr Jones to that of Mr Gerrard and considered the best evidence was obtained from the sale of comparable properties on the subject estate at Archery Close.

Relativity

18. The tribunal determines relativity is 78.29%.

Reasons for the tribunal's determination

19. Mr Gerrard accepted that the approach adopted by the Upper Tribunal in *Deritend Investments (Birkdale) Ltd v Treskonova* [202] UKUT 164 LC should be followed by the tribunal, although he had also canvassed alternative approaches in his report. Mr Jones also submitted that the *Deritend* approach should be followed. Consequently, the parties' valuers accepted that relativity of 78.29% is reached by utilising this approach.

Capitalisation rate

20. The tribunal determines the appropriate rate is 6%.

Reasons for the tribunal's determination

21. Mr Gerrard contended the appropriate capitalisation rate was 6.5% although agreed that 6% was within the accepted range. He stated that in his experience a capitalisation rate of 7% was often sought and therefore, 6.5% represented a midway point between 6% and 7%. Mr Jones asserted that a capitalisation rate of 6% was more usual and there was no reason for it not to be adopted in this instance.

Premium to be paid

22. The tribunal determines the premium to be paid is £38,100.

Reasons for the tribunal's determination

23. The tribunal preferred the methodology adopted by Mr Jones to that of Mr Gerrard in their respective reports. The tribunal did not consider that it was necessary to consider the sales of comparable properties outside of the subject estate and the discarding the outlier sale of 5 Archery Court was appropriate. The tribunal finds that the subject property was in a comparable state to that of the two comparable sales and that there was no substantial difference reflected by the differing kitchens and bathrooms. Therefore, the tribunal considered that no adjustments for these matters was required
24. In conclusion the tribunal determines the premium to be paid is £38,100 as set out in the valuation of Mr Stephen Jones in Appendix VI of his report dated 20 January 2020.

Name: Judge Tagliavini

Date: 2 February 2022

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).

