



Decision amended to
correct clerical error and
re-issued under Rule 50
Tribunal Rules of
Procedure

Case no : **LON/00AZ/OLR/2022/0230**

Property : **26 Taymount Grange Taymount
Rise Forest Hill London SE23 3UH**

Applicants : **Ms A S Butterfield
Ms E L Butterfield**

Representative : **Keystone Law
Mr G Evans**

Respondent : **Deritend Investments (Birkdale)
Ltd**

Representative : **Wallace LLP
Mr R Sharp**

Type of Application : **S.48 Leasehold Reform Housing
and Urban Development Act 1993**

Tribunal Members : **Mrs F J Silverman MA LLM
Mrs S Redmond MRICS**

**Date and venue of
Hearing** : **25 October 2022 .
CVP/Video Remote**

Date of Decision : **~~31 October 2022~~—12 December
2022**

DECISION

**The Tribunal determines that the premium to be paid by the
Applicants for an extended lease of the property is £38,875. The**

Tribunal's valuation is attached at Appendix A .

Reasons

1. The applicants seek a determination pursuant to s.48 Leasehold Reform Housing and Urban Development Act 1993.
2. The hearing of this matter took place on 25 October 2022 by a remote video hearing to which the parties had previously consented. Mr G Evans FRICS represented the Applicant tenants and gave expert evidence on their behalf and Mr R Sharp FRICS represented the Respondent landlord and similarly gave expert evidence on their behalf. The parties themselves were not present at the hearing.
3. The parties had prepared an agreed bundle of documents for the hearing. The Tribunal had received and read these documents prior to the hearing and makes reference to them below.
4. The sole issue which the Tribunal was asked to determine was the price to be paid by the Applicants to acquire an extended lease of the property. Other matters, including the form of the lease, had been agreed by the parties' advisors prior to the hearing and these were accepted by the Tribunal.
5. The Tribunal considered that it would not be proportionate to inspect the subject property and were not asked by the parties to do so. The Tribunal has seen photographs of the property and understands that it is an upper ground floor flat in a purpose built block situated in a residential area containing similar blocks of flats. The block in which the subject property is situate was probably built in the 1930's and is on a sloping site so that, from the front view of the block, the property appears to be above ground floor level. The property itself comprises a single living room/kitchen/ bedroom with a separate full bathroom. The parties agreed that the floor area of the property was 275 sq ft. The property does not enjoy the benefit of any outside space but photographs supplied by the parties show the block to be set in a garden area with some parking available within the grounds and unrestricted street parking in the neighbourhood.
- 6 The Applicants are the current assignees of a lease dated 21 November 1980 which created a term of 99 years commencing from 25 March 1976. They have the benefit of a notice served by their immediate predecessor in title on 21 July 2021 (the valuation date).
- 7 In relation to the capitalisation rate, Mr Evans had chosen figure of 7% which he felt reflected a 3.8% inflation at the valuation date and the fixed increment ground rents contained in the lease which had a growth rate of 1.4% to the review date. Mr Sharp's choice of 6% (page 147) was justified by him on the grounds that interest rates had been at an

historic low at the valuation date and that 6% was the normal rate to use except where there was an escalating ground rent. The Tribunal was unconvinced by Mr Sharp's argument on this point and prefers that put forward by Mr Evans. It has therefore used 7% in its attached valuation.

- 8 Given the unusual features of the property (a tiny ~~25 sq m~~ studio) it is perhaps not surprising that both experts had difficulty in finding suitable comparables. Both had used the sale of the subject property close to the valuation date in order to derive the short lease value without Act rights. Mr Sharp expressed concerns about the auction sale price where the property was sold on a maiden bid at a significantly higher price than the previous sale of the subject in 2019 whereas Mr Evans said that the auction price reflected what a willing buyer was prepared to pay. In this case we prefer Mr Evans's view. The deduction for 'no Act world' was agreed at 7.99% and we adopt Mr Evans valuation of £129,872 for the value of the existing lease unimproved.
- 9 Turning to the extended lease value, the experts produced between them 3 comparables. Two are in the same block as the subject property with the third in a nearby block. Both experts adopted a narrative approach in their reports and there was no table of comparables. The index to be used for adjustment for time was agreed.
- 10 There was some discussion regarding the effect of size, layout and position and the provision of an on-site caretaker at Taymount. Mr Evans considered the possible difficulty with mortgageability in relation to the small size of the subject property and comparables, all of which measured under 30 square metres and the existence or otherwise of separate kitchen areas. The subject property unlike the the comparables in the same block does not have a separate kitchen area nor, in contrast with 1A Forest Lodge, does the subject property enjoy a separate bedroom. Mr Sharp was able to show that the arrangements for ground rent for no.7, the larger of the comparables in the block were geared to 1/500 of the extended lease value at the date of review. Neither expert ascribed any particular level of deductions for any of these features and did not attempt a per square foot approach.
- 11 Mr Evans argued that the 2 comparables in the block were not comparable and chose to use the Mundy approach to derive the extended lease value of £174,735. He looked at the average of the sales of nos. 7 and 39 but had made no adjustments for any of the differences considered preferring to place reliance on the graphs.
- 12 The Tribunal prefers Mr Sharp's approach although he used only one comparable in the block, rejecting no. 39 as being historic (4 months prior to the sale of 7 Taymount which itself sold just under 3 years prior to the valuation date) and being around 20% smaller than the subject property. The Tribunal had some concerns about the historic nature of

these transactions but the HPI had very little impact over the period and the comparable at Forest Lodge was within a year of the valuation date. It considered that the experts had managed with the one comparable for the existing lease valuation and it was reasonable to expect the same approach to extended lease value despite the paucity of comparable evidence.

- 13 The Tribunal considered all three comparables with care. Number 7 Taymount is some 16 sq ft larger than the subject property which the Tribunal considers will have an impact when dealing with a very small unit. It has a separate kitchen area. We also consider the effect of its location and the ground rent review terms. Mr Sharp expressed the view that these factors on balance added 2.5%. However, weighing up the different factors, the Tribunal considered that a deduction of around 2% was needed, giving an extended lease value of £192,500.
- 14 It is clear that no.39 Taymount is approximately 20% smaller than the subject property. Its position on the ground floor is near the entrance door which may give rise to privacy and security issues. However, it also has a separate kitchen. The sales particulars indicated 'Cash buyers only' which may reflect Mr Evans's concerns about mortgageability. We do not consider that the sale of this property is any more historic than that of no.7. Looking only at the size aspect this would suggest that an adjustment to £184,500 would be needed before taking the other aspects into account. We do not consider that there is evidence that the position of the studio would call for a reduction but the separate kitchen is an advantage. This is a significant adjustment and on balance we prefer to adopt the evidence of the sale at no. 7.
- 15 Number 1A Forest Lodge in an adjacent block is described by the agents as a 'super studio' and has been configured to provide a separate bedroom with ensuite shower room. Its sale is within a year of the subject property. It was sold with a 999 year lease and appears to be of a very similar size to the subject property. We consider that a deduction would be needed here but it is nevertheless a useful cross check.
- 16 Taking into account all the aspects raised in the experts' reports and subsequent discussion we determine the extended lease value of the subject property at £192,500.
- 17 Applying these criteria to the valuation gives a Premium payable of £38,875.
- 18 The Tribunal's calculation is attached as Appendix A .

The Law

Section 48 Leasehold Reform Housing and Urban Development Act 1993 provides for :
Applications where terms in dispute or failure to enter into new lease.

(1)Where the landlord has given the tenant—

(a)a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or

(b)a further counter-notice required by or by virtue of section 46(4) or section 47(4) or (5),but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice or further counter-notice was so given, **the** appropriate tribunal may, on the application of either the tenant or the landlord, determine the matters in dispute.

(2)Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the tenant.

(3)Where—

(a)the landlord has given the tenant such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and

(b)all the terms of acquisition have been either agreed between those persons or determined by the appropriate tribunal under subsection (1),

but a new lease has not been entered into in pursuance of the tenant's notice by the end of the appropriate period specified in subsection (6), the court may, on the application of either the tenant or the landlord, make such order as it thinks fit with respect to the performance or discharge of any obligations arising out of that notice.

(4)Any such order may provide for the tenant's notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6).

(5)Any application for an order under subsection (3) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).

(6)For the purposes of this section the appropriate period is—

(a)where all of the terms of acquisition have been agreed between the tenant and the landlord, the period of two months beginning with the date when those terms were finally so agreed; or

(b)where all or any of those terms have been determined by the appropriate tribunal under subsection (1)—

(i) the period of two months beginning with the date when the decision of the tribunal under subsection (1) becomes final, or

(ii) such other period as may have been fixed by the tribunal when making its determination.

(7) In this Chapter “the terms of acquisition”, in relation to a claim by a tenant under this Chapter, means the terms on which the tenant is to acquire a new lease of his flat, whether they relate to the terms to be contained in the lease or to the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of the lease, or otherwise.

Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993 (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.

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.

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.

Para 5 provides for the payment of compensation for loss arising out of the grant of a new lease.

Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

Judge F J Silverman
As Chairman

~~31 October 2022~~

Decision amended to correct clerical error and re-issued under Rule 50
Tribunal Rules of Procedure

14 December 2022

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rplondon@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Appendix A (see next page)

LEASE EXTENSION			
per Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 as amended			
26 Taymount Grange LONDON SE23 3UJ			
Facts and matters agreed and determined:			
Ground floor studio 275 sq.ft			
Valuation date:	20/07/2021		
Capitalisation Rate:	7.00%		
Deferment rate:	5.00%		
Uplift to freehold value:	1%		
Extended lease value:	£192,500		
Lease: expires 24/3/2075	Unexpired Term:	53.68 years	
Ground Rent per annum:	£75 rising to £100 from 25/3/2042		
Existing lease value:	£129,872		
Marriage Value:	50%		
Calculation of premium:			
Diminution in value of Freeholder's interest:			
Current Ground Rent			75
YP @7% for 20.68 years	10.7598		807
Ground Rent at Review			100
YP @ 7% for 33 years	12.7534		
deferred 20.68 years @ 7%	0.2468		315
			1,122
Existing interest:			
Reversion to Freehold	194,444		
Deferred 53.68 years at 5%	0.0729		14,175
			15,297
Less Retained interest:			
Reversion to Freehold			194,444
Deferred 143.68 years @ 5%			0.0009
			175
Diminution in Freeholder's interest:			15,122
Calculation of Marriage Value:			
Proposed interests:			
Freeholder:	175		
Leaseholder:	192,500		192,675
Less Existing interests:			
Freeholder:	15,297		
Leaseholder:	129,872		145,169
Total Marriage Value:			47,506
Attributable to Landlords @ 50%			23,753
Total Premium payable:			£38,875

Appendix A

New lease claim	Valuation Date 1 March 2017		
Present lease	99	Years	From 01-Jan-87
Years unexpired	68.84		
Long lease value	£234,160	Freehold	£236,525
Existing lease value	194,897	Relativity	82.40%

Diminution in value of landlord's interest

Capitalised rents agreed at				£2,826
Reversion Flat value (F/H)	£	236,525		
Deferred	68.84 yrs @5%	0.03478	8,226	
				11,052

Less value after grant of new lease

Term				
New lease at a peppercorn rent				0
Reversion Flat value (F/H)	£	236,525		
Deferred	158.84 yrs @5%	0.000431		
				-102

Diminution in value of landlord's interest

10,950

Marriage value

Aggregate of values of interests after grant of new lease

Landlord's interest				
Tenant's proposed interest	102			
	234,160			
		234,262		
Less Aggregate of values prior to grant of new lease				
Landlord's interest	11,052			
Tenant's interest	194,897			
		205,949		
	Marriage value		28,313	
		50.00%		14,156

Premium 25,106