



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

Case Reference : LON/00AY/OLR/2016/1453 & 1455

Address : Flats 14,16 & 20 Clevedon Court,
Clive Road, SE21 8BT

Applicants : Terry Shealtial O'Hene (Flat 14)
Stephen Harper (Flat 16)
Matthew Peter Sinclair (Flat 20)

Representative : Mr R G McDonald MRICS LLB

Respondents : Ricky Gibbs & Carol Gibbs

Representative : Mr R M Balmforth FRICS

Type of Application : Grant of new lease (Section 48
Leasehold Reform, Housing and
Urban Development Act 1993)

Tribunal Members : Mr M Martyński (Tribunal Judge)
Mr N Martindale FRICS

**Date and venue of
Hearing** : 18 January 2017
10 Alfred Place, London WC1E 7LR

**Date of Reviewed
Decision** : 2 May 2017

REVIEWED DECISION

This reviewed decision follows an application dated 28 March 2017 from the Respondent's Valuer dated 28 March 2017. We have treated that application as a request for a review of our original decision dated 22 February 2017. We reviewed and amended our decision due to the fact that the figures set out in the original decision and the appendices to that decision did not match.

Decision summary

1. The premiums to be paid for the new leases are as follows:
Flat 14: £24,321
Flat 16: £25,093
Flat 20: £25,093
2. The valuations are attached.

Background

3. The subject flats are contained within Clevedon Court ('the Block') which is purpose-built 1930's block of flats. There were originally three storeys containing 23 flats. Approximately eight years ago a further storey was added with another seven flats.
4. The freehold interest in the Block is held by the Respondents.
5. The details of the Applicants' leases (which are in similar forms) are as follows.
6. Flat 14: Lease dated 27 February 1989 for a term of 99 years from 24 June 1984.
7. Flat 16: Lease dated 18 October 1988 for a term of 99 years from 24 June 1984.
8. Flat 20: Lease dated 18 July 1986 for a term of 99 years from 24 June 1984.
9. The Claim Notices were all dated 4 January 2016 and the Counter-Notices were all dated 8 March 2016 – the proposed premiums and counter-proposed premiums were as follows:-

	<i>Proposed</i>	<i>Counter-proposed</i>
Flat 14:	£12,900	£25,120
Flat 16:	£12,900	£24,820
Flat 20:	£12,900	£24,820
10. All three flats have two bedrooms and the agreed measurements for each flat are as follows:-

Flat 14:	52 sq.m
Flat 16:	54.4 sq.m
Flat 20:	54.4 sq.m

The issues

11. Three issues were put before the tribunal (all other valuation elements being agreed) as follows:-
 - a. The existence and value of tenants' improvements
 - b. The issue of damp/dry rot and its effect on valuation
 - c. The long lease value

The valuations - Applicants

12. Valuation reports were produced for the Applicants by Mr McDonald MRICS. One of the reports was in respect of Flat 16, the other was in respect of Flats 14 & 20.

Flat 14

13. For the new lease of this flat, Mr McDonald contended for a premium of £14,100.
14. Mr McDonald relied on one comparable for a long lease value. That comparable is Flat 2 in the subject Block which is situated on the ground floor. That flat sold on 21 April 2015 for £312,000 with a lease of 84.9 years remaining. He adjusted that value to £320,000 to take account of a premium of £6,500 that he considered would be payable for a new extended lease. He then adjusted for time using the Lambeth flats index and for a freehold value to arrive at a figure of £350,000.
15. He then makes an adjustment of £10,000 for tenant's improvements, those being;
 - a. central heating
 - b. double glazing
 - c. replacement of sanitary ware
 - d. modern kitchen units
 - e. laminate flooring
 - f. modern tiling to kitchen and bathroom
 - g. wiring earthed and proved with circuit breakers
16. A further adjustment of £102,000 (or 30%) is then made for the issue of damp/dry rot.
17. It was the Applicants' case that, following the construction of the fourth storey to the Block in 2007 there have been problems with damp and dry rot in a number of flats in the Block, particularly those situated on the Second Floor (immediately beneath the new storey).
18. Mr McDonald stated at the hearing that there were no issues with damp/dry rot affecting Flat 14 but that the issues in the rest of the Block would have an effect on this flat. Upon the lease being sold, the purchaser's conveyancer would make pre-contract enquiries and these should reveal that there is an on-going dispute regarding the block. In particular it would be revealed that there have been previous

proceedings in the First-tier Tribunal which mentioned the issue and that the freeholders and leaseholders have each instructed solicitors regarding the issue. The potential purchaser would then be put on notice that there was a serious issue and that there may be significant costs to be paid via the Service Charge for remedial works. The issues at the Block with damp/dry rot made the flats unmortgageable and they would only be of interest to investors who would want substantial discounts and who would be looking to make a 'killing' on any purchase.

19. We put it to Mr McDonald that there did not appear to be any expert evidence regarding this issue before the tribunal. In particular, there was no evidence that the issues of damp/dry rot were the freeholder's responsibility under the terms of the lease or that those issues were caused by the construction of the additional storey to the Block.
20. Mr McDonald had with him at the hearing a Surveyor's report which he said supported his case. That report had not previously been disclosed within these proceedings and was not in the bundles of documents provided for the parties for the hearing. Mr Balmforth, representing the Respondents at the hearing, stated that he had not seen the report and objected to it being adduced at this late stage. If it were adduced, argued Mr Balmforth, he would then wish to adduce other evidence to rebut that report. He pointed out that he himself had conducted experiments at the Block with a Surveyor appointed by leaseholders, the results of which contradicted the conclusions that the additional storey was responsible for damp/dry rot. He added that the First-tier Tribunal had, in a previous case relating to the Block, rejected a report that argued that the construction of the additional storey to the block was the cause of generalised damp and dry rot.
21. We refused to allow Mr McDonald to rely upon the Surveyor's report that he had brought to the hearing. It had not been previously disclosed in the proceedings. Allowing it to be adduced in evidence would necessitate the adjournment of the hearing with further directions for the filing of this evidence and counter-evidence from the Respondents.

Flat 16

22. For the new lease of this flat, Mr McDonald contended for a premium of £15,200.
23. Mr McDonald relied on the same comparable analysis as set out for Flat 14 above.
24. He then makes an adjustment of £10,000 for the same improvements as per flat 14.
25. A further adjustment of £140,000 (or 40%) is then made for the issue of damp/dry rot. The adjustment is greater than for Flat 14 because Flat 16 is on the second floor where more flats have had problems.

26. Mr McDonald stated at the hearing that the leaseholder in question had to undertake works of repair on a number of occasions in recent years to deal with the issue of damp and dry rot. However, there was no evidence of this beyond Mr McDonald's assertion and the confirmation of his assertion by the leaseholder in question who was present at the hearing (he had not however made a witness statement nor was he called to give evidence).
27. Appended to Mr McDonald's report was a photograph of the interior of one of the rooms in Flat 16. We were told that this photograph showed a damp stain on the wall but that was not readily apparent from the black and white photograph available to us in the hearing bundle.
28. Also appended to the report were photographs taken of the interior of Flat 23. These photographs showed damage to the front bedroom and hall skirting boards which appeared to show the wood rotting. There were also photographs which Mr McDonald said showed damp to ceilings in the rear reception room and bedroom of this flat. The purpose of these photographs was to show that there was a significant issue with damp and rot in the flats on the second floor – Flat 16 being situated on this floor as is Flat 23. Again Mr McDonald stated that the issues in the rest of the Block would have an effect on Flat 16 in the same way as it would on Flat 14 – i.e. making it unmortgageable.

Flat 20

29. For the new lease of this flat, Mr McDonald contended for a premium of £14,100.
30. Mr McDonald relied on the same comparable analysis as set out for Flat 14 above.
31. He then makes an adjustment of £10,000 for the same improvements as per Flat 14.
32. A further adjustment of £140,000 (or 40%) is then made for the issue of damp/dry rot. The adjustment is greater than for Flat 14 because flat 20 is on the second floor where more flats have had problems.
33. Appended to Mr McDonald's report are various photographs of the interior of flat 20. One photograph was said to show some minor traces of mould spotting along a wall. In the hearing Mr McDonald stated that there were only minor traces of damp/dry rot in the flat. Again Mr McDonald stated that the issues in the rest of the Block would have an effect on flat 20 on the same way as it would on Flats 14 & 16. Mr McDonald stated that there was a more severe problem in Flat 21. There was no further evidence of this problem in the hearing bundle.

The valuations - Respondents

34. A single valuation report was produced for the Respondents by Mr Balmforth FRICS.
35. Mr Balmforth's approach to the valuation was to rely on a number of comparables. He did not make any further adjustments for tenant's improvements or the issue of damp/rot.
36. Mr Balmforth approached the valuation by using the square meterage of the subject flats and the comparable flats. He stated that most estate agents were now in the habit of providing plans of the properties that they sell and to give details of the square meterage or footage of the properties. He considered therefore that buyers were becoming more aware of this factor in purchasing properties and would take account of it when forming their own views as to value.
37. Starting with the sale of Flat 2, Mr Balmforth noted that the flat was a relevant comparable but considered that adjustments needed to be made for some adverse features of that flat which he gave as:-
- (a) The entrance door to the flat is located immediately adjacent to the bottom of the communal staircase
 - (b) The heavy steel gates giving access to the Block are immediately adjacent to the flat and cause noise and vibration within the flat when they are used
 - (c) The windows face out to the communal courtyard and side garden and so there is a lack of privacy
 - (d) The intercom serving all the flats is located immediately adjacent to the bedroom window – again this is a source of disturbance to the occupants of flat 2
37. To the base value of £312,000 for this flat, Mr Balmforth adds £8,000 as the cost of an extended lease to arrive at £320,000.
39. Mr Balmforth then adds 10% to the figure of £320,000 to account for the adverse factors set out above.
40. The final adjustment is for time to arrive at a figure of £388,900, which equates to £7110 per square metre (but this was based on a square meterage of 54.7 which was later agreed in the hearing to be 52.7).
41. The second, third and fourth comparables relied upon are all flats on the new top storey of the Block which were all sold on new long leases – the details are:-
- Flat 27 – 43 square metres – sold 24.4.15 for £275,000 – adjusted value (for time) - £7054 psm
- Flat 29 – 41.5 square metres – sold 4.3.15 for £264,000 – adjusted value (for time) - £7082 psm

Flat 26 – 42.5 square metres – sold 9.1.15 for £280,000 – adjusted value (for time) - £7334 psm.

42. The final comparable relied upon is a very different flat in a converted Edwardian House at 136 Clive Road. This is flat is 74 square metres and sold on 5 November 2015 for £530,000. (We do not appear to have any details as to lease length). Adjusting for time gives £7047 psm.
43. Mr Balmforth then takes the average psm value for each of the comparables at Clevedon Court. There appears to be an error in Mr Balmforth's report at this point – we use the figures set out above which are slightly different from the figures in Mr Balmforth's report – we arrive at an average of £7145 psm (Mr Balmforth's figure is £7142 rounded to £7140).
44. As to his figure for 136 Clive Road of £7047 psm, Mr Balmforth uses this as a check against his averaged figure for the flats at Clevedon Court.
45. Mr Balmforth's average figure (as per his report) is then applied to the square meterage of the subject flats and long lease values arrived at which in turn lead to premiums for the new leases of:-

Flat 14:	£24,336
Flat 16:	£25,219
Flat 20:	£24,007
46. Mr Balmforth added an appendix to his report after considering Mr McDonald's report and commented on the issues of deductions for tenant's improvements and the damp/dry rot issues.
47. According to Mr Balmforth, the Crittal windows in the original Block were replaced approximately nine years ago, via the Service Charge, at a cost of £6,000 per flat as the old windows were at the end of their useful life.
48. In his oral evidence to the tribunal, Mr Balmforth stated that he did not consider that there were any other relevant tenant improvements. The kitchens and bathrooms were simply the normal maintenance that would take place over time. The laminate floors were simply a choice of taste and floor covering, not an improvement. It was more likely than not that the flats had central heating when the leases were granted. As for the electrical improvements claimed by Mr McDonald, again this was just normal updating/maintenance.
49. As to the damp/dry rot issue, in the appendix to his report, Mr Balmforth said as follows; No evidence of dry rot had been found in flats 16 & 20. There was evidence of localised dry rot in flat 22. He inspected the Block with a Surveyor instructed by the leaseholders. They carried out investigations by soaking areas of the Block with water and could find no evidence that there was a problem with water penetration or that the additional storey was causing a problem. They

concluded that there may have previously been a problem with the old rainwater pipes backing up and works had been carried out to deal with that problem. They also undertook invasive investigations and could not find any evidence of a generalised problem.

50. Mr Balmforth pointed out that in 2015 the RTM company, which manages the Block, undertook a full decorative programme in 2015 with associated repairs. The whole Block had been scaffolded. There was no suggestion that this work included any work or investigation as to a generalised problem with dry rot/damp.
51. Finally, Mr Balmforth pointed out that the freeholders have taken the full repairing obligation of the top storey. Leaseholders of the original Block do not contribute to the costs of the maintenance of the new storey – however, the freeholder contributes a proportionate part to the maintenance of the original Block.

Inspection

52. We carried out an inspection on 7 February 2017. We inspected Flats 2, 14,16,20,24,25 & 27 at the Block. We were able to view substantial parts of the exterior of the Block and to see the areas at which Mr Balmforth had previously conducted invasive testing on the maintenance balcony of the top storey to investigate the problems of water ingress in the flats on the second floor. We noted the following matters from that inspection.
53. The kitchens and bathrooms in the subject properties were maintained and updated to no more than a reasonable standard.
54. There was no evidence of a widespread problem of damp/dry rot caused by the additional storey. There was some evidence of historic damp in some flats.
55. The position of Flat 2 was such that it would suffer from its proximity to the entry phone by the metal gates giving access to the Block and from the opening and closing of those gates as people came and went from the Block.
56. The flats on the additional top storey were very small and were of an inferior quality to the original flats.

Decision

Comparables

57. Whilst we consider that looking at the flats on the new storey at the Block is a useful exercise, we are concerned that these flats are very small two-bedroomed flats – significantly smaller than the subject flats. For planning purposes the flats were shown as one bedroomed flats on the plans. It seems to us that using very small two bedroomed flats to

calculate values per square foot overplays the p.s.m. values. Whilst we accept that Mr Balmforth has used a flat outside of the block as a check on the p.s.m. value, that flat is of a wholly different order. It is in a very desirable converted period house and is much bigger.

58. As to Mr Balmforth's adjustments to the comparable at Flat 2, we agree that an adjustment has to be made to this flat to deal with its inferior position in the Block. We do not however accept the level of Mr Balmforth's deduction in this respect, only part of the flat is directly affected by the entry phone and front gates and we consider that a more modest 5% adjustment is appropriate.

Tenant's improvements

59. There is no evidence as to whether the subject flats had central heating installed at the time of the granting of the leases in the mid 1980s. We conclude that it is more than likely that they did. We consider that a flat without central heating in this era would be unusual.
60. As to double-glazing, we consider that this was no more than a maintenance of the windows. It was done via the Service Charge with the landlord organising the works and possibly getting a competitive price for bulk work.
61. The laminate flooring in the subject flats is, we conclude, no more than a choice of floor covering. Far from being an improvement, it is actually a breach of clause 2.23 of the leases which obliges the leaseholder to carpet rooms with felt underlay and to cover the bathroom and kitchen floors with rubberised materials.
62. The leases, at clause 2.4, obliges the leaseholders; *'well and substantially to repair cleanse maintain amend and keep the interior of the Flat and the landlord's fixtures and fittings therein in good order and condition all cisterns waterpipes ballcocks gas pipes and electric wires and tubes serving the flat exclusively and in repairing the same to comply in all respects with the requirements of all local authority and statutory bodies.....'*
63. Therefore, as to bathrooms and kitchens, their condition is, in our view, no more than is required by the terms of clause 2.4. There have been no real improvements and no adjustment should be made in respect of their condition.
64. As to the electrical works, again, we consider that this is no more than a compliance with clause 2.4 of the leases and again no adjustment should be made.

Damp/dry rot

65. We have not seen any evidence that there is a serious problem, in the Block or in the subject flats, as to damp/dry rot that would justify a

radical reduction in value. Mr McDonald, in cross-examination, stated that he had “a feeling” that there was an unaddressed problem in the Block. He was unable to back this up with any hard evidence of such a general problem. The only direct evidence that we heard on this issue was from Mr Balmforth and that evidence was to the effect that there was no such general on-going problem.

66. In the tribunal’s decision of 10 July 2012¹ regarding this block, it said the following:-

We should say that we had listened with interest to the evidence of Mr Hogg and Mr Balmforth. We had concluded that on the balance of probabilities it was not possible to determine that the damage caused to the flats on the second floor had been caused as a result of the various issues put forward by Mr Hogg giving rise to substantial potential repair costs.

67. We have taken account of what was said on behalf of the leaseholder of Flat 16 (that he had had to undertake works on a number of occasions regarding damp) but there is no evidence of the cause of those problems nor is there any evidence that this is part of a general problem caused by a defect to the Block.
68. We note that we were shown photographs of Flat 23 which showed problems that were attributable to damp/dry rot – however there was no evidence of the cause of these problems – they may have been caused by a leak from a flat above or a leak internally. There was no evidence that these problems showed a severe issue in the flats on the second floor generally. Our inspection did not add anything to this view.
69. There was no evidence that the flats were unmortgageable – the evidence of recent sales in the Block suggested that the flats were mortgageable and suggested that there was no discount in the value of the flats.
70. We note that, according to Mr McDonald, on the sale of Flat 2 in April 2015, according to the agent, there was no issue raised in respect of damp/dry rot. Whilst we accept that, according to Mr McDonald, the issue of damp/dry rot is not an immediate problem in the ground floor, he maintained that even if the issue did not directly affect a flat, it would indirectly affect the flat because it was an issue in the Block generally that would very possibly appear in a later Service Charge. There is no evidence of this in the sale of Flat 2.
71. We therefore reject the discount in respect of the issue of damp/dry rot.
72. To arrive at our valuation, we have followed the respective Valuers’ valuations on the comparable at Flat 2. We have taken the sale price of £312,000 adjusted to £320,000 to reflect the shorter lease at that sale. To this, we have added the (agreed) 10.5% adjustment for time. We

¹ Case number: LON/OOAY/LSC/2012/0098

have then added a further 5% to adjust for the inferior position of this flat to arrive at a figure of £371,280.

73. We then use this figure and the square meterage of Flat 2 (52.7) to arrive at a p.s.m. value of £7045. We applied the rate £/m² derived from Flat 2 to the agreed areas for the three flats to arrive at the starting point of each valuation - the virtual FHVP figure in each case - these vary slightly in line with the agreed floor areas.
74. The valuations are attached.

Mark Martyński, Tribunal Judge
2 May 2017

Appendix (revised)

14 Clevedon Court, Clive Road SE21 8BT

FLAT - Lease Extension

Virtual Freehold value (unimproved)	£371,280
Long Leasehold value (improved)	£367,567
Long Leasehold value (less value of improvements)	£367,567
Valuation Date	04-Jan-16
Expiry of existing lease	23-Jun-83
Existing Term unexpired	67.46
Capitalisation rate	7.25%
Deferment rate	5.00%
Relativity	91.00%
Short Leasehold value (unimproved) before extension	£334,486

Diminution of Landlords Interest

Landlords Present Interest

Term

Agreed		£1,577	£1,577
--------	--	--------	--------

Reversion

Virtual Freehold		£371,280	
PV £1 in 67.46 years @ 5%	0.0372		£13,812

Landlords present interest

£15,389

Landlords Proposed Interest

Virtual Freehold		£371,280	
PV£1 in 157.46 years @ 5%	0.00046		£170.79

Diminution in Landlord's Interest

£15,219

Marriage Value

Tenants Proposed Interest

Less Tenants Present Interest
Less Landlords Present Interest
Total

£367,567
£334,486
£15,219

£349,705
£17,862

Marriage Value

50% share of marriage value

£8,931

Lease Extension Premium

£24,321

Appendix (revised)

16 Clevedon Court, Clive Road SE21 8BT

FLAT - Lease Extension

Virtual Freehold value (unimproved)	£388,416
Long Leasehold value (improved)	£384,532
Long Leasehold value (less value of improvements)	£384,532
Valuation Date	04-Jan-16
Expiry of existing lease	23-Jun-83
Existing Term unexpired	67.46
Capitalisation rate	7.25%
Deferment rate	5.00%
Relativity	91.00%

Short Leasehold value (unimproved) before extension	£349,924		
Diminution of Landlords Interest			
Landlords Present Interest			
Term			
Agreed		£949	£949
Reversion			
Virtual Freehold	£388,416		
PV £1 in 67.46 years @ 5%	0.0372	£14,450	
Landlords present interest			£15,399
Landlords Proposed Interest			
Virtual Freehold	£388,416		
PV£1 in 157.46 years @ 5%	0.00046	£178.67	
Diminution in Landlord's Interest			£15,220
Marriage Value			
Tenants Proposed Interest			
Less Tenants Present Interest	£349,924	£384,532	
Less Landlords Present Interest	£15,220		
Total		£365,144	
Marriage Value		£19,388	
50% share of marriage value			£9,694
<u>Lease Extension Premium</u>			<u>£25,093</u>

Appendix (revised)

20 Clevedon Court, Clive Road SE21 8BT

FLAT - Lease Extension

Virtual Freehold value (unimproved)	£388,416
Long Leasehold value (improved)	£384,532
Long Leasehold value (less value of improvements)	£384,532
Valuation Date	04-Jan-16
Expiry of existing lease	23-Jun-83
Existing Term unexpired	67.46
Capitalisation rate	7.25%
Deferment rate	5.00%
Relativity	91.00%
Short Leasehold value (unimproved) before extension	£349,924

Diminution of Landlords Interest

Landlords Present Interest

Term

Agreed

£949

£949

Reversion

Virtual Freehold

£388,416

PV £1 in 67.46 years @ 5%

0.0372

£14,450

Landlords present interest

£15,399

Landlords Proposed Interest

Virtual Freehold PV£1 in 157.46 years @ 5%	0.00046	£388,416	£178.67	
Diminution in Landlord's Interest				£15,220
Marriage Value				
Tenants Proposed Interest			£384,532	
Less Tenants Present Interest		£349,924		
Less Landlords Present Interest		£15,220		
Total			£365,144	
Marriage Value			£19,388	
50% share of marriage value				£9,694
<u>Lease Extension Premium</u>				<u>£25,093</u>