

4447



FIRST-TIER TRIBUNAL

**PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)**

Case Reference : LON/ooAK/OLR/2016/1581

Property : 16 Oakwood Close, London N14 4JY

Applicant : Mr A Williams

Representative : Allan Jay Paine Ltd, solicitors

Appearances :
(1) Mr J Gilmartin, MRICS
(2) Ms C Rodway, trainee solicitor

Respondent : Daejan Properties Ltd

Representative : Wallace LLP

Appearances :
(1) Ms N Muir, counsel
(2) Mr R Sharp, FRICS

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

Tribunal :
1. Judge Amran Vance
2. Miss M Krisko, FRICS

Date of Hearing : 4 April 2017

Date of Decision : 7 May 2017

Date of Corrected Decision : 19 May 2017

**CORRECTED DECISION UNDER RULE 50 The Tribunal Procedure
(First-tier Tribunal) (Property Chamber) Rules 2013**

In this corrected decision the tribunal corrects an accidental arithmetic error in its original decision.

Decisions of the tribunal

1. We determine that the premium payable by the applicant under Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”) on the grant of a new lease of the subject flat and Garage 7 is **£ 42,391**.
2. We approve the terms of the draft lease included in the hearing bundle.

Background

3. This is an application made under section 48 of the Leasehold Reform Housing and Urban Development Act 1993 (“the Act”).
4. The applicant is entitled to a new lease of 16 Oakwood Close and Garage 7 (“the Flat”) under Chapter II of the Act. The Flat is a purpose built upper maisonette with access to communal gardens. It comprises a large reception room, two bedrooms, a kitchen, bathroom and a separate WC. The respondent is the freehold owner of 1-48 Oakwood Close, London, N14 4JY.
5. The applicant served a notice of claim to take a new lease of the Flat on 26 May 2016. In the notice, he proposed a 90-year extension of the term of the lease at a peppercorn rent. The premium proposed was £33,800.
6. On 28 July 2016, the respondent served a counter-notice admitting the applicant’s entitlement but disputing the proposed terms of acquisition. The counter-proposal was a premium of £89,389.
7. The applicant subsequently applied to this tribunal for the determination of the disputed terms in an application dated 29 September 2016.
8. The following are particulars of the applicant’s leasehold interest:

(a) Date of lease: 26 September 1973.

(b) Term of lease: 99 years from 25 December 1972.

(c) Ground rent: £35 per annum.

(d) The unexpired term of the lease (“the Lease”) at the valuation date of 26 May 2016 (the date of service of the applicant’s notice) was therefore 55.578 years.

9. Before us, the respondent proposed a premium of £65,697. The applicant’s proposed premium was £40,855.

10. The following matters were agreed between the parties:

(a) a valuation date of 26 May 2016;

(b) an unexpired term for the Lease at the valuation date of 55.578 years;

(c) a capitalised ground rent of £460;

(d) a deferment rate of 5%; and

(e) a notional freehold uplift of 1%.

(f) that the difference in opinion between the valuers as to the gross internal area of the Flat made no significant difference to its valuation.

11. The following issues were in dispute:

(a) the unimproved long lease/freehold value (“FHVP”) of the Flat;

(b) the existing lease value of the Flat;

(c) the relativity between the FHVP and the existing lease value; and

(d) the approach to be taken in respect of the valuation of Garage 7.

12. Garage 7 was sublet by an earlier long leaseholder of the Flat, on 5 June 1981, for a term of 99 years expiring three days before the end of the term of the Lease at an annual ground rent of £15 per annum. The terms of the Lease did not require the freeholder’s consent to the grant of the sublease of the garage, for which a premium of £1,200 was paid. Mr Sharp, the respondent’s valuer valued the Flat with the benefit of the Garage as both were included in the demise of the Flat. Mr Gilmartin, on the other hand, considered that the value of the Garage should be disregarded when calculating the FHVP of the Flat to reflect the fact that the applicant is not in

physical possession of the Garage and did derive any benefit from it except for the very small amount of annual ground rent payable.

Inspection

13. Neither party requested that we inspect the Flat and we considered this was unnecessary given the photographic evidence included in the hearing bundle.

The Law

14. Schedule 13 of 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.
15. 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.
16. 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 value shall be taken to be nil.
17. Para 5 provides for the payment of compensation for loss arising out of the grant of a new lease.
18. Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

The Hearing

19. We allowed the following documents to be admitted in evidence despite their late provision there being no objection from either party:
 - (a) a copy of the under lease for the Garage;
 - (b) office copy entries, with comments from Mr Sharp, in respect of flats 2 and 3 Kingsley Court

The Respondent's Case

Mr Sharp's Evidence

- 20.** When calculating the FHVP, Mr Sharp relied on comparable sales of three first-floor 2-bedroom flats in Oakwood Close, none of which has a garage, adjusting for time by using the Land Registry Index for Enfield:
- (a) First Floor Flat, 40 Oakwood Close which sold on an extended 111-year lease in February 2016 for £355,000 (£369,886 when adjusted for time to the valuation date).
 - (b) First Floor Flat, 20 Oakwood Close which sold on an extended 111-year lease with ground rent of £100 for the first 25 years, doubling every 25 years, in May 2015 for £355,000 (£415,915 when adjusted for time to the valuation date).
 - (c) First Floor Flat, 32 Oakwood Close which sold on the same lease as 20 Oakwood Close for £325,000 in April 2015 (£384,015 when adjusted for time to the valuation date).
- 21.** Mr Sharp took the average of the adjusted long lease prices for 40, 20 and 32 Oakwood Close to arrive at an average figure of £389,939. As the sale of 40 Oakwood Close was more recent and the land registry index was less reliable over time he gave it more weighting and using his judgment arrived at a long lease value of £375,000 for the subject Flat if it did not have a garage.
- 22.** As to the value to be attached to a garage, he had spoken to an agent who suggested that a garage added about £10,000 to the value of a local flat/maisonette but about £20,000 if it could be sold separately on a long lease. This, he suggested, was supported by the sale of a garage at 10 Stafford Close, about a ¼ of a mile from the Flat, which sold for £21,000 in February 2017, on a new 125-year lease. In his judgment, the garage added £15,000 to the value of the Flat, resulting in a long lease value of £390,000 with the garage.
- 23.** In addressing relativity, and in the absence of useful comparable evidence of sales of short leases in the locality, he took the average of what he considered to be the three most reliable graphs, Savills 2015, Gerald Eve and Beckett and Kay, arriving at a relativity of 72.33% and an existing lease value of £284,936 for the subject Flat.

The Applicant's Case

- 24.** In terms of comparable evidence, Mr Gilmartin relied upon six comparable transactions (two were dropped during the hearing) but considered that the two

most relevant were the sales of 40 and 20 Oakwood Close, being within a few metres of the Flat, with similar room dimensions and similar in style.

- 25.** He considered the fact that both sold for £355,000 with similar lease lengths provided much better evidence of price inflation for the period May 2015 to February 2016 than using an index. He first reduced the price paid for number 20 by £7,500 as he considered it to have been modernised and of better quality than number 40. He reduced it by a further £7,500 because he considered it looked as though, prior to the sale, part of the shared back garden had been occupied by the vendors for use as a patio for their private use, despite this not being demised in the lease. He therefore assessed the value of number 40 at May 2015 as being £340,000 giving inflation of 4.4% for the period to February 2016.
- 26.** For the period between the sale of number 40 in February 2016 to the valuation date he used the average of the Land Registry indices for Enfield and Barnet as the Flat is close to the border of the two local authorities which showed a 3.4% inflation.
- 27.** He had regard to all his comparable transactions, adjusted for various matters such as size and specification and then adjusted for time to the valuation date using the calculation referred to above. For number 40, he made an adjustment of £27,500 for modernisation by way of a 'developer's refurbishment' and for number 20 he made an adjustment of £35,000 to reflect a superior specification and £7,500 for the claimed garden area.
- 28.** As to the value of the Garage he considered there was scant evidence available but referred to a property at 17 The Vineries, London N14 4BH that was offered for sale in the open market with the option of acquiring a garage for an additional £10,000 although the buyer bought without the garage. In his view, a figure of £10,000 for the subject Garage was appropriate.
- 29.** Considering the evidence in the round he arrived at a figure of £340,000 for the FHVP of the subject Flat to which he added £10,000 for the value of the garage, giving a total of £350,000. However, to reflect the real-life situation, he then deducted the £10,000 value of the garage to reflect the fact that the tenant was not in physical possession, and added back in the reversionary value of the garage in the sum of £664 arriving at a long leasehold value of £337,199. When calculating the marriage value due to the respondent he again deducted the £10,000 value of the garage and added in £100 for the rental income to be realised.
- 30.** In assessing relativity, he considered the South East Leasehold, Nesbitt & Co and Andrew Pridell graphs which averaged 82.93% as well as settlements he had reached but preferred his own graph that he had put together using seven open market open market transactions in North London which showed a relativity of 82%.

Decision and Reasons

Long Lease/freehold value

31. We do not agree with Mr Gilmartin that the value of the Garage should be disregarded when calculating the FHVP of the Flat and when calculating marriage value. In our view the existence of the sublease is not relevant to this valuation exercise because what needs to be valued is what was demised in the Lease, namely the Flat *with* the Garage. The landlord is entitled to be compensated for the fact that its right to get both the Flat and the Garage back at the end of the term is postponed by ninety years. We therefore agree with Mr Sharp that the Flat should be valued with the benefit of the Garage, as both were included in the demise of the Flat.
32. As to the value to be placed on the garage, neither valuer could provide compelling evidence. The garage at The Vineries identified by Mr Gilmartin did not sell. Mr Sharp's enquiries resulted a local agent suggesting a figure of £10,000 when sold with a flat and £20,000 if sold on a separate long lease. In our view, the fact that garage 10, Stafford Close sold for £21,000 on a separate long lease supports that agent's assessment. Given that what was included in the demise of the Flat was a flat with the benefit of a garage and not a garage sold on a separate long lease, we consider the appropriate value to be £10,000.
33. We consider that the two best comparables identified by the valuers are the transactions concerning numbers 20 and 40 Oakwood Close, given their proximity to the subject Flat and similarities in terms of size and style. Of those two transactions, we consider that the best comparable is the sale of number 40 given that the sale was very close to the valuation date. In contrast, the sales of numbers 20 and 32 were about a year from the valuation date and we do not consider them useful comparable transactions for that reason.
34. In addition, we consider that the transaction concerning number 20 needs to be viewed with considerable caution as it appears to be out of line with the sale of number 32 on the estate as well as to the sales of comparable transactions of flats in nearby streets as referred to by Mr Gilmartin. The sale on the estate of 32 Oakwood Close was only a few weeks before the sale of number 20 but despite this, it sold for £30,000 less than number 20, even though it is a similar property.
35. As to Mr Gilmartin's alternative comparables outside the estate, he identified a sale in March 2016, of Flat 4, Chase Bank Court, located 140 metres from the Flat which sold on a long lease for £385,000. Adjusting this for time using the Land Registry Index for Enfield results in a figure of £392,144. Mr Gilmartin suggests that this flat is a superior property to number 20, being more modern in style and having the benefit of a private front garden, a more open aspect facing a green space and with plentiful parking available. These superior characteristics are borne out by the extracts from the sales particulars and the photograph annexed to Mr

Gilmartin's report. It is also a virtual freehold with 944 years to go. As identified by Mr Sharp, the adjusted for time sale price of number 20 using the Land Registry Index for Enfield is, £415,915. Given the superior nature of the property we query why the adjusted for time sale price of Flat 4, Chase Bank Court is much lower than number 20.

36. Another of Mr Gilmartin's comparables, 6 Linden Close, 238 metres from the subject Flat, sold on a long lease on 25 January 2016 for £342,837. Although, as shown by the sales particulars, it is not as attractive as number 20, it does have the benefit of a private rear garden. Adjusted for time using the Land Registry Index for Enfield results in a price of £ 348,000. Again, this is considerably less than the adjusted sale price for number 20.
37. The same is also true for the adjusted sale price of another of Mr Gilmartin's comparable transactions, namely the sale of 1 Grovesnor Court, 295 metres from the subject Flat, which sold for £350,000 on 11 December 2015. It also had the benefit of a private rear garden. Adjusted for time using the Land Registry Index for Enfield results in a price of £ 373,000.
38. This analysis of the adjusted sale price for these transactions, leads us to conclude that there is something anomalous about the sale of number 20 in in May 2015 which is likely to stem from the fact that despite being very similar to number 40, and modernised to a broadly similar standard, it sold for the same price as number 40, despite the sale being about 9 months later. For these reasons and because of the age of the transaction from the valuation date we consider its use as a comparable to be unsafe and we disregard it in our valuation, preferring to use the transaction concerning number 40 alone as our main comparable. It requires the fewest adjustments and is very comparable to the subject property.
39. We accept, as suggested by Mr Gilmartin that number 40 was been modernised to a higher standard than the subject Flat at the time of its sale. In his report, Mr Sharp makes no adjustment for this as he considers it that the refurbishment would be no better than required under the lease for the subject flat. He does not, however, refer to specific covenants in the lease. We disagree. Whilst the lease for number 40 contains a repairing covenant and a covenant relating to keep the property in good decorative order, a comparison of the sales particulars for number 40 to the photographs of the subject Flat indicate that number 40 was been modernised to a standard that that went beyond what was required under the lease covenants. It had the benefit of a modernised kitchen, an opened-up bathroom, new bathroom fittings and new fitted wardrobes.
40. This superior condition, in our view, merits an adjustment of minus £11,000 from the adjusted for time sale price using the Enfield Land Registry Index of £369,886. We also adjust that price by plus £10,000 to reflect the value added by the Garage, resulting in a net adjustment of £1,000, a long lease value of **£368,886** and a FHVP of **£372,612** applying the agreed uplift of 1%.

41. We consider it best to use the Enfield index as the property is in that local authority's area even though it is located quite close to the border with Barnet. We do not agree with Mr Gilchrist's methodology for adjusting for price inflation in light of the concerns stated above regarding the price paid for number 20 and our conclusion that it is likely to be an anomaly making it unsafe to be used as a comparable

Existing lease value

42. We do not consider Mr Gilmartin's graph to be reliable given that it is only based on seven open market transactions and therefore subject to a risk of skewed data given the limited number of transactions.
43. We prefer Mr Gilmartin's use of the South East Leasehold, Nesbitt & Co and Andrew Pridell graphs as opposed to the Savills 2015, Gerald Eve and Beckett and Kay graphs favoured by Mr Sharp. Whilst we recognise that the Upper Tribunal in *Sloane Stanley Estate v Mundy* [2016] UKUT 0226 (LC) was satisfied that the Gerald Eve graph was the graph which was most commonly used for leases without rights under the 1993 Act at the valuation dates being considered, February to April 2014, they did not reject the use of other graphs.
44. In their view, the best evidence was a 'real world' market transaction in respect of the existing lease, with rights under the 1993 Act, on or around the valuation date. We do not have the benefit of reliable market transactions in respect of the leases for the subject Flat at or around the valuation date, and have therefore considered whether there is a reliable graph for determining the relative value of the existing leases of the Flat without rights under the 1993 Act.
45. We do not consider it is appropriate to have regard to the Gerald Eve graph because this is based on transactional data in prime central London and, in our view, is not useful when considering suburban flats in outer London. Nor do we consider the Beckett and Kay Graph to be appropriate as the relativities identified in the table annexed to Mr Sharp's report show a significantly lower range than that indicated by the outer London graphs of South East Leasehold, Nesbitt & Co, Austin Gray and Andrew Pridell. In our view, it is unlikely to properly reflect the market for this type of flat in the outer London area. As for the Savills 2015 graph, we do not consider it to be useful given the technical criticisms made of the graph in *Sloane Stanley Estate v Mundy* and its basis upon the hedonic regression model.
46. We consider the best approach is to average the results of the outer London graphs of the South East Leasehold, Nesbitt & Co and Andrew Pridell graphs, which produces a relativity of 82.93% and which gives a value for the existing Lease of the subject Flat including the Garage of £ £309,007.

47. The diminution in the value of the landlord's interest in the Flat 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 1993 Act. This was agreed by the parties at £460.
48. 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 freehold value with vacant possession of £372,612. In our view the appropriate deferment rate is 5% as authoritatively determined to be in the case of *Earl Cadogan v Sportelli* (2006) LRA/50/2005 and as agreed by the parties.
49. 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.
50. The premium payable by the applicant under Schedule 13 of the Act, on the grant of a new lease of for the Flat is therefore **£ 42,391**. A copy of our valuation is attached to this decision.

Lease terms

51. The respondent's solicitors have prepared a form of draft lease for the Flat which we are invited to approve. The terms are agreed between the parties. The draft lease provides for the surrender of the existing Lease and the grant of a new lease with a term of 189 years in accordance with section 56(1) of the Act. The terms of the new lease are the same as those of the Lease with the addition of statutory rights of termination for redevelopment and modifications to the tenant's covenants in respect of payments to be made by the tenant in consideration of costs incurred by the landlord which in our view are permissible under section 57 of the Act. We are satisfied that the lease terms proposed are appropriate.

Name: Amran Vance

Date: 7 May 2017

Date of Corrected Decision: 19 May 2017

Appendix 1 – The Tribunal’s Valuation

**LON/00AK/OLR/2016/1581FIRST TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)**

S48 Leasehold Reform Housing and Urban Development Act 1993

**Determination for the premiums payable for extended lease of 16 Oakwood Close,
London, N14 4JY**

Matters Agreed

Valuation date	26th May 2016.
Term	55.578 years
Ground rent	£35 pa – agreed value £460
Deferment rate	5%
Freehold uplift	1%

Matters Determined

FHVP	£372,612
Extended lease	£368,886
Existing lease	£ 309,007
(all inclusive of garage at £10,000)	
Relativity	82.93%

Ground Rent

Agreed at **£ 460**

Reversion

FHVP £372,612

PV 55.578 years @ 5% 0.0664 **£ 24,741** **£25,201**

Less:

FH reversion	£372,612		
PV 145 years @ 5% 0.0008		£ 298	£24,903

Marriage Value

After extension:

Freeholder's interest	£ 298
Lessee's interest	£368,886

Less present interests:

Freeholder's interest	£ 25,201
Lessee's interest	£ 309,007

£ 34,976

50%

£ 17,448

Premium

£ 42,391

Appendix 2 - 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 Tribunal 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 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.
4. 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.