



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

**Case Reference** : **RC/LON/00AP/OLR/2015/1332**

**Property** : **Ground Floor Flat, 83 Northcott Avenue, Wood Green, London N22 7AP**

**Applicant** : **Ms Bita Mohseni Nejad**

**Representative** : **Mr Niraj Modha of Counsel**

**Respondent** : **Palace Gates Freehold Limited**

**Representatives** : **Mr Colin Rickard FRICS**

**Type of Application** : **For the determination of the premium payable for the grant of a new lease.**

**Tribunal Members** : **Ms N Hawkes  
Mr W R Shaw FRICS**

**Date and venue of Hearing** : **17.11.15 10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **18.11.15**

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**DECISION**

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## **Decision of the Tribunal**

The Tribunal determines that the total premium payable by the applicant for the grant of a new lease is £14,970.

## **Background**

1. This is an application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”) for the determination of the premium payable for the grant of a new lease.
2. By a notice dated 7<sup>th</sup> January 2015 pursuant to section 42 of the 1993 Act, the applicant claims to exercise the right to acquire a new lease of the property. The landlord has served a counter notice under section 45 of the 1993 Act dated 23<sup>rd</sup> March 2015.

## **The hearing**

3. The applicant was represented by Mr Modha of Counsel at the hearing at the hearing and the respondent was represented by its expert, Mr Rickard FRICS.
4. No representative of the respondent was present at 10 am when the hearing was due to commence. The case officer made enquiries and was initially informed that Mr Rickard had been booked to attend the hearing. The case officer was later informed that Mr Rickard had made an error in recording the date of the hearing in his diary and, with the applicant’s consent, the Tribunal adjourned the hearing until 11.40 am in order to enable Mr Rickard to attend.
5. The Tribunal heard oral expert evidence from Mr Graham FRICS who gave evidence on behalf of the applicant and from Mr Rickard FRICS who gave evidence on behalf of the respondent. The Tribunal has also carefully considered the written reports which have been provided by both of the experts.
6. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
7. Between 11.40 am and 1.30 pm, the Tribunal adjourned in order to enable discussions to take place between the experts with a view to narrowing the issues.
8. When the hearing resumed at 1.30 pm, it initially appeared to be common ground that relativity was agreed at 92.2%, based on the relativity graphs which are referred to in Mr Graham’s report, and that the only issue in dispute was whether there should be an additional 5%

deduction from the agreed relativity percentage on account of the “no Act world” assumption.

9. Mr Rickard later stated that he did not agree the relativity percentage at 92.2% based on the graphs but instead he preferred to rely upon sales evidence relating to 55 and 51 Northcott Avenue and he addressed the Tribunal on this basis.
10. Accordingly, the applicant addressed the Tribunal both on the assumption that the relativity percentage was agreed at 92.2% and on the assumption that relativity was in dispute.

### **The law**

11. Schedule 13 to the 1993 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 to the landlord.
12. 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. The value of the landlord's interest 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) applying the assumptions and requirements set out in clause 3 of Schedule 13 to the 1993 Act.
13. Paragraph 4 of Schedule 13 to the 1993 Act provides that the landlord's share of the marriage value is to be 50%, but that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil.

### **The Tribunal's determination**

14. The Tribunal prefers the expert evidence of Mr Graham to that of Mr Rickard.
15. If the relativity percentage has been agreed at 92.2% in reliance upon relativity graphs, the Tribunal does not accept that it is appropriate to make any deduction from the agreed relativity percentage because the “no Act world” assumption has already been taken into account in compiling the relativity graphs.
16. If the relativity percentage has not been agreed at 92.2%, the only figure in Mr Graham's valuation which was challenged by Mr Rickard

was the sum of £237,415 which represents the short lease value in the “no Act world” (i.e. the sum of £257,500 representing the agreed extended lease/freehold value of the flat multiplied by a relativity percentage).

17. Mr Rickard did not put forward a specific alternative relativity percentage in his closing submissions but he relied upon the sales evidence relating to 51 and 55 Northcott Avenue as his basis for challenging this figure. He argued that adjusted evidence of these actual sales should be relied upon in preference to the relativity graphs and that a 5% reduction should then be applied to the adjusted sales evidence on account of the “no Act world” assumption.
18. The sale of 55 Northcott Avenue completed in March 2015 for the sum of £230,000. This was a cash purchase; there is limited evidence regarding the condition of the property; and there is conflicting evidence regarding the service of a section 42 notice.
19. Mr Graham states that the selling agents informed him that this was a cash purchase and that no section 42 notice was served. He states that this would indicate that there are other circumstances concerning the sale which resulted in a low price being achieved and hence a low relativity which does not accord with any of the accepted graphs.
20. Mr Rickard states that the condition of the property was “fair” as it had previously been rented out. He states that a section 42 notice was served but deemed invalid.
21. The sale of 51, Northcott Avenue completed in July 2015 for the sum of £240,000. Mr Graham states that the selling agents were not able to confirm whether or not a section 42 notice was served although the property was originally marketed as being suitable for “cash buyers only”.
22. Mr Rickard stated in oral evidence that he is aware that a section 42 notice was served because he inspected the property pursuant to that notice. He explained that he has assumed that the property was dated because when he inspected the property it was “stripped out”. There is, however, no evidence before the Tribunal as to the condition of the property before it was “stripped out”.
23. The Tribunal accepts Mr Graham’s evidence and finds that there appear to be unusual circumstances surrounding both sales.
24. Accordingly, and whilst appreciating significant weight which market evidence may potentially carry, the Tribunal has not found the available market evidence to be of assistance on the facts of this particular case.
25. The Tribunal accepts Mr Graham’s evidence that the appropriate relativity percentage is 92.2%, based on the relativity graphs to which

he refers in his report. This being the only matter in dispute, the Tribunal approves and adopts Mr Graham's valuation.

26. For the sake of completeness, the Tribunal notes that, had it found the evidence of comparable sales to be of assistance in the present case, it would not have applied the 5% adjustment on account of the "no Act world" assumption which is proposed by Mr Rickard. This is because the Tribunal is not satisfied on the basis of Mr Rickard's evidence that a 5% deduction would be justified on the facts of this case.

Judge N Hawkes

18<sup>th</sup> November 2015