



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

Case reference	:	LON/00AY/OLR/2018/1337
Property	:	40 Brockwell Court, Effra Road, London SW2 1NA
Applicant	:	Ms Blathaid Duffy
Representative	:	Mr Chrisopher Heather QC of Counsel
Respondent	:	London Borough of Lambeth
Representative	:	Ms Michaella Jacobs of Counsel
Type of application	:	Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993
Tribunal members	:	Judge N Hawkes Mr N Martindale FRICS
Date of determination and venue	:	16 & 17 April 2019 and 21 May 2019 at 10 Alfred Place, London WC1E 7LR
Date of decision	:	01 July 2019

DECISION

Summary of the Tribunal's decision

The appropriate premium payable to the Respondent for the grant of a new lease is £128,957, and the sum of £1,957 is payable to the head lessee.

Background

1. This is an application made by the Applicant leaseholder pursuant to section 48 of the Leasehold Reform, Housing and Urban Development

Act 1993 (“the 1993 Act”) for the determination of the premium to be paid for the grant of a new lease of 40 Brockwell Court, Effra Road, London SW2 1NA (“the property”).

2. Brockwell Court is a detached, purpose-built, five-storey block containing approximately 70 flats. The Tribunal has been informed that approximately 20 flats in the block are privately owned, 5 flats are owned by the Respondent, and the remaining flats are owned by a head lessee.
3. The Applicant’s property is situated on the fourth floor of the block and it is accessed via an external walkway leading off an internal staircase and landing. The living accommodation comprises an entrance hall, kitchen, living room, two bedrooms, bathroom and a balcony.
4. Under cover of a letter dated 9 April 2018, the Applicant served a notice of claim dated 9 April 2018 pursuant to section 42 of the 1993 Act.
5. The existing lease was granted on 5 August 1980 for a term of 90 years less 10 days from 1 January 1959 at a ground rent of £40 per annum from 5 August 1980, which rose to £80 per annum on 5 August 2005. The ground rent will rise to £160 per annum on 5 August 2030.
6. There is a head lease dated 1 January 1959 for a term of 90 years from 1 January 1959 and the Respondent is the freehold owner of Brockwell Court.
7. In the section 42 notice, the Applicant proposed to pay a premium of £86,671 for the new lease and £1,721 by way of other amounts under schedule 13 of the 1993 Act to the intermediate landlord.
8. The Respondent freeholder served a counter-notice dated 21 June 2018 admitting the validity of the claim and counter-proposed a premium payable to the Respondent of £131,800 and a sum of £2,250 payable to the intermediate landlord.
9. By an application dated 17 October 2018, the Applicant applied to the Tribunal for a determination of the premium which is payable to the Respondent.
10. On 19 February 2019, this matter came before a different constituted Tribunal, when it was adjourned with Directions leading up to the final hearing.

The issues

Matters agreed

11. The following matters are agreed:
 - (a) The valuation date: 9 April 2018;
 - (b) The unexpired term: 30.70 years;
 - (c) The deferment rate: 5%;
 - (d) The relativity between the value of the freehold and the extended lease: 97.1%;
 - (e) “This is a fourth floor flat with balcony having views to the east. It comprises two bedrooms, lounge, kitchen, bathroom/WC and has a GIA of about 59 sq.m. For the purpose of the valuation we are to assume steel framed windows, a communal heating system (supplying just one radiator) and original features such as doors, covings etc.”

Matters not agreed

12. The following matters were not agreed:
 - (a) The capitalisation rate for ground rent;
 - (b) The short leasehold value;
 - (c) The extended lease value;
 - (d) The premium payable.

The hearing

13. The hearing of this matter took place on 16 April 2019, an inspection took place on 17 April 2019, written closing submissions were directed to be filed and served by 7 May 2019, and the Tribunal reconvened in order to reach its decision on 21 May 2019.
14. The Applicant was represented by Mr Heather QC of Counsel at the hearing and the Respondent was represented by Ms Jacobs of Counsel. The Tribunal is grateful to Counsel for both parties for their assistance.
15. The Applicant relied upon the expert valuation evidence of Mrs P Reade MRICS, who had prepared a report dated March 2019. The Respondent relied upon the valuation evidence of Mr J Dean MA (Cantab) MRICS, who had prepared a report dated 8 February 2019.

Both experts gave oral evidence. The Tribunal also heard oral evidence from the Applicant, Ms Duffy.

The law

16. In summary, Schedule 13 to the 1993 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 to the landlord.
17. The diminution in value of the landlord's interest is the difference between (a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease and (b) the value of his interest in the flat once the new lease is granted.
18. The value of the landlord's interest is the amount which at the relevant 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) applying the assumptions and requirements set out in paragraph 3 of Schedule 13 to the 1993 Act.
19. Paragraph 4 of Schedule 13 to the 1993 Act provides that the landlord's share of the marriage value is to be 50%, (but that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil). The unexpired term of the lease in the present case is 30.70 years.
20. For the purpose of the calculation of marriage value, it is necessary to establish the value of the interest of the lessee under the existing lease and also the value of the interest of the lessee under the extended lease.
21. The first value is to be arrived at pursuant to paragraph 4A of Schedule 13 to the 1993 Act and the second value is to be arrived at pursuant to paragraph 4B of Schedule 13. Both of these paragraphs require the open market value of the interest to be assessed on the assumption that there are no rights under the 1993 Act in respect of the subject property.
22. In determining this application, the Tribunal derived assistance from *Trustees of the Sloane Stanley Estate v Mundy* [2016] UKUT 223 (LC). At [168] of *Mundy*, it is stated:

168 Fourthly, in some (perhaps many) cases in the future, it is likely that there will have been a market transaction at around the valuation date in respect of the existing lease with rights under the 1993 Act. If the price paid for that market transaction was a true reflection of

market value for that interest, then that market value will be a very useful starting point for determining the value of the existing lease without rights under the 1993 Act. It will normally be possible for an experienced valuer to express an independent opinion as to the amount of the deduction which would be appropriate to reflect the statutory hypothesis that the existing lease does not have rights under the 1993 Act.

23. Further, the Tribunal notes that at [42] of *Mallory and Others v Orchidbase Limited* [2016] UKUT 468 (LC), the Upper Tribunal stated:

42 We endorse and reiterate the Tribunal's preference for market evidence over the use of relativity graphs, as long as it can be shown that the market evidence is reasonably comparable and does not require artificially extensive manipulation in order to apply it to the subject valuation.

General matters

24. Both parties submitted that the Tribunal should accept the evidence of their expert in its entirety. For the reasons set out below, the Tribunal has preferred the opinion of each expert in respect of different issues. The Tribunal considers that both experts sought to assist the Tribunal and it is noted that both experts made certain corrections during the course of their oral evidence.
25. The Respondent submitted that the Tribunal may wish “to bear in mind” “the fact that there was a pre-existing relationship between Ms Duffy and Mrs Reade and/or that they had prior knowledge of each other.
26. Mrs Reade gave evidence that Ms Duffy is an ex-work colleague. She explained that she and Ms Duffy had previously worked for the same firm in different departments and on different floors in an office containing approximately 120 people. She stated that Ms Duffy came to her as a client and that she and Ms Duffy do not have any personal relationship.
27. The Tribunal accepts Mrs Reade’s evidence and does not consider that anything turns on the fact that Mrs Reade and Ms Duffy had very limited prior knowledge of each other.

The capitalisation of ground rent

28. The Applicant’s case is as follows. There is a head lease, and it is the head lessee who is entitled to receive the ground rent. The head lease is a wasting asset, and the purchase price for the ground rent should therefore make provision for replacing the capital.

29. A dual rate has therefore been used by Mrs Reade with a sinking fund. She gave evidence that the appropriate rate is 7% with 2.25% for the sinking fund.
30. Mr Dean contended for a capitalisation rate of 6%. He stated that he frequently agrees this rate with other surveyors in respect of similar properties with ground rents of a similar magnitude.
31. Mr Dean gave evidence that he could understand Mrs Reade's approach and that, if he had adopted a similar approach, he would have considered a lower capitalisation rate to be appropriate. He agreed that 2.25% is the correct rate for the sinking fund. This accords with the risk-free rate in *Sportelli*.
32. The Tribunal prefers Mrs Reade's expert evidence to that of Mr Dean on this issue.

The existing lease value

33. In valuing the existing lease, Mrs Reade relies upon on the evidence relating to the sale of the subject flat in April 2018 for £180,000. She states that there is no need to adjust the sale price for condition, location, size or for any other matter because the sale is of the subject flat.
34. Mrs Reade deducts 15% for the benefit of Act rights, which the Applicant submits is in accordance with the decision in *The Trustees of the Sloane Stanley Estate v Mundy [2016] UKUT 223 (LC)*. This gives an existing lease value of £153,000 which Mrs Reade adopts in her valuation.
35. The Applicant, Ms Duffy, gave oral evidence concerning the sale of the subject flat in April 2018 for the sum of £180,000.
36. Ms Duffy stated that she made an initial offer in the sum of £221,000 on 17 November 2017. She subsequently made revised offers, which were accepted, in the sum of £195,000 and then in the sum of £180,000.
37. Ms Duffy gave evidence that she reduced the sum offered due to market uncertainty and also due to uncertainty concerning the cost of a lease extension and other potential costs associated with the property.
38. Ms Duffy rejected a proposition which was put to her that the vendor was desperate for a quick sale, she then thought that she had made a bad bargain, and she therefore sought to renegotiate. The Tribunal

accepts Ms Duffy's oral evidence and finds that the sale of the subject property was a fair, open market transaction with a willing seller.

39. Mr Dean did not place weight on the sale of the subject property because he considered that the sale price was too low. He stated that the price "seems wrong and it is difficult to know the reasons". Mr Dean instead relied upon evidence concerning the sale of 61 Brockwell Court, which sold in August 2016 (approximately 20 months before the valuation date).
40. The Tribunal has not placed any weight on the sale of 61 Brockwell Court because the transaction took place 20 months prior to the valuation date and approximately a year before a consultation notice was served in respect of major works, and the Tribunal is satisfied that that there is a "reliable market transaction concerning the existing lease with rights under the 1993 Act, at or near the valuation date" (see *Mundy* at [168]).
41. In Mr Dean's opinion, the subject property was out of repair at the valuation date whereas Mrs Reade was of the view that it was simply unmodernised. Having carefully considered the photographic evidence to which it was referred in addition to the oral evidence which it heard, the Tribunal finds on the balance of probabilities that the subject property was unmodernised but not in disrepair at the valuation date.
42. The Tribunal accepts the Applicant's submission that evidence concerning the condition of the property seven months after the valuation date, when refurbishment works were in the process of being undertaken, is not of assistance because it does not represent the condition of the subject property at the valuation date.
43. The Tribunal prefers the evidence of Mrs Reade that the sale of the subject flat in April 2018 for £180,000 is reliable evidence and accepts that there is no need to adjust the sale price. Mr. Dean agreed that a deduction of 15% for the benefit of Act Rights should be applied. Accordingly, the Tribunal has adopted this figure and finds that the existing lease value is £153,000.

The extended lease value

44. Mrs Reade has taken the sale of the subject flat for £180,000 in April 2018 and has adjusted it for lease length and time to produce an adjusted rate of £441 psf. She has carried out the adjustment for lease length using the 2015 Savills Enfranchisable Graph on the basis that the subject flat was sold on a short lease. Her time adjustment uses the Land Registry Lambeth index for houses and flats which excludes new build properties.

45. The Applicant submits that there is no need to adjust the sale price for condition, location, quantity or other because it is the subject flat. Mrs Reade arrives at an extended lease value of £441 x 637 sf, namely £280,917, which she rounds up to £281,000. That is her extended lease valuation.
46. Mrs Reade then cross-checks this by using a basket of comparables at Appendix F to her report. She adjusts these first for lease length and time. She uses Gerald Eve relativity for long unexpired terms and the 2015 Savills Enfranchiseable Graph for the short unexpired terms on the basis that it is the only graph that plots the relativity to freehold inclusive of Act rights.
47. Mrs Reade then makes adjustments on a case-by-case basis to put each comparable on a par with the subject flat. The most substantial adjustment is £100 psf for the flats which she considers have been modernised. She has allowed not only for costs of modernisation but also for added value following substantial refurbishments.
48. Mrs Reade also adjusts for location/block, quantity and other matters (balcony and access via external walkway). That produces a final adjusted rate per square foot for each comparable. Mrs Reade takes an average of these, which is £463 psf. This supports her valuation of £441 psf for the subject flat, which she therefore adopts.
49. Mr Dean stated that, arguably, the most relevant comparables are the sales of two flats in Brockwell Court which are both smaller, lack balconies and are in poorer positions than the subject property.
50. However, in recognition that these sales took place two and a half years before the valuation date, Mr Dean looked further afield for more up to date comparisons.
51. Mr Dean considered two sales in Arlington Lodge to be useful because they were both close to the valuation date (and not significantly affected by some commercial use of the building in which they are situated). He noted that Arlington Lodge is a local authority block in which there are still many local authority tenants. Mr Dean also took into account sales evidence relating to 83 Mathews Road, and relating to some private properties in 109 Brixton Hill Court and St Austin's Court.
52. Both experts gave extensive oral evidence concerning the comparable sales evidence which they relied upon and the adjustments which they considered to be appropriate.
53. The Tribunal has carried out both an external and an internal inspection of the subject property and it has carried out an external

inspection of all of the comparables which the parties referred to during the course of the hearing. Applying its expert knowledge and experience, the Tribunal has adopted the following approach.

54. The Tribunal considers that applying a graph derived percentage figure to a short lease sale price at the at the valuation date to arrive at a long lease value, is less reliable than carrying out an analysis of the actual long lease sales (which renders the use of the 2015 Savills prime central London based graph unnecessary). The Tribunal has not placed weight on any of the short leases sales because it considers that there is a sufficient number of relevant long lease sales at around the valuation date.
55. The Tribunal has not placed any weight upon the settlement evidence to which Mr Dean referred. As stated on behalf of the Applicant, this is not a transaction and there was no analysis of the settlement before the Tribunal. The Tribunal does not consider such evidence to be sufficiently reliable to be of assistance.
56. The Tribunal accepts Mr Dean's opinion that Mrs Reade's adjustments are numerous and complex with insufficient evidence to properly substantiate the level of detail which she adopts, particularly having regard to the fact the proposed comparable properties have not been inspected internally.
57. The adjustments which have been made by the Tribunal and the reasons for these adjustments are set out in the attached table.
58. In particular, the Tribunal considers that the following adjustments are appropriate: 15% in respect of a modernised and improved property; 5% for the advantage of being near Brixton town centre; 5% for having the benefit of double glazing but otherwise being unmodernised; and a 50% weighting in respect of properties in blocks of a significantly different character from Brockwell Court.
59. The Tribunal prefers Mrs Reade's opinion that the most appropriate index to use when adjusting for time is that which excludes new build properties, due to the degree of difference between new builds and the subject property (notwithstanding that this index includes houses). The Tribunal also prefers Mrs Reade's use of the Gerald Eve graph rather than the 2015 Savills prime central London graph to adjust the comparables to 120.75 years.
60. Mrs Reade sought to "correct" certain of the lease lengths in her table of comparables, noting that these corrections did not favour her client. The Tribunal was not provided with any direct evidence as to the correct lease lengths. If the corrections which Mrs Reade applied during the course of the hearing were adopted, it would follow that

some of the local authority flats would have been sold under the right to buy in the early 1980s, before the local authority would have been likely to have conducted right to buy sales. The Tribunal has therefore not adopted these corrections.

61. The Tribunal prefers Mr Dean's evidence as to floor areas. Mr Dean placed reliance upon information derived from Energy Performance Certificates. The Tribunal accepts Mr Dean's opinion that this information is likely to be more reliable than that derived from the available sales evidence. The Tribunal also prefers Mr Dean's use of square metres rather than square feet as the most commonly used unit of measurement.
62. Applying the findings set out above, the Tribunal has derived a long leasehold value of £335,444. The relativity between the value of the freehold and the extended lease is agreed at 97.1%. Accordingly, the freehold value is £345,444.

The premium

63. Applying the findings which are set out above and in the Tribunal's table of comparables, the Tribunal determines that the sum of £128,957 is payable to the Respondent and that the sum of £1,957 is payable to the head lessee.
64. A copy of the Tribunal's valuation calculation is annexed to this decision.

Name: Judge N Hawkes

Date: 01 July 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

40 Brockwell Court Effra Road SW2 1NA

Lease Extension

Valuation Date	09/04/18
Expiry of existing lease	22/12/48
Existing Term unexpired	30.70
Capitalisation rate plus 2.25% dual SF	7.00
Deferment rate	5.00
VP Value of Freehold	345462
Relativity: FH/ Long LH	97.10
VP Value of Long Leasehold	335444
Relativity: FH/ Short LH from Savills graph	53.10
VP Value of Short LH no rights -15%	153000
VP Value of Short LH no rights Savills graph	178121
VP Value of Short LH from sale at val date	180000

Head Leaseholders Present Interest

Fixed Present GR		80	
YP for 12.32 years @ 7% + 2.25%	7.076		£566
No deferment			
Fixed GR from first RR in 12.32 years		160	
YP for 18.38 years @ 7% + 2.25%	8.731		
PV £1 in 12.32 years @ 7%	0.434		£606
			£1,172

Freeholders Present Interest

VP Value of Freehold		345462	
PV £1 in 30.7 years @ 5%	0.2236		£77,245
			£78,418

Total Present

Freeholders Proposed Interest

VP Value of Freehold		345462	
PV £1 in 120.7 years @ 5%	0.0028		£967

Marriage Value

Tenants Proposed interest	335444		
Add Freeholders proposed interest	967		£336,411
Tenants Present Interest	153000		
Add FH's and LH's Present Interest	78418		£231,418
Total	1172		£104,994
Landlords' Share of Marriage Value 50%			£52,497

Combined Landlords' present interests

plus combined Landlords' marriage values

£78,418

£52,497

£130,915

Enfranchisement Price

Premium apportionment %

Head Leaseholder	1.50	52497	£785	£1,957
Freeholder	98.5	52497	£51,712	£128,957
			£52,497	£130,915

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62329 **5666 ave of 11**

on 59.2m2

LLHVP

£335,444

of subject flat at valuation date