



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

<b>Case Reference</b>	:	<b>LON/00AC/OLR/2016/1784</b>
<b>Address</b>	:	<b>Flat 14, Henley Court, Watford Way, NW4 4SR</b>
<b>Applicants</b>	:	<b>Sulman Habib Rahman &amp; Adela Shiroz Rahman</b>
<b>Representative</b>	:	<b>Mr Mullen (Counsel)</b>
<b>Respondent</b>	:	<b>Henley Court Properties Limited</b>
<b>Representative</b>	:	<b>Mr Hurndall (Solicitor)</b>
<b>Type of Application</b>	:	<b>Grant of new lease (Section 48 Leasehold Reform, Housing and Urban Development Act 1993)</b>
<b>Tribunal Members</b>	:	<b>Mr M Martyński (Tribunal Judge) Mr R Shaw FRICS</b>
<b>Date and venue of Hearing</b>	:	<b>14 March 2017 10 Alfred Place, London WC1E 7LR</b>
<b>Date of Decision</b>	:	<b>17 March 2017</b>

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**DECISION**

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**Decision summary**

1. The premium payable for the new lease is £29,113.

**Background - general**

- 2. The subject flat at 14 Henley Court ('the Flat') is a two-bedroomed property on the first floor of a purpose built block. The lease for the flat is for a term of 99 years from 1 August 1977. The term remaining on the lease as at the date of the Applicants' Notice is 60.35 years.
- 3. The Applicants' Notice claiming a new lease is dated 24 March 2016 and offered a premium of £20,000. The Respondent's Counter-Notice is dated 18 May 2016 and proposed £34,750 as the premium.

**Background – procedural**

- 4. The Applicants relied upon a professional valuation report of Mr Andrew Cohen MRICS.
- 5. The Respondent sought to rely upon the evidence given by the witness statements of Mr Hurdnall, a Solicitor.
- 6. At the outset of the hearing we established that Mr Hurdnall was a Director of the Respondent Company. He told us that his firm had been instructed by the Respondent regarding this matter and, alternatively, that he was an 'in-house' Solicitor for the Company.
- 7. There was some confusion as to the capacity in which Mr Hurdnall was appearing before the tribunal. Mr Hurdnall appeared to be willing to change his capacity to suit the tribunal. We pressed Mr Hurdnall to state, unequivocally, in what capacity he appeared. Mr Hurdnall stated that he appeared as a Solicitor representing the Respondent Company.
- 8. Mr Hurdnall wished to continue to rely upon the witness statements that he had prepared and signed for the proceedings and to give evidence to the tribunal.
- 9. We made an initial ruling that, as Mr Hurdnall was appearing in a professional capacity as the Respondent's legal representative, we would not allow him to rely upon the evidence in his witness statements, nor would we allow him to give evidence.
- 10. We made this decision having had regard to Rule 14 of the tribunal's rules, the relevant parts of which state as follows:-

**Representatives**

14.—(1) A party may appoint a representative (whether legally qualified or not) to represent that party in the proceedings.

(2) If a party appoints a representative, that party must send or deliver to the Tribunal and to each other party written notice of the representative's name and address.

(3) Anything permitted or required to be done by or provided to a party under these Rules, a practice direction or a direction may be done by or provided to the representative of that party except—

- (a) signing a witness statement;
- .....

Further, we did not consider it to be appropriate for a party's legal representative to give evidence (other than on the procedural history of the case) at a final hearing. We were further concerned at the blurring of lines between Mr Hurdnall's position as Director of the Respondent Company and his role as independent advocate for that Company at the hearing.

11. This ruling left the Respondent Company in the position of having no evidence that it could present to the tribunal. Mr Hurdnall made an application for an adjournment so that he could instruct a Valuer to provide a valuation in answer to Mr Cohen's valuation.
12. In order to consider this application, we considered the procedural history of the case which we summarise as follows.
13. Mr Hurdnall was in the habit of negotiating lease renewals at the building himself without the use of formal valuations.
14. The Applicants' application to this tribunal is dated 4 November 2016. Directions on that application were given on 2 December 2016. Those directions provided that the parties' valuers should exchange valuation calculations by 16 December 2016; to exchange statements of agreed facts and disputed issues by 20 January 2017 and to exchange expert's reports at least two weeks prior to the final hearing.
15. Mr Hurdnall chose not to instruct a Valuer. The Applicants' legal representatives took the view that they would not engage in discussions regarding valuation evidence with someone who was not qualified as a Valuer.
16. It appears that in or about February 2017, Mr Hurdnall contacted a Valuer, Ms Stone. There is no firm evidence that Ms Stone was at any point formally appointed by Mr Hurdnall to represent the Respondent on the valuation of the lease for the Flat.
17. Ms Stone then attempts to contact Mr Cohen with a view, it would seem, to negotiate a settlement outside of the tribunal proceedings. She has to wait for some time for Mr Cohen to get back to her. Mr Cohen presented an email exchange with Ms Stone dated 20 February 2017 in which Ms Stone confirms that she has not been formally instructed by the Respondent regarding the valuation.
18. Mr Hurdnall writes to the Applicants' legal representatives in February 2017 asking for access to the Flat for the purposes of valuation. The rather curious reply to these requests was a statement that there is no obvious need for the Respondent's Valuer to inspect the Flat for the purposes of a valuation.
19. After considering the procedural history and the parties' submissions, we refused the application for an adjournment.

20. Mr Hurdnall told us that he thought he could negotiate a premium for the new lease without recourse to his own Valuer. In our view, he was clearly on notice once these proceedings had been issued and once he had received the directions from this tribunal that, if he wished to rely on valuation evidence, he would have to instruct a Valuer. He failed to do this at any point prior to the hearing.
21. We were troubled by the Applicants' legal representative's response to the request for an inspection – it was clearly an inappropriate and wrong response. However, having missed the deadlines in the tribunal's directions in December 2016 and January 2017, it was necessary for Mr Hurdnall to be clear to the Applicants that he was now ready and willing to formally instruct a Valuer. Unfortunately he was far from clear. At no point in his correspondence with the Applicants' representatives did he say that he had formally instructed a Valuer and that the named Valuer wanted to inspect. Indeed the Valuer that he was in contact with specifically confirmed to Mr Cohen that she was not instructed in the proceedings.
22. Mr Hurdnall is a legal professional and by his own admission, he has a great deal of experience in enfranchisement procedure. He was aware, or should have been aware, of the dangers in not properly instructing a Valuer to represent the Respondent's valuation interests. He had, in our view, no good reason for his failure to have valuation evidence by the time of the hearing and there was nothing in the procedural history which would allow us to properly reach the decision to waste the tribunal's time and resources in adjourning the final hearing.

### **The Applicants' valuation**

23. Mr Cohen arrived at his valuation of £26,715 by taking account of the following matters.
24. *Condition:* The double glazed windows in the Flat were taken as an improvement on the original single glazed wooden windows.
25. *Layout:* The fact that the Flat has an irregular layout.
26. *Location:* Whilst on the one hand the Flat is convenient for local shops and transport, it has a very poor location - it sits on the junction of two very busy main roads (with traffic lights) and is very close to the M1 motorway.

### *Capitalisation Rate*

27. This was taken at 7% to reflect the modest rising ground rent.

### *Deferment Rate*

28. Mr Cohen adopted the standard 5% *Sportelli* rate.

*The value of the extended lease*

29. Mr Cohen identified five comparable sales. All those sales were of properties falling within the same area of land, that area being that which lies between the A41 and the M1. The comparables used and the adjustments made are as follows:-

*33 Wilshaw Close:* Adjusted for en-suite shower room and for being in a modern residential block to arrive at £303,000.

*25 Wilshaw Close:* Adjusted for time, en-suite shower room and for being in a modern residential block to arrive at £282,000.

*102a Wheatley Close:* Adjusted for time and a shorter lease length to arrive at £275,000.

*29 Wheatley Close:* Adjusted for time and a shorter lease length to arrive at £309,500.

*12 Johnson Close:* Adjusted for time, en-suite shower room and for being in a modern residential block to arrive at £282,000.

*30 Canberra Close:* Adjusted for time, an extra bedroom and for being in a modern block to arrive at £285,750.

30. The above adjusted values were then averaged to £290,000. Mr Cohen then deducted £2,000 in respect of the window improvement to arrive at a final figure of £288,000.

*Relativity*

31. To arrive at a Relativity figure of 86.27%, Mr Cohen had regard to the following Relativity graphs for the subject lease length and took an average:-

Beckett & Kay (2009)	84.46
South East Leasehold	90.07
Nesbitt	83.35
Austin Gray	85.74
Andrew Pridell	86.21

**The Respondent's case**

32. As a result of our decisions at the outset of the hearing, the Respondent was unable to present any evidence in support of its case and accordingly its involvement in the final hearing was limited to the cross-examination of Mr Cohen and to the making of submissions.

33. In summary, the following matters were put to Mr Cohen:-

- (a) That he did not take account of the relative locations of the comparable properties that he relied on, in particular;
- i. That the properties at Wheatley Close were significantly further from the underground station and other properties were not as conveniently located for local shopping. Mr Cohen's response was that this was not, in his opinion, a significant factor.
  - ii. That some of the comparables were in worse positions in terms of traffic and the position and screening of the M1 motorway. Mr Cohen pointed out that the Flat was on the junction of two main roads, that junction was controlled by traffic lights - some of the comparables were set back from the main road.
  - iii. The uplift for an additional bedroom at Canberra Close (£40,000) was too little.
  - iv. That some of the bedrooms in the comparables were smaller and no account had been taken of this.
- (b) Of the graphs relied upon, the best to rely on were the ones that included mostly properties in suburban London rather than other areas of the country, in particular the Nesbitt graph. Also, the John D Wood Pure Tribunal Graph should be taken into consideration. Mr Cohen's response was that although the Nesbitt Graph included properties in the Midlands and South Coast it was predominately Greater London.

34. Mr Hurdnall submitted that the long lease value for the Flat should be £325,000.

### **Inspection**

35. The parties agreed that there was little point in an internal inspection of the Flat. Neither party had a strong view as to whether or not we should inspect the area or the outside of the comparable properties.
36. We decided that we could gain sufficient information from consideration of various Google Street Views.

### **Decision**

37. We accept Mr Cohen's Deferment and Capitalisation rates (which were unchallenged).
38. As to the value of the long leasehold interest, we consider that Mr Cohen's comparables were, in the main, well chosen. We do not consider that the Flat is in any better position than the comparables in terms of traffic noise. We do not consider that, taking into account the Flat's very poor position, that it gains anything against the comparable properties with regard to proximity to local (limited) shopping or transport. Further, we did not consider that the bedroom size in the Flat was significant, the bedrooms are not so large or the comparables so small, as to make any meaningful difference on value. We did not

consider that the allowance for £40,000 for an extra bedroom at Canberra Close was unrealistic.

39. In arriving at the long leasehold value, we decided to exclude 102a Wheatley Close as there was uncertainty as to whether this was a one or two-bedroomed flat. We took the remainder of the comparables and averaged the value of those to arrive at a figure of £292,450. We added to that 1% for freehold value to arrive at a figure of £295,370. We did not make any adjustment for the tenant's improvements (double glazing) as this would have double-counted as Mr Cohen had made adjustments in his comparables for being modern blocks (with double-glazing).
40. As to Relativity, we concluded that it would be wrong to rely on just one graph which was not exclusively made up of properties in a similar geographical location. We have used the graphs adopted by Mr Cohen with the exclusion of the South East Leasehold graph which sits (for the lease length) considerably outside the range of the other graphs. Using these graphs, we arrived at a Relativity of 84.94%. We do not consider that the John D Wood pure Tribunal Graph should be considered as this has been disapproved by the Upper Tribunal.
41. Our valuation is attached.

**Mark Martyński, Tribunal Judge**  
**17 March 2017**

Sheet1

Appendix 1

14 Henley Court, London NW4

New lease claim	Valuation Date	25-Mar-16		
Present lease	99 Years	From	01/08/77	
Years unexpired	60.35			
Long lease value	£292,450	Freehold	£295,370	
Existing lease value	£250,890	Relativity	84.94%	
YP= 7.00%	PV= 5%			
<b>Diminution in value of landlord's interest</b>				
Value before grant of new lease				
Term				
Rent		£	80	
	YP 27.35 yrs @ 7%		12.041	963
Rent		£	120	
	YP 33 yrs @ 7%		12.754	
	Deferred 27.35 yrs @ 7%		0.157	240
Reversion				
Flat value (F/H)		£	295,370	
Deferred	60.35 yrs @5%		0.053	15,655
				16,858
<b>Less value after grant of new lease</b>				
Term				
New lease at a peppercorn rent				0
Reversion				
Flat value (F/H)		£	295,370	
Deferred	150.35 yrs @5%		0.00065	192
				-192
<b>Diminution in value of landlord's interest</b>				<b>16,666</b>
<b>Marriage value</b>				
Aggregate of values of interests after grant of new lease				
Landlord's interest			192	
Tenant's proposed interest			292,450	
			292,642	
<b>Less Aggregate of values prior to grant of new lease</b>				
Landlord's interest			16,858	
Tenant's interest			250,890	
			267,748	
	Marriage value		24,894	
			50.00%	<b>12,447</b>
			<b>Premium</b>	<b>29,113</b>