

4389



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

**Case Reference** : CAM/26UG/OLR/2016/0182

**Property** : 21 Wickwood Court, Sandpit Lane, St Albans,  
Hertfordshire AL1 4BS

**Applicant** : Mr David Pike

**Representative** : Mr T J Palmer BSc (Hons) MRICS of McNeill  
Lowe and Palmer, Chartered Surveyors

**Respondent** : Fodbury (Bristol) Limited and The Tannen  
Group Limited

**Representative** : Mr A Cohen MRICS of Talbots Surveying  
Services, Chartered Surveyors

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

**Tribunal Members** : Tribunal Judge Dutton  
Mr D Barndan MRICS  
Mr S E Moll FRICS

**Date and venue of  
Hearing** : Luton Magistrates' Court, Stewart Street, Luton  
on 6<sup>th</sup> March 2017

**Date of Decision** : 27th March 2017

---

**DECISION**

---

© CROWN COPYRIGHT 2017

## DECISION

**The Tribunal determines that the premium payable for the lease extension in respect of this property is £60,930. This is as set out on the attached valuation.**

### BACKGROUND

1. On 10<sup>th</sup> June 2016 the tenant, David Pike, the owner of 21 Wickwood Court, Sandpit Lane, St Albans (the Property) served on the Respondents Fodbury (Bristol) Limited and Tannen Group Limited a notice under section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act), seeking an extension to his lease on terms set out in the Notice.
2. On 5<sup>th</sup> August 2016 the Respondent served a counter notice under section 45 of the Act admitting the Applicant's right to a lease extension but rejecting the offer of premium at £52,900 and instead seeking a premium of £68,000.
3. The matter was not capable of agreement and came before us on 6<sup>th</sup> March 2017 with the requirement that we determine the premium payable for the new lease.
4. Before the hearing the Applicant and Respondent surveyors Mr Palmer and Mr Cohen had agreed the following:-
  - Date of valuation, 10<sup>th</sup> June 2016.
  - The unexpired term 56.07 years.
  - Capitalisation rate at 7%.
  - Deferment rate at 5%.
  - Gross internal floor area 1,291 square feet.
5. The matters that were not capable of agreement were the relativity applicable, the market value for the Property with an extended lease of 146.07 years and the value of the existing unexpired lease of 56.07 years, disregarding tenants improvement.
6. Prior to the hearing we inspected the subject property in the company of Mr Palmer and Mr Pike.
7. The flat is on the ground floor of a converted house forming part of a development at Sandpit Lane comprising both converted houses and purpose-built properties to the rear. There was car parking to the front of the flat although not designated.
8. The flat itself was built around the 1880s and converted in 1930. At the time of our inspection substantial works of improvement had been undertaken by the Applicant. The Property now comprises three bedrooms, one with en suite facilities, a bathroom, extensive kitchen/dining room as well as a living/dining room. The Property also has the benefit of a private garden to the rear which in turn gives access to a large communal garden that appeared to be in good order. It is a pleasant development.

## HEARING

9. Due to the vagaries of the postal service the bundles prepared by the parties had not reached some of the Tribunal members in advance of the hearing. They did, however, arrive subsequently and have been considered by us in reaching the decision that we have come to.
10. The bundles contained the notices as well as the application to the Tribunal and a copy of the lease. There was also a plan of the development. The entries on the official Register of Title have been produced, albeit somewhat dated, and we had the reports from Mr Palmer and from Mr Cohen. It is noted that Mr Palmer argued for a premium of £52,900 whereas Mr Cohen sought a premium of £71,638. The terms of what we understood to be an agreed new lease were included in the bundle and we were not asked to deal with that matter. It appears also that costs payable to the Respondent under section 60 of the Act had been agreed at £2,280.
11. Both valuers' reports explain the location of the property, and the accommodation. Both parties have disregarded the improvements carried out by Mr Pike. As to comparable evidence, both have confined their use of comparables to those within the Wickwood Court development. Mr Palmer chose flats at 2, 4, 22 and 1 Wickwood Court although nailed his colours to the mast to an extent by indicating that he considered that 22 Wickwood Court was the favoured comparable. A matter that was not disagreed by Mr Cohen.
12. Mr Palmer indicated that in considering the relative value of a considerably larger flat, a simple £ per Sq Ft approach is not appropriate. To show this he had provided details of properties at 5 and 6 Nexus Court, which when the price for No 6 was uplifted for a time adjustment brought it reasonably close to the price achieved for a larger property at No 5 Nexus Court.
13. It was Mr Palmer's assertion in his report that taking into account the sale of 22 Wickwood Court at £378,000 on 2<sup>nd</sup> September 2015, which included an extended lease and garage, he assumed that at the valuation date the subject property would be valued at £442,500 disregarding improvements. He felt an uplift of 15% for 11 months was a fair reflection and provided for the additional floor area without parking. As to relativity, he told us in his report that he had adopted 82% as the basis relying on the average of the RICS published graphs which he said fell within the range of 81.35% at 55 years unexpired and 85.93% at 60 unexpired years. Taking these matters into account, he concluded that the premium payable would be £52,900.
14. At the hearing he confirmed his report and that the issues between himself and Mr Cohen were relativity and market value. His view was that 22 Wickwood Court was the best comparable but was some 28% smaller than the subject property, although having the benefit of a garage but not garden area. It was, he thought, in the pre-improved condition to the subject flat and sold in September of 2015 for £378,000. He adjusted this figure for time by use of the Nationwide House Index lifting the price he said to £404,100. There was no copy of the Index in the papers. He concluded, however, that the increase in the Index gave a rise of 8.57%. In fact,

he told us, he had adjusted the figure by 15% for size as well as for time. However, he realised that this was an error and in fact the adjustment should have been 17% giving an 8.5% adjustment for time and an 8.5% adjustment for size. He then explained to us the relevance of the flats at 5 and 6 Nexus Court. These were in a block which was about ten years old although he could give no comment on the condition. It merely reflected in his view the fact that you could not assess the value of the flat by reference to the size.

15. He did not think there was much difference in value between the garage and the garden although could not say the size of the garage. He thought that the subject property had a market value of £442,500 on an extended lease basis.
16. He also relied on a comparable at 2 Wickwood Court, now on a 132-year lease, but with a potentially onerous ground rent in that it rose to the maximum of £8,000 per annum. This property, he told us, had been sold in September of 2016 at £380,000 but only after a lease extension had been agreed in April of 2016 at £16,000. Such lease extension did not change the ground rent provision. He thought that an incoming purchaser would want to rid himself of the onerous ground rent and that might pay £20,000 to do so. This he calculated, it would seem, on a capitalisation rate of 6%, although little is said of this in his report. He had carried out his own calculation but adduced no evidence in support. It was also noted from his valuation sheet that he had uplifted the extended lease value by 1% to give a rounded valuation of £447,000. On the question of relativity, he took the view that the balanced approach taking the average of the five graphs included in the RICS study was appropriate. This he calculated came to a rounded figure of 82%, which he applied, leading to the valuation of £52,900 for the premium.
17. Mr Cohen in his report had, as we have indicated, given details of the location, the Property and other factors. He confirmed that the tenants' improvements, which he listed, had been disregarded and that he had valued the flat on the basis of the original layout at the commencement of the lease. He confirmed the matters that had been agreed and relied upon those comparables put forward by Mr Palmer but with the addition of 14 Wickwood Court which had sold in December of 2014. The report contained a printout from RightMove concerning the sale prices of the five comparables and the estate agent's particulars. He confirmed that he made adjustments for time by reference to the UK House Price Index prepared by the Land Registry which was included within the report. He also produced an addendum showing the various adjustments made for time, size differential, condition and the existence of a garden or garage. In respect of the garage, he thought a deduction of £20,000 was reasonable if the property did not have one, and in respect of the private rear garden that the subject property had the benefit of, he thought this added to the value by around £30,000. His view was that 22 Wickwood Court was the best comparable being in the same building and with the same character features. Like Mr Palmer he did not think a straight £ per square foot calculation was appropriate and had made different size differentials leading him to the view that the extended lease value was £535,000.
18. On the question of relativity, he told us he had not been able to find any sales evidence of similar length leases and thought that the RICS graphs of relativity published in 2009 were a good starting point. He had taken the five graphs

contained within that document but had relied upon the updated Beckett and Kaye graph of 2015 which showed a relativity of 67% against the previous relativity in 2009 of 80.3 %. He also bore in mind the recent decision of the Upper Tribunal in what has become colloquially known as the Mundy case. His view was that whilst within prime central London, relativity may have fallen as much as 5% he said this was supported in the Mundy case, although he did not point us to the specific element which asserted this. He thought, however, that an adjustment of 2% on the 2009 graphs was appropriate. This reduced his relativity to 79%. Applying these elements to his valuation resulted in a figure of £71,638 being payable for the lease extension.

19. Mr Cohen asked some questions of Mr Palmer, particularly with regard to the use of 4 Wickwood Court and attacked the use of the Nationwide Index dealing with the adjustment for time. Mr Palmer had been somewhat dismissive of the comparable at 14 Wickwood Court being so long before the valuation date, namely December 2014. On the question of relativity, Mr Palmer told Mr Cohen that the relativity was in line with the settlement evidence that he had achieved on lease extensions although admitted he had not heard of the Upper Tribunal case of Arrowdale.
20. Mr Cohen gave oral evidence in support of his report and confirmed he considered the sale of Flat 22 to be the best comparable. He said it was in fairly poor condition, as he had inspected it at the time of a potential lease extension, smaller in size and with no garden. It did, however, have the benefit of a garage. He had applied adjustments for time and garage as well as size and came to the view that 22 Wickwood Court selling at £378,000 in September of 2015 would give rise to an adjusted figure of £459,000. He was also of the view that the properties at 21 and 22 Wickwood Court were together with those in the original houses better than the purpose-built developments to the side and rear. It was, he thought, the only flat that had a garden.
21. On the question of relativity, he thought that it was appropriate to include the Beckett and Kaye mortgage dependent graph and conceded that the main difference between his assessment of relativity and that of Mr Palmer was the impact of this later Beckett and Kaye graph. He also accepted that there was some benefit for having a share of the freehold.
22. Mr Palmer asked Mr Cohen some questions centring around the comparable properties and the adjustments made.

### **THE LAW**

23. We have applied the provisions of section 48 and schedule 13 of the Act to our decision which is set out on the valuation sheet annexed.

### **FINDINGS**

24. There are two elements that need to be considered by us. The first is the long lease value and the second is relativity.

25. It is accepted by both valuers that the best comparable is No 22 Wickwood Court. This sold in September 2015 at £378,000. We prefer the Land Registry Index to the Nationwide Index in this matter. No copy of the Nationwide index was produced. The Land Registry Index is accepted as the usual method of assessing the impact of the passage of time on prices of properties. The time adjustment by reference to the Land Registry Index would lift the sale value of 22 Wickwood Court to a rounded-up figure of £424,000. We then need to make adjustments for the provision of the garden at the subject property but the lack of garage and also the difference in condition of 22 Wickwood Court compared to the subject property before it had undergone its refurbishment at the hands of Mr Pike.
27. Mr Cohen had had the benefit of inspecting 22 Wickwood Court at the time of the lease extension and, therefore, was able to give some evidence as to its condition, which he indicated was somewhat dated. This was not inconsistent with the sales particulars included in the hearing bundle. There is, however, no evidence before us to suggest that the owners of 22 Wickwood Court had fallen foul of their repairing obligations. Mr Cohen sought to adjust the subject property upwards by £30,000 because of the condition. There is, as we have indicated, a lack of real evidence before us as to the difference in condition. We accept Mr Cohen's evidence given as an independent expert that 22 was not in as good a condition as the subject property but £30,000 seems to us to be quite an extensive sum to reflect the difference between what would have been two fairly basic unimproved properties. Further there was no indication that Mr Cohen had seen the subject property before it was improved but he does know the estate well, dealing with the lease extensions for the Respondent. We are, however, comfortable with an uplift of £10,000 to reflect the condition point.
28. Mr Cohen's assessment of the garden value at £30,000 and the garage at £20,000 is we think probably appropriate. Mr Palmer thought there was little between the two but there is car parking to the front of the Property, albeit it on a first come first served basis and in our finding there is more value to the garden. Perhaps £10,000. Accordingly applying that figure with the condition sum of £10,000 to the time adjusted value of £424,000 gives a basic comparable figure of £444,000 which we need to uplift to reflect the difference in size. Mr Cohen in his report had produced a schedule of 'final adjustments' setting out 'size adjustments' he had made. It has been said by both valuers that one cannot just apply a square footage rate. Mr Palmer in his report at paragraph 12.6 provided an uplift in value of 15% it seems representing both time and the additional floor area but without parking. Mr Cohen in his schedule of adjustments gave various percentages which averaged out at around 15%. It seems to us, therefore, doing the best we can that a size adjustment of 15% would be appropriate which lifts the extended lease value of the subject property to £510,000.
29. We do think it is appropriate to add 1% in respect of the freehold value. The need to obtain consents and other approvals from the landlord would be potentially avoided if a share of the freehold were available and there were other management benefits that would flow. One percent, therefore, seems reasonable and that provides a freehold vacant possession value of £515,100.
30. The other matter we need to consider is that of relativity. Both parties have used the RICS graphs but Mr Cohen has inserted the latest Beckett Mortgage Dependent Graph which we believe is open to certain criticism and indeed in our

experience is not used by valuers acting certainly for the tenants. The percentage attributed to the latest Beckett and Kay Graph is out of line with those other graphs produced in 2009. Mr Cohen produced no substantial evidence to us to persuade us that we should depart from those graphs issued in 2009 and to take the average thereof which rounded down comes to 82%.

31. Factoring these figures into the valuation as can be seen from the attached gives rise to a premium payable of £60,930.
32. We should perhaps in passing make mention of the fact that on our calculation the years remaining would in fact be slightly less at 56.04 years but the parties have agreed 56.07. Further, we would have calculated the relativity slightly differently at 82.33% taking the average relating to a lease of 56.04 years which we calculate would be the appropriate amount. However, we are not intending to go outside the parameter of the relativity adjustments made by the valuers and will remain at 82% as suggested by Mr Palmer which we accept in this case is the correct relativity percentage to be applied. The ground rent calculations and the deferment rate was agreed between the parties.

*Andrew Dutton*

Judge:

---

A A Dutton

Date: 27th March 2017

#### **ANNEX – RIGHTS OF APPEAL**

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.

Lease extension 21 Wickwood Court AL1 4BS St Albans

### Calculations

#### Valuation assumptions

Lease expiry date	23/06/2072
Valuation date	10/06/2016
Unexpired term	56.07
Capitalisation rate	7.0%
Deferment rate	5.0%
Freehold value	£ 515,100
Extended lease value	£ 510,000
Existing lease value	£ 422,382
Relativity	82.00%

#### Value of Landlord's existing interest

<b>Ground Rent</b>		£	60.00		
<b>Years Purchase</b>	56.07 years @	7.0%	13.9641	£	838
Reversion to freehold		£	515,100		
<b>Present Value of £1</b>	56.07 years	5.0%	0.06485	£	33,405
<b>Total</b>				£	34,243

#### Marriage value calculation

Value of Landlord's proposed interest	£	-		
Value of Tenant's proposed interest	£	510,000		
Sub-total			£	510,000
Value of landlords existing interest	£	34,243		
Value of tenants existing lease	£	422,382		
Sub-total			£	456,625
Marriage gain			£	53,375
Landlords 50% share			£	26,688
Plus: Loss to landlord in granting new lease			£	34,243
<b>Premium payable</b>			£	<b>60,930</b>