



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

**Case reference** : **LON/00AT/OLR/2018/0327**

**Property** : **10 Lampton Court, Lampton Road,  
Hounslow, Middlesex TW3 4EU**

**Applicant** : **Mrs Sara Wijekoon**

**Representative** : **Jackson Green & Preston**

**Respondent** : **Mr Sanjay Kapila & Ms Sonia  
Khanna**

**Representative** : **Infields Solicitors**

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

**Tribunal members** : **Judge Ruth Wayte  
Patrick Casey MRICS**

**Date of determination  
and venue** : **17 July 2018 at  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **17 August 2018**

---

**DECISION**

---

**Summary of the tribunal's decision**

(1) The premium payable for the new lease is **£44,250**.

**Background**

1. This is an application made by the 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 10 Lampton Court, Lampton Road, Hounslow, Middlesex (the “property”).

2. By a notice of a claim dated 5 July 2017, served pursuant to section 42 of the Act, the previous leaseholder exercised the right for the grant of a new lease in respect of the subject property. The existing lease was granted on 17 March 1976 for a term of 99 years from 25 December 1975, at an annual ground rent of £20 rising to £80 over the life of the lease. The leaseholder proposed to pay a premium of £23,000 for the new lease.
3. On 1 September 2017, the respondent freeholder served a counter-notice, admitting the validity of the claim and counter-proposed a premium of £57,073 for the grant of a new lease.
4. The property was sold at auction to the applicant with the benefit of the claim. On 28 February 2018, the applicant applied to the tribunal for a determination of the premium.

### **The issues**

#### **Matters agreed**

5. The following matters were agreed:
  - (a) The subject property is a self-contained flat on the first floor, within a three storey block of flats constructed around 1935 and containing 12 flats of similar kinds, with 3 commercial units on the ground floor;
  - (b) The gross internal floor area is 684 square feet;
  - (c) The valuation date: 5 July 2017;
  - (d) Unexpired term: 57.47 years;
  - (e) Ground rent: £20 rising to £80 over the lease period;
  - (f) Long leasehold value: 99% of the freehold value;
  - (g) Capitalisation of ground rent: 6% per annum.

#### **Matters not agreed**

6. The following matters were not agreed:
  - (a) The deferment rate: the applicant proposing 5.25% and the respondent relying on the standard 5%;
  - (b) The “no-Act world” short leasehold value: the applicant contending at the hearing for £212,667 and the respondent contending for £196,796;

- (c) The deduction for Act rights: the applicant's position being 5% as opposed to 6.92% from the respondent;
- (d) The extended lease value: the applicant contending at the hearing for £263,175 and the respondent for £281,241;
- (e) Relativity: the applicant contending at the hearing for 84% and the respondent for 69.27%; and
- (f) The premium payable.

### **The hearing**

- 7. The hearing in this matter took place on 17 July 2018. The applicant was represented by Kevin Broadhurst and the respondent by Wilson Dunsin, both RICS Registered Valuers.
- 8. Both parties confirmed that they did not require the tribunal to inspect the property and the tribunal did not consider it necessary to carry out a physical inspection to make its determination.
- 9. The applicant relied upon the expert report and valuation of Kevin Broadhurst dated 9 July 2018 and the respondent relied upon the expert report and valuation of Wilson Dunsin dated 3 July 2018.

### **The Act**

- 10. Schedule 13 of the Act provides that the premium to be paid comprises the aggregate of:
  - the diminution in the value of the landlord's interest in the flat – i.e. the difference between the value before and after the new lease is granted;
  - the landlord's share of any marriage value that may be applicable and
  - any compensation for other loss or damage resulting to the freeholder as a result of the lease extension (not relevant here).

### **The Deferment Rate**

- 11. Although Mr Broadhurst used the *Sportelli* deferment rate of 5% for flats as his starting point, he argued that a different rate should be applied here, to reflect the difference in growth of house prices in Hounslow as opposed to Prime Central London (PCL). He produced statistical analysis of house prices in Kensington and Chelsea, the West Midlands and Hounslow which he argued showed that growth rates in PCL significantly outstripped those

of the West Midlands and Hounslow. The information dated back to 1995, just over 20 years. On the basis of this data, he argued for a deferment rate of 5.25%. He relied on the Upper Tribunal's decision in *Sinclair Gardens Investments (Kensington) Ltd* [2014] UKUT 0079 (LC) as authority to support that evidence to justify a departure from *Sportelli* outside of PCL did not have to be especially cogent or compelling.

12. In response, Mr Dunsin stated that there was no specific reason to depart from 5%. He relied on two authorities in addition to *Sportelli*: *Hildron Finance Ltd v Greenhill Hampstead Ltd* (2007) LRA/120/2006 and *Lippe Cik v Chavda* (2008) LRA/111/2007. In *Hildron Finance*, the Lands Tribunal had held that in order to provide a reliable indication of the long term movement in residential values so as to justify a departure from the *Sportelli* starting point, a period of 50 years was required in terms of statistical information. Here only 20 had been provided. The *Lippe Cik* case concerned other property in Hounslow, however the evidence in that case was inferior to the information produced by Mr Broadhurst.

### **The tribunal's determination**

13. The tribunal determines that the deferment rate should be 5%. Although the evidence produced by Mr Broadhurst was considerably better than the evidence relied on in *Lippe Cik*, it was clear that the growth rate for Hounslow was higher than that in the West Midlands, with a less clear differential to the price growth in PCL. A period of 20 years also falls well short of the 50 years recommended in *Hildron Finance*. The tribunal accepts that the evidential bar is not as high as "compelling" for properties outside of PCL but, as confirmed in *Sinclair Gardens*, it still needs to be a reliable indication of a long term movement in residential values and preferably include evidence about the property itself, which was missing here.

### **The existing lease value**

14. Given that the property was sold at auction on or around the valuation date for £211,200 with a lease of 57.47 years, at first sight the answer may well seem obvious. However, Mr Broadhurst argued that in addition to the purchase price, the reservation fee of 5% plus VAT paid by the purchaser and £10,000 of improvement and redecoration work should be added, making a total of some £223,900. His main point was that the auction price was too low compared to the market evidence, as adjusted.
15. In terms of comparables, both parties had identified the following sales of two bedroomed flats in Hounslow:
  - 25 Highlands Close, sold 6 December 2017 for £274,950
  - 17 The Beeches, sold 12 March 2018 for £246,000
  - 2 Lampton Court, sold 19 October 2016 for £276,000
  - 7 Lampton Court, sold 3 October 2016 for £275,000
  - 8 Lampton Court, sold 20 June 2016 for £275,000

- 12 Lampton Court, sold 16 September 2016 for £275,000
16. Mr Broadhurst relied mainly on 25 Highlands Close and 17 The Beeches, as he had been able to consider more detail surrounding those sales than the Lampton Court properties, which on the face of it would be the starting point, given they are in the same block as the subject property. This produced a valuation in the region of £345 per square foot, which when multiplied by the agreed area of the property would produce a valuation of £235,980.
  17. From his initial valuation there needed to be a deduction to disregard the benefit of the Act rights. His approach was to look at a number of Upper Tribunal decisions and from those gave an opinion that in this case a deduction of 4% should be applied. Upon questioning as to his methodology, Mr Broadhurst conceded that 5% was probably more accurate. This would mean a valuation of £212,667.
  18. In response, Mr Dunsin stated that there was no reason to depart from the auction price. He compared the auction reserve to estate agents' fees, in his view the sale price should be the money that passed between the purchaser and the vendor. He also submitted that there was no reason to add the works carried out by the purchaser to the sale price. He had inspected the property shortly after the sale and his photographs demonstrated that the condition appeared to be the same as that shown in the estate agents' particulars for the property prior to it being placed into the auction. He had applied the Savills 2015 Value of Act Rights deduction of 6.92% to the sale price of £211, 200, to arrive at his valuation of £196,796. The tribunal pointed out that the 2015 graphs were not in evidence and Mr Dunsin accepted that if the approach taken by the Upper Tribunal and upheld by the Court of Appeal in the recent decision of *Mundy v Sloane Stanley Estate* [2018] EWCA Civ 35 was followed, using the graphs produced in his report, 5.59% would be the appropriate deduction.

### **The tribunal's determination**

19. The tribunal accepts Mr Broadhurst's evidence that the reservation fee should be added to the sale price to produce the short lease value. The fact that this is the total price paid by the purchaser is in the tribunal's view the relevant question, as opposed to the actual money passing hands between the vendor and purchaser. In particular, the tribunal accepts the argument that a purchaser would factor the fee into the total price they would be willing to pay. This produces a total sale price of £223,872. From this figure the tribunal determines that the appropriate deduction for Act rights is 5.59% as set out in paragraph 18 above and following *Mundy*. This produces an adjusted valuation of £211, 357, rounded down to £211,350.

### **The extended lease value**

20. In order to calculate this, Mr Broadhurst relied on Graphs of Relativity as opposed to market evidence. Although he was aware of *Mundy* and the stated preference for market evidence, he maintained that he considered the transaction price for the property too low. As stated previously, he also felt he had insufficient detail to rely on the Lampton Court comparables and considered that the location of the property directly above the late night convenience store would depress the value of that property compared to other flats further away in the same block. He also submitted that flats above commercial premises had difficulties in obtaining a mortgage. He therefore relied on the Savills Enfranchiseable Graph 2002 which gave 84% for a lease of 57.47 years, producing an extended lease value according to his calculations of £263,175.
21. In response, Mr Dunsin relied on the Lampton Court sales. He produced particulars for the Lampton Court comparables which had all been sold by the freeholder with new leases of 109 years. The prices were remarkably similar, at or around £275,000 which, when adjusted for time, would produce around £282,000 as at the valuation date. He submitted that no further adjustments were required for location. The uniformity in the price achieved was evidence that there was in fact no impact of the commercial premises. In particular, flat 8 was on the ground floor behind the convenience store which is arguably a worse location than the subject flat. He had also produced office copy entries for the properties which showed that they had all obtained mortgages. He had applied two further adjustments: a 2% uplift to reflect the freehold value (following the case of *Cadogan v Erkman* [2011] UKUT 90) and capitalised ground rent. These made his extended lease value £284,082.

### **The tribunal's determination**

22. The tribunal agrees with Mr Dunsin that the Lampton Court sales are the best market evidence for the extended lease value. Given the uniformity of the evidence, the tribunal determines that no further adjustments are necessary. In particular, we reject the application of an "*Erkman* uplift" as no evidence was provided to support that adjustment for the subject property. We also consider that although the rent rises throughout the term, it cannot be described as onerous. In the circumstances the tribunal determines the extended lease value at the valuation date at £282,000.

### **Relativity**

23. Again, since Mr Broadhurst had discounted the market evidence he was forced to turn to the relativity tables. He relied on Savills Enfranchiseable Lease Table 2002 which gave him a figure of 84%. He then made a further deduction of 5% for Schedule 10 rights – the right of a leaseholder to an assured tenancy on expiry of the lease.

24. Mr Dunsin's position was simple. Since there was clear market evidence there was no need to look further. He felt the expiry of the term was too remote to merit any deduction for Schedule 10 rights

### **The tribunal's determination**

25. Again, in the light of *Mundy*, the tribunal determines that the price achieved in the auction, plus the reservation fee, is the best evidence of the short lease value and the other Lampton Court comparables provide the freehold value. The tribunal also agrees with Mr Dunsin that no further deduction is appropriate, given the length of the lease.

### **The premium**

26. The tribunal determines the appropriate premium to be **£44,250**. A copy of its valuation calculation is annexed to this decision.

**Name:** Judge Ruth Wayte                      **Date:** 17 August 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).

**CASE REFERENCE LON/00AT/OLR/2018/0327**

**First-tier Tribunal  
Property Chamber (Residential Property)**

**Determination of the premium payable for an extended lease  
of Flat 10 Lampton Court, Lampton Road, Hounslow, Middlesex  
TW3 4EU**

**Valuation date: 5 July 2017 – Unexpired term 57.47 years**

**Diminution in Value of Freehold Interest**

Capitalisation of ground rent pa YP for 8.47 years @ 6%	£40 <u>6.4923</u>		£260
Capitalisation of ground rent pa YP for 25 years deferred 8.47 years @ 6%	£60 <u>7.804</u>		£468
Capitalisation of ground rent pa YP for 24 years deferred 33.47 years @ 6%	£80 <u>1.785</u>		£143
Reversion to F/H value with VP Deferred 57.47 years @ 5%	£284,820 <u>0.06057</u>	£17,251	
Less value of F/H after grant of new lease Deferred 147.47 years @5%	£284,820 <u>0.00075</u>	£213	£17,038 <u>£17,909</u>

**Marriage Value**

*After grant of new lease*

Value of extended lease	£282,000		
Plus freehold value	<u>£213</u>	£282,213	
<i>Before grant of new lease</i>			
Value of existing lease	£211,350		
Plus freehold value	<u>£18,122</u>	£229,472	
		£52,741	<u>£26,370</u>

**Marriage Value** £44,279  
**50% share to Freeholder**

**Premium Payable Say £44,250**