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

**Case reference** : LON/00AE/OLR/2017/0390

**Property** : Third Floor Flat, 63 Empire Court,  
North End Road, Wembley,  
Middlesex HA9 0AQ

**Applicant** : Damian George Walker

**Representative** : Andrew M Lester MRICS

**Respondent** : LKB Investments Ltd

**Representative** : Eric Frank Shapiro BSc (EstMan)  
FRICS FCI Arb

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

**Tribunal members** : Judge Timothy Powell  
Ian Holdsworth FRICS

**Date of determination  
and venue** : 4 July 2017 at  
10 Alfred Place, London WC1E 7LR

**Date of decision** : 13 July 2017

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**DECISION**

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**Background**

1. This is an application made by the applicant leaseholder, Mr Damian Walker, 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 63 Empire Court, North End Road, Wembley, London HA9 0AQ ("the Property").

2. By a notice of a claim dated 7 July 2016, 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 6 December 1985 for a term of years expiring on 21 March 2075. The applicant proposed to pay a premium of £19,500 for the new lease.
3. On 14 September 2016, the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £80,485 for the grant of a new lease.
4. On 9 March 2017, the applicant applied to the tribunal for a determination of the premium.

### **The issues**

#### **Matters agreed**

5. The following matters were agreed:
  - (a) The property is a third floor self-contained flat in a four storey purpose built block of flats, thought to have been constructed in around 1936. The property consists of two bedrooms, reception room, kitchen and bathroom/wc;
  - (b) No significant internal alterations have been undertaken which would be deemed to be leaseholder's improvements, although it is recognised that the valuations should reflect an "unimproved" basis to the condition of the property;
  - (c) The gross internal floor area is 575 square feet;
  - (d) There is a differential of 5% less in terms of value between flats on the third floor and flats on the ground/first/second floors in Empire and Danes Court;
  - (e) The valuation date 7 July 2016;
  - (f) The existing lease is due to expire on 1 March 2075 and therefore the unexpired term on the lease as at the valuation date is 58.70 years;
  - (g) The current annual ground rent is £75 and this is due to rise to £100 on 21 March 2027 for 21 years, whereupon on 21 March 2048 it will increase to £200 for the remainder of the term;
  - (h) The extended lease value, which is 99% of the freehold vacant possession value;
  - (i) The freehold vacant possession value is £285,000;
  - (j) The capitalisation rate is 6.5% per annum;
  - (k) The capitalised value of the annual ground rent income payable throughout the lease is £1,483; and
  - (l) The deferment rate is 5%.

### **Matters not agreed**

6. The following matters were not agreed:
  - (a) The current lease value;
  - (b) The premium payable for a statutory lease extension.

### **The hearing**

7. The hearing in this matter took place on 4 July 2017. The applicant was represented by Mr Andrew M Lester MRICS and the respondent by Mr Eric Frank Shapiro BSc (EstMan) FRICS FCI Arb, each relying on their respective reports dated 30 June 2017.
8. Neither party asked the tribunal to inspect the property and the tribunal did not consider it necessary to carry out a physical inspection in order to make its determination.

### **The tribunal's determination**

9. The tribunal determines that the existing lease value is £198,000 and the appropriate premium payable for a statutory lease extension is £50,843.00.

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

10. The two expert valuers took very different approaches to the valuation of the short lease value of the subject property.
11. For the landlord, Mr Shapiro relied upon: (a) evidence submitted to a previous tribunal comprising of Judge Pittaway and Mrs Bowers FRICS, whose decision dated 24 November 2016 under reference LON/00AE/OLR/2016/0857 ("the Pittaway decision") made findings in relation to nine other flats on the estate, and (b) an analysis of three subsequent short lease sales at 72 Danes Court, 91 Empire Court and 54 Empire Court. Mr Shapiro's approach was to make adjustments to the sale prices of the various flats for condition, floor and time; and then to calculate the average price per square foot, which he then applied to the gross internal area ("GIA") of the subject Property. Doing so, he said, gave a value of £198,089, which he rounded off to £198,000.
12. For the applicant, Mr Lester disputed this approach, saying that the local "micro market" on the estate did not have regard to the GIA of the flats. The strongest evidence for this, he said, was that none of the local estate agents put the GIA on the sales of particulars. This was because purchasers in the local market, who he said were mostly rental investors, were not concerned about the GIA, as such, but only whether the flat concerned had one or two bedrooms.

13. Mr Lester disputed that there should be any reliance upon the findings of the earlier Pittaway decision. He said that the findings of value were purely the opinion of the previous tribunal, not actual sales, and the decision was “flawed”. For his part, he preferred to rely upon two recent short lease sales, relatively close to the July 2016 valuation date of the subject Property, namely at 91 and 54 Empire Court. He also invited the tribunal to consider another earlier decision, issued by Judge Latham and Mr Jagger FRICS on 29 September 2016 under reference LON/00AE/OLR/2016/0280 (“the Latham decision”), in which Mr Shapiro had also been involved. That decision was in respect a single flat at 230 Empire Court and Mr Lester used it to question the consistency of Mr Shapiro’s approach in relation to relativity and deductions for Act rights, as compared with his submissions to the Pittaway tribunal.
14. Ordinarily, we would not consider the findings of another tribunal as evidence. However, in the present case, Mr Shapiro gave convincing reasons why we should at least have regard to the Pittaway decision. First, it involved a basket of nine previous transactions on the same estate, with valuation dates in October, November and December 2015. Secondly, the two valuers in that case were the same as in the present case; and similar arguments had been presented. Thirdly, his evidence to the Pittaway tribunal had been accepted “word-for-word, pound-for-pound” and, therefore, the underlying evidence provided to the Pittaway tribunal, if not the findings themselves, should be accepted as evidence by this tribunal.
15. Although Mr Lester gave general reasons for his view that the Pittaway decision was “flawed” (including the tribunal’s reliance upon the Savills 2015 enfranchiseable graph, which post-dated the valuation dates in that case), he did not analyse how the alleged flawed nature of that decision affected outcomes.
16. Stepping back, and having regard to these matters, the tribunal came to the conclusion that it should at least consider the previous tribunal decisions, which were clearly persuasive. However, of the two, the Pittaway decision was obviously much more persuasive than the Latham decision, simply by reason of the very much greater number of transactions considered and the greater resources invested in the evidence produced to that tribunal.
17. While the two market transactions Mr Lester relied upon were sufficient to question the findings of the Pittaway tribunal, in our judgment, they were insufficient to demonstrate conclusively that the previous decision did not accurately reflect the market at the time. To do so would have required more than the two comparable transactions produced by Mr Lester: it would have required a larger data set and more forensic analysis than was presented to this tribunal. In the absence of such valuation information, this tribunal has therefore relied upon the previously-submitted transaction evidence, as this is likely to

be more reflective of the market, than the two comparables produced by Mr Lester.

18. At page 16 of his report, Mr Shapiro analysed those two new comparables and came up with similar rates per square foot for the short lease value. Mr Lester disputed the GIAs of the flats concerned, but he did not provide alternatives. Although he pointed to the comment at the foot of page 9 of the Pittaway decision, which stated that the square footage evidence provided to that tribunal “may not be accurate”, he provided no evidence to suggest that the GIAs were in fact wrong.
19. The evidence presented by Mr Lester, as analysed by Mr Shapiro, gave a square footage rate of £345. That compares with Mr Shapiro’s analysis of the previously-submitted evidence in his schedule of short leases comparables of £337.
20. Although this tribunal had reservations about Mr Shapiro’s primary reliance on GIAs, it concluded that the two recent comparable transactions were simply not sufficient to undermine the body of information presented to the Pittaway tribunal and the inference drawn from that information. We therefore accept Mr Shapiro’s valuation in the present case.
21. While our decision maintains consistency with the Pittaway decision, we would nonetheless emphasise that the market, in particular at Empire and Danes Court, is not fixed. In accordance with the Upper Tribunal decision in *The Trustees of the Sloane Stanley Estate v Munday* [2016] UKUT 0223 (LC), the tribunal must reflect the market as it is at the time and, if subsequent evidence and analysis justifies it, a future tribunal may well come to the conclusion that the market on this estate operates in another way from that suggested by Mr Shapiro; and particularly that hypothetical purchasers may not buy solely on the basis of the GIAs of the flats concerned.

**Name:** Timothy Powell

**Date:** 13 July 2017

### **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).