



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

|  |   |   |
|--|---|---|
| <b>Case reference</b>                  | : | <b>LON/00AQ/OLR/2019/0319</b>   |
| <b>Property</b>                        | : | <b>349B Caphorne Court, Alexandra Avenue, Harrow HA2 9EB</b>                      |
| <b>Applicants</b>                      | : | <b>Mr Jayten Jayesh Patel &amp; Priya Shah</b>                                    |
| <b>Representative</b>                  | : | <b>Mr J Patel litigant in person</b>  |
| <b>Respondent</b>                      | : | <b>Catharine Ferree</b>   |
| <b>Representative</b>                  | : | <b>Mr C Noyce Lovell, Son &amp; Pitfield</b>                                      |
| <b>Type of application</b>             | : | <b>Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993</b> |
| <b>Tribunal members</b>                | : | <b>Judge Daley<br/>Mr D Jagger FRICS</b>  |
| <b>Date of determination and venue</b> | : | <b>26 November 2019 at<br/>10 Alfred Place, London WC1E 7LR</b>                   |
| <b>Date of decision</b>                | : |   |

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**DECISION**

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**The tribunal's decision**

- (1) Upon hearing from the parties, the tribunal determines that the relativity rate is 32.75% The appropriate premium payable for the new lease is **£153,894.**
- (2) This application is made under the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act') for a

determination of the premium payable for the grant of a new lease of 349B Capthorne Court, Alexandra Avenue, Harrow, HA2 9EB ('the subject property').

### **The background**

- (3) The subject property is a purpose built flat on the second floor of a three-storey building, built in approximately 1939. The property comprises a hallway, lounge, kitchen, two bedrooms and bathroom with WC, of 670 sq. ft.
- (4) The subject property has a lease which was granted on 25 March 1973 for a term of 65 years.
- (5) By notice dated 22 August 2018, the Applicants asserted the right to the grant of a new extended lease at a premium of £105,000. By way of a counter notice dated 25 October 2018, the premium and lease terms were both disputed, with the Respondent landlord proposing a premium of £203,000.

### **The issues**

- (6) The Tribunal noted that there was very little disagreement between the parties upon most of the issues and where matters were disagreed the parties could agree the issues upon all the matters save the extended lease value. The matters which were agreed in the Statement of Agreed Facts and Disputed issues, and those matters subsequently agreed at the hearing are set out below:
  - Date of valuation: 22 August 2018
  - Unexpired Term: 19.56 years
  - Marriage value: 50%
  - Relativity between Freehold Vacant Possession Value and Extended lease value: 99%
  - Deferment Rate: this was agreed at the hearing as being 5%
  - Capitalisation Rate: this was agreed at the hearing as being 7 %

- (7) As all the other matters had been agreed the Tribunal focused solely on the parties' evidence in respect of the unimproved extended lease value and the existing leasehold value (and following on from this relativity).

### **The hearing**

- (9) The Applicant Mr Patel appeared before us as a litigant in person. The Respondent was represented by a solicitor. However, the evidence before the Tribunal was presented by Mr Murphy of Richard John Clarke. Mr Murphy was not the original valuer, he had been instructed to attend on the basis that the original surveyor who had produced the report in July was not now available as he had a long-term commitment involving another tribunal hearing. Mr Murphy had produced a report which was served on the Tribunal on 25 November 2019.
- (10) Mr Patel was given half an hour to consider the 13-page report. He objected to the Report on the basis that it was served late and did not comply with the Directions. The Tribunal noted that no new evidence was introduced in this report, other than details of a conversation that Mr Murphy had had with the estate agents at Foxton who had marketed the property. The Tribunal determined that it was appropriate to admit this evidence, it bore in mind that it could decide what weight if any to attach to this evidence, it also considered the overriding objective rule 3 of the Tribunal Procedure Rules, and rule 7 which gave it the power to waive the requirements.
- (11) Mr Patel referred the Tribunal to a first instance Tribunal case, 53 Beechwood Court. The Tribunal was familiar with this case having made the decision referred to. In this case, the Tribunal had considered the sale of the same property in January and June. The Tribunal had considered the January sale evidence of Flat 14 Beechwood unreliable. It stated that the seller British Home Seller specialised at achieving a quick discounted sale. In their view this meant that they did not meet the criteria set out by the Royal Institution of Chartered Surveyors of a *Market Value* which was defined as “... *the estimated amount for which an asset or liability should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after*

*proper marketing and where the parties had acted knowledgeably, prudently and without compulsion.”* (2.02 of his report).

- (12) Mr Murphy set out his qualifications and experience; he stated that he carried out 10-12 valuations a year, and that he appeared before the Tribunal 7-8 times a year.

#### *The existing lease value*

- (13) He referred us to paragraph 4 of his valuation, in respect of the existing lease value, the unexpired term of the lease was 19.56 years he stated that this had been arrived at by using the sales price in October 2019 of £119,000, as this was the best evidence as it was an “... arms –length transaction where the parties had each acted knowledgeably, prudently and without compulsion.” He had made a discount for “no act rights” of 20.13%, this had been calculated by determining the difference between Savills Enfranchisable 2015 and Savills Unenfranchisable graph 2016 and dividing this figure by the former. The Savills actual market evidence was based on sales.
- (14) He had allowed the sum of £2500 for tenant’s improvements (this was for central heating) which would not have been available at the start of the lease. He had also subtracted 20.13% to reflect no act rights and had used the Harrow property index for flats which produced a differential factor of 1.000846. This produced an existing lease value of £92,623.

#### *The Unimproved Extended Lease Value*

- (15) In respect of the unimproved extended lease value, Mr Murphy stated that he had adopted Mr Patel’s comparable properties and also those of Mr Evans, this had produced 10 Comparable properties to which he had made adjustments to produce a figure of £299,410 those comparable properties ranged from £256,500 for 323b Drake Court Alexandra Avenue Harrow to £350,000 for 357b Perwell Court Alexandra Avenue Harrow HA2 9ED, these comparables were all two bedroom purpose built flats which had sold between 20 October 2017 and 12 June 2019, Mr Murphy had made an allowance for tenant’s improvements of £10,000 for central heating, double glazing, kitchen, and bathroom. He had adjusted the Sale price, by using the HPI for flats and maisonettes in Harrow and had arrived at an average sale price of £299,410. This had produced a relativity of 30.63%
- (16) Mr Murphy’s calculations which were set out in his report.

#### *Mr Patel’s Submissions*

- (15) Mr Patel did not accept that the sale price of the flat was reliable market evidence of the starting point for the short leasehold value of the flat. He

stated that the premises had been on the market for 6 months and the vendor had a potential purchaser which had fallen through, he had wanted to purchase a property, and as Mr Patel was a cash buyer who was able to move relatively quickly and complete in 14 days, he had been able to “pressure purchase”. He stated that he had then prior to the sale negotiated with the vendor to extend the lease, and that the vendor had not been aware of this option prior to the sale.

- (16) He did not accept that a further discount should be applied to the purchase price. He also invited the Tribunal to reject the sale as good market evidence. He referred to the case of 53 Beechwood Carshalton, Surrey, a tribunal case which had involved this tribunal as being a reason to depart from the market evidence.
- (17) Mr Patel had used the evidence of the Tribunal graph John D Wood the Tribunal graph to produce a relativity of 49.3%. This resulted in an existing lease value of £140,277 (without 1993 Act rights). He had then applied the value of Act Rights deduction of 15% to arrive at the existing lease value (without the value of act rights) of £119,171
- (18) Mr Patel had used 4 Comparable properties on the basis that they were sales within 6 months of the subject property
  - 351 Copthorne Court, Alexandra Avenue, Harrow HA2 9EB (Sale price) £306,000 he had made adjustments using the using the HPI for properties in Harrow however these were for all properties not just flats and maisonettes, and had made a discount for improvement of £20,000. Producing an adjusted figure of £286,241
  - 256b Merlins Court Alexandra, Harrow HA2 9DY (Sale price) £320,000. The same calculation, (£20,000 for improvement) was applied to this comparable producing an adjusted figure of £300,253
  - 323b Drake Court, Alexandra, Harrow HA2 9DY (Sale price) £256,500, adjusted figure of £236,5000
  - 357b Penwell Court Alexandra Ave Harrow HA2 9EE (Sale price) £335,000 with the additional adjustment of £45,000 which had been applied by Mr Patel prior to the hearing, this produced a figure of £305,000.
- (19) The Tribunal noted that both *323b Drake Court, Alexandra and 357b Penwell Court Alexandra* were outliers, there was no information concerning the condition of Drakes Court, and in respect of Penwell Court it was noted that this had been finished to a very high specification. Mr Patel had made an allowance for the improvements carried out at Penwell Court of £45,000. However, at the hearing, he conceded that his allowance for improvements had been generous and that the correct

allowance for condition should be £30,000. He did not accept that the allowance of £10,000 given by Mr Murphy for central heating, double glazing, kitchen and bathrooms was correct.

- (20) In respect of Drake Court, he relied upon, although these did not suggest that the property was in poor condition, they contained little information concerning the condition of the property.

### **Tribunal Decision and Reasons for the tribunal's determination**

- (21) In reaching its decision, the Tribunal decided not to rely on the case of 53 Beechwood Court which had been put forward by Mr Patel as a basis for rejecting market evidence, in this case there had been a sale of a property in January and then when the property was re- sold in June there had been a considerable variation in the price. Further, the Tribunal is not bound by precedents as each case is fact specific.
- (22) The Tribunal accepted Mr Murphy's submissions that a short lease was likely to attract a cash purchaser who would be an investor, who would act in a similar way to Mr Patel, and that the tribunal could consider the transaction to be between a willing seller and a willing purchaser at arm's length.
- (23) The Tribunal noted that there was no evidence that the central heating was a tenant's improvement. The Tribunal finds that the short lease value of the premises was £95,125.00.
- (24) The Tribunal preferred to rely on Mr Patel's comparable properties, as they were sales within six months of the valuation date, we have made an allowance for improvements of £20,000, save for 357b Penwell Court Alexandra Ave, the Tribunal noted from the evidence of sale that this property had been refurbished to a very high standard, accordingly we have made a deduction of £30,000 to reflect the improvements. This produced a long lease value of £290,499 and a freehold value of £293,433. Tribunal has decided that the appropriate premium is as set out below.

### **The premium**

The tribunal determines the appropriate premium to be is **£ 153,894**  
A copy of the tribunal valuation is attached.

**Name:** Judge Daley

**Date:** 26 March 2019

**Appendix A**  
**Flat 349B Capthorne Court, Alexandra Avenue,**  
**Harrow, HA2 9EB**

**The Tribunal's Valuation**

**Assessment of premium for a new lease**  
**In accordance with the Leasehold Reform, Housing and Urban**  
**Development Act 1993**  
**LON/OOAQ/OLR/2019/0319**

**Components**

|   |                              |          |
|---|------------------------------|----------|
| Valuation date:                             | 22 <sup>ND</sup> August 2018 |          |
| Deferment rate:                             | 5%                           |          |
| Capitalisation rate:                        | 7%                           |          |
| Freehold value (plus 1%):                   | £292,433                     |          |
| Long lease value                            | £290,499                     |          |
| Existing leasehold value                    | £95,125                      |          |
| Relativity                                  | 32.75%                       |          |
| Unexpired Term                              | 19.56 years                  |          |
| Ground rent currently receivable            | £70                          |          |
| Capitalised @ 7% for 4.59 years             | 3.8137                       | £267     |
| Ground rent to be received                  | £140                         |          |
| Capitalised @ 7% for 14.97 years            |                              | £934     |
| PV £1 in 4.59 years @ 7%                    | 6.66877                      | £1,201   |
| Reversion to:                               | £292,433                     |          |
| Deferred 19.56 years @ 5%                   | 0.385068                     | £112,607 |
|   |                              | £113,808 |
| Less value of Freeholders proposed interest |                              |          |
| Reversion to Freehold value:                | £292,433                     |          |
| Deferred @ 5% for 109.56 years              | 0.00477                      | -£1,395  |

**£112,413**

**Marriage Value**

**Value of Proposed Interests**

|                             |               |          |
|-----------------------------|---------------|----------|
| Extended leasehold interest | £290,499      |          |
| Plus, freehold interest     | <u>£1,395</u> | £291,894 |

## Value of Existing Interests

|                                |                 |                 |
|--------------------------------|-----------------|-----------------|
| Landlord's existing value      | £113,808        |                 |
| Existing leasehold value       | <u>£95,125</u>  | <u>£208,933</u> |
|                                | £82,961         |                 |
| Freeholders share @ 50%        | <b>£41,481</b>  |                 |
| <b>LEASE EXTENSION PREMIUM</b> | <b>£153,894</b> |                 |

### APPENDIX 1 - 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.