



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

Case reference : **CHI/43UB/OLR/2020/0078**

Property : **39 Kingfisher Court
Bridge Road
East Molesey
Surrey
KT8 9HN**

Applicant : **Gillian Bowes Edney**

Representative : **Nicholas Marcy Dawson
Solicitors**

Respondent : **Centro Group Ltd**

Representative : **Cater Bells
Solicitors**

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

Tribunal members : **Mr I Perry FRICS
Mrs J E Coupe FRICS**

**Date of determination
and venue** : **10th September 2020
Paper Determination**

Date of decision : **10th September 2020**

DECISION

Background

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 39 Kingfisher Court, Bridge Road, East Molesey, Surrey, KT8 9HN (“the property”).

1. By a notice of a claim dated 26th September 2019 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. At the time, the applicant held the existing lease granted on 2nd October 1997 for a term of 99 years from 25th March 1997.
2. The initial ground rent was £80 per annum with reviews after the first 25 years and every subsequent 25 years to £160 per annum, £240 per annum and £320 per annum. The applicant proposed to pay a total premium of £2,140 for the new lease of the flat and car space.
3. On 27th November 2019 the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £25,000 for the grant of a new lease.
4. On 22nd April 2020 the applicant applied to the Tribunal for a determination of the premium.
5. On the 27th April 2020 the Tribunal issued directions indicating that because of the Coronavirus outbreak the matter would be dealt with on the papers without an oral hearing. Subsequently a determination on the papers was arranged for Thursday 10th September 2020.

The Matters Agreed

6. The following matters have been agreed.

Valuation date: 26th September 2019

Unexpired term: 76.49 years

Ground rent: £80 per annum increasing to
£160 per annum on 25th March 2022

£240 per annum on 25th March 2047

£320 per annum on 25th March 2072

Deferment rate: 5%

Valuation of ground rent income: £2,506

Capitalisation rate: 6.5%

Accommodation: 2 bedroom flat with hallway, reception room, kitchen and bathroom

Gross internal floor area: 57 sq.m.

Car parking space: The lease for the car park is for a different term to that of the flat. It is dated 19th August 2005 and is for 125 years from 25th March 1997 at a peppercorn rent.

Both leases are to be extended by 90 years. The long lease value of the flat includes the car space and the value of the additional 26-year period in possession of the car space after the extended flat terminates is nil.

The Matters in Dispute

7. The following matters are in dispute.

Extended lease value
Freehold value
Relativity
Premium

The Law

8. The statutory provisions dealing with the premium payable by the Applicants for the grant of a new lease are found in paragraph 2, part 11 of schedule 13 of the 1993 Act. The premium is the aggregate of:

- i. The diminution in value of the landlord's interest in the tenant's flat
- ii. The landlord's share of the marriage value
- iii. Any amount of compensation payable to the landlord.

9. Paragraph 3(1) states that the diminution in value of the landlord's interest is the difference between:

- i) The value of the landlord's interest in the tenant's flat prior to the grant of the new lease: and
- ii) The value of his interest in the flat once the new lease is granted.

10. Paragraph 3(2) spells out the factors to be taken into account when valuing the landlord's interest. Essentially the valuation equates with the value of an open market sale by a willing seller of an estate in fee simple which ignores the right to acquire a new lease and disregards any value attributable to tenant's improvements.

11. The value of the landlord's interest comprises two elements:

- i) The right to receive rent under the existing lease for the remainder of the term (*The term*)
- ii) The right to vacant possession at the end of the term subject to the tenant's right to remain in occupation (*The reversion*).

12. Paragraph 4 of schedule 13 deals with marriage value which is calculated by aggregating the values of the landlord's and tenant's corresponding values prior to the grant of the new lease. The landlord is entitled to a 50 per cent share of the marriage value.

13. Paragraph 5 of the schedule 13 enables compensation to be paid to a landlord for any loss or damage arising out of the grant of a new lease. The question of loss or damage was not an issue in this Application.

The Evidence and consideration

14. Richard Pugh MRICS of Bentley Pugh and Associates prepared a Surveyors Report to the Tribunal on behalf the Applicant. He describes the property as being a ground floor flat within a development of some 63 flats comprising a Grade II Art Deco development between East Molesey and Hampton Court. The flats are arranged around a central lawn, tennis court and swimming pool with a service road and car parking spaces around the outer perimeter.
15. Roger Nelson FRICS prepared a report for the Tribunal on behalf of the Respondent including sales information on 8 properties in Kingfisher Court which had been sold between October 2015 and August 2019. He includes floor areas for 7 of the properties ranging from 58 sq.m. to 83 sq.m.

Extended lease value

16. Mr Pugh submitted to the Tribunal the sale of 40 Kingfisher Court, an almost identical flat on the second floor, sold on 13th August 2019 with a recorded sale price of £351,250 for a lease with 107 years unexpired, sold only 44 days of the valuation date for the property. He provided the Tribunal with a copy of the Title of 40 Kingfisher Court and a copy of a floor plan.
17. He suggests that this price should be adjusted using quarterly statistics from the Land Registry House Price Index for Elmbridge to take account of the 44 days between the sale of 40 Kingfisher Court and the valuation date for 39 Kingfisher Court suggesting an adjusted value for the valuation date of £357,088.
18. Mr Pugh acknowledges that this price needs to be reviewed to take account of its unimproved condition but contends that the building is Listed Grade II which would prevent the upgrading of the original Crittal windows to double glazed units resulting in lower thermal efficiency, that a ground floor flat offers less security than an upper floor flat and that because the walls are of solid construction and the solid floor would have no insulation a ground floor flat would be colder and susceptible to damp. He refers to some internal damp on the kitchen floor of number 39.
19. He contends that the figure of £357,088 should be reduced by 10% to reflect these shortcomings and that the long lease value is therefore £321,379. He made no suggestion of an adjustment to reflect condition or any improvements.
20. Mr Nelson refers to the last 8 sales in Kingfisher Court which he adjusts using a Land Registry index producing an average price of £384,410. He acknowledges that some of these flats were better situated having views over the river Mole, declines to analyse them by floor area and acknowledges that prices reflect an uncertain market and unknown particulars of parties involved. He also acknowledges that he has no information as to whether the properties were in good condition or whether any improvements have been made.
21. Whilst contending that a simple average of time adjusted sale prices is a meaningful starting point he too asserts that the best evidence available is the

sale of 40 Kingfisher Court although it was described as ‘requiring complete modernisation’ . He states that it is a mirror image of the subject flat albeit on another floor but that there is no evidence of different values applying to the same layout of a flat on different floors.

22. Mr Nelson contends that the sale price of £351,250 for flat 40 in August 2019 should be adjusted to reflect its condition and that a value for it some 44 days later should be £357,085 rounded to £357,000.
23. Neither valuer had produced Estate Agents sale particulars or photographs of flat 39.
24. The Tribunal agrees with both valuers that the best evidence available is the sale of 40 Kingfisher Court, a flat in the mirror image of the subject property, situated on an upper floor but described as ‘requiring complete modernisation’.
25. Neither valuer has produced any empirical evidence of the relative difference in value between a ground floor or upper floor flat and the Tribunal also using its own knowledge and experience does not make any addition or deduction for this.
26. Mr Pugh refers to slight evidence of damp in number 39 but the Tribunal is required to value the property ‘as new’, that is with any repairs carried out and newly decorated. 40 Kingfisher Court sold for £351,250 some 44 days before the valuation date needing works. The Tribunal therefore decides that a long lease value of £357,000 is not excessive and uses this figure for its calculations.

Share of Freehold/Long Leasehold Value

27. Mr Pugh contends that the long lease value is 99% of any hypothetical freehold value so that the freehold value is £324,625.
28. Mr Nelson contends that the long lease value is £357,000 which would be 99% of any hypothetical freehold value, so that value is £360,606.
29. The Tribunal accepts the case made by both valuers that there should be a differential of 1%. Based on an extended lease value of £357,000 the freehold/long lease value becomes £360,606.

Relativity

30. Mr Pugh acknowledges the lack of market evidence of any sales at Kingfisher Court with only 76 years unexpired.
31. Aware of the decision in *Sloane Stanley v Mundy (2016) UKUT 0223 (LC)* he has consulted a number of relativity graphs and refers to the Beckett and Kay graph which gives a relativity 95.16% for an unexpired term of 76.49 years and 95.57% as the average of the Greater London graphs.

32. He argues that Kingfisher Court “is a very different animal” to most central London flats which are often within converted buildings and acknowledges the problem of placing too much reliance on one graph over another. He says that the Savills graph should be adjusted to reflect the fact that with an unexpired term of 70-80 years is above the line linking the leases of less than 70 or more than 80 years. He contends for a figure of an average from the Greater London graph (95.57%), Gerald Eve graph (92.19%) and the Savills graph adjusted by him (92.3%) producing a relativity of 92.19%.
33. Mr Nelson also acknowledges the lack of market evidence of a sale of a lease with only 76 years unexpired and refers the Tribunal to various graphs. He too acknowledges the Upper Tribunal decision in *Sloane Stanley v Mundy (2016) UKUT 0223 (LC)* and the more recent case of *Deritend Investments (Birkdale) Limited v Ms Kornelia Trekonova (2020) UKUT 0164 (LC)* which supports an average taken from the Savills 2015 (unenfranchisable) graph and the Gerald Eve graph from 2016.
34. He takes the average of these two graphs 87.8% and 88.7% producing a relativity figure of 88.25%.
35. The lack of real time evidence for the sale of any other properties in the area with short or long leases leaves the parties and the Tribunal dependent on the use of suitable graphs. The Tribunal decides that it should follow the latest Upper Tribunal case (*Deritend*) and therefore applies a relativity figure of 88.25%.

Premium

36. The ground rent income is agreed at £2,506.
37. Mr Pugh contends for a FHVP of £324,625; a 5% deferment rate giving a reversion value of £7,773; 92.19% relativity which gives a marriage value of £5,962; a value of the freeholder’s future interest of £96 and a total premium of £16,145.
38. Mr Nelson contends for a FHVP £360,606; a 5% deferment rate and relativity of 88.25% which gives a premium of £24,900.

Decision

39. The Tribunal decides that the disputed issues shall be.

Extended lease value £357,000
Freehold/long lease value £360,606
Relativity 88.25%
Premium payable £24,900

The tribunal determines a value of £24,900 for the extended lease of the subject property at a peppercorn rent.

Chairman:Dated

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making a written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend the time limit, or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

If the First-tier Tribunal refuses permission to appeal in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may take a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for the permission.

9 Kingfisher Court, Bridge Road, East Molesey, Surry, KT8 9HN.

Valuation date 26th September 2019

Lease 99 years from 25th March 1997

1. Diminution in Value of Landlord's Interest per Schedule 13(3)
 (a) Value before grant of new lease:

Term 1

Ground Rent £ 80
 Years Purchase 2.49 yrs at 6.5% 2.2328 £ 179

Term 2

Ground Rent £ 160
 Years Purchase 25 years at 6.5% 12.1979
 Present Value £1 in 2.49 yrs at 6.5% 0.85487 £ 1,668

Term 3

Ground Rent £ 240
 Years Purchase 25 years at 6.5% 12.1979
 Present Value £1 in 27.49 yrs at 6.5% 0.17708 £ 518

Term 4

Ground Rent £ 320
 Years Purchase 25 years at 6.5% 12.1979
 Present Value £1 in 52.49 yrs at 6.5% 0.85487 £ 141

£ 2,506

Reversion

Extended lease value £360,606
 Present Value £1 in 76.49 yrs at 5% 0.02394

£ 8,634

Less

(b) Value after grant of new lease: £360,606
 Present Value £1 in 166.49 yrs at 5% 0.00030 £ 107 £8527

Present Value of landlord's interest £ 11,033

2. Landlord's Share of Marriage Value per Schedule 13(4)

- (i) Value of Tenant's interest

CHI/43UB/OLR/2020/0078

	with extended lease £357,000	£ 357,000	
(ii)	Value of Landlord's interest after new lease	£ 107	<u>£ 357,107</u>
Less			
(i)	Value of Tenant's interest Before new lease 88.25%	£ 318,235	
(ii)	Value of Landlord's interest Before new lease	£ 11,033	<u>£ 329,375</u>
	Total Marriage Value	£ 27,732	
	Landlord's share 50%		<u>£ 13,866</u>
	Compensation Payable to Landlord		<u>£</u>
	<u>24,899</u>		
			Say £24,900