

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

**Case reference
HMCTS Code:** : **LON/00AE/OLR/2020/0242
VIDEO REMOTE**

Property : **Flat 20, Third Avenue, Wembley HA9
8QE**

Applicant : **Ms Nastaran Tavakoli-Far**

Representative : **In person**

Respondent : **Halliard Property Company Limited**

Representative : **Mr C Fain counsel instructed by Wallace
LLP**

Type of application : **Lease extension**

Tribunal members : **Judge Tagliavini
Mrs E Flint DMS FRICS**

**Venue and date of
hearing** : **10 Alfred Place, London WC1E 7LR
HMCTS: Video Remote
25 February 2021**

Date of Decision : **1 March 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was **V: CVPREMOTE**. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the tribunal was referred to in a bundle number 1 to 366 the contents of which, the tribunal has noted. The order made is described at the end of these reasons.

Summary of decisions of the first-tier residential property tribunal

- (1) The tribunal determines that the premium for the lease extension of Flat 20, Third Avenue, Wembley HA9 8QE is £89,671.**
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The application

1. This is an application made under the provisions of section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 seeking the tribunal's determination of the premium payable and the terms of a new lease for subject property Flat 20, Third Avenue, Wembley HA9 8QE ('the Flat').

Background

2. The subject property is a two bedroom first floor flat with kitchen, living room and bathroom/w.c. and situated in a purpose built block of flats circa 1930's. The subject property is in an outdated condition and requires modernising and redecoration throughout. The applicant purchased the subject property at auction on 11 September 2019 for £194,000 with the benefit of a section 42 Notice. The respondent is the freehold owner of 1-32 and 34-40 Third Avenue, Wembley and is therefore the competent landlord. The lease is for a term of 99 years from 14 October 1995.
3. A Notice of Claim under section 42 of the 1993 Act was served by the applicant's predecessors in title dated 19 May 2019 proposing a premium payable of £38,650. A Counter Notice dated 11 September 2019 admitted the lessees right to acquire a new lease but proposed a premium of £118,675. Subsequently, the applicant amended the premium payable to £61,590 and the respondent amended its premium to £91,513.

The issues agreed between the parties

4. At the date of the hearing the parties had agreed the following:
 - (i) The terms of the new lease

- (ii) The GIA at 635 sqft (58.99 sqm)
- (iii) The ground rent at £20 per annum (fixed)
- (iv) Deferment rate of 5%
- (v) Capitalisation rate of 6.5%
- (vi) Unexpired term of 35.395 years
- (vii) Valuation date of 22/05/2019

The issues not agreed between the parties

- 5.
 - (i) The existing short lease value of the Flat without 1993 Rights
 - (ii) The extended leaser value of the Flat
 - (iii) Relativity
 - (iv) The premium payable

The applicant's case

- 6. The applicant relied upon a valuation report said to be an 'Expert Report' by both the applicant and her father Mr Ali Tavakoli-Far dated 4 February 2021 in which the premium payable was calculated in the sum of £61,590. Oral evidence was heard by the tribunal from Mr Tavakoli-Far who confirmed that he had been appointed by his daughter to assist her with the lease extension for the Flat. In his report Mr Tavakoli-Far stated he is a qualified home energy surveyor and has experience in finance and management of residential buildings, mainly overseas investments. On questioning by the tribunal, Mr Tavakoli-Far confirmed he had no qualifications as a surveyor and was not a member of the RICS but that he had acquired his 'expertise' in preparing the valuation from having helped other friends with similar valuations and transactions. As the report did not contain a Statement of Truth Mr Tavakoli-Far confirmed orally to the tribunal that the contents of it were true.
- 7. In his valuation report the premium payable was based on a valuation date of 10 November 2020, although it was agreed at the hearing that the correct valuation date was 29 May 2019. Similarly, Mr Tavakoli-Far had used a capitalisation rate of 7% but also subsequently agreed this should be 6.5%.
- 8. Mr Tavokoli-Far explained to the tribunal that he had sought 'valuations' from Foytons and Wex & Co of the short lease market value, which when averaged provided a figure of £220K. Mr Tavakoli-Far also asserted that 'Everyone knows the auction prices are 10 - 15% lower.' Mr Tavakoli-Far then made a deduction to reach a short lease market value of £208K. On questioning, Mr

Tavakoli-Far accepted he had made no adjustments for time, condition, floor or Act Rights in respect of these comparable properties. Mr Tavakoli-Far stated that in his opinion, the required renovations and redecorations would cost in the region of £35,000.

9. In considering the long-lease of the Flat, Mr Tavakoli-Far explained to the tribunal that he had used a number of sales that were said to be of comparable properties in the local area and relied on the Office Copy Entries and Particulars of Sales for these properties in support of his evidence. These sales referred to 31 Kirk House, 16 Bell House, 72A The Avenue, 15 Lister House, 1 Elsey Court which were all in the Wembley area but none of which was situated on Third Avenue, Wembley. Mr. Tavakoli-Far stated that he had averaged these sales which provided a figure of £282K (rounded to £290K). Mr Tavakoli-Far also referred the tribunal to the graph titled 'House prices reports for Wembley November 2019 to November 2020 which he asserted showed that average flat prices had fallen from £290,492 to £281,667 and a downward trend to his valuation date of 10 November 2020. Mr Tavakoli-Far also referred the tribunal to documents from Zoopla which he asserted showed a similar downward trend in Wembley flat prices over the past five years.
10. In support of his long lease value of £290K Mr Tavakoli-Far referred the tribunal to particulars of sale of comparable properties from local Wembley Estate Agents. Mr Tavakoli-Far asserted these established a long lease value of £290k in respect of the subject Flat.
11. In reaching his relativity figure of 77.9% Mr Tavakoli-Far stated that he preferred to rely on the sales rather than any graphs as the former method provided the most reliable figure. Therefore, he had calculated the relativity to be 75.9% by using short lease market value of £220K and a long lease value of £290K.
12. In cross-examination Mr Tavakoli-Far accepted that he knew very little about the 1993 Act and deferred several times to his daughter, the applicant on several issues asserting that Ms Tavakoli-Far was an 'expert' herself and conceded he was not an 'expert' himself and accepted he did not understand the requirement to make adjustments for time to reflect the (agreed) valuation date.
13. Mr Tavakoli-Far accepted he had no evidence to support his assertion that prices achieved at auction were generally at least 10% less than the market value. He asserted again that this was widely known and accepted that the price achieved at auction reflected that the buyers tended to be investors and cash buyers.
14. In the report Mr Tavakoli-Far produced a valuation of £61,590 based on a valuation date of 10 November 2020 and a capitalisation rate of 7%.

The respondent's case

15. The Respondent relied upon the oral evidence of its expert valuer Mr Robin Sharp BSc FRICS who spoke to his signed report dated February 2021.
16. Mr Sharp told the tribunal that he had visited the subject Flat on 10 September 2019 and taken the date stamped photographs exhibited in his valuation report and had found it to be in a tired and dated condition in need of modernisation and redecoration throughout.
17. In assessing the long leasehold value of the Flat, Mr Sharp relied on the sales of four comparable flats and maisonettes in the local area which he had adjusted variously for condition, geared ground rent, length of lease and location. Mr Sharp stated that these sales provided an average figure of £310,500. Mr Sharp subsequently reduced this figure by £3,000 to reflect the repair of former heating and hot water arrangements thereby providing a long lease value of £307,500.
18. Although Mr Sharp had previously agreed a notional freehold value of 1% at the hearing he resiled from this and his report relied on a figure of 1.5% which he stated was in line with the Upper Tribunal decision concerning *42 Cadogan Square* thereby providing a notional freehold value of £312,183.
19. In valuing the existing leasehold value Mr Sharp considered the available market evidence. Mr Sharp told the tribunal that both the subject Flat and 4 Third Avenue had sold within 6 months of each other. Although both properties were held on similar lease terms No. 4 was a maisonette with its own front door and in average to good condition unlike the subject property but had sold in the most recent sale in March 2020 for £182,000 (£190,403 indexed to May 2019).
20. Mr Sharp told the tribunal that he had found details of three sales transactions for the subject flat, that took place in 2019 for £190k, £194k and £195k, the average price of which was £193k. To this average figure Mr Sharp made an allowance of £17,500 for refurbishment and renovation to bring the subject Flat into a condition similar to the long lease comparables, which provided an existing lease value inclusive of 1993 act rights of £210,500. Mr Sharp told the tribunal that using Savills 1993 Act discount figure of 13.83% the figure was reduced to £181,389 which divided by the freehold value of £312,183 produced a relativity of 58.1%.
21. Mr Sharp compared the sales history of the subject Flat to that of the maisonette at 4 Third Avenue which he had inspected in December 2019 when he had found it to be in a superior condition. This property had sold for between £182,000 to £190,403 (indexed to May 2019) and therefore cast doubt on the reliability of the sales prices for the subject Flat.
22. As a way of testing the reliability of the relativity figure Mr Sharp stated he had used Gerald Eve and Savills 2016 graph which provided a relativity for 35.395 unexpired of 57.53%. Using a capitalisation rate of 6.5% (now agreed) and a 5% deferment rate of 5% Mr Sharp calculated that the premium payable is £91,513.

23. In cross-examination by Ms Tavakoli-Far it was suggested to Mr Sharp that he had not in fact visited the property as he seemed unaware that the windows were wood and not metal as he had described; was unaware of the form of heating und and unaware if there was running water in the bathroom. Mr Sharp confirmed his visit to the subject Flat and also explained he was entitled to rely on sales both before and after the valuation date as these often showed trends in values.

The tribunal's decision and reasons

24. On balance the tribunal preferred the expert evidence of Mr Sharp to that of Mr Tavakoli-Far. The tribunal finds the valuation evidence relied upon by the applicant to be unreliable as it was based on an incorrect valuation date; had made no adjustments in the sales of the comparable properties for time, condition, size, location or floor and appeared to have been prepared inexpertly with little reference to the requirements of Schedule 13 of the 1993 Act.
25. The tribunal accepts that Mr Sharp visited the subject Flat on 10 September 2019 and accepted his evidence in mistaking wooden window frames for metal and preferred his evidence to that of the applicant. However, the tribunal was not satisfied that Mr Sharp's conclusion that the sales of the subject Flat were too high and unreliable because the sales of a single comparable at 4, Third Avenue were lower, although a superior property with a similar lease length. Therefore, the tribunal using its expertise uplifted the long leasehold value by 1% as per the agreed statement of facts and used £195,000 as the starting point to arrive at the short lease value as the tribunal had two documented sales close to the valuation date at £195,000 and £194,000. The tribunal also accepted Mr Sharp's figure of £17,500 to reflect the poor repair and need for renovation works. The tribunal accepted it was appropriate to make the deduction in line with the Savills Index for Act rights as proposed by Mr. Sharp.
26. Therefore, the tribunal finds that the premium payable is £89,671 (see valuation attached).

Name: Judge Tagliavini

Date: 1 March 2021

20 Third Avenue Wembley HA9 8QE

Valuation date 22nd May 2019

Freehold Value	£310,575
Long Lease value	£307,500
Existing lease value	£183,000
Unexpired term	35.3949 years

Landlord's present interest

Ground rent	£20	
35.3949 yrs at 6.5%	13.729	£275

Reversion	£310,575	
deferred 35.3949 years at 5%	0.1778	<u>£55,220</u>
		£55,495

less Landlord's proposed interest	£310,575	
deferred 125.3949 years at 5%	0.0021	<u>£652</u>

Diminution in Landlord's interest		£54,843
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Marriage Value

Landlord's proposed interest	£652
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Claimant's proposed interest	£307,500
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less

Landlord's existing interest	£55,495
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Existing leasehold value	£183,000
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	£69,657	<u>£34,829</u>
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Lease extension premium	£89,671
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Rights of appeal from the decision of the tribunal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 201, 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).