FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AJ/OLR/2018/1036**
Property	**:**	**2 Sandall Close Ealing London W5 1JE**
Applicant	**:**	**Naveen Sagar**
Representative	**:**	**Mr Chris Green Solicitor**
Respondent	**:**	**Felix Dheepak Jebaraj Samuel**
Representative	**:**	**Ms Amanda Gourlay of Counsel**
Type of application	**:**	**Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal members	**:**	**Judge Professor Robert M. Abbey Marina Krisko FRICS**
Date of determination and venue	**:**	**6th February 2019 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**12th February 2019**

DECISION

Summary of the tribunal's decision

(1) The appropriate premium payable for the new lease is **£19,758**. The basis for this lease extension valuation is set out in detail in appendix A to this decision.

Background

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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 Act") for a determination of the premium to be paid for the grant of a new lease of **2 Sandall Close Ealing London W5 1JE** (the "subject property") and for the determination of lease terms to be included in the new lease of the subject property.

2. By a notice of a claim served pursuant to section 42 of the Act, the applicant exercised the right for the grant of a new lease in respect of the subject property. At the time, the applicant held the existing lease of the subject property. The applicant subsequently proposed to pay a premium of £9,600 for the new lease.

3. The respondent freeholder served a counter-notice admitting the validity of the claim and subsequently counter-proposed a premium of £30,138 for the grant of a new lease.

4. On 8th August 2018, the applicant applied to the tribunal for a determination of the premium and for the determination of lease terms to be included in the new lease of the subject property.

The issues

Matter not agreed

5. The following matter was not agreed:
   (a) The premium payable, (relativity, long leasehold value),

   (b) New lease terms and in particular clauses relating to the service charge provisions, insurance provisions, regulations and forfeiture

The hearing

6. The hearing in this matter took place on 6th February 2019. The applicant was represented by Mr Green, and the respondent by Ms Gourlay.

7. Neither party asked the tribunal to inspect the subject property and the tribunal did not consider it necessary to carry out a physical inspection to make its determination.

8. The applicant relied upon the expert report and valuation of Mr Arvind Ram BSc, MA, MRICS of AMR Surveyors such report and valuation dated 26th January 2019 and the respondent relied upon the expert report and valuation of Mr Wilson Dunsin FRICS of Dunsins Surveyors dated 4th December 2018. In their reports Mr Ram concludes that the

premium payable to extend the lease is £17,000 while Mr Dunsin concludes that the premium is £31,362.

9. The representatives advised the Tribunal that they had reached agreement on the unexpired term at 79.02 years with the capitalisation rate at 6% and the deferment rate at 5%. At the commencement of the hearing the surveyors agreed the gross internal floor area at 675 square feet. The term value was agreed at £1251 and all parties accepted the valuation date as being 19th December 2017.

The tribunal's determination

10. The tribunal determines that the appropriate premium payable for the new lease is **£19,758.**

11. The tribunal determines that none of the lease clauses proposed by the respondent are approved and as such are all refused to the intent that the form of lease to be used on the lease extension shall be that produced to the tribunal but excluding the amendments set out as being not agreed between the parties.

Reasons for the tribunal's determination

12. Dealing first with the lease amendments proposed by the respondent the law in that regard is governed by section 57 of the Leasehold Reform Housing and Urban Development Act 1993 and which can be seen in full in the annex to this decision. Relevant elements are set out below insofar as they relate to this dispute:-

> ***57 Terms on which new lease is to be granted.***
>
> *(1)Subject to the provisions of this Chapter (and in particular to the provisions as to rent and duration contained in section 56(1)), the new lease to be granted to a tenant under section 56 shall be a lease on the same terms as those of the existing lease, as they apply on the relevant date, ...*
>
> *(6)Subsections (1) to (5) shall have effect subject to any agreement between the landlord and tenant as to the terms of the new lease or any agreement collateral thereto; and either of them may require that for the purposes of the new lease any term of the existing lease shall be excluded or modified in so far as—*
>
> *(a)it is necessary to do so in order to remedy a defect in the existing lease; or*

(b)it would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease

13. Accordingly, in the main lease amendments need to either remedy a defect in the old lease or it would be unreasonable to not make an amendment in view of changes that have occurred since the old lease was granted and which affects the suitability of the provisions of the old lease. Examples given of appropriate changes have referred to gas lighting or coal sheds being mentioned in old leases and where these matters are clearly now out of date.

14. The first clause to be considered related to the service charge provisions in the lease. The subject property is one of two maisonettes in this property being the upper maisonette. The old lease being extended was formulated on the basis of the lessee of the upper maisonette being responsible for the repairs and maintenance of the upper part including the roof and presumable the same being true for the tenant of the lower maisonette and the repair of the lower part. So the upper lessee maintains the roof and the lower the foundations. This is a common approach in maisonette leases.

15. The amendments in the draft lease before the tribunal clearly show that the lessor wishes to change the service charge regime with the imposition of the lessor's involvement in the service charge arrangements. However, the Tribunal is of the opinion that there is no defect in the old lease as there are adequate maintenance/service charge arrangements for a maisonette lease. Furthermore it seemed to the tribunal that there are no changes relevant either and so the tribunal will not allow the service charge amendment to remain in the new lease. Furthermore there being no interest provision for late payment in the old lease it is neither remedying a defect nor covering changes to permit an interest provision in the new lease and as such this amendment is also refused. It should also be noted that as there are existing service charge provisions in the old lease section 57(2) of the Act will not apply.

16. Turning to the insurance of the subject property, insurance can be dealt with in one of two ways. First, the lessee can be made to covenant to insure or, second, the lessor can agree to insure. Where the lease is of a whole house or of one of two maisonettes, then it would be unsurprising to expect the lessee to insure. However, where there is a building in multiple occupation, the converse should apply so as to ensure that there is an appropriate level of cover rather than the

patchwork of different policies that would occur if all the lessees insured separately. The subject property being a maisonette it is not a defect to allow the lessee to insure. Furthermore as the other maisonette owners presumably insure the other part of the property it would not be sensible to change the insurance arrangement currently in place. Therefore the Tribunal considers that in regard to the insurance amendments it is neither remedying a defect nor covering changes to allow the landlords amendment in the new lease and as such this amendment is also refused. It should also be noted that as there are existing insurance provisions in the old lease requiring the tenant to insure section 57(2) of the Act will not apply.

17. The next amendment proposed by the landlord relates to the imposition of a clause allowing the lessor to impose regulations governing the use, security and management of the maisonettes. The applicant does not consider this to be required and the applicant believes such a clause does not come within the range of the Act. The Tribunal agrees with this view. There is no defect in the lease without this clause nor is there a change in circumstances requiring such a clause. There being no such provision in the old lease the Tribunal therefore does not approve this amendment and it is refused.

18. Turning finally to the forfeiture clause, this was a late suggestion by the respondent and had not been disclosed to the applicant until very close to the hearing date and had not been shown to the Tribunal in detail; all that was said was that the respondent wanted the forfeiture clause to be in modern form. In the absence of any supporting evidence, (or indeed any proposed wording in writing before the tribunal) to show that a change is necessary under the terms of the Act, the Tribunal will not allow any changes to the forfeiture clause which must remain in the same wording as in the lease being extended. Accordingly, this proposed amendment is refused

19. We now turn to the premium payavble for the extended lease under the enfranchisement provisions in the Act. The two surveyors have accepted that the valuation date of the subject property was 19 December 2017. The task of valuation is the determination of the value as at that date based on real and or hypothetical market transactions in which the parties are advised by valuers adopting the approach and methodology in vogue and in common usage at that time. It should be noted that the judicial guidance in the case of *Reiss v Ironhawk Limited [2018] UKUT 0311 (LC)* did not come along until September 2018 and thus would not have been adopted in December 2017. In these circumstances we find that we do not need to consider *Ironhawk* and to the extent to which it may turn on it's very particular circumstances.

20. The subject property is a reasonably presented and reasonably fitted maisonette which seems to be in a generally satisfactory condition

consistent with its age and type of construction although some modernisation works could be seen to be appropriate.

21. The Tribunal was mindful of the guidance from the case of *Trustees of Sloane Stanley Estate v Mundy* [2016] UKUT 0223 (LC) where at paragraphs 164 and 169 the Upper Tribunal (Lands Chamber) offer some assistance in a case such as this:-

> *"We would have liked to have arrived at a method of valuation which would be clear and simple and predictable as to its future application to determine the relativities for leases without rights under the 1993 Act. If we had been able to support the use of the Parthenia model that might have been the result. Further, if we had been able to give unqualified approval to the Gerald Eve graph, that too would have simplified matters. However, in the event, it is clear to us that we cannot support the use of the Parthenia model and we have reservations about the use of the Gerald Eve graph. Nonetheless, we will try to describe those matters which might be of use in future cases. ….*
>
> *…. the more difficult cases in the future are likely to be those where there was no reliable market transaction concerning the existing lease with rights under the 1993 Act, at or near the valuation date. In such a case, valuers will need to consider adopting more than one approach. One possible method is to use the most reliable graph for determining the relative value of an existing lease without rights under the 1993 Act. Another method is to use a graph to determine the relative value of an existing lease with rights under the 1993 Act and then to make a deduction from that value to reflect the absence of those rights on the statutory hypothesis. When those methods throw up different figures, it will then be for the good sense of the experienced valuer to determine what figure best reflects the strengths and weaknesses of the two methods which have been used."*

22. With regard to valuation matters, various comparables were advanced by both surveyors. However, the tribunal was of the clear view that the best comparable was 9 Sandall Close having been sold in July 2016 and being really quite close to the subject property. Adjusting for time the long leasehold value for this comparable came out at £811 per square foot and this figure is roughly in line with the calculations made by both surveyors. The next best comparable is 40 Sandall Close where there was a sale in June 2015. This comparable is affected by a loft space but it does not back onto an open space (golf course) as the subject property does. These two aspects could very well balance each other out and so making no adjustment for these two points the value is £807 per square foot. Number 12 Sandall Close is a difficult comparable as there are no marketing details available for an apparent sale in June 2017

and so the Tribunal could not be sure that this was a market transaction at arm's length. Finally 35 Sandall Close is presently on the market but not sold but where the value could equate to £822 per square foot. This gives an average value of £813 per square foot.

23. The Tribunal were also provided with comparables in Connell Crescent Ealing. These were some distance away and were, in the opinion of the tribunal too far away and too unlike the subject property or its location to be of any real assistance to the Tribunal Consequently the tribunal found it could not use the Connell Crescent comparables.

24. The sale prices we were given for long leaseholds are, after time adjustments; No 12, £554,223, No 9, £558,187, No 40, £518,356 and No 31, £562,868 which gives an average of £548,408. The tribunal then utilised the average price per foot to get £549,000 for the subject, long lease value. The Tribunal observed that the long leasehold value based on the average per square foot values fits in very well with the adjusted sale prices.

25. The Tribunal then looked at all the relativity graphs supplied by the parties who were of course not in agreement as to which should be adopted. The Tribunal proceeded by leaving out those which are South coast only and those which cover Prime Central London- Grosvenor, Belgravia, Mayfair, and the Cadogan Estates, bearing in mind the subject property is in Ealing near to Hanger Lane. Accordingly, of those left, the Tribunal could use London and greater London data and thus came to an average at 79.02 years of 94.2.

26. On using the above mentioned values a relevant calculation, (see the valuation in appendix A), gives a premium of £19,758 at 94.2%. The Tribunal found itself unable to use Mr Dunsin's figure of 90.21%. This is because he uses the Savills graph which is the lowest, and a one off only, and is Prime Central London focussed. It has the lowest values, even compared to other Prime Central London 2015 graphs. (For example Knight Frank, Gerald Eve, at 92.01%). This being the case, Mr. Dunsin's property values are to be preferred, but Mr Ram's relativity figure is closer to the figure preferred by the Tribunal.

27. Rights of appeal are set out below.

Name:	Judge Professor Robert. M Abbey	**Date:**	12th February 2019

2 Sandall Close, Ealing W5 1JE

APPENDIX A

TRIBUNAL VALUATION

Valuation date: 19th December 2017
Unexpired term: 79.02 years
Existing leasehold value: £522,329
Extended leasehold value: £549,000
Freehold value (+1%): £554,490
Relativity: 94.2%
Yields term 6%
Reversion 5%

Term			
Value agreed		£ 1,251	
Reversion			
Freehold: £554,490			
PV 79.02 years 0.02117		£11,738	
Freehold interest		£12,989	
Less			
Reversion to freehold	£554,490		
PV 169.02 years 0.00026		£ 144	
Loss to freeholder			£12,845
Marriage value			
Extended lease	£549,000		
Freehold reversion	£ 144		
Less			
Existing lease	£522,329		
Freehold interest	£ 12,989		
	£ 13,826		
50%			£ 6,913
Premium			**£19,758**

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).

Leasehold Reform, Housing and Urban Development Act 1993

57 Terms on which new lease is to be granted.

(1)Subject to the provisions of this Chapter (and in particular to the provisions as to rent and duration contained in section 56(1)), the new lease to be granted to a tenant under section 56 shall be a lease on the same terms as those of the existing lease, as they apply on the relevant date, but with such modifications as may be required or appropriate to take account—

(a)of the omission from the new lease of property included in the existing lease but not comprised in the flat;

(b)of alterations made to the property demised since the grant of the existing lease; or

(c)in a case where the existing lease derives (in accordance with section 7(6) as it applies in accordance with section 39(3)) from more than one separate leases, of their combined effect and of the differences (if any) in their terms.

(2)Where during the continuance of the new lease the landlord will be under any obligation for the provision of services, or for repairs, maintenance or insurance—

(a)the new lease may require payments to be made by the tenant (whether as rent or otherwise) in consideration of those matters or in respect of the cost thereof to the landlord; and

(b)(if the terms of the existing lease do not include any provision for the making of any such payments by the tenant or include provision only for the payment of a fixed amount) the terms of the new lease shall make, as from the term date of the existing lease, such provision as may be just—

(i)for the making by the tenant of payments related to the cost from time to time to the landlord, and

(ii)for the tenant's liability to make those payments to be enforceable by distress, re-entry or otherwise in like manner as if it were a liability for payment of rent.

(3)Subject to subsection (4), provision shall be made by the terms of the new lease or by an agreement collateral thereto for the continuance, with any suitable adaptations, of any agreement collateral to the existing lease.

(4)For the purposes of subsections (1) and (3) there shall be excluded from the new lease any term of the existing lease or of any agreement collateral thereto in so far as that term—

(a)provides for or relates to the renewal of the lease,

(b)confers any option to purchase or right of pre-emption in relation to the flat demised by the existing lease, or

(c)provides for the termination of the existing lease before its term date otherwise than in the event of a breach of its terms;

and there shall be made in the terms of the new lease or any agreement collateral thereto such modifications as may be required or appropriate to take account of the exclusion of any such term.

(5)Where the new lease is granted after the term date of the existing lease, then on the grant of the new lease there shall be payable by the tenant to the landlord, as an addition to the rent payable under the existing lease, any amount by which, for the period since the term date or the relevant date (whichever is the later), the sums payable to the landlord in respect of the flat (after making any necessary apportionment) for the matters referred to in subsection (2) fall short in total of the sums that would have been payable for such matters under the new lease if it had been granted on that date; and section 56(3)(a) shall apply accordingly.

(6)Subsections (1) to (5) shall have effect subject to any agreement between the landlord and tenant as to the terms of the new lease or any agreement collateral thereto; and either of them may require that for the purposes of the new lease any term of the existing lease shall be excluded or modified in so far as—

(a)it is necessary to do so in order to remedy a defect in the existing lease; or

(b)it would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease