



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

Case reference : **JM/LON/00AZ/OLR/2021/0684**

Property : **Ground floor flat 5 Church Terrace,
Lewisham, London SE13 5BT**

Applicant : **Robin William Nicolson**

Representative : **Mr Wilson Dunsin FRICS**

Respondent : **Ms Emir Ann Whitty**

Representative : **Mr Jonathan L. Wilson FRICS**

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

Tribunal members : **Judge Dutton
Mr R Waterhouse BSc (Hons) LLM
Property Law MA FRICS**

**Date of determination
and venue** : **By CVP Remote Video on 15
February 2022**

Date of decision : **21 February 2022**

DECISION

This has been a remote video hearing, which has been consented to by the parties. The form of remote hearing was CVPRemote. A face-to-face hearing was not held because it was not practicable and no one requested same.

The documents the Tribunal were referred to were in a bundle of some 113 pages, the contents of which had been noted.

Summary of the tribunal's decision

- (1) The appropriate premium payable for the new lease is **£68,550** as set out on the attached valuation.

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 the Ground Floor Flat 5 Church Terrace, Lewisham, London SE13 5BT (the “Property”).
2. By a notice of a claim dated 28 January 2021, 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 20 June 1983 for a term of 99 years from 1 May 1981 at an annual ground rent of £50 rising to £150. The applicant proposed to pay a premium of £55,150 for the new lease.
3. On or before 12 April 2021, the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £70,000 for the grant of a new lease.
4. On 5 August 2021, the applicant applied to the tribunal for a determination of the premium.

The issues

Matters agreed

5. Thanks to the assistance of both Mr Dunsin and Mr Wilson the following matters were agreed:
 - (a) The subject property is a self-contained flat on the ground floor within a four storey converted semi-detached property built around 1844, which is Grade II listed in the Blackheath conservation area and containing four flats of similar kinds;
 - (b) The gross internal floor area is 70.8 square metres, which equates to 762 square feet;
 - (c) The valuation date: 28 January 2021
 - (d) Unexpired term: 59.25 years;
 - (e) Annual ground rent: £100 rising to £150 throughout the term;
 - (f) Long leasehold (unimproved) value: 99% of the freehold (unimproved) value;
 - (g) Capitalisation of ground rent: 7.00% per annum;

- (h) Deferment rate: 5.00%.
- (i) Relativity: 77.74% and
- (j) Value of ground rent: £1,511

Matters not agreed

- 6. The following matters were not agreed:
 - (a) The freehold (unimproved) vacant possession value: the applicant contending for £406,831 and the respondent contending for £510,000; and
 - (b) The premium payable.

The hearing

- 7. The hearing in this matter took place on 15 February 2022. The applicant was represented by Mr Dunsin, and the respondent by Mr Wilson, both of whom had, somewhat late in the day, lodged an expert's report and valuation.
- 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 only issue we were required to consider was the freehold vacant possession value of the Property and thus the premium payable for the extended lease.
- 10. Mr Dunsin, for the applicant relied on four comparable properties, three of which had also been relied upon by Mr Wilson. The four were flat 1, 11 Church Terrace, flat 1, 4 Church Terrace, top floor flat at the 5 Church Terrace and finally 2b Lee Terrace. His preferred comparable and indeed that of Mr Wilson, was flat 1, 11 Church Terrace.
- 11. Mr Dunsin had produced a helpful schedule of the four flats and their property type, i.e. floor area, location within the building, number of bedrooms and condition. In addition, he had provided the date and sale price and the uplifted value to allow for the passage of time, relying on the HM Land Registry House Price Index for Lewisham in respect of flats and maisonettes. The lease length was given, adjusted for extended leased length and adjustments made for various matters to which he applied percentage deductions leading to a rate per square foot figure.

12. In respect of his preferred comparable at flat 1 11 Church Terrace, applying the time adjustment gave a value, which was agreed by Mr Wilson, of £593,904. He then made deductions of 17.5% to reflect the various adjustments he considered appropriate, which resulted in the adjusted valuation figure of £489.97 giving a square footage rate of £528.56 for this comparable. He then applied the same rate to the Property, which is agreed at 762 square feet, to give an extended lease value for the Property of £402,763, which uplifted by 1% to FVPV gave the figure of £406,831.
13. We were provided with photographs of the Property, both internally and externally as well as the Estate Agents particulars for the comparable properties with Land Registry details for each and floor plans.
14. In response Mr Wilson had utilised the first three comparables relied upon by Mr Dunsin. However, as with Mr Dunsin he put little or no weight on any but the flat at 11 Church Terrace. There was some disagreement concerning the floor area of flat 1, 11 Church Terrace. He deducted £15,000 reflect the different usage of the rear garden, the Property having common usage, unlike the comparable which had exclusivity, albeit accessed by passing across another part of the garden. He also adjusted the sale price further, by 5% to allow for the difference in size, the comparable being either 926 or 880 square feet depending upon the inclusion of the storage area. He made no adjustment for condition, although accepting that the Property was in an inferior condition, as was supported by the internal photographs we had been provided with. This gave, on his assessment, a value of £520,000, which he further reduced to £510,000 when taking an average of the three. This gave a premium of £69,000.
15. The premium was slightly reduced as Mr Wilson had applied a capitalisation rate of 6.5%, when 7% had been agreed.

The tribunal's determination

16. The tribunal determines that the FVPV is £510,000.

Reasons for the tribunal's determination

17. We carefully listened to all that the valuers had to say. We are very grateful to them for the compromises they made to lead to some many elements of the valuation being agreed.
18. The concern we have with Mr Dunsin's approach is that if we accept the assessment of the adjustments to be made to the comparable at 11 Church Terrace there is a need to reduce the value by nearly £104,000. There is no doubt that the comparable at flat 1, 11 Church Terrace is in

better condition that the Property, as can be seen from the photographs. However, the floor layout is little different, save that the Property is open plan and there is no immediate access to the rear garden save for passing outside the Property and to the side, although it does have a small balcony overlooking the garden. The exteriors of the properties are very similar, as of course is the location. There is not a great deal of difference in size in respect of the main rooms.

19. What Mr Wilson does not seem to have done is allow for the passage of time. He agreed that the price at the valuation date would be as put forward by Mr Dunsin, namely £593,904. If one applies the reduction of £15,000 to this and 5% for size it gives a value of around £549,000. This does not appear in his report. Further he has made no reduction to reflect the undoubted difference in condition. Notwithstanding these omissions he has considered that the price of the FVPV should be £510,000.
20. Doing the best we can, we agree that the figure argued for by Mr Wilson of £510,000 is the closest we can get the FVPV. This, in our finding sits well with the values attributed to the other comparables, which although not relied upon by either valuer, do at least give a feel for the prices of properties in the immediate location.
21. Accordingly, having found that the FVPV should be £510,000 we need only utilise the agreed elements of the valuation, which leads us to determine that the premium for the lease extension of the Property should be £68,550, as set out on the attached valuation schedule.

Name: Judge

Date: 21 February 2022

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).

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 Property

| | | | |
|---|-------------------------------|------|------|
| JM/LON/OOAZ/OLR/2021/0684 | | | |
| Address of Property | GFF 5 Church Terrace SE13 5BT | | |
| Freeholder | Emir Anne Whitty | | |
| Freehold value of flat at reversion Relativity 100% | 510,000 | | |
| Relativity with existing lease | 77.74% | | |
| Yield rate on reversion | 5% | | |
| Capitalisation rate on ground rent | 7% | | |
| Details of Lease Existing at Valuation Date | | | |
| Term | 99 years | | |
| Commencement Date | 1 st May 1981 | | |
| Termination date | 30 th April 2080 | | |
| Valuation date | 28 th January 2021 | | |
| Remaining term at valuation date | 59.254 | | |
| Period in years between ground rent increases | 33 | | |
| Number of periods unexpired, including period of valuation | 2 | | |
| 1 Valuation of freeholders loss of interest in the property | | | |
| Freeholder's loss of existing ground rent | | | |
| Annual ground rent income in period of valuation | 100 | | |
| 26.3 years purchase at given capitalisation rate | 11.8752 | 0.0 | 1187 |
| Annual ground rent income in subsequent period | 150 | | |
| 33 years purchase at given capitalisation rate | 2.1520 | 26.3 | 323 |
| | | | 1509 |

| | | | |
|---|---------|--|--------|
| Freeholders reversionary interest with existing lease | | | |
| Freehold value of flat at reversion | 510,000 | | |
| Reversionary interest to freeholder at given yield rate | 5% | | 28320 |
| Freeholder's reversionary interest with proposed lease | | | |
| Freehold value of flat at reversion | 510,000 | | |
| Reversionary interest to freeholder at given yield rate | 0.00069 | | 351 |
| Value of freeholders loss of interest (i) | | | 28671 |
| 2 Valuation of freeholders share of marriage value (if remaining term less than 80 years) | | | |
| a) Value of flat with proposed lease . Relativity= | 99.0% | | 504900 |
| b) Value of flat with existing lease. Relativity = | 77.74% | | 396474 |
| c) Freeholder's loss of interest (i) | | | 28671 |
| Marriage value (a-(b+c)) | | | 79755 |
| Freeholder's share of Marriage Value @ 50% (ii) | | | 39877 |
| Premium Required For Lease Extension (I + ii) under the Leasehold Reform , Housing and Urban Development Act 1993 as amended | | | 68548 |
| Rounded to | | | £68550 |
| | | | |