



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

Case reference : **LON/00AJ/OLR/2020/0699**

Property : **Ground Floor Flat, 6 Westfield,
London W13 9JR**

Applicant : **Sergie Larin**

Representative : **Mr Keith Chapman Burnett**

Respondent : **Mrs Shashi Khanna**

Representative : **Bishamber Khanna also in
attendance Sandip Khanna**

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

Tribunal members : **Judge Daley
Mrs E Flint FRICS**

**Date of determination
and venue** : **16 March 2021 heard Remotely**

Date of decision : **26 April 2021**

DECISION

Covid-19 pandemic: description of hearing This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V:SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same.

Summary of the tribunal's decision

(1) The appropriate premium payable for the new lease is **£51,530**

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 Ground Floor Flat, 6 Westfield Road, London W13 9JR (the “property”).
2. By a notice of a claim dated 27.11.2019, 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 4.11.1985 for a term of 99 years from 4.11.85 at an annual ground rent of £75.00 for the first 33 years, and £150.00 for the first 33 years and £300.00 for the final 33 years. The applicant proposed to pay a premium of 37,900 for the new lease.
3. On 24.1.2020, the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £78,135 for the grant of a new lease.
4. On 3.07.2020, 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, within an Edwardian Terrace which has been converted into two properties, the subject premises is on the ground floor of Westfield Road and has a small rear garden;
 - (b) The valuation date: 27 November 2019;
 - (c) Unexpired term: 61.83 years;
 - (d) Ground rent: £75.00 for the first 33 years, and £150.00 for the next 33 years and £300.00 for the final 33 years;
 - (e) And Deferment rate: 5%.

Matters not agreed

6. The following matters were not agreed:
 - (a) The “no-Act world” short leasehold (unimproved) value:
 - (b) The freehold (unimproved) value; and

- (c) Long leasehold (unimproved) value: 99% of the freehold (unimproved) value;
- (d) Capitalisation of ground rent and
- (e) The premium payable.

The hearing

7. The hearing in this matter took place on 16.03.2021, as a video hearing, all parties and participants attended the hearing by Video link. The applicant was represented by Mr Keith Chapman Burnett valuation surveyor. The respondent who attended the hearing together with her husband was represented by her by son, Mr Bishamber Khanna.
8. Neither party asked the tribunal to inspect the property and the tribunal did not consider it necessary to carry out a physical inspection to make its determination.
9. The applicant relied upon the expert report and valuation of Keith Chapman Burnett dated 23 February 2021 and the respondent relied upon the written valuation report of Dunsin Surveyors and written submissions and oral evidence prepared by Mr Bishamber Khanna on behalf of the respondent.

The Valuation

10. The Tribunal heard from Mr Chapman-Burnett on behalf of the Applicant. He set out the details of his experience which were included within his report, and the issues which were disputed between the parties.
11. In respect of the background, he informed the Tribunal that the Section 13 Notice was served on 27.11.2019. He stated for the benefit of the Respondent that the figure in the notice of £37,900.00 was a figure which allowed the Applicant room for negotiation. He stated that on 24 January 2020 the Respondent served the Counter Notice agreeing the terms save for the premium. The Respondent proposed the sum of £78,135.00
12. Mr Chapman-Burnett set out that he had then carried out a comprehensive desk top valuation. He stated that in respect of the short lease value, the subject property had been on the market for £395,000. However it had not achieved a sale at this price.
13. He stated that the subject property was a Victorian terraced house, near an adopted highway, it was one of 2 two bed flats, situated on the

ground floor. The property had a mixture of single glazed and UVPC windows, a coal cellar and timber roof slates. He stated that the property itself was located nearer to the commercial units on the street. He stated that the frontage of the property was three doors away from a commercial garage. At the rear there was a small terraced garden of concrete slabs and that somewhat typical of the type of properties there was a pathway directly behind the garden which created a security issue.

14. He stated that the original garden was shared and that the upper flat had access to the rear via a stairwell and that as this was directly located above the kitchen this affected the configuration of this room and the available floor space.
15. The first floor flat's garden overlooked the 2 bedrooms, and as such there was a lack of privacy. He stated that although there had been 6 viewings of the flat. There had been no offers, and one of the reasons cited had been the lack of privacy. In respect of the frontage of the property was a small space which served as a bin store.
16. He stated that the interior of the property comprised one small double and one of a reasonable size, a small kitchen and a very basic bathroom. He had included the measurements of the interior of the property in his report.
17. In respect of the measurements of the premises these were set out in his report at paragraph 3.3. Mr Chapman Burnett stated that he had inspected the premises and had taken electronic measurements of the rooms and had calculated the Gross Internal Area to be 60.22 Sqm (648 Sqft). In his report he stated that his measurements had been more than those on Rightmove Plus, the estate agents had set out the flat measurements to be 55.0 Sqm (592) Sqft.
18. In respect of his valuation he set out the basis of his valuation which he stated was on an Investment method and Comparable approach. He stated that he had firstly considered the diminution in value in the freeholder's interest following the lease extension.

Capitalization of the Rent

19. He stated that the annual ground rent was £150.00, the next rent review was not due until 29 years' time. Mr Chapman Burnett stated that this made it fairly unattractive as an income stream, as an investor would have to wait for a considerable period before the annual rent provided a better income stream. As a result he had decided that it was less attractive than comparable properties. At paragraph 5.2.4, he

stated that based on his experience of leasehold extension and enfranchisement. He considered that the correct capitalization rate was 7%.

20. At paragraph 5.2.7 he referred to LVT decisions in 3 & 41 Observatory Way, Ramsgate, Kent and 24,36, 54 60 and 84 Pretoria Road Chertsey KT16 9AZ. He noted that in all these cases the properties had a higher rent with doubling of rent at 10, 15 and 20-years', with in some cases the rent review being linked to the RPI. He noted that in these cases the capitalization rate was 6.5%.

The Comparable evidence

21. Mr Chapman Burnett referred the Tribunal to his report at paragraph 5.4, he stated that he had referred firstly to local estate agents Hunters and Dexters, together with online database searches such as Google Maps, Rightmove, Rightmove Plus, together with HM Land Registry House Price Paid Data. Mr Chapman Burnett stated that he had made adjustments, from the date of sale using the House Price Index, in respect of flats and maisonettes in the London Borough of Ealing.
22. Mr Chapman Burnett, referred to the sale of 2 Westfield Road, this property was just two doors away, and was very similar in size to the subject property in that it was a 2 Bed Ground floor flat. The sale was dated 17 April 2020, less than 6 months from the valuation date. Mr Chapman however cautioned that there were subtle but important differences between this flat and the subject property.
23. The gross internal floor area was 74 Sqm(796 sq.). He stated that this appeared to include a side conservatory. He stated that the property had an open plan kitchen/breakfast room with laminate flooring. In respect of adjusting for time, he stated that the extended lease value was £460,921. This produced a sale price per square foot of £551 or excluding the conservatory £620.00 based on the GIA of 744(sqft). However, Mr Chapman Burnett stated that this required adjustments to reflect the full width garden with increased privacy, the new kitchen with an improved layout, plus the side conservatory. He stated that this required a downward adjustment, of £20,000, making an adjusted sale price of £440,921. The property had an unexpired lease of 146 years with a peppercorn ground rent.
24. Mr Chapman Burnett also referred to 9A Westfield Road which sold on 11 September 2020, this was at the commercial end of the road opposite the commercial garage. This was a two- bedroom flat, which he described as being in a fairly basic condition.
25. Mr Chapman Burnett stated that it was in a similar condition to the subject flat. He stated that both flats 2 and 9 were end terrace,

properties with attractive frontage and reasonable gardens and external staircase. He described the kitchen at 9A as being modest. The property had a larger gross internal area of 710 square feet. He stated that the agreed sale price, having been adjusted for time was £398,394. This property was subject to a 146-year lease. He stated that the price per square foot was £627.00. He stated that the property had a long lease of 148 years which was extended in 2016 for £35,000.

26. In his report Mr Chapman Burnett stated that he had not found it necessary to make any particular adjustments as although it had a slightly better layout than the subject property and loft space, it was at the commercial end of the road directly opposite the garage.
27. The next property 28 Coldershaw Road W8, was a little bit further away geographically. The property sold in October 2018 for £446,947. Although the property was of similar size to the subject property it had a full width garden and a modern improved kitchen. He noted that the second bedroom was narrower, although the layout of the flat was similar to the subject property, however 28 Coldershaw was in better condition than the subject property. In respect of the gross internal area the property was 720 square feet. Adjusted for time of sale, and to reflect the superior condition and layout of the property, Mr Chapman Burnett had made a downward price adjustment of £10,000 to £436,947.
28. Mr Chapman Burnett had also considered two properties on the same road as the subject property, 10 Westfield Road and 12 A. 10 Westfield Road, Mr Chapman Burnett accepted that this was geographically near to the property, however, he had needed to make a considerable adjustment as it was further away in terms of the date of sale and had sold on 30.06.2017 at what he stated was the peak of the property market.
29. The property had a 150-year lease and had also been in what he described as superb condition with a period fire place, full width garden with timber decking. The gross internal area was 720 square feet. He had made an adjustment for time (using the property index of 6.1. 7 %) which reduced the property from £512,000 to £486,185, and had made a further adjustment of £35,000 to reflect the condition and had arrived at a comparable valuation of £456,185, or £625 per square foot.
30. In respect of 12 A Westfield Road, this was also a 2-bedroom flat that comprised 750 square metres, it sold in January 2018, with a 997-year lease and consent to extend into the loft space. Internally it had a new kitchen, new lighting and bamboo flooring, with access to the garden. He had made adjustments to the sale price of £5000.00 for the potential loft space, and £25,000 for the level of improvement from the sale price of £508,308 to £478,00 or £638 per square foot.

31. The last comparable that he had used was 70 Sidney Road, this was a two-bedroom ground floor flat which had sold on 8.01.2018 at £434,000. This property had a private entrance and French doors at the rear which opened into the garden. He stated that although it was described as a two-bedroom property it had in his opinion one single and 1 double bedroom. The floor area based on the plan was 600 square feet. He stated that adjusted for time this was £420,329. He had made a further adjustment of £10,000 to arrive at a price of £410,329 or £680 per square feet.
32. Mr Chapman Burnett had then taken an average of the adjusted properties and had arrived at a figure of £634.30 per square feet and a valuation of £411,026. Based upon Mr Chapman Burnett's knowledge and experience of the market this had seem too low, so he stated that he had stepped back from his valuations and had made an upward adjustment to arrive at an extended lease valuation of £430,000.
33. Mr Bishamber Khanna, asked a number of questions in cross examination concerning the measurements of the subject premises, as he was unhappy about the accuracy of the measurement, He stated that there was a 79 square feet difference between the upstairs flat and the subject flat. Mr Chapman Burnett referred to how he had carried out the measurement, and expressed confidence that he had measured it accurately within a tolerance of error.
34. Mr Bishamber Khanna referred to the comparables that he had chosen to use, as he considered that some of the adjustments were inconsistent and subjective. For example he queried why 9 A Westfield had been adjusted for the loft demise, and yet no reference had been made to the fact that this property overlooked the garages, and yet the proximity to the garage had been used to reduce the valuation of the subject property.
35. He referred to the fact that there were a number of properties which had sold at a higher price in Coldershaw Road that had not been referred to within Mr Chapman Burnett's valuation report. He referred to Nos 153, 129A, and 159 Coldershaw Road. Mr Chapman Burnett stated that 153 was open plan and comprised 882 square feet and in his opinion was not comparable. In respect of 129A, he stated that this had been sold with a share of the freehold, and that although there was no floor plan it was a larger flat.
36. In respect of the Comparables referred to on Westfield Road, although Mr Chapman Burnett was unsure as to why he had excluded flat 8A Westfield Road he stated that 14A had been excluded because it was a 3 Bedroom flat with loft conversion and for this reason it was not comparable.

37. In respect of 11 Sidney Road he repeated his reasoning for the adjustments that he had made. Mr Chapman Burnett considered that he had used a good range of properties in selecting his appropriate comparables.

The Relativity Rate and the Short Lease value

38. Mr Chapman Burnett concluded by saying that in respect of the short lease value and relativity, he had made a 1% adjustment for the extended lease value. As there was no credible, short lease evidence, he had used the graph of relativity. He stated that there was more than one approach to the use of the graph. He had referred to the Saville's 2015 enfranchisable, Saville's Unenfranchisable Graph and the Gerald Eve 2017 and the Average of Greater London Graphs.
39. In paragraphs 5.5.6 to 5.5.10 of his report Mr Chapman Burnett stated that he had considered the following decisions: Sloane Stanley Estate-v- Munday and the Zucconi decision of August 2019. He stated that having considered the reason for the decision that it was not wrong to consider the average of 2009 Greater London & UK graph it was merely wrong to not consider the more recent graphs.
40. In paragraph 5.5.13 of the report, Mr Chapman Burnett stated that "if one were to include the average of the 2009 graphs for Greater London and UK at 87.17% the average relativity would increase to 81.33%. This remains below the Gerald Eve graph but may not entirely reflect the Zucconi differential. He stated that "accordingly I believe it would be appropriate to make a modest upward adjustment of 1% to the foregoing average of the 3 Prime Central London graphs."
41. He stated that he had therefore adopted a relativity rate of 80.39%. This generated a short leasehold value of £349,133. He had arrived at a relativity of 74.8%. He stated that the relativity was higher than Saville's and Gerald Eves, however he had made adjustments using the R.I.Cs greater London average as it was outside prime central London
42. Mr Chapman Burnett in his conclusions set out that in conclusion he had determined that the capitalization rate was 7%, the capitalised value was £2382.00. He considered that the best comparable evidence was provided by Flat 2A Westfield Road, in terms of geographical location and date of sale, with an adjusted sale price of £440,921. The extended lease value was assessed by Mr Chapman Burnett of £430,000, with a freehold vacant possession value of £434,000. With a relativity of 80.39% producing a short leasehold value of £349,133.00.

43. In his opinion this produced a premium of £52,125.00.
44. In answer to Mr Khanna's question concerning the difference in the value in his report and in the Notice of Claim, Mr Chapman Burnett stated that the offer in the Notice of Claim was almost like an opening offer. He also explained that it was not necessarily related to any without prejudice offer that the parties may have discussed in any without prejudice negotiations or the valuation that was set out in his report.
45. Mr Bishamber Khanna, stated in his submissions that did not agree with the measurements of the property, and he also did not accept that no 2 Westfield Road was a good comparison. He stated that it was a lot lower than the other properties and in his view was probably a distressed sale. He stated that the property market was very buoyant in the area.
46. He referred to the sale of No 14 Westfield Road which sold at £550,000 and flat No12A which sold at £520,000 in 2017 and flat 8A Westfield Road which sold at £525,000 in 2018, he considered that the flats chosen by Mr Chapman Burnett in his report were under- valued. He also stated that property prices had risen in value and given this he considered that this supported a higher extended leasehold valuation.
47. He referred to the House Price Index in London for April 2017 which was 119.1, he stated that currently the index stands at 125.45. He stated that applying these figures to £512,000, this produced an adjusted price of £539298. He considered the valuation of £512,000 was modest.
48. In support of his valuation he referred to both the Leasehold Valuation Calculator which he had referred to and the valuation of Dunsin Surveyor dated 15 January 2020. Mr Dunsin in his report stated that freehold vacant possession value of the premises was £530,000, the extended leasehold value of the premises was £524,000, and the existing lease value of the property was £ 397,500. Mr Dunsin in his report used a Capitalisation rate of 5.00%, and Deferment rate of 5.00% and a relativity of 75%.
49. This produced a premium of £29070, in respect of the marriage value, he calculated this to be £98,130, he had then calculated that the respondent's share of the marriage value was £49065. He concluded that taking all of the elements into account the premium payable for the lease extension was £78,135.
50. Mr Khanna stated that this accorded with the estimated figure he had arrived at using the lease advice calculator he estimated the price to be £539,298, he also entered the date and the ground rent and arrived at a

valuation of between £71,000-£75,000. He stated that due to the fact that the lease increased in value in 33 years he stated that in his view the premium should be at the higher end. Mr Khanna therefore assessed the premium at £75000.

The tribunal's determination

51. The tribunal determines that the premium to be paid for the lease extension is £51,530.00.

Reasons for the tribunal's determination

52. The Tribunal in reaching its decision considered all of the valuation evidence put forward by the parties, however, it considered that the approach adopted by Mr Chapman Burnett, was more detailed and reasoned than that adopted by the respondent, for this reason, the Tribunal adopted the Comparables put forward by Mr Chapman Burnett.

53. The Tribunal however, considered that there was some inconsistency in Mr Chapman Burnett approach to adjustments. The Tribunal agreed with Mr Khanna, that Mr Chapman Burnett was inconsistent in his approach that he applied to Nos 2 and 9a in his treatment of the garage. He also was inconsistent in his approach to the loft space in respect of no 9A and 12.

54. The Tribunal noted that although Mr Chapman Burnett had made adjustments in respect of the conservatory at number 2, Mr Chapman Burnett had made no adjustment for the loss of ventilation and light caused by the conservatory, nor the poorer layout with the bathroom opening directly into the kitchen.

55. The Tribunal has adjusted the sale prices to ensure consistency of approach, using the methodology of Mr Chapman. The average increased from £634.3 to £640 per sq. ft. In using this approach the Tribunal arrived at an extended lease value of £414,400, the Tribunal considered that this was somewhat lower than would be expected based on the market evidence.

56. However, the Tribunal considers that this is somewhat more realistic, and better reflects the market evidence that has been provided, than the extended lease price adopted by the respondent in their evidence. The Tribunal consider that this evidence was inconsistent with the market evidence, and did not reflect the size of the premises, and the compromised layout. The Tribunal noted that the extended lease value of £539,298, put forward by the Respondent was not reflective of the actual market.

57. The Tribunal considers that in order to reflect the disadvantage of the bedroom and kitchen windows looking into the first floor "garden" area and consequently lacking in privacy a further adjustment was needed to Mr Chapman Burnett's figure of £430,000, which the Tribunal considered to be somewhat optimistic.

58. The Tribunal has instead adopted the figure of £425,000 for the extended lease value, plus 1% for the freehold: £429,250.
59. The Tribunal, has accepted Mr Chapman Burnett's evidence and approach on relativity.

The tribunal's determination

60. Accordingly, the tribunal determines that the revised premium is £51,530

The premium

61. A copy of its valuation calculation is annexed to this decision.

Name:	Judge Daley	Date:	
		26.04.2021	

Appendix: Valuation setting out the tribunal's calculations

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).

6 Westfield Road Ealing W13 9JR

Capitalised ground rent agreed			£2,382
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Reversion to freehold	£429,250		
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PV £1 in 61 years 10 months @ 5%		0.0489548	
£21,014			

Landlord's existing interest			£23,396
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Reversion after extension

Freehold	£429,250		
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PV £1 in 151.83 years	0.0006064		£260
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Diminution in landlord's interest			
£23,136			

Marriage Value

Freeholders proposed interest	£260		
Leaseholder's proposed interest		£425,000	£425,260
Freeholder's current interest	£23,396		
Leaseholder's current interest	£345,074		£368,470
Marriage Value	£56,790		
Landlord's share of marriage value £28,395			
		£51,531	
	Premium say		£51,530

CASE REFERENCE LON/00AC/OLR/2014/0106

**First-tier Tribunal
Property Chamber (Residential Property)**

**Valuation under Schedule 13 of the Leasehold Reform Housing and
Urban Development Act 1993**

**Premium payable for an extended leasehold Interest in [Ground
Floor Flat, 6 Westfield, London W13 9JR]**

Valuation date: [27 November 2019]