



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

Case reference : **KA/LON/00BH/OLR/2019/0520**

Property : **26a Markhouse Avenue, London,
E17 8AZ**

Applicant : **Yellow Brick Homes Limited**

Representative : **Mr Mellor, DipSurvPrac**

Respondent : **Markhouse Avenue No.26 Limited**

Representative : **Mr Dunsin, FRICS**

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

Tribunal members : **Tribunal Judge I Mohabir
Mr K Ridgeway, FRICS**

**Date of determination
and venue** : **4 September 2019 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **16 September 2019**

DECISION

Summary of the Tribunal's decision

(1) The appropriate premium payable for the new lease is **£33,602** .

Background

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 26a Markhouse Avenue, London, E17 8AZ (the “property”).

2. By a notice of a claim dated 4 December 2018 (“the notice”), 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.
3. The notice was served by the Applicant’s predecessor in title, Ms Vieira, pursuant to an order made in the Central Family Court dated 6 September 2018 in financial remedy proceedings. The order required the sale to take place on or before 6 December 2018, failing which, her former husband, Mr Burrell, would have conduct of the sale of the property at auction. As the Tribunal understands it, Mr Burrell is the main or only Director and/or shareholder in the Respondent company.
4. The notice was assigned to the Applicant when completion of the sale of the property took place on 19 December 2018.
5. At the time, the Applicant held the existing lease granted on 25 March 1988 for a term of 99 years from 31 December 1986 at an annual ground rent of £100, £125, £175 and £225 rising every 25 years. The applicant proposed to pay a premium of £17,000 for the new lease.
6. On 13 February 2019, the Respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £99,713 for the grant of a new lease.
7. On 18 April 2019, the Applicant applied to the Tribunal for a determination of the premium.

The issues

Matters agreed

8. The following matters were agreed:
 - (a) The floor area is 46.9 square metres, which equates to 505 square feet;
 - (b) The valuation date is 4 December 2018;
 - (c) Unexpired term: 67.07 years;
 - (d) Ground rent: £100, £125, £175 and £225 rising every 25 years throughout the term;
 - (e) Capitalisation of ground rent: 6.5% per annum; and
 - (f) Deferment rate: 5%.
 - (g) The long leasehold relativity is 99% of the freehold vacant possession value for the marriage value calculation.
 - (h) That no compensation is payable under paragraphs 2(c) and 5 of Schedule 13 of the Act.

Matters not agreed

9. The following matters were not agreed:

- (a) The freehold (unimproved) vacant possession value: the Applicant contending for £340,000 and the Respondent contending for £400,000; and
- (b) The “no-Act world” short leasehold (unimproved) value for the marriage calculation: the Applicant contending for a relativity of for 89.3% and the Respondent contending for a relativity of 54.48%;
- (c) The premium payable.

The hearing

- 10. The hearing in this matter took place on 4 September 2019. The Applicant was represented by Mr Mellor, DipSurvPrac and the Respondent by Mr Dunsin, FRICS.
- 11. Neither party asked the Tribunal to inspect the property and the Tribunal did not consider it necessary to carry out a physical inspection to make its determination.
- 12. The Applicant relied upon the expert report and valuation of Mr Mellor dated 26 August 2019 and the Respondent relied upon the expert report and valuation of Mr Dunsin dated 21 August 2019.

Freehold Vacant Possession Value

- 13. Mr Mellor provided a summary table of his comparables in his valuation report (C45). It comprised of 10 properties, sale price as well adjustments for size, bedroom number, condition and outside space in relation to the subject flat.
- 14. Mr Dunsin also provided a table of comparables although his only made adjustment for time. He then ‘stood back’ and considered other adjustments needed as a single amendment of the average of his five comparables. Having done so, he appears to have simply adopted the lowest extended lease value of £396,000 for 9 Hove Avenue, Walthamstow and applied an uplift of 1% to achieve a freehold value of £400,000.
- 15. From Mr Mellor’s table it was possible to see what adjustments were made, whilst Mr Dunsin’s offering did not consider any were necessary, save for time. Given that the subject property and the comparables relied on by Mr Dunsin were not identical, the Tribunal considered that similar adjustments like those carried out by Mr Mellor were appropriate to provide a more reliable valuation. They clearly had an effect on value and Mr Dunsin’s figure for the valuation of the extended lease value and, therefore, the freehold vacant possession value was inherently more unreliable than that of Mr Mellor.
- 16. It follows that the Tribunal preferred that given by Mr Mellor. However, some of the comparables became less relevant as larger adjustments needed to be made. During cross-examination by Mr Mellor, Mr Dunstin agreed that the first five sales in Mr Mellor’s table were reasonable comparables. The Tribunal has, therefore, adopted those sales as the best evidence of the extended lease value, which when averaged provided a long leasehold value of £371,000. The parties had agreed that the long leasehold relativity is 1% and this results in a FHVP of say £374,750.

Existing Lease Value

17. Both valuers referred the Tribunal to the guidance given in the Upper Tribunal decision in *Sloane Stanley Estate v Mundy* [2016] UKUT 0233 (LC) when it was said, at paragraph 168 in the judgement, that market transactions around the valuation date could be regarded as a useful starting point to determine the existing lease value if they were in fact a true reflection of market values.
18. Unsurprisingly, therefore, Mr Dunsin relied on the sale of the subject property on 19 December 2018 for the sum of £225,000, which resulted in no change in value when adjusted for time. He then made a “no Act world” deduction of 3.5% for rights under the Act to arrive at an existing lease value of £217,125.
19. Mr Mellor argued that the sale of the subject property could not be relied on for two reasons. Firstly, to rely on a single transaction was not conclusive proof of the existing lease value, especially when this produces a relativity that cannot be reconciled with the graphs on relativity.
20. Secondly, and in any event, because the sale was subject to the time limit imposed by the court order dated 6 September 2018, it was in effect a forced sale. The sale price could not, therefore, be regarded as a true reflection of the market value of the existing lease.
21. The sale of the subject property in December 2018, on the face of it, appeared to be a good comparable for the ascertaining the existing lease value. However, the sale was part of financial remedy proceedings and subject to the court order imposing a time limit for completion.
22. Materially, the former owner, Ms Vieira, confirmed in a witness statement dated 7 May 2019 that she did sell the property at an undervalue despite having a higher valuation of £265,000. She stated that she did so because she did not have the luxury of time and had to target cash buyers. Although the Applicant’s offer was not the highest, she proceeded with it on the basis that she was satisfied that completion could take place in accordance with the time limit set out in the court order. This is in fact what occurred.
23. The Tribunal accepted the evidence of Ms Vieira and found that the sale of the subject property was in effect a forced sale at a significant discount to the market value. It could not, therefore, be regarded as the correct starting point to determine the existing lease value.
24. Whilst the Tribunal did not consider that the sale of the subject property could be used to determine the value the existing lease, it might be that the suggested market value of £265,000 may be a useful guide to assessing relativity. Against the long leasehold value and allowing 3.5% adjustment for the ‘no Act world’, this produces a relativity of 68.93%
25. Mr Dunsin did not make any use of Relativity Graphs at all, as he relied on the sale of the subject properties sale to provide the existing lease value. Mr Mellor on the other hand chose to the graphs in the absence of any market evidence, having insisted that the sale of the flat was not suitable evidence. His preferred graphs were the 2009 RICS Greater London and England group. Of that he considered the Nesbit & Co graph to be the better, which gave a relativity of 89.24%. The Tribunal also had regard to the Savills 2015 enfranchiseable graph as a more up to date guide, which gave a relativity of 86.30%.

26. The relativity of 68.93% resulting from the sale of the subject property is very low when compared to the graphs. This further demonstrates the inadvisability of only using the sale of the subject property as evidence of the existing lease value. Therefore, the Tribunal preferred the relativity of 86.30% suggested by the Savills' graph.

27. Using a long lease value of £371,000, a freehold vacant possession value of £374,750 and a relativity of 86.30% this results in a premium of £33,602.

The premium

28. Accordingly, the Tribunal determines the appropriate premium to be **£33,602**. A copy of its valuation calculation is annexed to this decision.

Name: Tribunal Judge I Mohabir **Date:** 16 September 2019

Appendix: Valuation setting out the Tribunal's calculations

Valuation for lease extension

26a Markhouse Avenue, London E17 8AZ

Valuation Date	04/12/2018		
Lease Commencement	31/12/1986		
Lease Term	99.00	years	
Unexpired Term	67.07	years	
Long Lease value	£371,000		
Freehold VP value	£374,710	+1% long lease value	
	Term 1	Term 2	Term 3
Ground rent	£125.00	£175.00	£225.00
Reversion years	18.07	25.00	24.00
Capitalisation rate	7%		
Deferment rate	5%		
Compensation	£0.00		
Relativity	86.30%		

Diminution of Landlord's interest

Ground rent				£125	
YP	18.07	yrs @	6.50%	<u>10.45424858</u>	
					£1,307
Rent Review 1				£175	
YP	25.00	yrs @	6.50%	12.19787673	
PV of £1	18.07	yrs @	6.50%	<u>0.320473842</u>	
					£684
Rent Review2				£225	
YP	24.00	yrs @	6.50%	11.99073871	

PV of £1	43.07	yrs @	6.50%	<u>0.066382315</u>	
					£179
Reversion to VP value				£374,710	
PV	67.07	yrs @	5.00%	<u>0.03791698</u>	
					£14,208
L/L's interest on reversion of new lease				£374,710	
FH VP				<u>0.00046967</u>	
PV	157.07	yrs @	5.00%		
					-£176
					£16,202

Landlord's share of Marriage Value

Val. Tenant's interest new long lease					£371,000
Val. L/L's interest after reversion of new lease					£176
					<u>£371,176</u>

Less

Val. tenant's interest existing lease		Relativity	86.30%	£320,173	
Val. l/lord's interest existing lease				<u>£16,202</u>	
					<u>£336,375</u>
					<u>£34,801</u>

Marriage Value at Compensation	50%				£17,401
					<u>£0</u>

PREMIUM

£33,602

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).