



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

Case Reference : **CAM/26UB/OLR/2019/0045**

Property : **69 Landau Way Broxbourne
Hertfordshire EN10 6LP**

Applicant : **Christina Huzjuk**

Representative : **Mr Liam Varnam**

Respondent : **Sinclair Garden Investments
(Kensington) Ltd**

Representative :

Types of Application : **Lease extension**

Tribunal Members : **Mrs E Flint FRICS
Judge Morris
Mr R Thomas MRICS**

**Date and venue of
Hearing** : **11 July 2019 Cheshunt Marriott
Hotel Halfhide Lane Broxbourne
EN10 6NG**

Date of Decision : **31 July 2019**

DECISION

Decisions of the tribunal

- I. The premium payable for an extension of the lease for the subject property is £19,250 (nineteen thousand two hundred and fifty pounds).

The application

1. This is an application made by the Applicant lessee under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (the 1993 Act) seeking a 90 year extension at a peppercorn ground rent of the lease dated 23rd May 1983, granted for a term of 99 years from 1 March 1982, with an unexpired term of 62.54 years at a current ground rent of £75 per annum rising to £100 per annum from 1 March 2048 for the remainder of the term.
2. A section 42 Notice was served on the freeholder on 13 August 2018, offering a premium of £14,909 for a 90 year lease extension and the reduction of the ground rent to a peppercorn. The freeholder served a counter notice quoting a premium of £26,297.

The premises

3. The flat is on the first floor of a traditionally built two storey block of eight flats situated towards the end of a residential cul de sac; there are two other blocks of similar flats nearby. The subject premises are on the first floor, backing onto the mainline railway line into London and comprise two rooms, kitchen and bathroom/wc. The accommodation is well maintained: the kitchen has been replaced, the bathroom/wc is fully tiled with modern fittings, the flat is centrally heated by a modern gas fired combi boiler.

The hearing and evidence

4. At the hearing the Applicant was represented by Mr Liam Varnam of counsel who called Mr Wilson Dunsin FRICS to give evidence and the Respondent by Mr Geoffrey Holden FRICS.
5. Prior to the hearing the parties had agreed the following:
 - (i) the valuation date – 13 August 2018
 - (ii) the extended lease value £185,000
 - (iii) The freehold value £186,869
 - (iv) the capitalisation rate – 7%
 - (v) the deferment rate – 5%
6. Therefore, the only issues requiring the tribunal's determination were the short lease value and the premium payable.

The Applicant's case

7. On behalf of the Applicant, Mr. Varnam explained that the case was essentially a question of whether to use the graphs of relativity or adjusted market sales to arrive at the existing lease value.
8. Mr Dunsin explained the various methods of valuing the existing lease. He was of the opinion that the sales evidence, being between 2.4 years and 4 years prior to the valuation date was too old to be used as a basis for valuing the existing lease. He had relied on the five graphs in the RICS research which excluded those relating specifically to Prime Central London.
9. He referred to the Upper Tribunal decisions in Mundy, Mallory v Orchidbase Ltd [2016] UKUT 468 (LC) and Reiss v Ironhawk [2018] UKUT 0311 (LC) to support his contention

that sales as old as in the current case were too old to be relied on by updating using an index because what was required was sales evidence at around the valuation date. Each of the decisions supported the view that where there was no reliable sales evidence the alternative approach was to use graphs of relativity to arrive at the existing lease value.

10. He took the average of the five Greater London and England graphs, which he considered to be the most reliable method in this case which showed a relativity of 87.65%. He noted that other tribunals had adopted a similar approach. The existing use value adopted in his valuation on that basis was £163,971.
11. He had not adjusted the value for tenant's improvements as he did not consider replacing the kitchen or bathroom fittings to be other than complying with the obligations to maintain under the lease. He did not concede that the replacement of two wall mounted gas heaters with a gas fired combi boiler central heating system and replacement double glazed windows would have added to the value of the flat.
12. Under cross examination he confirmed that he had not looked at any of the later graphs available. Mr Dunsin said that he used the same graphs in his negotiations and was of the opinion that a purchaser of a short lease would seek advice regarding the cost of extending from an expert who would also use these graphs rather than the alternatives.
13. Again, under cross examination Mr Dunsin said that he was of the opinion that using the Land Registry Index was not appropriate in this case because the more dated the evidence the less reliable it was, even after updating. He accepted that the graphs were based on data from the mid 2000's. However, he did not accept that the figures produced were unreliable despite the credit crunch and the referendum in the meantime.
14. Based on a freehold value of £186,869 and existing lease value of £163,791 Mr Dunsin said the premium payable was £15,519.

The Respondent's case

15. Mr. Holden said he had used the very comparables which Mr Dunsin had dismissed as being of no consequence. He was of the view that the sales of six of the twenty-four flats within the three neighbouring blocks were a good starting point.
16. The transactions he was aware of were as follows:

Address	Floor	Price	Date	Unexpired term	Price adjusted to Valuation Date
65 Landau Way	1st	£150,000	31.3.16	64.92	
67 Landau Way	1st	£134,995	15.1.15	66.12	£165,735
73 Landau Way	1st	£131,000	27.10.14	66.34	£169,347
64 Landau Way	ground	£129,995	9.10.14	66.39	£168,048
69 Landau Way	1st	£125,000	5.9.14	66.49	£162,999
61 Landau Way	1st	£137,995	11.7.14	66.64	
			Average		£166,532

17. He had adjusted the sales using the Land Registry Index for flats and maisonettes in the Borough of Broxbourne which he considered to be a reliable method because the borough was compact in size. He had no detailed information on No.65, including whether it was an open market sale and No.61 appeared out of kilter with the remaining sales he had therefore disregarded both.
18. He had deducted 2.5% for tenant's improvements, it was his usual practice and one he had agreed with other surveyors on many occasions. He had adopted the same percentage when adjusting the comparables.
19. He compared the unimproved leasehold value £161,369 (£166,532 -2.5%) with the agreed freehold value which produced a relativity of 86.89% for an average lease length of 66 .34 years. He then adjusted this relativity to reflect the unexpired term at the valuation date by deducting 2.64% based on the LEASE graph. The resulting real world relativity of 84.25% was then adjusted by 5.43% to reflect the Act rights. This adjustment was the result of looking at a range of tribunal decisions and the Savills 2015 enfranchiseable and unenfranchiseable graphs.
20. Mr Holden's final valuation of the unimproved leasehold vacant possession value, excluding Act rights, at the valuation date was £148,888.
21. He said that the premium payable based on the above was £22,965.
22. Under cross examination he accepted that his deduction of 5.43% for Act rights was above the line of best fit based on the evidence he had produced. He had done the best he could as there was no up to date transaction evidence and had no faith in the graphs which were a mixture of sales and opinion evidence.
23. Although the transactions were several years old they represented six of the twenty four flats within the estate and were worthy of consideration. The value of short leases has diminished over the years owing to the increased number of flats being built thus increasing the availability of flats with long unexpired terms.
24. In closing Mr Varnam said that case law referred to earlier supported his contention that old comparables were not a reliable method of assessing value and that in cases such as this the graphs of relativity should be used. Mr Holden's method involved too many adjustments to provide a reliable basis upon which to assess the value of the existing lease. His deduction for Act rights was out of line with the Upper Tribunal decisions to which he had referred.

The tribunal's decision and reasons

25. The tribunal prefers the methodology of Mr Dunsin and finds that the most useful method to determine the existing lease value is to rely upon the graphs of relativity.
26. The Tribunal has used the adjusted sales evidence only as a check. The sales evidence is too old to be provide a reliable standalone method of valuing the subject property. Moreover, Mr Holden's approach involved so many adjustments as to render the end result unreliable: indeed, such artificially extensive manipulation, was held in *Mallory v Orchidbase Ltd* [2016] UKUT 468 (LC) to not produce a good market comparable.
27. The Tribunal noted that the updated sales price of the subject premises was £162,999, which is close to the value of £163,791 contended for by Mr Dunsin. The updated sales price has provided a reliable check of the value ascertained using the graphs of relativity.

28. The Tribunal determines a real world relativity of 87.65%. The Tribunal determines that based on the evidence there should be a deduction of 4% for Act rights giving a relativity of 83.65%.

29. The Tribunal determines the unimproved value existing use value at £156,315.

30. The premium payable is £19,250 as shown on the valuation attached.

Signed: Evelyn Flint

Dated: 31 July 2019

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.

69 Landau Way, Broxbourne, Herts.

Unexpired term	62.54	years
Date of Valuation	13/08/1982	
Capitalisation Rate	7%	
Deferment rate	5%	
Lease term	99	years
Ground rent	£75	for next 29.54 years
	£100	for final 33 years
Freehold vacant possession	£186,869	
		(1%
Extended lease value	£185,000	reduction)
Existing lease value	£156,315	
Relatively	83.65%	

Calculation of premium:

1. Value of Freeholder's Interest before lease extension

Ground rent

Period i			£75		
YP for	29.54	7%	12.3497	£926	
period ii			£100		
YP for	33	7%	12.7538		
deferred	29.54	7%	0.1355	£173	£1,099

reversion to freehold

reversion to freehold			£186,869		
deferred	62.54	5%	0.0473	£8,839	£9,938

2. Value of freeholder's interest after lease extension

Reversion to freehold			£186,869		
Deferred	62.54	5%	0.00059	£110	£110
Diminution in value					£9,828

MARRIAGE VALUE

Extended lease value			£185,000		
Landlord's reversion			£110		
sum of proposed interests				£185,110	
LESS					
Landlord present interest			£9,938		
Lessee's present interest			£156,315	£166,253	
Marriage value				£18,857	
	50%	share			£9,429
					£19,256
		premium payable			<u>£19,250</u>

