



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

**Case Reference** : **BG/LON/00AG/OLR/2015/0944**

**Property** : **Flat 2, 66 Rosslyn Hill, London, NW3  
1ND**

**Applicant** : **Deborah Anastazia Kol  
(the "Leaseholder")**

**Representative** : **FDR Law**

**Appearances** : **Ms Kol**

**Respondent** : **Martyn John Gordon, Andrew David  
Philip Gordon and Richard Benjamin  
Grosse (the "Landlords" and freehold  
reversioners)**

**Representative** : **Underwood Vinecombe, solicitors**

**Appearances** : **Mr Richard Bakewell , FRICS**

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

**Tribunal** : **1. Mr A Vance, Tribunal Judge  
2. Mrs E Flint, FRICS**

**Date of Hearing** : **2 September 2015**

**Date of Decision** : **2 October 2015**

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**DECISION**

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## **Decision of the tribunal**

1. The Tribunal determines that the premium payable by the Applicants under Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") on the grant of a new lease of the subject property is £38,600. The reasons for the Tribunal's decision are set out below.

## **Background**

2. This is an application under section 48 of the Leasehold Reform Housing and Urban Development Act 1993 (the "1993 Act").
3. The Applicant is entitled to a new lease of Flat 2, 66 Rosslyn Hill, London, NW3 1ND ("the Property") under Chapter II of the 1993 Act.
4. The Applicant served notice of a claim to take a new lease of the Property on 15 January 2015.
5. The Respondents served a counter-notice dated 11 March 2015 admitting the Applicant's entitlement but disputing the proposed terms of acquisition.
6. The Applicant applied to this Tribunal for the determination of the disputed terms on 15 May 2015.

## **The Lease**

7. The following are particulars of the Applicants' leasehold interest:
  - (a) Date of lease: 9 November 1982.
  - (b) Term of lease: 99 years commencing on 25 December 1981.
  - (c) Ground rent: £50 per annum
8. The Respondents were registered as freehold proprietors of the Property on 16 January 2014. The Applicants' leasehold interest was registered on 22 January 2001. The price stated to have been paid on 5 December 2000 was £195,000. There are no intermediate interests.
9. The Applicant's proposed premium before the Tribunal was £31,751.
10. The Respondent's proposed premium was £44,597.

### **Inspection**

11. The Tribunal did not consider an inspection of the Property to be necessary or proportionate to determine the matters in dispute between the parties.

### **Matters agreed**

12. The following were agreed between the parties:
- (a) A valuation date of 15 January 2015.
  - (b) A capitalisation rate for the ground rent of 7.5%;
  - (c) That the appropriate deferment rate to be used for calculation of the Landlord's reversionary interest is 5% per annum;
  - (d) That the unexpired term at the valuation date was 65.94 years;
  - (e) That there were no tenant's improvements to be taken into consideration; and
  - (f) The terms of the new lease (except for the amount of the premium to be paid for the new lease).
13. There was also no material dispute as to the location and description of the Property. It is located on the southern fringe of Hampstead village and on the second floor of a four storey building ("the Building") built circa 1890 which has been converted into three self-contained flats and a ground floor shop. The Property comprises one bedroom, an open plan kitchen/reception room and a shower/WC. Ms Kol considers the gross internal floor area to be 33 square metres whilst Mr Bakewell measured it as being slightly larger at 34.19 square metres. A photograph of the front elevation of the Building was included in Mr Bakewell's report.

### **Matters in Dispute**

14. The following matters of valuation were in dispute:
- (a) The current freehold vacant possession value of the Property as at the valuation date;
  - (b) The value of the Applicant's interest in the Property under the proposed new lease as at the valuation date;

(c) The value of the Applicant's current lease

(d) The premium payable for the grant of the new lease.

### **The Law**

- 15.** Schedule 13 the Act provides that the premium to be paid by the tenant for the grant of a new lease shall be the aggregate of the diminution in the value of the landlord's interest in the tenant's flat, the landlord's share of the marriage value, and the amount of any compensation payable for other loss.
- 16.** The value of the landlord's interests before and after the grant of the new lease is the amount which at the valuation date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) on the assumption that the tenant has no rights under the Act to acquire any interest in any premises containing the tenant's flat or to acquire any new lease.
- 17.** Para 4 of the Schedule, as amended, provides that the landlord's share of the marriage value is to be 50%, and that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil.
- 18.** Para 5 provides for the payment of compensation for loss arising out of the grant of a new lease.
- 19.** Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

### **The Hearing**

- 20.** The Applicant represented herself at the hearing and was accompanied by a friend. Mr Bakewell appeared on behalf of the Respondent.
- 21.** Ms Kol had prepared the hearing bundle which contained her statement of case, her valuation of the premium payable, details of comparable properties and Graphs of Relativity for Greater London and England.
- 22.** The Respondent relied upon Mr Bakewell's report dated 24 August 2015.
- 23.** The tribunal heard oral evidence from both Ms Kol and Mr Bakewell.

## **The current freehold vacant possession value of the Property**

- 24.** An assessment of the virtual freehold vacant possession value of the Property (“FHVP”) as at the valuation date is required in order to value the Landlord’s reversionary interest and the value of the long leasehold interest in the Property once extended.
- 25.** The parties disagreed as to the value of the long leasehold interest in the Property once extended by 90 years. The Applicant’s position is that it will be equal to 99% of the FHVP. In her view there was an intrinsic and qualitative difference between a long leasehold title and a freehold title, the former being a contractual right of occupation and the latter a proprietary ownership in land.
- 26.** Furthermore, she submitted, leaseholders had limited ability to make decisions over the management of the buildings in which their flats are located. These differences meant that a willing buyer in the open market would be prepared to pay at least an additional 1% for the greater control available to a freeholder. In her Statement of Case she relied upon the Upper Tribunal (Lands Chamber) decision in *Wolfart Gunnar Hauser v Howard De Walden Estates Ltd* [2013] UKHT 0597 (LC) in which the Tribunal determined a 99% figure to be appropriate. However, no copy of that decision was included in her bundle or provided to the Tribunal on the day of the hearing.
- 27.** In his valuation Mr Bakewell had assessed the value of the extended long leasehold interest in the Property to be 100% of the FHVP. At the hearing before us he stated that he had realised shortly before the hearing that the sales of the two comparable properties on which he relied were not for flats with extended leases. They were both sales of flats with leases with approximately 95 years of the term remaining. He acknowledged that this warranted an adjustment to the FHVP and in his opinion an adjustment of a little less than 1% was appropriate to reflect the differences in the lengths of the respective leases.
- 28.** In assessing the FHVP value both parties had regard to the sale price achieved in respect of Flat 4, 60 Rosslyn Hill which sold for £495,000 on 5 September 2014 with approximately 95 years unexpired.
- 29.** However, Mr Bakewell also relied on another comparable property in the same building, Flat 2, 60 Rosslyn Hill which sold for £505,000 on 1 August 2014. Sales particulars provided by the Applicant indicate that the commencement date and term of the lease of this flat was identical to the lease for Flat 4 60 Rosslyn Hill. Both leases were granted for a term of 125 years from 24 June 1984. Therefore when Flat 2 was sold on 1 August 2014, as with Flat 4, there was approximately 95 years of the lease term remaining.

- 30.** Both agreed that the flats at 60 Rosslyn Hill are in a building of very similar design and construction located in the same street as the Building. A photograph appeared in Mr Bakewell's report.

#### The Respondent's Position

- 31.** Mr Bakewell valued the FHVP by taking an average of the sale prices achieved for Flats 2 and 4, 60 Rosslyn Hill and arrived at a figure of £500,000.
- 32.** He then adjusted for time by reference to the Land Registry House price Index for Greater London and concluded that an appropriate uplift was 1%. In doing so he looked at the Index data for June 2014 to December 2014. His justification for going back as far as June 2014 was that purchasers would have undertaken legal investigations before the sale took place and, as such, the decision to purchase would have taken place some time before the actual sales.
- 33.** He derived support for this conclusion by cross-checking against the Nationwide House Price Calculator for the last quarter of 2014 which he submitted shows a growth in Greater London of 1.41%.
- 34.** He therefore valued the FHVP at £505,000 as at the valuation date of 25 January 2015.

#### The Applicants Position

- 35.** The Applicant considered Flat 4, 60 Rosslyn Hill to be the best available comparable. Like the subject Property it is located on the second floor of a similar building in the same road. She considered that the size of the two flats was likely to be similar.
- 36.** She adjusted the sale price of £495,000 achieved on 5 September 2014 for time by using the Land Registry House Price Index for flats and maisonettes in the London Borough of Camden and had regard to monthly changes in the Index for the period September 2014 to January 2015. As the valuation date was mid-January she ascertained the difference between the adjusted value for the end of January 2015 and the value at the end of December 2014 and then added the pro rata difference for 15 days to the December 2014 value.
- 37.** As a result of this calculation the Applicant's valuation of the FHVP was £480,156 as at the valuation date of 25 January 2015.
- 38.** The tribunal asked the Applicant why, when valuing the FHVP she had not made an adjustment to reflect the fact that when Flat 4, 60 Rosslyn Hill was sold in September 2014 it was not sold with an extended lease

(there being about 95 years of the term remaining). In her submission no adjustment was necessary as the remaining term was significantly over the 80 year point which is when in her opinion differences in value begin. She considered that any difference between a lease with a 95 year term remaining and one with 155 years remaining (such as this extended lease) would be *de minimis*. The Applicant did not consider it relevant that the graphs of relativity, upon which she relied in assessing the relativity for the existing lease, indicated that with 100 years unexpired the value ranged from 97% to 100% of the freehold value.

### Decision and Reasons

- 39.** We consider the best comparable property to be Flat 4, 60 Rosslyn Hill. It is situated in a very similar building on the same street as the Property and located on the same floor. The photographic evidence before the Tribunal is that the frontage is identical in design and size and Mr Bakewell, who measured the frontage of both buildings, agreed that this is the case. It also appears from the plans attached to the Land Registry office copy entries that both buildings are similar in size. Given these points and the fact that the sale of Flat 4 was close in time to the sale of the subject Property we consider this to be the more appropriate of the two comparables.
- 40.** We consider Flat 2, 60 Rosslyn Hill to be less reliable as a comparable than Flat 4. It is located on the first floor and there was considerable doubt over its size compared to the subject Property. Neither the Applicant nor Mr Bakewell had been inside Flat 2, 60 Rosslyn Hill. However, the Applicant informed us that she is familiar with the first floor flat in the Building and that it is substantially larger than her flat. This is substantiated by the lease plan for the Building at page 45 of the Applicant's lease.
- 41.** Mr Bakewell agreed that Flat 2 in the Building had an additional bedroom to the subject Property but contended that this did not necessarily mean that this was also the case at 60 Rosslyn Hill. He may be right, but given that he has not inspected the flat internally and given the identical frontage of the two buildings and their similar size and shape as indicated in the Land Registry plans it is clearly a matter of some uncertainty. This uncertainty, in our view, renders the property considerably less reliable as a comparable and we place less weight on it when reaching our valuation.
- 42.** Weighing up the evidence as to comparable properties provided we consider that the appropriate starting point when determining the FHVP is the sale price for Flat 4 of £495,000. Given the uncertainties concerning the reliability of Flat 2 as a comparable we see no reason to adjust that figure to take into account the sale price realised for that flat.

43. We agree with the Applicant that it is appropriate to adjust the sale price of Flat 4 for time by using the Land Registry House Price Index for flats and maisonettes within the London Borough of Camden as opposed to the index for Greater London as the latter includes houses and flats over a much wider geographical area. We accept her adjusted for time figure of £480,150.
44. That figure then needs to be adjusted to reflect the value of the long leasehold interest in the Property, once extended by 90 years. We do not agree with the Applicant's submission that it is unnecessary to make an adjustment to reflect the fact that the relevant comparable (Flat 4, 60 Rossllyn Hill) did not sell with an extended lease. Once extended, the lease of the Property will be for 155 years at a peppercorn rent. In our opinion this is more attractive to a purchaser than a flat with a remaining term of 95 years at a ground rent of £100 or more per annum (as was the case for Flat 4, 60 Rossllyn Hill). We accept the evidence of Mr Bakewell that this warrants an uplift from the sale price of the comparable of approximately 1%: the extended lease value is therefore £484,950.
45. We are not persuaded by the Applicant's assertion that a hypothetical purchaser of a flat would be prepared to pay a sum of at least an additional 1% simply in order to achieve the greater management control available to a freeholder. With control also come burdens, such as responsibility for effecting repairs that, as we suggested to the parties at the hearing, not all leaseholders might welcome. Furthermore, many of the advantages of owning a freehold house cannot be exercised when the property is, as here, a flat situated within a terraced building with other accommodation below and above. We do, however, accept that most purchasers, given the choice, would prefer a freehold title rather than a leasehold title and that a further 1% adjustment is appropriate giving a freehold value of £489,800.

### **The Existing Leasehold Value**

46. Both parties relied upon graphs of relativity when calculating the existing leasehold value.

#### The Respondent's Position

47. Mr Bakewell relied upon the 2011 John D Wood Graph of Tribunal Decisions as this pre-dated, and was closest in time, to the valuation date. The graph indicates that for a lease with an unexpired term of 66 years the relativity is 86.7% and with 65 years is 86%. For this Property with a 65.94 term remaining he considered the appropriate figure to be 86.6%.
48. He pointed out that this was not too dissimilar to the 85.16% figure arrived at by averaging four 2015 graphs of relativity namely the Charles



Boston, Cluttons Flats, Knight Frank and Gerald Eve graphs. However, he preferred the 2011 John D Wood graph as the 2015 data was collated after the sale of the subject Property.

#### The Applicants' Position

49. The Applicant considered the appropriate relativity rate to be 90%. She accounted for the difference between her and Mr Bakewell to be primarily due to his assessment of the Property as falling within Prime Central London. She relied on the Upper Tribunal decision in *Hildron Finance Ltd v Greenhill Hampstead Ltd [LRA/120/2006]* as authority for her contention that Hampstead was not a Prime Central London location.
50. In her submission the appropriate graphs of relativity were the 2009 RICS Greater London & England graphs comprising the Beckett & Kay, South East Leasehold, Nesbit & Co, Austin Gray and Andrew Pridell graphs. Taking an average of those graphs she arrives at a figure of 89.93% and rounds this up to 90%.

#### Decision

51. We accept that it appropriate to have regard to graphs of relativity given the lack of suitable transactional data. The 2009 RICS Greater London & England graphs are well established and, in our view, are to be preferred to the 2011 John D Wood graph because of the danger inherent in the latter graph of extrapolating out data from tribunal decisions when each decision turns on its particular facts which are unknown to the parties or to us. We therefore prefer the RICS graphs despite the age of the data used to produce those graphs.
52. We accept the Applicant's submission that the Property cannot be considered to be akin to a Prime Central London location. However, it is still located in a very desirable part of London and therefore we consider it appropriate to have regard to both of the 2009 RICS graphs namely those for Greater London & England *and* Prime Central London but excluding the Cluttons Houses graph as the subject Property is a flat.
53. We note that the average of the both sets of graphs for a lease with 65.94 years remaining is 87.34%
54. The FHVP determined above is £489,800 and the extended lease value is £484,950.
55. Applying 87.34% to the FHVP of £489,800 results in an existing lease value of £427,800.

## Valuation

56. The diminution in the value of the landlord's interest in the Property is represented first by the capitalised value of the grounds rent receivable under the lease which will be surrendered and replaced by a peppercorn rent under the terms of the Act. The parties agreed the value of the capitalised ground rent at £663.
57. Next, the effect of the grant of the new lease will be to defer the landlord's freehold reversion for a further 90 years, thereby for practical purposes depriving the landlord of the current value of the freehold reversion indefinitely. The present value of the reversion is determined by applying a deferment rate to the FHVP of £489,800. The parties accept that the deferment rate appropriate for leasehold flats in Central London is, as was authoritatively determined to be 5% in the case of *Earl Cadogan v Sportelli (2006) LRA/50/2005*. Marriage value is the difference between (on the one hand) the aggregate value of the interests of the leaseholder and the landlord before the new lease; and (on the other) the aggregate value after the grant of the new lease. It is to be shared equally between the parties, as required by the Act.
58. The premium payable by the Applicants under Schedule 13 of the Act on the grant of a new lease of the Property is £38,600. A copy of the Tribunal's valuation is attached to this decision.

## Final Comments

59. In her Statement of Case the Applicant sought to support her valuation by what she described as a "back-of-an-envelope calculation" in which she applied an assumed 6% yield investment to the figure of £550,000 paid by the landlord on acquisition of 66 Rosslyn Hill on 12 December 2013 apportioned between the three residential flats and the commercial unit on the ground floor. This exercise, she said, indicated that her valuation represented fair compensation to the landlord.
60. The tribunal considers this to be highly speculative especially given the lack of evidence before us as to why the 6% figure is appropriate and as to the background to sale of the freehold of the property. We do not consider this to be a useful exercise when determining the premium payable.

**Name:** Amran Vance

**Date:** 1 October 2015

**Flat 2 66 Rossllyn Hill London NW3 1ND**

Date of Valuation: 15 January 2015

Lease granted for a term of 99 years from 25 December 1981, at £50 pa  
Unexpired term at 15 January 2015 65.94 years.

Landlord's current Interest

Capitalised ground rents agreed		£663
Reversion	£489,800	
deferred 65.94 yrs @ 5%	<u>0.0400662</u>	<u>£19,624</u>
Freeholder's current interest		£20,287

Landlord's proposed Interest

Reversion	£489,800	
deferred 155.92 years at 5%	0.0004963	<u>£243</u>
Diminution in landlord's interest		£20,044

Marriage value

landlord's proposed interest	£243	
Lessees proposed interest	£484,950	£485,193
less		
Landlord's present interest	£20,287	
Lessees present interest	£427,800	<u>£448,087</u>
Marriage value		£37,106
Freeholders share	50%	<u>£18,553</u>
		<b>£38,597</b>
	<b>Premium</b>	<b>£38,600</b>