



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

Case Reference : **LON/00AY/OLR/2022/0116 V:CVP**

Property : **GF Maisonette, 18 Doverfield Road,
London, SW2 5NB**

Applicant : **ADENIKE ELLIOTT
ADEWALE OLUMUYIWA ADEFOWORA
ADEDAPO ADEDEJI ADEFOWORA
and TUNDE ADEFOWORA**

Representative : **Comptons Solicitors LLP
PATRICIA ANN KENDLE**

Respondent : **BICKENHALL ENGINEERING
COMPANY LIMITED**

Representative : **Winckworth Sherwood LLP**

**Type of
Application** : **93 Act New Lease of Flat**

**Tribunal
member(s)** : **Judge Sheftel
Mrs Sarah Redmond MRICS**

Date of Decision : **17 January 2023**

DECISION

Background

1. This is an application made pursuant to Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (the “1993 Act”) for a determination of the premium to be paid and the terms for a new lease.
2. The application relates to the property known as Ground Floor Maisonette, 18 Doverfield Road, Brixton Hill, London, SW2 5NB (the “Property”). The Property comprises a two-bedroom maisonette on the ground floor of a two storey mid-terrace, built around 1910 . The front and

rear gardens are included in the demise, subject to rights of way for the leaseholder of the upper maisonette to access the upper maisonette over the front garden and hang washing in the rear garden.

3. The Property is let pursuant to a head lease for a term of 90 years commencing 25 December 1966 and an underlease for a term of 90 years less one day from 25 December 1966.
4. The Applicant served a Section 42 Notice of Claim dated 10 September 2021, proposing a premium for a lease extension of £120,000. The Respondent served a Counter-Notice dated 19 November 2021, proposing a premium of £245,000.
5. The hearing of this application took place on 6 December 2022. The Applicant, tenant, was represented by Mr James Hayes MRICS, who also provided expert evidence. The Respondent, landlord, was represented by Mr David Robson MA (Oxon) MSc MRICS who had also provided an expert report. Although the hearing was cut slightly short due to a family member of one of the tribunal being taken ill, as the only outstanding issue at that point was relativity – on which there was little difference between the parties as set out below – both Mr Hayes and Mr Robson agreed to rely on their written submissions on this issue as contained in their respective reports.
6. The parties had provided a bundle in advance of the hearing. The parties confirmed that the terms of the new lease had been agreed and that the only thing for the tribunal to determine was the premium.

Valuation

7. The following matters have been agreed between the parties:
 - (1) Valuation date: 13 September 2021
 - (2) Unexpired Term: 35.28 years
 - (3) Ground rent: The provisions in both leases are the same with £38 per annum for the 1st 30 years, £48 per annum for the next 30 years and £58 per annum for the final 30 years.
 - (4) Deferment Rate: 5%
 - (5) Capitalisation Rate: 1.18%

- (6) 1% differential between the unimproved extended lease value and the unimproved freehold vacant possession.
8. The issues in dispute were as follows:
 - (1) Floor area
 - (2) Tenant improvements
 - (3) Freehold value with vacant possession
 - (4) Existing underlease value
 - (5) Resulting premium and apportionment
 9. Mr Hayes calculated a figure of £143,000 for the total premium. In contrast, Mr Robson proposed a total premium of £155,030.

Floor area

10. Mr Hayes had calculated the floor area to be 772 sq ft. In contrast, Mr Robson considered the figure to be 788sq ft – he suggested there were inappropriate deductions in the Applicant’s calculations.
11. The tribunal is not in a position to make a finding one way or the other, although the point is of relatively limited significance for the purposes of these proceedings, particularly given the small difference between the two figures. In any event, the parties agreed to split the difference at the hearing.

Tenant improvements

12. Mr Hayes valued the tenant improvements at £17,000. This was derived from: a change of layout to the kitchen (removing an internal wall), the installation of central heating, double glazing and improved electrics. With regard to the latter, at the hearing he confirmed that essentially this related to additional power points which would have been installed since the lease was granted.
13. In contrast, Mr Robson proposed a figure of £5,000. This was an allowance to reflect the fact that it is likely the heating provision has been improved to the Property at some stage since the commencement of the lease with the installation of a gas central heating system. However, having regard to the lease plan, he considered that it is unlikely there have been any significant alterations to the configuration of the accommodation, or alternatively even if there had been the removal of the

internal wall to open up the kitchen, this was a matter of preference rather than an improvement. Similarly, he considered that although uPVC framed double glazing had been installed, this was also a matter of preference on period properties rather than a change which would bring about a higher price in the market – as was the alleged additional of electric socket points.

14. The tribunal accepts that each of the items identified by Mr Hayes could, in principle, constitute improvements. However, as Mr Hayes, himself acknowledged, it is extremely difficult to quantify the value of such improvements and no objective evidence was presented to the tribunal in this regard. While we consider an appropriate sum for tenant's improvements to be greater than the £5,000 allowed by the Respondent on the basis of our findings that the other items could also constitute improvements, we do not consider that the evidence exists to justify a figure as high as that proposed by the Applicant.
15. In the tribunal's determination, taking all of the matters together and having regard to the submissions of both parties, we consider an appropriate figure in respect of tenant improvements to be £12,000.

Freehold value with vacant possession

16. Mr Hayes considered the appropriate figure to be £500,000 for the extended lease value.
17. He provided several comparables of maisonettes on the same road. The greatest weight was given to 48 Doverfield Road, a similar 2-bedroom ground floor flat with garden, sold in May 2021 and date-adjusted to £492,000. Reference was also made to: 53 Doverfield Road, albeit this is a mansion block with no garden and some 170 sq ft smaller, which sold £425,000 in June 2021; and 46 Doverfield Road, which sold for £492,175 in March 2021, although this is larger 3-bed property. Further, Mr Hayes included the sales of 23 and 42 Doverfield Road. They were sold in July and March 2019 respectively, which was more than two years prior to the valuation date, although according to Mr Hayes, there would only be a small adjustment for time, to approximately £520,400 and £514,000.
18. Finally, Mr Hayes made brief mention to the sale of 56 Doverfield Road at £550,000. However, as this sale took place six months after the valuation date, he considered that limited weight should be given to it –

notwithstanding that this was a comparable relied on by Mr Robson. Mr Hayes submitted that sales on nearby Dumbarton Road should also be given little weight as it is a more desirable road, mainly on the basis of more impressive buildings with larger gardens. He suggested that a price per square foot analysis of the seven most relevant comparables for Dumbarton Road (although little detail was provided as to these comparables) produce a value of £527,000 for a flat of the size of the subject Property.

19. Taking the price per square foot for his chosen comparables on Doverfield Road, the range of prices per sq ft was £552 to £692. However, according to Mr Hayes, £552 was for a larger flat with a garden. He also considered that a 10% uplift is reasonable and considered that the correct value was in the range of £600-£700. A figure of £650 per sq ft would produce an overall figure of £501,800. Mr Hayes also commented that on the question of adjustments for time, although there had been some variations between March and June 2021, overall, the picture had been broadly stable.
20. In contrast, Mr Robson proposed a figure £520,400. He noted that the Property was marketed between June 2021 and May 2022. Whilst originally marketed at £550,000 this was later changed to seek offers in excess of £525,000. It was said that the property was marketed on the basis that the lease would be extended by completion.
21. In determining the valuation, Mr Robson also had regard to the recent sales in similar buildings on Doverfield Road since the beginning of 2021, as well as the sales of other ground floor two-bedroom flats and maisonettes on the surrounding roads. For solely leasehold comparables, he applied an adjustment on the basis that a knowledgeable, prudent purchaser would reflect this in their offer, based on a discount aligning with the cost of the premium to extend the lease and something towards the associated costs and risk. Mr Robson also made adjustments for physical aspects of comparables and their condition. Further, he had regard to the right of way over the rear garden for the upper maisonette to hang washing – although as a matter of fact it appeared that the garden of the subject Property had, perhaps informally, been split into two. Mr Robson was of the view that the existence of the right of way made little difference to the overall valuation. He concluded no adjustment was required for comparables where similar rights of way existed over the rear

gardens and a 1% adjustment was applied to the others where no rights of way are apparent. More specifically, in answer to a question put by Mr Hayes as to how the fact that the upstairs maisonette had a right over the garden affected the overall value, he explained why a 1% discount was, in his view sufficient:

“It is a specific right rather than a sharing of the enjoyment of the garden and whilst I appreciate it is possible some may have more concerns than others, given modern-day living with the use of washer-driers / tumble driers I believe the successful hypothetical purchaser would not be overly concerned by any potential impact to their enjoyment / use and take a view by the time they become aware of it. To my mind the prices achieved for 48, 56 and 30 Doverfield Road provide comfort on this point with the latter being an example of a property with a shared garden with the maisonette below it.

The above said, whilst relatively typical for the location the garden is not an example of one of the more desirable gardens so in isolation and ignoring the right of way I consider a value of £25,000 for the garden as demised to be appropriate and given the potential for concern I consider my deduction of 1% / c.£5,000-£6,000 in my overall analysis of the other comparables, where it is believed the gardens are not subject to any rights of way, to be sufficient and appropriate.”

22. Mr Robson’s analysis produced a range of £491,946 to £565,884, with an average of approximately £525,400. He considered that this was appropriate, which he then reduced by £5,000 to reflect tenant improvements.

23. In the tribunal’s determination, the best comparable appears to be 48 Doverfield Road. Whilst caution is required in respect of those sales of similar properties which are which are more than two years prior to the valuation date, we note that the Land Registry House Price Index over this period suggests a relatively stable market. In this regard we also consider that it is reasonable to include the post valuation date comparable in this case.

24. We agree with the Applicant that it appears that adjacent roads may be more desirable. Moreover, given that there are sales of four similar sized 2-bedroom ground floor flats on the road in question (48, 23, 42 and 56 Doverfield Road), we prefer to look at those in more detail – albeit having regard to the fact that two are more than 2 years prior to the valuation date and one is six months after the valuation date. We also note that neither expert has made deductions for condition for these comparables.

25. Taking a broad-brush approach, the average value of these comparables is £512,460 (we have made no adjustment to allow for the lack of share of freehold for 56 Doverfield Road). Standing back and reflecting on the other comparables put forward by the Respondent and noting Mr Hayes's conclusion that his comparables suggest a sales price of £515,00–£520,000 we determine the extended lease value at £512,500. From this we deduct the amount of £12,000 to reflect the value of improvements as set out above, to give £500,500. The agreed uplift to FHVP therefore produces a figure of £505,555.

Relativity

26. Mr Hayes proposed a figure of 58.4%. This was arrived at on the basis of the Savills Enfranchiseable 2016, less a 12.5% no-Act discount. This followed the approach set in *Zucconi* [2019] UKUT 242.
27. In contrast, the Respondent arrived at the figure of 57.40%, being the average of the two Savills (2016) and Gerald Eve (2016) graphs in accordance with the Upper Tribunal guidance in the more recent case of *Deritend Investments (Birkdale) Limited v Treskonova* [2020] UKUT 0164 (LC).
28. Mr Hayes considered that averaging Savills Unenfranchiseable and Gerald Eve was a 'reasonable' approach but considered that it is less good than the method he has proposed. Firstly, adopting one or the other is simpler and makes relatively little difference. Secondly, he stated that he had been told by staff at Gerald Eve that their 2016 graph was updated in a "holistic way" by reference to Savills 2016, the "finance market" and opinion. In other words, averaging reasonably good data with a very similar copy that has been adjusted by reference to opinion makes little sense.
29. The tribunal acknowledges that there are inevitably difficulties in accurately determining relativity. It is also the case that there is little difference in terms of outcome between the two approaches advocated here.
30. However, the tribunal adopts the approach suggested by the Respondent. While the Applicant's submission relating to the Gerald Eve graph is noted, it was based on anecdotal evidence; and in any event, it was acknowledged that the approach suggested by the Respondent was still

reasonable. It was also approved of by the Upper Tribunal in *Deritend*. In that case, the Upper Tribunal stated:

“39. The two PCL graphs are still rightly regarded as the most reliable and recent graphs of relativity. They provide objective evidence of relativity, based on a very large data set, and have been revised in light of close scrutiny by the Tribunal in *Mundy*. They should be considered as a starting point where no, or insufficient, transactional evidence has been submitted by the parties. They are not ideal, particularly for property outside PCL, but for the time being they provide the only treatment of relativity which can be regarded as reliable. Their use is always preferable to the use of an average of the RICS 2009 graphs.

31. We therefore adopt Mr Robson’s figure of 57.40% for relativity.

32. In light of our findings in relation to the three issues in dispute, we therefore determine the premium payable to be **£150,609** as set out in the attached appendix showing the tribunal’s calculations. This sum to be apportioned as shown in the calculation as £2,676 to the head leaseholder and £147,933 to the freeholder.

Conclusion

33. **For the reasons set out above, we determine the premium payable to be £150,609.**

Name: Judge Sheftel

Date: 17 January 2023

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).

Appendix

18 Doverfield Road, Brixton Hill, LONDON SW2 5NB

Facts and matters agreed and determined:

ground floor maisonette with garden subject to rights 788 sq.ft

Valuation date:	13/09/2021
Capitalisation Rate:	1.18%
Value of Ground Rents	£1,615
Deferment rate:	5.00%
Uplift to freehold value:	1%
Extended lease value:	£500,500
FHVP:	£505,555
Lease: expires 24/12/2056	Unexpired Term: 35.28 years
Ground Rent per annum:	£38 first 30 years, £48 for 30 years, £58 for remainder
Existing lease value:	£290,189
Marriage Value:	50%
Relativity:	57.40%
Value of improvements:	£12,000

Calculation of premium:

Diminution in value of Headlessee's interest:

Value of Ground rents	1,615
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Diminution in value of Freeholders Interest

Reversion to Freehold	505,555		
Deferred 35.28 years at 5%	<u>0.17883</u>	<u>90,408</u>	92,023

Value of Landlords proposed interest:

Reversion to Freehold	505,555		
Deferred 125.28 years @ 5%	<u>0.00221</u>	<u>1,117</u>	
Diminution in Freeholder's interest:			90,906

Calculation of Marriage Value:

Proposed interests:			
Head Leaseholder	0		
Freeholder:	1,117		
Leaseholder:	<u>500,500</u>	<u>501,617</u>	
Less Existing interests:			
Head Leaseholder:	1,615		
Freeholder:	90,408		
Leaseholder:	<u>290,189</u>	<u>382,212</u>	
Total Marriage Value:		119,405	
Attributable to Landlords @ 50%			<u>59,703</u>
Total Premium payable:			<u>£150,609</u>

Apportionment:

Diminution in Head Lessee's interest:	£1,615
Diminution in Freeholder's interest	£89,291
Total interests:	£90,906
Head lessee's proportion of existing interest:	0.01777
Freeholder's proportion of existing interest	0.98223
Thus, Head lessee's share of Marriage value:	£1,061
Freeholder's share of Marriage value:	£58,642
Adding respective shares gives:	
Head Leaseholder's share of Premium:	£2,676
Freeholder's share of Premium:	£147,933
Total Premium:	£150,609