



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

**Case reference** : **KA/LON/00AW/OLR/2020/0093**

**HMCTS code (video)** : **V: CVPREMOTE**

**Applicant** : **Ms KAMILAH RAMJI**

**Representatives** : **READ ROPER SOLICITORS  
Ms EMILY DUCKWORTH of  
Counsel  
DUNSIN SURVEYORS - Mr  
WILSON DUNSIN FRICS**

**Respondent** : **BROOKSET 15 LIMITED**

**Representative** : **Mr ROBIN DELWORTH SHARP  
BSc FRICS**

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

**Tribunal members** : **Judge Shaw  
Ms M Krisco BSc (Est Man) FRICS**

**Date of (virtual)  
hearing** : **3<sup>rd</sup> November 2020**

**Date of decision** : **10<sup>th</sup> December 2020**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has been consented by the parties. The form of remote hearing was V: CVPEREMOTE. A face-to-face hearing was not held because of the Covid-19 Pandemic, and all parties were agreeable to a remote hearing. It was practicable to resolve all issues with a remote hearing. The documents referred to by the Tribunal are in 2 bundles,

submitted by the parties respectively, The contents of all documents have been carefully considered by the tribunal.

### **Summary of the tribunal's decision**

The appropriate premium payable for the new lease is **£106,148**.

### **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 30 Thackeray Court, Elystan place, London SW3 3LB (the “property”).
2. By a notice of a claim dated 15<sup>th</sup> April 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 5<sup>th</sup> February 1977 for a term of 99 years less 5 days from 1<sup>st</sup> April 1974. The annual ground rent under the lease is £30 per annum for the first 33 years, increasing by £30 every 33 years. The applicant proposed to pay a premium of £80,000 for the new lease.
3. On 15<sup>th</sup> July 2019, the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £186,480 for the grant of a new lease.
4. On 10<sup>th</sup> January 2020, the applicant applied to the tribunal for a determination of the premium.

### **The Issues**

#### **Matters agreed**

5. The following matters were agreed:
  1. Property: 395 sq ft, fourth floor, purpose built flat in five storey block.
  2. Accommodation: Hall, Lounge, Kitchen, Bedroom, Bathroom with WC.
  3. Lease date: 3<sup>rd</sup> February 1977.
  4. Lease Term: 99 years (less five days) from 1<sup>st</sup> April 1974 to 26th March 2073.
  5. Date of Valuation: 7<sup>th</sup> May 2019.
  6. Unexpired Term: 53.88 years.

7. The respondent is the competent landlord.
8. Ground Rent: £30 per annum for the first 33 years, increasing by £30 every 33 years.
9. Marriage Value: 50%.
10. Extended Lease Value is 99% of the Freehold Vacant Possession Value.
11. Deferment Rate: 5%.
12. Capitalisation Rate: 6%.
13. Term valuation: £1056 (agreed at hearing)

### **Matters in Dispute:**

1. Extended Lease Value/ Freehold Vacant Possession Value, the applicant arguing at the hearing for £529,864, the respondent arguing for £687,299
2. Existing Lease Value, the applicant arguing at the hearing for £414,405, the Respondent arguing for £442,995.
3. Premium payable, the Applicant arguing at the hearing for £77,343, the respondent arguing for £147,146

### **The Hearing**

6. The hearing in this matter took place on 3<sup>rd</sup> November 2020, by way of video, given the pandemic situation. The parties were represented as set out above, Mr Sharp acting as both expert and advocate for the respondent. The applicant was present as an observer, but gave no evidence, nor, given the very full reports, was any required from her.
7. 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.
8. The applicant relied upon the expert report and valuation of Mr Dunsin dated 20<sup>th</sup> October 2020 and the respondent relied upon the expert report and valuation of Mr Sharp dated 19<sup>th</sup> October 2020. The Tribunal would like to thank both experts for their assistance in this case, and Mr Sharp for the careful distinction he made between his role as advocate and that of expert.

## **Summary of the Evidence on Existing (Short) and Extended Leasehold Valuations**

9. The applicant's evidence, summarised as from Mr Dunsin's report and his evidence before the tribunal was that the best comparable evidence for assessing this value, was a transaction within the block, and indeed directly next door to the subject property. Flat 29 sold for £712,000 on 7<sup>th</sup> August 2019 (just 3 months after the valuation date) in an improved and modernised condition. It had previously sold for £582,500 with a short lease and in unimproved condition.
10. His evidence was that Flat 29 and the subject flat are effectively identical save that it has the right of access to, and enjoyment of, an undemised balcony. In achieving his short lease valuation he added £20,000 from the short lease sale of flat 29, because it was sold in poor condition, producing an adjusted short lease price of £602,500. He applied the Land Registry House Price Index to equate to the valuation date, producing £579,659.
11. The tribunal would observe here that applicant used the Land Registry Index for flats in Kensington and Chelsea. This is produced monthly using actual sales information. This showed a drop in values for the valuation date. The respondent, on the other hand, used the Gerald Eve/Savills index, which is produced quarterly, and is based on sales, but also on opinion. This showed an increase in value at the valuation date.
12. The tribunal's preference was for the Land Registry Index. There was no evidence to show that values in different parts of the borough would rise and fall at different rates. Accordingly, as will be observed, the tribunal used the adjustment from this index when analysing the comparable at Flat 29.
13. The short lease sale of the subject property was £450,000, as compared to this adjusted short lease valuation of Mr Dunsin of £579,659 for Flat 29, produces a relativity of 77.63%. He explains the difference in these values as being referable to Flat 29's use of the long balcony.
14. In arriving at the long lease value, Mr Dunsin deducted £20,000 from the sale price mentioned above because of the unimproved and modernised condition, giving an adjusted extended lease value of £692,550. After applying the same Land Registry Index, this figure becomes £682,550 as at the valuation date. He applies his relativity figure of 77.63% to produce £529,864 for the extended lease value of the subject property. (Application of the agreed 1% uplift for freehold value produces £535,216 for the purposes of the statutory formula

calculation) He mentions, as a cross-check, that his 77.63% is consistent (or “not out of kilter”) with the Gerald Eve and Savills relativities graph.

15. In all of this, Mr Dunsin’s approach was generally that the sale of the adjacent flat on both on an extended lease close to the valuation date, and short lease at a date capable of adjustment by the indices, was really something of a gift, from a valuation point of view, because one could not really hope for better comparable evidence than the sale of a substantially identical property, in the very same block – indeed, directly next door.
16. Mr Sharp, for the respondent, counselled the tribunal to take a more cautious approach. He readily accepted that, in considering the extended leasehold value, the sale of the adjacent Flat 29 in August 2019 for £712,000 was the best comparable evidence. Indeed, with characteristic even-handedness, he referred the tribunal to the decisions in *Sloane Stanley v Mundy* [2016] UKUT 223 (LC) and *Mallory v Orchidbase Limited* [2016] UKUT 468 (LC) in both of which cases it was emphasised that where possible reliable comparable and transactional evidence should be relied upon in preference to graph evidence, in approaching relativity and generally:

*".....it is likely that there will be a market transaction at around the valuation date in respect of the existing lease with rights under the Act. If the price paid for that market transaction was a true reflection of market value for that interest, then that market value will be a very useful starting point for determining the value of the existing lease without rights under the 1993 Act".*

- See paragraph 168 of the *Munday* decision.

17. Nonetheless, Mr Sharp contended that he, as a prudent valuer, and indeed the tribunal too, had to take steps to ensure that the sale of the adjacent flat, was not, as he put it, “*an outlier.*” In order to rule out this possibility, he took the tribunal to a series of transactions in two blocks of flats within 100 yards of the subject property, namely Sloane Avenue Mansions or Nell Gynn House. His careful analysis of transactions in both these blocks, and of the sale of Flat 29 can be found at paragraph 6 of his report, and no purpose would be served by repeating that material *verbatim* herein. Suffice it say that the analysis leads him, after consideration of these sales comparables, and a series of adjustments, to the conclusion that proper long lease valuation is £687,299 (as opposed to the applicant’s £529,864).
18. In approaching the short lease valuation, he notes that the subject property was purchased for £450,000, very close indeed to the valuation date, and with Act rights. At paragraph 7 of his report, he strips out the Act rights,

using the Savills figure of 7.91% to conclude that net of Act rights, £450,000 becomes £414,405. He then makes a further adjustment (not accepted by the applicant), by “rounding up” £414,405 to £420,000 because he considers that the 1930's bathroom was not as modern as the kitchen when he inspected.

19. There then follow yet further adjustments identified at paragraphs 7.10-7.12 of his report, producing an ultimate relativity figure of 63.81% and short lease valuation of £442,995, as used in his calculation. He conceded that the 63.81% he had adopted was not in line with the Gerald Eve/Savill's graph.

### **Analysis and Finding of the Tribunal**

20. On the general approach of the applicant relying on the sale price of the subject property closer to the valuation date and the adjacent Flat 29, as contrasted with the respondent's contention that “*one swallow does not a summer make*,” the tribunal prefers the approach of the applicant. Its reasons for this preference are that: first, the authorities cited above encourage such reliance, albeit as a starting point. However, in this case, there is no evidence that the transactions within the building and involving the subject and adjacent flat, were anything other than arm's length transactions. They are substantially identical flats (with the exception of the use of balcony, a limited difference which can be adjusted for) and involve sales close, or close enough to the valuation date. They are compelling evidence. Secondly, the comparables introduced by the respondent, were, on its own admission, from very different blocks in very different locations. Mr Sharp described them as more in the nature of hotel type buildings, with very many more flats, a busy atmosphere of noise and activity in noisier locations – as compared with the subject property, which is in what he described as a relatively quiet backwater, in a small well-maintained, quieter block of a very different character. The tribunal for these reasons did not find these comparables of such great assistance. Thirdly, in order to adapt these comparables, so as to make them more useful, a whole series of adjustments had to be made in each case, rendering them of less evidential weight. Fourthly, the relativity figure of 68.81% produced by the respondent's long and short lease valuations does not sit well with the Gerald Eve and Savill's research, whereas the Applicant's resultant 77.43% is close to their suggested range. Fifthly, the respondent's suggested “*rounding out*” adjustment for the property's kitchen being less modern than the bathroom seemed to the tribunal not to be supported on the evidence.

21. On the disputed issues, the tribunal's specific findings are:

Existing Lease Value: **£414,405** –Both parties had agreed that the sale price of no 30 required an adjustment of 7.91%, to allow for Act rights. The resulting value was £414,405. The tribunal preferred the applicant's approach, as the respondent made a further adjustment for improvement which appeared unnecessary.

Extended Lease Value: **£583,617** - The sale of flat no 29 was the only comparable of value and used by both parties. It is slightly smaller and refurbished with the sole use of a long balcony. The tribunal favoured Mr Sharp's deduction for improvements of 4%, as he had been into, and was familiar with, this property. However, the allowances made by both parties for the balcony were not satisfactorily established, in the view of the tribunal, on the evidence. The respondent used 2.5% while the applicant approximately applied 23%. the Tribunal agrees that a balcony has value, but, from its own experience, regards the respondent's allowance as too low, and the applicant's assessment as too high. In the tribunal's judgment, the reasonable allowance would be 15%. The resultant value was adjusted for time, using the Land Registration index for flat sales in Kensington and Chelsea giving an extended lease value equating to £1478 per square foot for Flat 29. The tribunal used the agreed 1% uplift from extended lease value in its valuation.

This results in a value of £583,617 for the subject flat. Or £589,453 as the freehold value. The resulting relativity is 70.30% which is very much in line with the Gerald Eve/Savills index. These figures are set out in the valuation attached.

### **Conclusion**

22. For the reasons set out above, the tribunal's finding is that the premium to be paid for the extended lease in this case is **£106,148**, as set out in the valuation attached to this Decision.

**Name:** Judge Shaw

**Date:** 10<sup>th</sup> December 2020

**Appendix:** Valuation setting out the tribunal's calculations.

### **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).





