

2731



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

**Case Reference** : **LON/00AX/OLR/2013/0534**

**Property** : **Flat D, 15 Claremont Gardens,  
Surrey, KT6 4TL**

**Applicant** : **Ms Claire McCarthy**

**Representative** : **None**

**Respondent** : **Plainworth Limited**

**Representative** : **Alan Cummings**

**Type of Application** : **For the determination of the  
premium on a lease renewal under  
section 48(1) Leasehold Reform,  
Housing and Urban Development  
Act 1993 (the "Act")**

**Tribunal Members** : **Judge J Pittaway  
Mrs H Bowers**

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

**Date of Decision** : **11 September 2013**

---

**DECISION**

---

## **Decisions of the Tribunal**

### **1. The Premium**

The Tribunal **determines** in accordance with section 48 and Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 that the **premium for the extended lease is fourteen thousand one hundred and eighty seven pounds (£14,187.00)**

A copy of the Tribunal's calculation of the premium is attached as Appendix 2.

### **2. Costs**

The Applicant did not ask the Tribunal to determine the Respondent's reasonable costs under section 60(1) of the Act so it has made no determination.

## **Background**

1. This is an application to the Tribunal by the Applicant for a lease extension of the lease of Flat D 15 Claremont Gardens, Surbiton, Surrey KT6 4TL. The Notice of Claim to Exercise this Right is dated 21 December 2012, and admitted by the Respondent by way of Counter Notice dated 1 February 2013. The Applicant applied to the Tribunal on 21 April 2013 for the determination of the premium payable for the 90 year lease extension.
2. The Tribunal issued Directions on 13 May 2013.
3. The Application was heard on 10 September 2013. Ms McCarthy represented herself. Mr Cummings a director of Plainworth Limited represented the landlord respondent.

## **Matters in Dispute**

1. By the date of the Hearing the issues that remained in dispute were
  - a. The capitalisation rate;
  - b. The extended lease value;
  - c. Relativity; and
  - d. Marriage value.
2. During the Hearing the parties agreed a capitalisation rate of 6.5% and, following detailed evidence from Ms McCarthy on the value of comparable leasehold properties, an extended lease value of £215,000.00.

## **Evidence**

1. The Bundle before the Tribunal contained the valuations of the respective surveyors but without any underlying narrative.
2. Ms McCarthy submitted that an appropriate relativity would be 91%. She justified differing from the relativities suggested by her surveyor by reference to a previous decision of the Tribunal in relation to 21 St Matthews Court 7B Coppets Lane London N10 1NW (ref 00AP/OLR/2012/0987 of February 2013, and because she believed that he may have adopted the John D Wood relativity graph, which is relevant to Prime Central London.
3. Although the decision she referred to was in respect of a flat in North London she submitted that it was a useful guide as it related to a flat in Greater London, on the first floor of a property (as her flat is), held on a lease for a similar unexpired term at the valuation date, granted at about the same time as her lease was granted. In that case the relativity was determined at 92.16% for an unexpired term of 69.4 years (compared to the unexpired term of her lease at the relevant valuation date of 68.77 years). She also referred the Tribunal to the RICS Research Report on Graphs of Relativity and the Greater London and England graphs set out in Section 2 of that Report.
3. Mr Cummings was unable to explain how his surveyor had arrived at a relativity of 86.26% and said that he would rely on the Tribunal's determination as to the appropriate relativity.

## **Inspection**

The Tribunal did not consider an inspection to be necessary.

## **Reasons for the Tribunal's determination**

1. The only issue for the Tribunal to determine was the appropriate relativity, as the marriage value follows from that determination.
2. Based on Ms McCarthy's submissions and their own expert knowledge, and in the absence of any submissions from Mr Cummings to support a relativity of 86.26%, the Tribunal agree with Ms McCarthy that a relativity of 91% is to be applied in calculating the marriage value. This level of relativity is within the range identified in the RICS Research Report on Graphs of Relativity for the Greater London and England area.

**The Law**

The relevant statutory provisions are set out in Appendix 1 to this decision.

**Name:** J Pittaway

**Date:** 11 September 2013

## APPENDIX 1

### LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

#### **s 48 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, a leasehold valuation tribunal may, on the application of either the tenant or the landlord, determine the matters in dispute.

(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.

#### **s 56 Obligation to grant new lease.**

(1) Where a qualifying tenant of a flat has under this Chapter a right to acquire a new lease of the flat and gives notice of his claim in accordance with section 42, then except as provided by this Chapter the landlord shall be bound to grant to the tenant, and the tenant shall be bound to accept—

- (a) in substitution for the existing lease, and
- (b) on payment of the premium payable under Schedule 13 in respect of the grant,

a new lease of the flat at a peppercorn rent for a term expiring 90 years after the term date of the existing lease.

#### **S 60 Costs incurred in connection with new lease to be paid by tenant.**

(1) Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely—

- (a) any investigation reasonably undertaken of the tenant’s right to a new lease;
- (b) any valuation of the tenant’s flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56;
- (c) the grant of a new lease under that section;

but this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

(2) For the purposes of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.

### **SCHEDULE 13 PART II PREMIUM PAYABLE IN RESPECT OF GRANT OF NEW LEASE**

#### ***Premium payable by tenant***

2 The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate of—

- (a) the diminution in value of the landlord’s interest in the tenant’s flat as determined in accordance with paragraph 3,
- (b) the landlord’s share of the marriage value as determined in accordance with paragraph 4, and
- (c) any amount of compensation payable to the landlord under paragraph 5.

#### ***Diminution in value of landlord’s interest***

- 3(1) The diminution in value of the landlord's interest is the difference between—
- (a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease; and
  - (b) the value of his interest in the flat once the new lease is granted.
- 3(2) Subject to the provisions of this paragraph, the value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) is the amount which at the relevant 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 following assumptions—
- (a) on the assumption that the vendor is selling for an estate in fee simple or (as the case may be) such other interest as is held by the landlord, subject to the relevant lease and any intermediate leasehold interests;
  - (b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;
  - (c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and
  - (d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which the relevant lease has effect or (as the case may be) is to be granted.
- 3(3) In sub-paragraph (2) "the relevant lease" means either the tenant's existing lease or the new lease, depending on whether the valuation is for the purposes of paragraph (a) or paragraph (b) of sub-paragraph (1).
- 3(4) It is hereby declared that the fact that sub-paragraph (2) requires assumptions to be made as to the matters specified in paragraphs (a) to (d) of that sub-paragraph does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) might be expected to realise if sold as mentioned in sub-paragraph (2).
- 3(5) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.
- (6) The value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) shall not be increased by reason of—
- (a) any transaction which—
    - (i) is entered into on or after the date of the passing of this Act (otherwise than in pursuance of a contract entered into before that date), and
    - (ii) involves the creation or transfer of an interest superior to (whether or not preceding) any interest held by the tenant; or
  - (b) any alteration on or after that date of the terms on which any such superior interest is held.

***Landlord's share of marriage value***

- 4(1) The marriage value is the amount referred to in sub-paragraph (2), and the landlord's share of the marriage value is 50 per cent. of that amount.
- 4(2) Subject to sub-paragraph (2A), the marriage value is the difference between the following amounts, namely—
- (a) the aggregate of—
    - (i) the value of the interest of the tenant under his existing lease,
    - (ii) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease, and
    - (iii) the values prior to the grant of that lease of all intermediate leasehold interests (if any); and
  - (b) the aggregate of—
    - (i) the value of the interest to be held by the tenant under the new lease,
    - (ii) the value of the landlord's interest in the tenant's flat once the new lease is granted, and
    - (iii) the values of all intermediate leasehold interests (if any) once that lease is granted.
- 4(2A) Where at the relevant date the unexpired term of the tenant's existing lease exceeds eighty years, the marriage value shall be taken to be nil.
- 4(3) For the purposes of sub-paragraph (2)—

(a) the value of the interest of the tenant under his existing lease shall be determined in accordance with paragraph 4A;

(aa) the value of the interest to be held by the tenant under the new lease shall be determined in accordance with paragraph 4B;

(b) the value of any such interest of the landlord as is mentioned in paragraph (a) or paragraph (b) of sub-paragraph (2) is the amount determined for the purposes of paragraph 3(1)(a) or paragraph 3(1)(b) (as the case may be); and

(c) the value of any intermediate leasehold interest shall be determined in accordance with paragraph 8, and shall be so determined as at the relevant date .

4A(1) Subject to the provisions of this paragraph, the value of the interest of the tenant under the existing lease is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with neither the landlord nor any owner of an intermediate leasehold interest buying or seeking to buy) on the following assumptions—

(a) on the assumption that the vendor is selling such interest as is held by the tenant subject to any interest inferior to the interest of the tenant;

(b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;

(c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and

(d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which any interest inferior to the existing lease of the tenant has effect.

4A(2) It is hereby declared that the fact that sub-paragraph (1) requires assumptions to be made in relation to particular matters does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date the interest of the tenant under his existing lease might be expected to realise if sold as mentioned in that sub-paragraph.

4A(3) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

4A(4) Subject to sub-paragraph (5), the value of the interest of the tenant under his existing lease shall not be increased by reason of—

(a) any transaction which—

(i) is entered into after 19th January 1996, and

(ii) involves the creation or transfer of an interest inferior to the tenant's existing lease; or

(b) any alteration after that date of the terms on which any such inferior interest is held.

4A(5) Sub-paragraph (4) shall not apply to any transaction which falls within paragraph (a) of that sub-paragraph if—

(a) the transaction is entered into in pursuance of a contract entered into on or before the date mentioned in that paragraph; and

(b) the amount of the premium payable by the tenant in respect of the grant of the new lease was determined on or before that date either by agreement or by a leasehold valuation tribunal under this Chapter. ]

4B(1) Subject to the provisions of this paragraph, the value of the interest to be held by the tenant under the new lease is the amount which at the relevant date that interest (assuming it to have been granted to him at that date) might be expected to realise if sold on the open market by a willing seller (with the owner of any interest superior to the interest of the tenant not buying or seeking to buy) on the following assumptions—

(a) on the assumption that the vendor is selling such interest as is to be held by the tenant under the new lease subject to the inferior interests to which the tenant's existing lease is subject at the relevant date ;

(b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;

(c) on the assumption that there is to be disregarded any increase in the value of the flat which would fall to be disregarded under paragraph (c) of sub-paragraph (1) of paragraph 4A in valuing in accordance with that sub-paragraph the interest of the tenant under his existing lease; and

(d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which any interest inferior to the tenant's existing lease at the relevant date then has effect.

4B(2) It is hereby declared that the fact that sub-paragraph (1) requires assumptions to be made in relation to particular matters does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date the interest to be held by the tenant under the new lease might be expected to realise if sold as mentioned in that sub-paragraph.

4B(3) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

4B(4) Subject to sub-paragraph (5), the value of the interest to be held by the tenant under the new lease shall not be decreased by reason of—

(a) any transaction which—

(i) is entered into after 19th January 1996, and

(ii) involves the creation or transfer of an interest inferior to the tenant's existing lease; or

(b) any alteration after that date of the terms on which any such inferior interest is held.

4B(5) Sub-paragraph (4) shall not apply to any transaction which falls within paragraph (a) of that sub-paragraph if—

(a) the transaction is entered into in pursuance of a contract entered into on or before the date mentioned in that paragraph; and

(b) the amount of the premium payable by the tenant in respect of the grant of the new lease was determined on or before that date either by agreement or by a leasehold valuation tribunal under this Chapter.

5(1) Where the landlord will suffer any loss or damage to which this paragraph applies, there shall be payable to him such amount as is reasonable to compensate him for that loss or damage.5(2) This paragraph applies to—

(a) any diminution in value of any interest of the landlord in any property other than the tenant's flat which results from the grant to the tenant of the new lease; and

(b) any other loss or damage which results therefrom to the extent that it is referable to the landlord's ownership of any such interest.

5(3) Without prejudice to the generality of paragraph (b) of sub-paragraph (2), the kinds of loss falling within that paragraph include loss of development value in relation to the tenant's flat to the extent that it is referable as mentioned in that paragraph.

5(4) In sub-paragraph (3) "development value", in relation to the tenant's flat, means any increase in the value of the landlord's interest in the flat which is attributable to the possibility of demolishing, reconstructing, or carrying out substantial works of construction affecting, the flat (whether together with any other premises or otherwise).



## APPENDIX 2

### FIRST TIER TRIBUNAL'S VALUATION IN ACCORDANCE WITH THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993 AS AMENDED

#### **FLAT 15D Claremont Gardens**

Surbiton  
Surrey, KT6 4TL

FH in reversion value	£217,150
Extended lease value	£215,000
Short lease value	£195,650

#### **Freeholder's Present Interest**

##### **Term**

Term 1

Rent Reserved	£50
YP to 1st review 2.77 years @ 6.5%	<u>2.4581</u>

£123

Term 2

Rent Reserved	£100
YP to 2nd review 33 years @ 6.5%	13.4591
PV of £1 @ 6.5% in 2.77 years	<u>0.8402</u>

£1,131

Term 3

Rent Reserved	£200
YP to 3rd review 33 years @ 6.5%	13.4591
PV of £1 @ 6.5% in 35.77 years	<u>0.10516</u>

£283

##### **Reversion**

FH reversion	£217,150
PV of £1 in 68.77 years @ 5%	<u>0.03491</u>

£7,581

£9,118

less

#### **Freeholder's Proposed Interest**

FH reversion	£217,150
PV of £1 in 158.77 years @ 5%	<u>0.000428</u>

£93

£9,025

#### **Marriage value**

Proposed

Extended lease value	£215,000
FH in reversion	£93

less

Existing

Freeholder's Interest	£9,118
Short lease value	<u>£195,650</u>

Marriage Value	<u>£10,325</u>	
50:50 division		<u>£5,162</u>
<b>Premium for lease extension</b>		<b>£14,187</b>