



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

Case reference : **LON/00AG/OLR/2018/0305**

Property : **Flat 1, 51 Shelton Street, London,
WC2H 9JU**

Applicant : **Mr Guy William Davis**

Representative : **Ms Sanghera, Simkins LLP,
Solicitors**

Respondent : **Searchgrade Ltd**

Representative : **Mr Bowker of Counsel**

Type of application : **Section 48 of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal members : **Judge I Mohabir
Mr K Ridgeway, BSc MRICS**

**Date of hearing and
venue** : **2 October 2018
10 Alfred Place, London WC1E 7LR**

Date of decision : **26 November 2018**

DECISION

Background

1. This is an application made by the Applicant qualifying tenant 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 Flat 1, 51 Shelton Street, London, WC2H 9JU (the “property”).

2. By a notice of a claim dated 3 July 2017, served pursuant to section 42 of the Act, the former leaseholder, Caroline Margaret Lewis, exercised the right for the grant of a new lease of the property and proposed to pay a premium of £27,730. On 10 July 2017 the notice was assigned to the Applicant when he purchased the leasehold interest.
3. On 6 September 2017, the Respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £99,000.
4. On 21 February 2018, the Applicant applied to the Tribunal for a determination of the premium and terms of acquisition.

The Issues

Matters Agreed

5. These are the valuation date of 3 July 2017 and a deferment rate of 5%. The parties had also agreed the terms of new lease.

Matters Not Agreed

6. The issues not agreed were:
 - (a) Capitalisation rate.
 - (b) Floor area.
 - (c) Freehold vacant possession value.
 - (d) Existing lease value.
7. The Applicant relied upon the expert report and valuation of Mr Row, BSc MRICS MCI Arb dated 1 October 2018 and the Respondent relied upon the expert report and valuation of Mr Hau, BSc (Hons) MSc MARLA MRICS dated 27 September 2018.

Decision

8. The hearing in this case took place on 2 October 2018. The Applicant was represented by Ms Sanghera a Solicitor from Simkins LLP. The Respondent was represented by Mr Bowker of Counsel.

Procedural

9. Neither valuer had complied with the Tribunal's Directions to serve their valuation reports not less than 2 weeks before the hearing date. Mr Hau had attempted to do so, but no response was obtained from Mr Row. Nevertheless, the Tribunal explained that this should not have prevented Mr Hau from complying with the Tribunal's Directions by, for example, obtaining an undertaking from Mr Row not to read his report until such time as he had served his report on Mr Hau.
10. The only reason advanced by both sides for not complying with the Tribunal's direction as to service of the reports was that both valuers were negotiating and had hoped to reach a settlement. The Tribunal did not consider this to be a good reason for non-compliance. Negotiations between the parties does not stay or suspend compliance with the Tribunal's Directions. There is no certainty that negotiations will prove to be successful. It is incumbent on the parties to both comply with Directions and negotiate at the same time.
11. The situation faced by the Tribunal here is, unfortunately, a regular occurrence and is unacceptable. Solicitors and valuers instructed by parties are bound by their professional duty to comply with Directions issued by the Tribunal. A failure to do so is potentially a professional conduct issue.
12. Perhaps more importantly for practitioners is that by failing to comply with the Tribunal's Directions, the Applicant runs the significant risk to having their application struck out or the Respondent runs the risk of being debarred from defending the claim. The consequences for professional advisers are obvious.
13. Indeed, in the present case, the Directions expressly provided that failure to comply with them had the potential consequences. The application could be struck out under Rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules") or the Respondent debarred from defending under Rules 9(7) and (8).
14. Both parties made cross applications for relief from sanctions. Having considered the submissions made, the Tribunal reluctantly granted relief from sanctions and gave permission for the expert reports to be admitted in evidence. The only basis on which the Tribunal did so was that both parties were in a position to proceed and neither had taken any point about prejudice caused by the late service of the reports. Had this not been the case, the Tribunal would have had little hesitation in striking out the application and making any appropriate cost order against the Respondent.
15. After careful consideration, the Tribunal preferred the evidence and valuation of Mr Hau, the Respondent's valuer for the following reasons.

Comparable Evidence

16. Mr Rowe provided only three comparables with no accompanying explanation of how they had been analysed and which were then ignored in reaching his opinion of freehold value. Indeed, two of the comparables were discounted during the Tribunal hearing. In Mr Hau's report, he provided nine comparables properties including a narrative explaining his reasons for adjusting the values to reach his opinion of freehold value.

Floor Area

17. Mr Rowe claimed to have measured the property 'in accordance with the RICS Professional Statement of Property Measurement' to 'approximately 32.46 sq m (349 sq ft)'. During the Tribunal he confirmed this and stated he would have been using a laser measuring device. Interestingly, later in his report he said he reached his freehold vacant possession value 'based on the agent' measurements of 360 sq ft. Further, during cross examination he admitted he has included an area of around 9 square feet not included in the demise of the flat. No calculations were provided by Mr Rowe in his report showing how he had reached his areas, nor was he able to say when he inspected without consulting an unsubmitted document. Mr Hau's report stated the date of inspection and included a copy of his sketch plan with the measurements taken.

Adjustments

18. Despite providing three comparables, Mr. Rowe ignored these and made an adjustment of 1.7% to the purchase price of the flat to reflect the no act world. He then applied the Savills Enfranchiseable Graph at 87.70% to arrive at his freehold vacant possession value of £521,202. No explanation is given in his report as to how he reached that percentage. In cross-examination he confirmed it was the difference of the Savills Enfranchiseable and Unenfranchiseable reports. Also, no explanation was provided as to why no other graphs were not considered and if they were, why they were discounted.
19. Mr. Hau also made reference to differential of 1.7% in the two Savills graphs. He then went on to explain why he considered this too small an adjustment for this property in its location and his reasons for preferring 5%. In reaching his relativity figure of 80.52%, Mr Hau's report give an analysis as to how he arrived at the figure along with graphs he consulted as a 'sense check'.
20. Based on the evidence before the Tribunal, it considered the evidence and valuation of Mr Hau to be preferable that of Mr Rowe. Therefore, the Tribunal made the following findings:

Valuation Date

3 July 2017 (previously
agreed)

Deferment Rate	5% (Previously agreed)
Capitalisation Rate	6.5%
Floor Area	363 sq ft (33.77 sq m)
Capitalisation Rate	6.5%
Freehold Vacant Possession Value	£550,000
Existing Lease value	£441,500 (relativity 80.32%)

21. Accordingly, the tribunal determined that the appropriate premium to be paid for the new lease of the property is **£59,520**. A copy of Mr Hau's valuation is annexed to this decision.

Name: Judge I Mohabir **Date:** 26 November 2018

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).

ADDRESS:
1, 91 Shelton Street
London
WC2H

03/07/2017	03/07/2017	28/09/2027	78.24
£550,000	100%	£550,000	£550,000
£544,500	99%	£544,500	£544,500
£441,750	80.32%	£441,750	£441,750
£125		£125	£125
£59		£59	£59
£0.00		£0.00	£0.00
£0.00		£0.00	£0.00

Leasehold Reform, Housing and Urban Development Act 1993 (as amended)

1. Loss of Freeholder's Present Interest

1.1. Capitalisation of Ground Rent

From	03-Jul-2017	to	28-Sep-2027	YP	10.24 years @	10.52%	Ground Rent	£125 pa		
								7,382		£914
From	28-Sep-2027	to	28-Sep-2060	YP	33.00 years @	8.51%	Ground Rent	£250 pa		
								13,480		
				PV	10.24 years @	8.74%		0.524939559		£1,706
From	28-Sep-2060	to	28-Sep-2093	YP	33.00 years @	8.50%	Ground Rent	£900 pa		
								13,460		
				PV	43.24 years @	8.50%		0.085691403		£442
										£3,122

1.2. Freeholder's Loss of Reversion

From	03-Jul-2017	to	28-Sep-2093	PV	76.24 years @	10.80%	Estimated Freehold Value	£550,000		
								0.0242		£13,333

1.3. Loss value of Freeholder's Proposed Interest

From	03-Jul-2017	to	22-Mar-2119	PV	166.24 years @	8.70%	Estimated Freehold Value	£550,000		
								0.000300	less	£185

Loss in value of Freeholder's Present Interest therefore **£16,290**

2. Marriage Value

2.1. Sum of values of proposed interests										
Value of new lease to Freeholder (Para 1.3 above)										£185
Value of new lease to Leaseholder (Existing lease value)										£44,485
Less										£44,665

2.2. Sum of values of present interests										
Value of existing lease to Freeholder (Sum of paras 1.1 & 1.2 above)										£4,485
Value of existing lease to Leaseholder (Existing lease value)										£441,750
										£486,235

Marriage Value therefore **£86,486**

50% of Marriage Value to Freeholder **£43,243**

3. Premium Payable

Premium **Say £59,520**