

FIRST TIER PROPERTY CHAMBER DECISION



FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	VG/LON/00AG/OLR/2021/0966
Property	:	Flat 42, 8 Newton Street, LONDON WC2B 5EG
Applicant/Tenant	:	Frances Mary CARTER as Attorney for John Martin Stansbury
Representative	:	Rebecca Sage of counsel
1st Respond- ent/Freeholder	:	Coldunnell Limited
1st Respondent's Repre- sentative	:	Paul Holder FRICS.
2nd Respondent/ Head Tenant	:	The Mayor and Burgesses of the London Borough of Camden
Type of Application	:	S.48(1) Leasehold reform Housing and Urban Development Act 1993 (hereafter 'The Act') Application for Determination of Premium and other Terms of Acquisition remaining in dispute.
Tribunal Judge	:	Tessa Hingston Barrister at Law.
Member	:	Bruce Bourne MRICS.
Date of Decision		24th November 2022

Summary of the Decision of the Tribunal: -

The Tribunal has determined for the reasons set out below that the premium payable by the Applicant for the lease extension at the property is the sum of £166,304.

BRIEF BACKGROUND.

1. This is an application (dated 16th November 2021) for determination of the premium and other terms for the acquisition of an extended lease for the property.
2. The building was leased to Camden Borough Council (the Second Respondent) on the 17th March 1981.
3. Mr. John Stansbury acquired the leasehold of Flat 42 on 9th October 1989 for a period of 80 years (less 5 days) from the commencement date 10th of October 1977.
4. The Applicant Ms. Carter is acting as Attorney for Mr. Stansbury.
5. The First Respondents, Coldunnell Limited, are the freeholders.
6. On the 17th of March 2021 the Applicant served a Notice under Section 42 of the Act, seeking a 90 year extension to the lease and proposing a payment of £89,500 premium for the same.
7. On the 25th of May 2021 the 1st Respondents served a Counter Notice under Section 45(2)(a) of the Act, proposing a payment of £250,000 for the lease extension.
8. Directions were made by the Tribunal on 18th February 2022 setting out the information required to enable it to make a determination.
9. The parties confirmed that the new draft lease had been agreed and that the only issues remaining were matters of valuation. The Tribunal was provided with a 'Statement of Agreed Facts'.
10. The following matters were agreed between the parties: -
 - Date of valuation - 17th March 2021
 - Unexpired term at valuation date - 36.55 years
 - Ground rent - £10 p.a.
 - Capitalisation of ground rent - £115
 - Deferment rate - 5%
 - Extended leasehold value - 1% of FHVP value.
 - Floor area – 505sq.ft.
11. The following were disputed : -
 - Unimproved Long Lease Vacant Possession Value
 - Unimproved Short Lease Vacant Possession Value/Relativity
 - Resulting Premium.

12. A paginated bundle was submitted by the Applicants and copied to all parties.

13. Valuation reports were submitted from Mr. Ian Davidson BSc. UES. MRICS.(instructed by the Applicant) and Mr Paul W.Holder FRICS (instructed by the First Respondents).

14. The second Respondents had indicated via their solicitors that they would not be attending the hearing. In respect of their position the terms of the acquisition and the new lease were agreed, with their share of the premium agreed at £300 together with Section 60 costs.

15. The matter was determined by video conference hearing on 8th November 2022. An inspection of the property was not undertaken. The Tribunal relied upon evidence of the nature and condition of the property from the expert witnesses.

THE PROPERTY.

16. The property is a one bedroom flat, one of 50 in a 14 storey ex-local authority purpose-built high-rise block constructed in the 1970s. It is situated in 'Prime Central London', close to Holborn Underground station.

17. The flat has a lounge/dining room opening onto a small balcony, with a hallway, kitchen, bedroom and bathroom/WC.

APPLICANT'S CASE.

18. The Tribunal considered the report of Mr. Davidson dated 31.10.22, the Skeleton Argument of Ms. Sage dated 04.11.22, and the further submissions of counsel and oral evidence of Mr. Davidson given during the hearing.

19. On behalf of the Applicant it was argued by way of preliminary matters: -
i) that the value of the subject flat would be affected significantly by the 'Grenfell Factor', and
ii) that the property required approximately £50,000's worth of updating/refurbishment to bring it up to a good marketable standard.

20. Grenfell factor

In respect of the former point i) above, Mr. Davidson gave evidence that since the Grenfell tragedy in 2017 buyers have been wary of high-rise blocks such as this one. It was his view that this factor would have a significant detrimental effect on the value of the subject property.

With regard to this argument, Mr. Davidson exhibited the following: -

20 (i) A letter from Mr. Drummond of estate agents Aspire Estates (main bundle Page 237), who expressed the opinion that only when a fully qualified assessor had carried out an independent report on both the exterior (of the building) and '*behind the exterior*' (referred to by Mr, Davidson as an 'intrusive' survey) would this kind of high-rise property be certified for mortgage purposes. Mr. Drummond commented that often buyers and their representatives would demand an EWS1 (External Wall System Fire Review) form even when it was not actually required.

20 (ii) A letter from Adrian Philpott (Page 241) Associate Director at Winkworths, who confirmed that WC2 is mainly an 'investor market', and who suggested that the value of the flat with the benefit of a long lease if the block were 'EWS1 compliant' would be about £575,000. If not so compliant then he said the value of the flat would be approximately £430,000.

20 (iii) An email from Richard Stott of fire consultants 'Suretyfire' (Page 238), stating:

'There doesn't appear to be any cladding so the only issue looks like the vertically stacked balconies.' He went on to say that if the balcony 'decking and balustrades' were not made of combustible materials, then no EWS1 would be required.

21. Refurbishments. In respect of the necessary refurbishments, Mr. Davidson gave a breakdown of the costs which he considered reasonable for bringing the flat up to standard, and he explained how he had arrived at the figure of £50,000. (Page 203.)

22. Market values.

22 (i) Ms Sage submitted that the Tribunal should have regard to the state of the market at the valuation date of 17th March 2021. She stated that there were fewer long leasehold transactions taking place at that time, and that long leaseholds in high-rise blocks had decreased in value because of the Grenfell tragedy. As a result, she argued that relativity increased after the Savills and Gerald Eves graphs of 2016.

22 (ii) On behalf of the Applicant it was also submitted that at the time of the valuation date in March 2021 people were moving out of the city in the wake of the Covid pandemic, and prices were relatively low.

22 (iii) Ms. Sage points out in her Skeleton Argument that only three flats in this block with long leases had been advertised for sale during the period from November 2019 – Sept. 2022, and that all three of them were withdrawn from the market without being sold. She refers to two flats on short leases which were also withdrawn from sale over the same period.

Ms. Sage invites the Tribunal to draw the conclusion that the subject block is therefore 'undesirable' and 'effectively unmarketable.'

23. Submissions as to how the value of the property should be calculated, using comparables - similar properties.

23 (i) - Mr. Davidson referred to the sale of Flat 41, 8 Newton Street (on a 35 year lease, also on the 11th floor of the subject block) for £432,000 at auction in July 2022. He submitted that this was not a good comparable because: *'...it appears to be in better condition than Flat 42, it is post-date of the Valuation and because it is not proven who the Buyer is etc. ...'* He pointed out that: - *'It is a one off from my research and for obvious reasons one sale should not be fully relied upon. The buyer could have a specific reason to buy the flat and so on.'*

23 (ii) Rental prices/Income flow. Mr. Davidson stated that in his view the subject flat would be particularly attractive to investors rather than owner-occupiers, as a Rental Investment type of property. He referred to the current rent for Flat 42 of

£400 per week - or approximately £20,800 per annum - (Page 206), and to other rents in the same block (Page 217). He then applied a rate of return of 6% to the rental income to arrive at a 'Capital Value' of '...between say £255,000 and £260,000 or thereabouts'. He concluded that a purchaser of the 36 year shorthold lease would possibly pay around £255,300 for it. (Page 206.)

23 (iii) At Page 207 of his report Mr. Davidson then goes on to say (in the 6th paragraph) that :

*'If we use the above variables (apparently referring to his submissions as to the investment value of the 36 year lease) the following **90 year extension** would probably apply: relativity 63.49% assumed.'* He then proceeds to put the 'Assumed Freehold Value' of the property at £260,000 for the purpose of calculating a 'Total Premium' figure of £67,787.

It appears that the figure thus calculated is in fact a valuation of the **shorthold lease**, and not of the premium for an extended lease, because £260,000 was his estimate for a 36-year fixed term as above.

23 (iv) Mr Davidson provided details of a number of comparable properties in the same area, and he drew our attention in particular to two flats (55 and 54) on the 11th floor of Winter Gardens, Mackin Street (situated a short distance from the subject property) which had sold in January and February 2020 for £590,000 and £615,000 respectively. It was his view that although these flats were in better condition, slightly more desirable than the subject property, and the sales had taken place a year before the valuation date, they were still good comparables because they were situated in a similar high-rise ex-local authority block. The sale prices were those actually achieved and thus they provided a realistic comparison.

Mr Davidson did not believe when comparing these properties with the subject property that there should be any differential in value due to the mixed use of the block at Winter Gardens.

23 (v) Floor area/£s per square foot ('PSF').

Ultimately, Mr. Davidson seems to have taken the Floor area calculations as his preferred method of **valuation for the long leasehold**. Using the two flats in Winter Gardens and another in Cresse St. as the best comparables for price per square foot, Mr. Davidson also referred to a number of similar properties in the same area and then took an average value of all the comparables to arrive at the figure of **£1,165PSF**. He concluded that *if* the 'Grenfell factor' were satisfactorily resolved, then that average figure multiplied by 505 square feet (being the size of the subject flat) would give a long leasehold value of **£588, 325** after refurbishment, or **£538, 325 in** its condition as at the date of application. (Page 208)

24. Freehold valuation.

Mr. Davidson goes on to add 1% to the present condition long lease value to arrive at a freehold valuation of **£543,708** after the grant of the new lease. (Page 209)

25. Relativity.

Taking the sale of Flat 41 as the closest 'transaction' evidence, even though he had previously said it was not a good comparable, Mr. Davidson calculated that 73% was the relativity figure resulting from his analysis of that sale. He then added it to the relativity figures from the Savill's and Gerald Eves graphs, which were 58.73% and 58.74% respectively, and arrived at an overall average **relativity figure of 63.49%** (Page 210.) He submitted that one should err on the side of caution because of the '*impact of Grenfell*' and because (in his view) the flat was less desirable than other nearby flats.

26. Premium.

In conclusion Mr. Davidson submitted that the premium payable for the Long leasehold should be **£141,693**. In calculating this figure (Pages 210/211) he took the Unimproved Value as £543,708 as above.

RESPONDENT'S CASE.

27. Mr. Holder was acting both as expert witness and as representative of the Respondent Freeholders. The Tribunal considered his report dated 25.10.22 (original bundle Page 288), his Appendices PWH/1 – 15, and his oral evidence at the hearing.

28. Grenfell Factor.

On behalf of the Respondents it was not accepted that the 'Grenfell factor' would affect prices in this block. Mr. Holder submitted that the structure obviously had no cladding and the balconies were made of concrete and brick, so that no fire safety issues should arise.

29. An old 'Fire Risk Assessment Report' on the building at 8 Newton Street, undertaken by Frankham RMS and dated 21.10.2020, was produced by the Applicant Ms. Carter and copied to all parties at the hearing. This assessment included, under the heading 'Measures to Limit Fire Spread and Development' the question at point 14.4: '*From a visual inspection, do structural elements appear to be adequately protected to maintain fire resistance?*' and the answer recorded was 'Yes'. There is no specific reference to the balconies in this document, but a 'Life Safety Fire Risk Assessment Certificate of Conformity' was issued on the 8th December 2020..

30. A further 'Fire Risk Assessment Report', also prepared by Frankham RMS and dated 20th June 2022, was produced by Mr. Holder in a supplemental bundle as his Appendix PWH/15. This second report contained a far more detailed analysis of the structural risks, as a result of legislation (the Fire Safety Act 2021) passed in the wake of the Grenfell tragedy. At Point 14 (page 19) there are a number of questions about the external structure, linings, balcony materials etc. and it is noted that there are no elements of the external wall system which might promote fire spread. The balconies are described as being '*concrete*' and the walls are of '*brick and concrete construction.*'

In answer to the question – '*Does the building require an EWS1 form?*' the box is ticked for 'No'.

A 'Life Safety Fire Risk Assessment Certificate of Conformity' was issued on the 5th of July 2022.

31. Mr. Holder drew the Tribunal's attention to the RICS Guidance Note '**Valuation of properties in multi-storey multi-occupancy residential buildings with cladding**' 1st Edition (PWH9), which was issued in March 2021 and was therefore current at the valuation date. At Page 13 there was a photograph and description of 'Case Study Number 3', which was a building of a similar type and construction to 8 Newton Street, described as being '*brickwork with concrete/brickwork balconies.*' The guidance states that an EWS1 form '*is not required*', and under the heading 'rationale' it goes on to say that because the traditional cavity wall construction does not have 'cladding' and because the balconies are not constructed of combustible material - '*...an EWS1 form should not be required.*'

32. Marketability of long leasehold flats.

Mr. Holder conceded that there had been no actual sales of long leasehold flats at 8 Newton Street in the period between Grenfell and the valuation date, but he pointed out that there had been no actual sales of long leasehold flats in the building in the years immediately *before* Grenfell either. He stated that there are relatively few long leasehold flats in the block anyway (although 10 or 11 of them had had their leases extended) and therefore very few of them come onto the market. He expressed his professional opinion that guidance on fire risks and safety of high-rise blocks was readily available to lawyers, surveyors and lenders representing those interested in making a purchase, and that they would not be put off by the 'Grenfell factor.'

33. Mr Holder agreed that the subject flat needed refurbishing, but stated that such works should not cost more than £20,000.

34. Mr. Holder contended that in March 2021 the residential property market was rapidly recovering after the Covid pandemic.

35. Comparable evidence.

In terms of comparables, Mr. Holder produced a list and details of properties in the area which had been sold or offered for sale on extended leases at around the time of the valuation date. In particular he referred to Flats 27 and 50 in the same building (8 Newton Street) which had both been offered for sale at £775,000 in the last 18 months. Flat 27 was withdrawn from the market, but Flat 50 was still for sale at that price at the time of the hearing on 8th November.

36. Mr. Holder submitted to the Tribunal that these asking prices were a realistic reflection of the true value of the properties, and that the estate agents must have set the price in the expectation that they would obtain that amount or something close to it. However, when using this evidence as a starting-point he made a deduction of £75,000 because these particular flats had not actually sold at that price.

37. In respect of the purchase of the similar Flat 41 for £432,000 in July 2022 at auction, Mr. Holder said that the auction was 'open and transparent' and he would regard that as being good evidence of real market value.

38. Mr. Holder agreed that the best comparable evidence was probably at Winter Gardens, but he considered that Newton Street was more valuable. He said that greater floor area in Winter Gardens was not necessarily a benefit, and that he made a 5% deduction for flats in 'mixed use' with commercial premises on the ground floor because, in his opinion, that could affect mortgage offers.

39. Floor area/£s per square foot (PSF).

Referring to other evidence of a number of similar one-bedroom flats in the same vicinity. Mr. Holder said that he would make adjustments to the PSF rates for differences in time, condition, nature (private residential or ex-local authority) and external amenity etc. He conceded that flats in the Hexagon (for example) were of a higher quality, in a newly modernised building. Having looked at the list of comparables at Pages 319 and 386 of the bundle, he considered that a middle-of-the-range **PSF of £1,386** was appropriate in the present case.

40. Valuation - long leasehold.

Based on all the evidence Mr. Holder submitted that the **long (extended) leasehold value of Flat 42 was £700,000** (with a **freehold value**, 1% added, of **£707,070.**)

41. Relativity

When considering relativity Mr Holder referred to the sale of flat 41 in July 2022 which was 'sold without the benefit of a Section 42 Notice of Claim for a statutory lease extension having been served'. Mr Holder believed this sale price should be adjusted to reflect the value of 1993 Act rights and also for the date of the transaction being just over 16 months after the date of valuation. In addition to these factors an adjustment should also be made to reflect the difference of unexpired terms of the two flats.

42. To adjust for 'Value of Act Rights' Mr Holder used the Savills 2015 enfranchiseable and unenfranchiseable graphs, resulting in a figure of 13.95%. This reduced the value of flat 41 to £371,736.

43. Mr Holder then adjusted this figure to reflect the differing dates of valuation between March 2021 and July 2022. For this he used the Land Registry House Price Index for Camden which showed a reduction in values of 0.9774% over the period, resulting in a value of the **short leasehold interest of £370,423.**

44. Mr. Holder confirmed that the average relativity figure from the Gerald Eve and Savills graphs would be 58.735%. Then, taking into account his interpretation of the figures from the sale of Flat 41, he used that to calculate a **relativity figure of 52.4%** (Page 298 - his original report) and adopted that as the appropriate figure in reaching his conclusions. He said he believed that the graphs were too high due to their age, compared with the more up-to-date relativity he calculated for flat 41.

45. Premium – two options.

45 (i) Using the relativity figure of **52.4%** as above, Mr. Holder calculated that the **premium payable should be £223,500.** (Page 298.)

45 (ii) However, in the supplemental bundle served on 8th November 2022 at the hearing (at Pages 79 and 80) Mr. Holder submitted a revised set of calculations in which he used just the Gerald Eve and Savill's average relativity figure of **58.73%.** **The premium thus calculated changed to £201,000.**

CONCLUSIONS AND DECISION.

46. Fire safety and the 'Grenfell Factor'.

The Tribunal acknowledged that high-rise blocks were less popular with buyers following the Grenfell tragedy in 2017, but we were satisfied that: -

- a) the visible construction of this particular building, and
- b) the information available from RICS guidance notes and other publications was sufficient to reassure potential purchasers and their surveyors, lawyers and lenders, so that the market value of flats at 8 Newton Street was not significantly affected.

47. The Tribunal had evidence that, at the valuation date in March 2021, the building had been certified as Fire risk compliant. There was also evidence that in July 2022 the construction of the external walls and balconies was *not* made of combustible materials, so in the absence of any suggestion that the building had been altered between March 2021 and July 2022 it was concluded that there was no necessity for an EWS1 form in this case.

48. In summary, The Tribunal prefers Mr Holder's argument that the value of the subject flat is not severely reduced due to the 'Grenfell Effect'. If indeed the market for flats in high-rise blocks is affected by fire safety concerns, then that is already reflected in the comparables which were cited by the experts. The general lack of sales does not necessarily reflect purchasers seeing the block as blighted due to its construction.

49. Condition of the Property.

From the photographs and information provided, the Tribunal considered that the property was in a fair internal condition at the date of the valuation. In terms of the estimated costs of refurbishment and modernisation, the Tribunal did not accept Mr Davidson's figure of £50,000. It was considered that Mr. Holder's estimate, at £20,000, was too low, but a figure of £30,000 was taken as reasonable.

50. Market values and Comparables.

The Tribunal carefully reviewed the comparables provided by both experts. It was accepted that the sales of flats in Winter Gardens provided some comparable evidence, but it was considered that the Winter Gardens properties were of a better standard than Newton Street.

51. The Tribunal found that the evidence of the auction sale of Flat 41 at 8 Newton Street was relevant as part of the overall comparable evidence, but should be treated with caution.

52. The Tribunal did not consider that the evidence of negotiations between the parties prior to the current Application was relevant or admissible.

53. To arrive at the valuation of the long leasehold interest Mr Holder primarily uses prices for properties in the same block which were on the market but had not sold. The Tribunal found that evidence of 'asking prices' for properties which did not sell was of limited value.

54. Rental values - £s per square foot.

The Tribunal preferred Mr Davidson's analysis of comparable rentals, which he used to achieve a £ ft²(PSF) valuation for the subject flat.

Mr Holder had also considered the PSF approach (p336 and 386 of his original report) but in doing so he took comparables which had the benefit of additional services, and some of these are in 'mixed use' blocks (with both commercial and residential properties). As a result, additional adjustments would need to be made to relate to the subject property, thus potentially causing errors in valuation.

55. Relevant Case Law.

The Tribunal took account of the case of ***The Trustees of the Sloane Stanley Estate v. Mundy [2016] UKUT 223(LC)*** in which it was made clear that the preferred method of calculating relativity is by analysis of market evidence of actual transactions of a similar kind, if available, before resorting to graphs. If graphs are to be used, the case of ***Deritend Investments (Birkdale) Ltd. v. Ms. Komelia Trekanova [202] UKUT 164 (LC)*** suggests that Savills and Gerald Eve 2016 are the most reliable.

It was also noted that the 'Deritend' case (as above) found that other First Tier decisions on relativity were not necessarily helpful because each case had to be determined on its own particular facts.

56. Relativity

All in all, the Tribunal concluded that the limited 'transaction evidence' was not sufficiently similar or reliable for it to be used as a basis for calculating relativity.

The Tribunal did not consider Mr Davidson's approach - of utilising the relativity figure from flat 41 - to be helpful, particularly as Mr Davidson had conceded that it was not fully reliable as a comparable.

The Tribunal also does not subscribe to Mr Holder's original approach of taking the Gerald Eve and Savills graphs and then deviating from them, firstly due to their age and secondly to reflect Mr Holder's analysis of the sale of flat 41.

For these reasons the Tribunal adopted the figures derived from the Gerald Eve 2016 and Savills 2015 graphs alone.

The Tribunal therefore finds the correct relativity figure, in line with an average of the Gerald Eve and Savills graphs, to be **58.735%**.

57. Valuation of long leasehold.

The Tribunal determines that the value of the long leasehold interest is **£585,264** in its present unimproved condition.

Premium/ Enfranchisement Price:

Based on the findings above, the Tribunal determines the premium to be paid for the freehold interest is **£166,304. (See calculations below.)**

Agreed Capitalisation of GR £115.00

Value of Freehold

Unimproved value £585,264
PV £1 in 35.55 yrs @5% 0.168
£98,324

Less F/H interest after Extension £ 585,264
PV £1 in 126.55yrs @5% 0.0021
£1,229

Diminution of F/H interest if new lease £97,095

Marriage Value

F/H £1,229
L/H £579,411
£580,640

Less Existing Interest

F/H £ 98,439
L/H 58.74% £343,784
£442,223

Total Marriage Value £138,417
50% £ 69,208

£69,208
£166.304

Tribunal Judge Tessa Hingston
24th November 2022.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouth-ern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.