



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

**Case Reference** : **MAN/00CG/OLR/2020/0002**

**Property** : **531 Gleadless Road, Sheffield S2 2BS**

**Applicant** : **Mr Hafiz Abdul Hamid**

**Representative** : **Mr Bank, Barrister. Anna  
Pettinger, Taylor and Emmet Solicitors**

**Respondent** : **Widerange Limited**

**Representative** : **Keystone Law**

**Type of Application** : **Leasehold Reform, Housing and Urban  
Development Act 1993-Section 48(1)-  
Application for determination of  
premium and other terms in dispute**

**Intermediate  
Landlord** : **Mr Andrew Michael Creswick**

**Tribunal Members** : **Judge C. P. Tonge  
Valuer Member Mrs S. A. Kendall**

**Date** : **24 and 25 November 2020**

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**DECISION**

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**CROWN COPYRIGHT 2020**

## **Decision**

1. The premium payable for the new Lease is £10,859, out of which £8,439 is payable to the Respondent and £2,420 is payable to the intermediate landlord.

## **Application**

2. By an application, dated 15 January 2020 Mr Hafiz Abdul Hamid (“the Applicant”) applied to the First-tier Tribunal for the determination of the premium and other terms of acquisition of a new lease in respect of 531 Gleadless Road, Sheffield S2 2BS (“the Property”). The Applicant is represented by Anna Pettinger of Taylor and Emmet Solicitors and has instructed Mr M. D. Holmes BSc, MRICS as his valuer expert.
3. The Respondent to the application is Widerange Limited (“the Respondent”). That company is represented by Keystone Law and has instructed Mr G Evans FRICS as its valuer expert.
4. The intermediate landlord is Mr Andrew Michael Creswick who has played no part in these proceedings. As such his interests have been monitored by the competent landlord, the Respondent.
5. The Property is held on the remainder of an under lease (“the under lease”) for a term of 99 years (less three days) commencing 25 March 1965, with a ground rent of £55 per year payable to the intermediate landlord.
6. The intermediate landlord holds the property and a shop at 511 Gleadless Road, Sheffield on a lease that commenced on 25 March 1965 and has the remainder of 99 years to run. The intermediate landlord has a ground rent of £100 per year to pay to the Respondent.
7. The Applicant served a Notice of Claim to Exercise the Right to acquire a new lease, pursuant to Section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”) dated incorrectly, but it is an agreed fact that the notice should have been dated 25 May 2019. The effective date of service of this notice on the Respondent pursuant to the CPR is 28 May 2019 (this provides for postal delivery and the fact that 27 May 2019 was a Bank Holiday).
8. The term proposed for the new lease was the unexpired term of the existing lease plus an extension of 90 years at a peppercorn rent.
9. The Applicant proposed a premium under the terms of the 2003 Act of £7,500 with a further £100 to be paid to the intermediate landlord.

10. The Respondent served a Counter Notice, dated 26 July 2019, agreeing the grant of a new lease, but proposing the premium for the new lease at £19,700 and an additional payment of £1,500 to the intermediate landlord. In addition, the Notice contained amendments to be made to the terms of the under lease, seeking to add terms pursuant to section 57 (7) and (11) of the 1993 Act.
11. Regional Surveyor Walsh, acting as a procedural Judge of the Tribunal, issued Directions relating to the application on 20 February 2020. These were amended by letters dated 26 May 2020. Further Directions were issued on 29 June 2020. Due to the restrictions imposed during the Covid-19 pandemic, it has not been possible for the Tribunal to inspect the interior of the Property and it was left to the Tribunal to decide whether or not an external inspection would be necessary.
12. The Tribunal met on Friday 20 November 2020, without notifying the Parties that it intended to do so, to determine the issue as to whether or not to undertake an external inspection of the property. The Tribunal determined that there was no need to do so. The evidential bundles contain photographs of the exterior and interior of the property, including photographs of the shopping parade on Gleadless Road and a plan of the surrounding area, with a full description of the property. In addition, the members of the Tribunal are Sheffield based, the valuer member of the Tribunal having substantial knowledge of the Gleadless area.
13. The application has been determined by an oral hearing held via the full video hearing system, that hearing occupying the morning sitting on Tuesday 24 November 2020. The Tribunal then met to determine the issues in the case that same afternoon and the morning of the following day.

### **Issues**

14. The expert valuers, Mr Holmes for the Applicant and Mr Evans for the Respondent have agreed the following:
  - (1) A Deferment rate of 5%.
  - (2) An uplift of 1% to Freehold Vacant Possession (FHVP).
  - (3) The purchase price for the under lease £42,000
15. The issues for determination by the Tribunal are:
  - (1) The Market Capital Value of the property on an unextended and extended lease basis
  - (2) Relativity

- (3) Premium
- (4) The status of the intermediate landlord
- (5) An application pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (as amended in 2014) ("the Rules") on behalf of the Respondent relating to an error made by the Applicant's expert, Mr Holmes adding the words, "Commercial in Confidence" to Appendix IV of his report 10 March 2020.
- (6) An error was made by Deputy Regional Valuer Walsh in failing to add the intermediate landlord as a party to the proceedings in his Directions of 20 February 2020. As a result, the Tribunal failed to serve the application and associated documents upon the intermediate landlord at that time. A situation that was corrected later. New Directions were issued on 29 June 2020. Has this caused any substantial costs to be incurred by the Applicant? Further, if this Tribunal so finds, should the Tribunal offer to contribute that amount in a payment to the Applicant in compensation for the additional costs incurred?
- (7) Disputed terms in the new lease.
- (8) Whether or not the Parties are content with the Tribunal's determination made on Friday 20 November 2020 that there is no need for the Tribunal to inspect the property.

### **The Property**

16. The Property is a maisonette occupying two floors of a building above a shop premises. It is situated in a district shopping parade where there is a row of shops with maisonettes above. The three-storey purpose built development is of mid-1960's construction, having brick walls and flat roofs. The Property has three bedrooms, shower room with toilet, cloakroom with toilet, kitchen and living room. The Property has been improved since the under lease was granted (improving and modernising the existing features) in that the property now has a modern shower room, modern kitchen, uPVC windows and doors and modernised heating system. These improvements must be disregarded in calculating the premium to be paid upon issue of the new lease (Schedule 13 of the Act, section 3 (2)(c)).
17. Access is gained to the Maisonette via an external stair case or ramp leading to a deck area that provides similar access along the length of the building. There is an external garage a short distance away from the maisonette. The area in which this property is situated is known locally to be a socially deprived area.

## **The Law**

18. Section 48(1) of the 1993 Act enables an application to be made to the First-tier Tribunal for a determination in respect of any disputed terms relating to the granting of a new lease and the premium to be paid.

19. Section 56 (1) of the 1993 Act provides as follows:

*“Where a qualifying tenant of a flat has under this Chapter a right to acquire a new lease of the flat and gives the landlord notice of his claim in accordance with section 42, then except as provided by this Chapter the landlord shall be bound to grant to the tenant, and the tenant shall be bound to accept-*

*(a) in substitution for the existing lease, and*

*(b) on payment if the premium payable under Schedule 13 in respect of the grant*

*a new lease of the flat at a peppercorn rent for a term expiring 90 after the term date of the existing lease.”*

*Schedule 13 of the 1993 Act provides detail as to how the premium is to be calculated.*

20. Section 57 (7) and (11) of the 1993 Act state as follows:

*(7) The terms of the new lease shall-*

*(a) make provision in accordance with section 59(3); and*

*(b) reserve to the person who is for the time being the tenant’s immediate landlord the right to obtain possession of the flat in question in accordance with section 61.*

*(11) The new lease shall contain a statement that it is a lease granted under section 56; and any such statement shall comply with such requirements as may be prescribed by [land registration rules under the Land Registration Act 2002].*

## **The Hearing**

21. The hearing was conducted by video and occupied the morning of Tuesday 24 November 2020. Persons present were the Applicant's solicitor Anna Pettinger (Taylor and Emmet), barrister Mr Bank and expert valuer Mr D. Holmes. On behalf of the Respondent, Miss Evans and the expert valuer Mr G Evans.

22. In relation to the list of issues to be determined by the Tribunal and listed in paragraph 15 above, it was established that item (5) the application pursuant to Rule 13 of the Rules is no longer being proceeded with. Item (7), the disputed terms in the new lease have now been agreed. They are no longer in dispute. Item (8), the Tribunal's

decision that an inspection of the property is not necessary was agreed to by both parties.

23. In relation to item (4) of paragraph 15 above. It is clear that the head lease requires a payment of £100 per year in ground rent for the maisonette and shop premises, this is to be paid by the intermediate landlord to the freeholder. It is also clear that the under lease requires a payment of £55 per year from the Applicant leaving the intermediate landlord to recover £45 per year ground rent from the under lessee of the shop.
24. On behalf of the Applicant an invoice, dated 28 November 2017, for payment of £25 per half year ground rent has been produced (£50 per year). It is issued by Korax LLP and addressed to Mr and Mrs Jones, whom the Applicant contends were the prior holders of the under lease. The invoice relates to the property. The invoice states that the landlord is Bingwood Property Company LLP. These two companies ( Korax LLP and Bingwood Property Company LLP) are not Widerange Limited, but the Applicant contends that they share an address with Widerange Limited and are therefore to be presumed to be in some way associated with Widerange Limited.
25. As such Mr Holmes on behalf of the Applicant submits that he suspects that the Freeholder is in fact demanding the ground rent due on the property direct from the under lessee (since the purchase of the under lease that is the Applicant) and not from the intermediate landlord. As such the intermediate landlord no longer has any interest in the ground rent that is required to be paid under the terms of the leases and will therefore not suffer a loss. Other than this one invoice there is no evidence to suggest that the situation as described in the head lease and under lease has changed. Mr Holmes frankly admitted that he does not know what the true position is in relation to this point.
26. Mr Evans, on behalf of the Respondent, submits that he has instructions that the head lease and under lease still govern this situation and it is therefore clear that the intermediate landlord will be required to pay £100 per year for both the shop and this maisonette and will therefore suffer a loss of £55 per year ground rent when the new lease is issued at a peppercorn rent. Further, he suggests that this invoice has clearly been issued by mistake, that no person involved in this case should ever be charged a ground rent of £50 per year.
27. In calculating the premium to be paid the valuation experts have adopted two radically different approaches to the value of the unextended lease of the property which is then reflected in very different capital values for the property on an extended lease basis. Mr Evans seeks to start with the agreed purchase price of £42,000 in March 2017 of the unextended lease. He extrapolates forwards from that figure using HM Land Registry index figures for Sheffield flats between 2017 and 2019 resulting in a figure of £44,800 for the unextended lease in May 2019 (the valuation date) which he then

adjusts by £1000 to arrive at £43,800 to take into account tenants' improvements. From this he deducts a figure of 10.73% to take into account the Savilles Value of Acts Rights to arrive at an unextended lease value in 2019 of £39,100. Mr Evans then uses a percentage rate of 74.56% as per the Savilles Enfranchisable graph of relativity to extrapolate forwards to calculate a figure for the extended lease value and arrives at a figure of £58,745, £59,332 with the 1% uplift to FHVP.

28. Mr Holmes on the other hand suggests that the property was purchased in 2017 at a price that was above the market rate. His evidence is a similar property with an extended lease (84 Spring View Close) having sold at £39,000 just 12 days prior to the valuation date in May 2019. Mr Holmes pointed out that the Applicant did not have the benefit of any advice at the point that he purchased the under lease to the property. The Applicant did not take a mortgage, nor have a valuation survey and almost certainly underestimated the costs of extending the lease.

29. Mr Holmes also remarked that there is a question over the mortgageability of the property due to its location in a mixed-use development with its position being over retail premises. This type of property is a cash purchase investment as there will be virtually no owner-occupied demand. The investor will be attracted by double digit yield returns but must expect active management, and high voids. Albeit Mr Evans maintained that there was no evidence to suggest that the transaction was anything other than between a willing buyer and a willing seller.

30. Mr Holmes suggests that a better approach to tackle the calculation of the premium is to take the value of comparable extended lease maisonettes in 2019 and then extrapolate backwards to arrive at a figure for the unextended lease value. Thus using the market evidence, he adduces that the extended lease value in May 2019 is £42,500 - a figure that is close to the actual price paid in 2017 for the unextended lease. With 1% uplift to FHVP this becomes £42,930. He then extrapolates backwards using the Leasehold Advisory Service Relativity Graph figure of 74.87% to calculate the unextended lease value in 2019 which computes to £32,140.

31. Mr Holmes, being based in a Sheffield practice, points out that he had the benefit of making a full inspection of the property during which he had taken the photographs now before the Tribunal. He compared this fact with his contention that Mr Evans had not inspected the property. Mr Evans accepted that he had not inspected the interior of the property but had inspected the exterior and said that he is conversant with the area.

32. Mr Holmes continued with his submission that the error made in the original Directions had caused extra work to be carried out on behalf of the Applicant that he estimated as having taken an hour and a half at £125 per hour. He indicated that this was reflected in the addition of

two paragraphs in his reports and referred the Tribunal to paragraphs 4.5 and 4.6 in his report of 16 July 2020. The Tribunal also notes that there is a letter on file, containing the views expressed by Deputy Regional Valuer Walsh as per his email of 8 July 2020.

33. Mr Evans referred the Tribunal to *Elmbirch v Humphrey Middlemore* [2017] UKUT 0314 (LC), *Judith Reiss v Ironhawk* [2018] UKUT 0311 (LC), *Trustees of the Barry and Peggy High Foundation and Clauio Zucconi and Mirella Zanre* [2019] UKUT 0242 (LC) to support his approach to relativity in his calculations.

### **Determination**

34. The Tribunal first considers the issue of the intermediate landlord. It is clear that when the two leases are read together that the intermediate landlord will lose out to the value of £55 per year in ground rent when the new lease is granted.

35. Mr Holmes on behalf of the Applicant submits that this might not be the case. He puts an invoice before the Tribunal and suggests that this might mean that the Respondent has apportioned the ground rent seeking now to claim the relevant figure in ground rent from the sub tenant responsible for it, by passing the intermediate landlord, at least in the case of the property.

36. The Tribunal has to balance the evidence before it, on one hand two leases and the instructions given to Mr Evans, clear evidence that the intermediate landlord will suffer a loss as described above. On the other hand, an invoice that quite simply must have been issued in error because this case does not involve anyone being required to pay a ground rent of £25 per half year or £50 per year. Approaching the invoice from the starting point that it clearly shows an error has been made, add to that that Mr Holmes accepts that he really does not know what the true position is and there is no evidence before the Tribunal that is capable of persuading the Tribunal that the situation as described in the two leases has been changed.

37. The Tribunal determines that the intermediate landlord will have to pay ground rent at £100 per year but will no longer receive £55 per year as a result of the new under lease being granted at a peppercorn rent. The Tribunal agrees with the approach made by Mr Evans in his valuation of 25 March 2020 that a capitalisation rate of 2.5% should be used which results in a value of £1,473 for the intermediate landlord before adding the marriage value share.

38. Moving to the valuation, the Tribunal determines that it is likely that the Applicant bought the property at above the true market rate, there being a similar property on the market at the same time that he could have bought for £39,000 extended, instead of paying £42,000 for an unextended lease. The Tribunal is not persuaded that the approach



taken by Mr Evans by extrapolating upwards using relativity graphs is correct.

39. In *Deritend Investments (Birkdale) limited v Treskonova UT* [2020] UKUT 0164(LC) the Upper Tribunal has followed its earlier decisions. Martin Rodger QC Deputy Chamber President states:

“The guidance given by this Tribunal endorses the use of the Savills and Gerald Eve 2016 graphs where there is no transaction evidence, notwithstanding, that the subject of the valuation is outside the PLC. If persuasive evidence suggests that the resulting relativity is not appropriate for a particular location a tribunal would be entitled to adjust the figure suggested by the PLC graphs.”

40. Here, the Tribunal considers there is sufficient transactional evidence to take precedence over relativity graphs.

41. The Tribunal agrees with submissions made that this is a socially deprived area. Most actual residents will be looking to rent a very cheap maisonette at or about the housing benefit level. There will be little difference in rent charged between a two or three bed roomed maisonette. What may be useful to one prospective resident may in fact be a detriment to another. The use of a garage some distance away from the property may have security risks, such that the actual resident may be unwilling to use the garage even for storage, in circumstances where that resident is unlikely to be able to afford to own a motor vehicle. Improvements to the interior of the property may affect the choice of the maisonette to be rented but is unlikely to increase the rent paid. Such improvements may enhance the saleability of the property rather than the capital value.

42. The Tribunal is obliged to do its best on the evidence provided. Mr Evans focussed on constructing his valuation on the sale evidence of the maisonette. Mr Holmes on the other hand stood back and examined the sale evidence in the context of other sales in the vicinity. The approach taken by Mr Holmes is a better approach, at least in arriving at a starting value for the calculations. Mr Holmes suggests that it might be possible to exclude one comparable that he suggests is unreasonably high in value. The Tribunal does not accept this and determines that as a matter of being fair and just to all parties all eleven comparables produced by both valuers must be included, resulting in a value of £45,900 for the extended lease with a FHVP value after 1% uplift of £46,359. In adopting this wide approach, including all the suggested comparables (many of which do not appear to have been improved) and bearing in mind the Tribunal's findings in paragraph 41 above, the Tribunal determines that it has disregarded the tenants' improvements to the property.

43. The Tribunal agrees with Mr Evans approach to relativity using the Savills enfranchisable graph rather than Mr Holmes use of the Leasehold Advisory Services graph, which it is acknowledged may self

perpetuate inaccuracies. Thereafter, details of the Tribunals valuation can be seen on the valuation schedule at appendix 1.

44. The Tribunal determines the premium payable is in the sum of £10,859 and that sum is comprised of £8,439 to the freeholder with £2,420 to the intermediate landlord, as shown in the attached valuation schedule (appendix 1).
45. The Tribunal moves to the issue as to whether or not the error made in the first set of Directions has caused any significant cost to the Applicant in what is described as "abortive costs" in Mr Holme's letter of 4 July 2020.
46. The Tribunal notes the letter of Deputy Regional Valuer Walsh in which he points to the error made by Mr Holmes in Mr Holme's first report which made it difficult for Mr Evans to properly respond to that first report and that both parties were then in difficulty in complying with the first Directions. It was as a result of this that amended Directions were issued, in an effort to address both errors and issue Directions that could be followed. The Tribunal determines that this was done to assist both Parties in the preparation of the case.
47. The Tribunal notes that Mr Holmes has in fact produced reports dated 10 March 2020, 31 March 2020, 15 June 2020 and 13 August 2020. The Tribunal determines that much of the extra work done by Mr Holmes has been made necessary as a result of the error that he made in his first report. The Tribunal has considered the two paragraphs that Mr Holmes points to as being necessary because of the mistake made in the Directions and it appears to this Tribunal that only paragraph 4.6 seeks to address that issue. In any event it is clear that as a result of the error made by Mr Holmes himself that another report would have to be made. In fact, three other reports were made.
48. In fact it is clear that intermediate landlord has not sought to involve himself in this case, so no prejudice could possibly have been caused by the error in the Directions to the intermediate landlord.
49. The final point that the Tribunal thinks that it is necessary to make is that both Parties, having either completed the application form to the Tribunal or having had that form served upon them could have been in no doubt what so ever that there was a mistake in those first Directions. The application form makes it very clear that there is an intermediate landlord and yet the Party that completed that application form did not notify the Tribunal that a mistake had been made. This is a clear breach of the Parties duty to help and co-operate with the Tribunal pursuant to Rule 3 (4) of the Rules. If this had been brought to the attention of the

Tribunal promptly there could not have been any question of "abortive costs".

50. The Tribunal determines that it is satisfied that there was an error in the first Directions, but it is not satisfied that there have been substantial "abortive costs" on the part of the Applicant as a result.

51. This case has been conducted during the Covid 19 pandemic and the restrictions imposed as a result. The only substantial change that this has brought about in this case is that this Tribunal has not been permitted to make an internal inspection of the property. In fact, this has had no actual effect upon this case because the Tribunal decided that due to photographic evidence, plan, description and the local knowledge of its valuer member, the Tribunal did not need to inspect the property at all. This is a view that both Parties agreed with.

### **Decision**

52. The premium payable for the new lease under section 48 of the Leasehold Reform and Urban Development Act 1993 is £10,859, out of which £8,439 is payable to the Respondent and £2,420 as payable to the intermediate landlord.

53. Appeal against this Decision is to the Upper Tribunal. Any Party, including the intermediate landlord, wishing to appeal against this Decision has 28 days from the date that the Decision is sent to them to deliver to this First-tier Tribunal an application for permission to appeal. That application must state the grounds of appeal, including paragraph numbers of the Decision that are challenged, particulars of the appeal and the result that the appellant seeks to achieve by bringing the appeal.

### **Judge C. P. Tonge**

Appendix 1 is the Valuation Schedule that is part of this Decision

**16 December 2020**

## Appendix 1

### Valuation Schedule for 531 Gleadless Road, Sheffield S2 2BS

#### Freeholder

PV of £1 in 44.83 years @5%	0.1122 x £46,359	=	5,201
PV of £1 in 134.83 years @5%	0.0014 x £45,900	=	64
			5,137

#### Intermediate Landlord (ILL)

YP 2.5% for 44.82 years - £55 x 26.7739			1,473
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#### Marriage value

Landlords proposed interest	64		
Tenants proposed interest	45,900		45,964
Landlords existing interest	5,137		
Tenants existing interest	30,856	35,993	9,971
ILL			1,473
Marriage value			8,498
Divide equally - 50%			4,249

#### Apportion - in ratio to premiums

Freeholder - 77.72%	x	4,249	= 3,302
ILL - 22.28%	x	4,249	= 947

#### Premiums

Freeholder - £5,137 plus marriage value share - £ 3,302			£8,439
ILL - £1,473 plus marriage value share - £947			£2,420

Total Premium £10,859