



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

Case reference : **LON/00BA/OLR/2018/0268**

Property : **1 Exeter Court, Devonshire Road,
Colliers Wood, London SW19 2EJ**

Applicant : **Mrs Kamla Sumbhoolaul**

Representative : **Mr Z Bredemear of Counsel
instructed by Jeremy Marozzi & Co
Solicitors**

Respondent : **Escalus Properties Limited**

Representative : **Mr G Holden FRICS instructed by
W H Matthews & Co, Solicitors**

Type of application : **Application under section 48 of the
Leasehold Reform Housing and
Urban Development Act 1993**

Tribunal members : **Judge N Hawkes
Mr L Jarero BSc FRICS**

Date and venue : **12 June 2018 at 10 Alfred Place,
London WC1E 7LR**

Date of decision : **27 June 2018**

DECISION

Decision of the Tribunal

The premium payable by the applicant in respect of the new lease of 1 Exeter Court, Devonshire Road, Colliers Wood, London SW19 2EJ is £34,217.

The background

1. This is an application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”) for the determination of the premium payable for the grant of a new lease of 1 Exeter Court, Devonshire Road, Colliers Wood, London SW19 2EJ (“the Property”).
2. The respondent is the freehold owner of the Property. The Tribunal has been informed that the Property is a one bedroom, ground floor flat in a three-storey block of twelve flats built in the late 1970s.
3. By a notice dated 17 November 2017, pursuant to section 42 of the 1993 Act, the applicant tenant claimed to exercise the right to acquire a new lease of the Property. The respondent landlord has served a counter-notice, pursuant to section 45 of the 1993 Act, dated 12 May 2017.
4. An application for the determination of the premium payable was made to this Tribunal by an application notice dated 11 December 2017.

The issues

5. The Tribunal has been informed that the following matters were agreed prior to the hearing:
 - (i) The valuation date is 20 November 2017;
 - (ii) the unexpired term as at the valuation date is 57.34 years; and
 - (iii) the deferment rate is 5%.
6. The following matters remain to be determined by the Tribunal in order to arrive at the premium:
 - (i) The capitalisation rate;
 - (ii) the freehold value of the Property with vacant possession; and

- (iii) the relativity of the existing leasehold interest to the freehold interest.

The hearing

- 7. The applicant was represented by Mr Bredemear of Counsel and the respondent was represented by its expert, Mr Holden FRICS, at the hearing.
- 8. The Tribunal has been provided with a copy of an expert report, dated 23 May 2018, prepared by Mr Simpson BSc (Hons) MRICS on behalf of the applicant and with a copy of an expert report, dated 17 May 2018, prepared by Mr Holden FRICS on behalf of the respondent.
- 9. The Tribunal also heard oral expert evidence from Mr Holden. For reasons which the Tribunal and the representatives of both parties agree are entirely understandable, Mr Simpson was unable to attend the hearing and therefore did not give oral evidence.
- 10. There was no application to adjourn the proceedings and the Tribunal indicated that it would take into account the fact that Mr Simpson's expert evidence has not been tested in cross-examination when assessing the degree of weight to be given to it.

The law

- 11. Schedule 13 to the 1993 Act provides that the premium to be paid by the tenant for the grant of a new lease shall be the aggregate of the diminution in the value of the landlord's interest in the tenant's flat, the landlord's share of the marriage value, and the amount of any compensation payable to the landlord.
- 12. The diminution in value of the landlord's interest is the difference between (a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease and (b) the value of his interest in the flat once the new lease is granted.
- 13. The value of the landlord's interest is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) applying the assumptions and requirements set out in paragraph 3 of Schedule 13 to the 1993 Act.
- 14. Paragraph 4 of Schedule 13 to the 1993 Act provides that the landlord's share of the marriage value is to be 50% (but that where the unexpired

term of the lease exceeds eighty years at the valuation date the marriage value shall be taken to be nil).

The Tribunal's determinations

The capitalisation rate

15. The annual ground rent is £80, rising to £120 in 2042.
16. The applicant contends that a capitalisation rate of 8% should be applied and the respondent contends for a capitalisation rate of 6%.
17. In support of the respondent's proposed capitalisation rate of 6%, Mr Holden relied upon a table of evidence derived from auction sales of freehold ground rent investments where the leases provide for periodic ground rent reviews to predetermined sums. The Tribunal notes that the lowest ground rent in this table is £100.
18. The respondent did not seek to argue that there is any provision in the lease entitling the landlord to recover the costs associated with collecting the ground rent and the applicant submitted that there is a real risk that the costs of pursuing the ground rent will become disproportionate.
19. The respondent pointed to the lack of evidence to support the applicant's proposed capitalisation rate of 8% and submitted that with interest rates historically low a capitalisation rate of 6%, or 6% to 7%, is justified.
20. The Tribunal finds that the appropriate capitalisation rate is 7%. In reaching this determination the Tribunal has had regard, in particular, to the low level of the ground rent; to the guaranteed rent increase in 2042; and to the high cost of collection relative to the sum which is being recovered.

The freehold value of the property with vacant possession

21. The applicant contends for a freehold value with vacant possession of £285,000 and the respondent for £312,000.
22. In Mr Holden's opinion, the best comparable sales evidence is that relating to flats in the same block as the Property, namely 7 and 12 Exeter Court.
23. However, Mr Holden also relies upon comparable sales evidence relating to 2 Chagford Court on the basis that:

- (i) Chagford Court was built by the developer who built Exeter Court (Chagford Court was built two years earlier);
 - (ii) Chagford Court is within half a mile of the Property; and
 - (iii) the flats in Chagford Court appear to be identical in design to those in Exeter Court.
- 24. Mr Holden has made adjustments to remove the ground rents because the leases of these properties were not extended pursuant to the 1993 Act and the ground rent provisions continue. The Tribunal has adopted Mr Holden's approach but has applied a 7% capitalisation rate in order to reflect its finding above.
- 25. Mr Holden has also adjusted for time using the Land Registry Data for the sale of maisonettes in the London Borough of Merton. The average adjusted price of the three comparable flats as at the valuation date, applying Mr Holden's methodology, is £316,971. Mr Holden has then deducted an agreed 2.5% in respect of tenants' improvements in order to arrive at his figure of £312,000 for the freehold value of the property with vacant possession.
- 26. In cross-examination, it was put to Mr Holden that the London Borough of Merton is mixed and includes high value properties, for example, in Wimbledon Village, as well as lower value properties in Tooting and Colliers Wood where the market is very different.
- 27. The applicant pointed to the fact that, between May 2017 and January 2018, the Land Registry index fluctuated and there were two peaks. The applicant submitted that it is impossible to say whether this was the result of a volatile market or whether the index was distorted by the sale of a number of high value properties.
- 28. Mr Holden accepted that indexing is by its nature imprecise. However, he stated that in every borough there are variations in value and that "averaging deals with this issue".
- 29. It was also put to Mr Holden that 12 Exeter Court, which was sold for £300,000 on 8 December 2017, is a more desirable property than 7 Exeter Court, which sold on 10 April 2017 for £310,000. The applicant submitted that these two transactions demonstrate that the market in Colliers Wood was stagnating at the Valuation Date.
- 30. In Mr Holden's opinion, evidence in the form of two transactions is insufficient to demonstrate a stagnating market. In Mr Holden's view,

the market is imperfect and that there could be many reasons for the £10,000 difference in value.

31. It was put to Mr Holden in cross-examination that Mr Simpson's figure of £285,000 is reasonable, if Mr Simpson has relied upon the sales evidence relating to 12 Exeter Court alone.
32. It was also put to Mr Holden that the estate agents' particulars of sale demonstrate that 12 Exeter Court was in better condition than the Property. Further, the applicant points to the fact that, unlike the Property, 12 Exeter Court does not have a bedroom window close to a driveway.
33. Mr Holden accepted that 12 Exeter Court was "better presented" than the Property. Mr Holden agreed that 12 Exeter Court was more desirable than 7 Exeter Court which was, in turn, more desirable than the Property.
34. Mr Holden noted that it is unclear how Mr Simpson has reached his figure of £285,000. He accepted that £285,000 would be a reasonable figure if Mr Simpson has relied upon the sales evidence relating to 12 Exeter Court alone. However, Mr Holden stated that he considered it preferable to rely on three sales rather than on one.
35. The applicant submitted that the Tribunal should base its valuation on the adjusted sales evidence relating to 12 Exeter Court alone on the grounds that:
 - (i) The sale took place shortly after the valuation date and the problems with indexing can therefore be avoided.
 - (ii) The sales particulars are available and the condition of 12 Exeter Court at the date of the sale is known.
36. The Tribunal accepts that indexing is imprecise but it is of the view that one sale alone is insufficient to define the market. The Tribunal considers that relatively little detail is known about any of the three transactions and that the safest approach, on the basis of the limited information available, is that put forward by Mr Holden. Accordingly, the Tribunal has adopted Mr Holden's methodology (save that it has applied a 7% capitalisation rate to the ground rents).

Relativity

37. The applicant contends for a relativity of 83.48% and the respondent for a relativity of 69.2%.

38. In support of the respondent's proposed relativity of 69.25%, Mr Holden relied upon market evidence relating to the sale of 11 Chagford Court. This property sold for £220,000 on 13 January 2017, with an unexpired term of 58.19 years.
39. The estate agents' particulars of sale which were presented to the Tribunal record that 11 Chagford Court was being marketed for the sum of £325,000, as a newly refurbished property. The applicant noted that it is extremely unlikely that a property which was marketed for £325,000 in 2017 would have sold for £220,000.
40. The Tribunal is satisfied, on the balance of probabilities, that it is likely that the sales evidence before the Tribunal relates to a subsequent sale. Accordingly, nothing is known about the condition of 11 Chagford Court when it sold for £220,000 on 13 January 2017.
41. Mr Holden seeks to rely upon the 2.5% discount which was agreed respect of tenant's improvements in this context.
42. The Tribunal accepts the applicant's submission that it is not appropriate to apply this discount, which was agreed in a different context, to another property whose condition at the date of sale is entirely unknown.
43. The Tribunal also accepts the applicant's submission that, in the absence of:
 - (i) any evidence concerning the condition of 11 Chagford Court at the date of the sale which took place on 13 January 2017; and
 - (ii) any evidence concerning the extent of the refurbishment which was subsequently carried out;

the market evidence concerning this transaction is not reliable.

44. In Trustees of the Sloane Stanley Estate v Mundy [2016] UKUT 223 (LC), at [169] the Upper Tribunal stated (emphasis supplied):

*"... 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.”

45. Further, in Mallory and Others v Orchidbase Limited [2016] UKUT 468 (LC) at [42] the Upper Tribunal stated:

“We endorse and reiterate the Tribunal's preference for market evidence over the use of relativity graphs, as long as it can be shown that the market evidence is reasonably comparable and does not require artificially extensive manipulation in order to apply it to the subject valuation.”

46. The Tribunal considers that, in the absence of any evidence relating to condition, it cannot be demonstrated that the market evidence is reasonably comparable and does not require extensive manipulation.
47. It is common ground between the parties that the most reliable graphs are the 2009 RICS graphs of relativity. The Tribunal has therefore applied these graphs and has arrived at an average relativity of 83.48%, as contended for by the applicant.

Conclusion

48. Applying the above determinations, the Tribunal finds that the premium payable by the applicant for the grant of a new lease of the Property is £34,217.
49. Copies of the Tribunal's valuation and the Tribunal's table of adjusted comparables are attached to this decision.

Judge Hawkes

27 June 2018

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.
3. 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.
4. 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.

First-tier Tribunal

Ref: GM/LON/00AC/OLR/2016/1710

Valuation of 1 Exeter Court, Devonshire Road, Colliers Wood, SW19 2EJ

Valuation date	20 November 2017
Date of lease	24 March 1976
Length of lease remaining	57.34 years
Ground rent for 1st 33 years	£40
Ground rent for 2nd 33 years	£80
Ground rent for remainder	£120
Freehold value	£311,991
Long lease value	£308,871
Relativity	83.48%
Existing lease value	£260,450
Capitalisation rate	7.0%
Deferment rate	5%

Value of freeholder's present interest

Ground rent	£80	
YP 24.34 yrs @ 7%	11.5334	£923
Reversion to new ground rent	£120	
YP 33 yrs @ 7%	12.7538	
PV of £1 deferred 24.34 years @ 7%	0.1927	£295
Reversion to freehold value	£311,991	
Deferred 57.34 years at 5%	0.06100	<u>£19,031</u>
Freeholder's present interest		£20,249

Freeholders Interest after grant of long lease

Ground rent	0	
Reversion to freehold value	£311,991	
Deferred 147.34 years at 5%	0.000755	<u>£236</u>

Freeholder's diminution in value

£20,013

Calculation of marriage value**Value of property after grant of long lease**

Freeholder's interest	£236	
Tenant's interest	£308,871	£309,107

Value of existing interests

Freeholder's interest from above	£20,249		
Tenant's interest	£260,450	<u>£280,699</u>	
Marriage value		£28,408	
Marriage value to be divided equally between freeholder and tenant			£14,204
Premium payable to freeholder			£34,217

First-tier Tribunal

GM/LON/00AC/OLR/2016/171
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Ref:

1 Exeter Court, Devonshire Road, Colliers Wood, London, SW19 2EJ

	Floor	Sale Price	Date	Unexpired Term	Adjust for lease ext outside the Act	Land Registry average price at sale date	Land Registry average price at valuation date	%age increase/decrease	Adjusted sale price
12 Exeter Court	2nd	£300,000	Dec 2017	107.04 yrs	£2,900	£398,760	£404,784	-1.488%	£307,407
7 Exeter Court	1st	£310,000	April 2017	107.71 yrs	£2,881	£394,657	£404,784	2.566%	£320,910
2 Chagford Court Grd	Grd	£314,000	April 2017	147.96 yrs	£0	£394,657	£404,784	2.566%	£322,057
									£950,374
						Average long lease value			£316,791
						Deduct for tenant's improvements			£308,871
						Adjust to freehold value			£311,991